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# The Yukon Education Act: Commentary and discussion on recent legislation

## Abstract

*For the past four years the people of the Yukon Territory in the Northwest of Canada have been involved in a number of activities designed to bring about a reform of their education system. The culmination of these activities is to be a new education law planned for enactment in 1990. This article provides an analysis of the Yukon's proposed new Education Act, refers to some of the recent education reform movements elsewhere, and then outlines some of the major elements of the Yukon's draft law including student and parental rights and responsibilities, a three-tiered system of local school governance, the roles of teachers and principals, a "made in the Yukon" curriculum, a comprehensive appeals procedure, and arrangements for the increased participation of the Yukon's First Nation peoples. The article concludes with critical analysis and commentary on the appropriateness of the proposed law for schooling in today's society.*

## Résumé

*Depuis quatre ans, la population du Yukon (nord-ouest du Canada) participe à un processus de réforme du système d'éducation qui a pour but l'adoption d'une nouvelle loi sur l'éducation dont l'entrée en vigueur est prévue pour 1990. Le présent article analyse ce projet de loi, examine d'autres mouvements réformistes récents et décrit certains des principaux éléments du projet de loi yukonais, notamment: les droits et responsabilités des parents et des étudiants, le système de gestion scolaire à trois paliers proposé, le rôle des enseignants et principaux d'école, le programme scolaire "conçu au Yukon", la procédure globale d'appel et les dispositions visant à accroître la participation des Premières nations. L'article se termine sur une analyse critique assortie d'observations où l'auteur examine la pertinence du projet de loi compte tenu des besoins de la société contemporaine en matière d'éducation.*

As a society becomes more complex, more relative, more ambiguous, and less structured, demands upon the individual multiply. We have created a world in which there no longer is a common body of information that everyone must or can learn. The only hope for meeting the demands of the future is the development of people who are capable of assuming responsibility for their own needs. Schools should help every child to prepare for a world of rapid changes and unforeseeable demands in which continuing education throughout adult life should be a normal expectation. (Goodlad, 1984, p. 56)

John Goodlad (1984) has succinctly encapsulated the challenges faced by contemporary public school systems. Today, in many parts of the western world, politicians, parents, bureaucrats, and educators are attempting to address these problems by means of appropriate legislation, be it of the remedial, enabling, or more prescriptive variety. For the past four years the people of the Yukon Territory, in the far Northwest of Canada, have been involved in a variety of consultation activities designed to bring about a reform of their education system. The culmination of these activities is to be a new education law planned for enactment in the spring of 1990.

The Yukon is not a province, but a territory. It covers a land area approximately the same size as France, and has a total population of about 25,000, the equivalent of a fair-sized Montreal suburb. There is a territorial commissioner, an elected government, a chief minister, and a cabinet. There is a minister of education, a deputy minister, a superintendent of schools, and three regional superintendents. There are, as yet, no school boards. There are about 5,000 students enrolled in some 26 schools; the largest of which, a secondary school in Whitehorse, has an enrollment of about 750 students; while the smallest, Beaver Creek School, has an enrollment of 6 (Yukon Bureau of Statistics, 1987). An important element of the population in the Yukon is the Yukon First Nation made up of some fourteen distinct Indian bands and councils. These native peoples are currently seeking self-government agreements within the context of a massive Yukon land-claim agreement with the federal government. Many of the First Nation people are also seeking more direct control of their own education. Up to this stage in its development, the school system in the Yukon has tended to adopt its models from elsewhere. The curriculum, for example, has been borrowed from the provinces, especially from neighbouring British Columbia. The federal government has also played a major role in the Yukon, which is really not surprising given its responsibilities for Indian education and for the overall administration of the territory.

### Education Reform Legislation in Canada and Elsewhere

Today, however, the territory is poised to enact its own "made in the Yukon" education legislation which it is hoped will better reflect the unique needs and circumstances of its land and peoples. A new education act for the Yukon must obviously reflect the difficulties inherent in the territory's vast size and in its varied and dispersed population including the Indian First Nations. It must also reflect a society undergoing rapid change and, at the same time, chart the way forward to the as yet unknown challenges of the 21st century. In these latter respects, at least, the Yukon is little different from most other North American societies.

The purpose of this paper is to review some of the education reform legislation recently enacted elsewhere, to outline the new education act proposed for the Yukon, to highlight its unique features, and to offer some commentary upon its appropriateness for schooling in today's society.

The past decade has been witness to a flurry of legislated educational reform activity. In the United States the reform movement began with the issuance of "A Nation at Risk" in 1983 (NCEE) and, in the two years that followed, state legislatures enacted more than 700 statutes intended to reform education by legislating higher standards in the schools together with more bureaucratic regulations and controls. As the president of the National Education Association pointed out, this first wave of reform emanated not from the schoolhouse, but from the statehouse (Futrell, 1989). Subsequent legislative efforts in the States have attempted to place the focus for reform more at the local grassroots level, rather than with more top-down regulations, and to grant more responsibilities to local schools, to local educators, to local parents, and to local communities. In the Chicago and New York school systems, for example, local parents hire and fire the school principals. In Britain, on the other hand, the Education Reform Act of 1988, while granting more financial and staffing authority to the governing bodies of local schools, has considerably increased the powers of central authorities. A national curriculum has been introduced for the first time, augmented by a system of testing and evaluation. While parents and individual schools may have won some new powers in the British education system, it appears that teachers, local school boards, colleges, and universities have lost some of their traditional autonomy (Bayley & Burgess, 1988).

In Canada, meanwhile, several provinces have recently adopted new education legislation designed to improve the quality of schooling and to prepare their public education systems for the 21st century. The Minister of

Education in British Columbia, for example, in introducing the new Public School Act (1989) stated that:

The new Act is a considerable improvement on former legislation. It is broadly enabling rather than prescriptive, and provides for enhanced consultation throughout all levels of the B.C. education system. Bill 67 is broad, flexible legislation designed to enable school districts to provide educational programs delivering quality education for our children and our grandchildren. It will become the foundation for an education system that will prepare today's students for the challenges and opportunities of the 21st century. (B.C. Ministry of Education, 1989)

In Quebec, on the other hand, the most significant change introduced by the new education act (Bill 107) is the provision for the replacement of school boards for Catholics and for Protestants by French-language and English-language school boards. According to the Assistant Deputy Minister responsible for the network of schools in Quebec, the new education act replaces a piece of legislation that is outdated. The old act had become unwieldy as a result of the many amendments adopted since its coming into force in 1899. Apart from the shift to a linguistic basis of organization, the new act does not significantly alter the major responsibilities of the school boards or of the minister or government (Ministère de l'Éducation, 1990). What is new is the focus that is placed on the rights of students, including the right of appeal, the increased role for parents especially in the definition of the educational project for each school, the recognition of the religious diversity that now exists within Quebec today, and a much clearer definition of the rights and responsibilities of the various agents involved in the schooling enterprise.

Although each of these various reform proposals deals primarily with its own unique circumstances, the common threads appear to be an emphasis on the legal rights of children for access to educational services, the increased participation of parents, a clearer definition of the duties and responsibilities of the various stakeholders, increased consultation procedures, and greater accountability throughout the system in order to increase the prospects for a quality education. To what extent does the new legislation in the Yukon include these common elements and to what extent is it specific to the Yukon? Up until now, the public education system in the Yukon has been managed and controlled from the centre. There are no locally-elected school boards, there is no local school taxation, and there is little opportunity for public participation in the system. Will the new legislation seek to change or to retain this state of affairs?

### **Yukon Education**

In direct response to the request of parents that a statement of the overall aims and objectives concerning public education in the Yukon Territory be prepared by the territorial government, the following statement of philosophy was published in a White Paper in 1988:

**Public education should prepare people for life and work in the Yukon, Canada and the world, and promote in the community a love of learning. (Yukon Government, 1988a)**

In addition, the White Paper went on to emphasize two central themes which were to guide the government in the elaboration of its new education act. These were first, universal quality education to meet individual needs, and second, greater public participation in the education system. The government then went on to elaborate a number of priorities that it intended to address in the new legislation. These included:

- to ensure in law the right of access to an appropriate education;
- to develop self-worth through a positive learning environment;
- to provide opportunities for each student to achieve his or her maximum potential;
- to promote personal growth and effective participation in Yukon society;
- to promote the recognition of equality among the peoples of the Yukon in an environment that respects the cultural differences of individuals and promotes the wealth of this cultural diversity;
- to develop critical and creative thinking and information assessment skills for today's world;
- to promote understanding of the history and values of the Indian culture in order to heighten understanding of the Yukon and its peoples;
- to increase awareness and appreciation of the Yukon's natural environment which is as much part of the Yukon's identity as are its peoples and history;
- to encourage understanding and democratic participation within the education system;
- to provide a standardized core curriculum so that students may transfer smoothly to other schools within the Yukon or to other parts of Canada;
- to prepare students for participation in a Yukon, Canadian and world society;
- to encourage in students the development of basic skills and of aesthetic sensitivity to the world around them;
- to provide schooling in a supportive environment especially for those who must leave their home communities in order to attend public school elsewhere in the territory. (Yukon Government, 1988b)

Whereas many of these goals, such as the legal right to an education, the development of basic skills, and the increased participation of parents, are to be found in virtually all recently enacted educational legislation, there are a number of features in this listing that are specific to the Yukon. These include awareness and appreciation of the Yukon's natural environment, the references to the Yukon's Indian peoples and their history, and the need to provide a supportive environment for those who must receive their education away from home. Other more local elements in this listing might include the references to the development of self-worth and to the recognition of equality among all the peoples of the Yukon.

Following a period of consultation including the publication of a Task Force Report in 1987 (Yukon Government, 1987) and a government White Paper in 1988 (Yukon Government, 1988b) the Draft Education Act was released for public consultation in December 1989 (Yukon Government, 1989). The highlights of this discussion document are the following:

#### ***Student rights and responsibilities***

Students will have the legal right to receive a free education program appropriate to their needs. This right includes the selection of an optional education program or of an individualized education plan for those in need of special education. The draft law specifies that students are to be treated in a fair and consistent manner, and that they or their parents will have the right to appeal any decisions "that significantly affect their education, health or safety." Another interesting provision is the right to express "any religious, political, moral or other belief or opinion provided the expression does not adversely affect the rights or education of other students of the school." The draft law also specifies that: "Corporal punishment shall not be used in the discipline of students." It is quite possible that these latter elements of the law are in direct response to the Canadian Charter of Rights and Freedoms, and especially to s. 2 concerning freedom of thought, belief, opinion, and expression and to s. 12 concerning cruel or unusual treatment or punishment.

#### ***Parental rights and responsibilities***

The draft law permits parents to choose among public, private, or home schooling for their children. Parents will also have the right, upon reasonable notice to the principal, to observe the instruction of their children in the classroom. As well, "prior written informed consent" from parents would be required "before a child is subjected to psychological tests." Parents would also have access to a comprehensive appeal procedure.

*School authorities, school councils, and school committees*

In an evolutionary measure, the Draft Education Act establishes a three-tiered system of local school governance, depending upon the degree of experience or expertise of each school community. At the bottom of the hierarchy would be the school committee with advisory capabilities only; next would come the school council with some powers including selection of the school principal, but with the Minister retaining responsibility for the overall operation and maintenance of the school. Finally, in those communities capable and willing to take on greater responsibility, school authorities would be established. School authorities in the Yukon would be somewhat similar to provincial school boards or to local education authorities in England, but with one important exception – they would not have the power to tax. As is the situation today, all funding for schools in the Yukon is to be derived directly from the territorial government. Both school councils and school authorities would be incorporated bodies, thus having some degree of autonomy. As with most other education acts, there are numerous clauses spelling out the procedures for the election and management of the councils and authorities.

*Teachers and principals*

One of the more interesting features of the Draft Education Act for the Yukon is that about half of the total number of clauses in the Act deal with teachers and principals. While it is not uncommon for education acts to deal with such matters as teacher certification, the teaching profession, and a code of ethics, for example, it is somewhat unusual to see whole sections dealing with collective bargaining, disputes, grievances, strikes, lay-offs, and so on. It is as if the entire collective agreement for teachers in the Yukon has been reproduced verbatim in the Education Act, and one wonders how long it might be before these sections will have to be changed and amended. Another interesting feature is the emphasis on evaluation. Teachers are to be evaluated annually by the school principal or vice-principal, and at least once every three years by the school authority or Department of Education. Principals, on the other hand, are to be evaluated annually by the director of the school authority or by the superintendent of the Department of Education. Both parents and teachers will also have the right to participate in the annual evaluation of principals.

In spite of the move to more autonomous school authorities and school councils, which bodies may select the principal, and, if an authority, hire, dismiss, and demote staff, all teachers and principals in the Yukon are to remain as employees of the Yukon Government.

### *Programs of study*

It will be the responsibility of the Minister of Education to establish goals for the Yukon education system, to prescribe the courses of study, and to approve textbooks and other materials for use in schools. In addition to the basic core courses, the Minister is empowered to add courses that would:

- further an understanding of the contemporary role of women and the principle of gender equity;
- promote the understanding of the history, language, culture, rights, and values of Yukon First Nations and their changing role in contemporary society;
- increase awareness and appreciation of the Yukon's natural environment.

There are some other interesting features in the programs of study proposed for the Yukon. In addition to courses offered in English (or in French), the Minister will be obligated, where the circumstances warrant, to provide instructional material and instructors for the teaching of aboriginal languages when requested to do so by an authority, Indian Education Authority, or a Yukon First Nation. Finally, up to 20 per cent of the program may be composed of locally developed courses, provided that these are approved by the Minister. There appears to be nothing in the draft legislation about religious instruction, although students may be excused from attendance at school if they are "a participant in religious observances, celebrations, or activities recognized by a religious denomination, or is a participant in Yukon aboriginal cultural activities, including aboriginal harvesting activities." Does the absence of any mention of religious instruction in the law reflect recent court decisions in Ontario concerning s. 15 of the Canadian Charter which deals with discrimination based on religion?

### *Yukon First Nations*

Each Yukon First Nation, and there are fourteen defined in the Act, will have the right to establish a local Indian Education Authority to speak on its behalf in educational matters. In addition, there is to be guaranteed First Nation representation on each school authority and school council. In the event of any discordance or conflict between the Yukon Education Act and the Yukon First Nation Land-Claim Agreement, the latter shall prevail to the extent of the conflict. In other words, this act will grant considerable power to aboriginal groups in the Yukon.



### *Appeals*

One of the features of the Draft Education Act that is particularly distinctive is a whole chapter devoted to the matter of appeals. There are to be at least two levels of appeal. At the local level, a parent of a student or a student (if over 16 years of age) may appeal the decision of any school employee if it significantly affects the education, health, or safety of the student. The appeal is to be heard either by the school authority, if there is one, or by the Deputy Minister of Education. The Minister is also required to set up a permanent Educational Appeal Tribunal which will have very broad powers ranging from identifying students with special needs, determining if parents are liable for damage to school property caused by their child, to overturning the decisions of the Minister concerning the non-approval of locally developed courses. In addition to the wide-ranging powers of the Appeal Tribunal, there is also to be a Teaching Profession Appeal Board, a Conciliation Board, and a whole set of procedures concerning bargaining, grievances, arbitration, mediation, adjudication, and appeals to the Supreme Court. One can perhaps be forgiven for wondering if Yukoners are a very argumentative lot! Or perhaps, once again, the draft law has been written to ensure that Charter rights concerning due process are fully respected.

### **Commentary**

The proposed new Education Act for the Yukon is a very mixed bag. On the one hand, the law proposes to retain a very centralized administration with the government controlling the curriculum, staffing, and all of the pursestrings. Although it is only of symbolic interest, it is perhaps significant that the powers and duties of the Minister are listed first in the law; the rights of students to an education are listed second. On the other hand, there appears to be a serious effort to involve local communities in school-based management by means of an incremental or sliding-scale approach. School-based management, however, does not necessarily imply control of educational policy. Locally elected school councils or authorities will certainly have the power to hire and fire school principals and teachers, but local communities will have no real financial powers and only very limited control of curriculum matters. Even the 20 per cent of the curriculum that can be designed locally must first be approved by the Minister or by a ministerial appointed Appeal Tribunal. But as an evolutionary measure towards decentralization and towards local control, it is a step in the right direction.

One of the more glaring gaps in the legislation is the absence of any reference to adult education or to continuing education. This is more than

strange, if only because in the government's policy paper there was a stated intention to move in new directions and to signify this change by naming the new legislation the "Education Act" rather than retaining the old title of "School Act." As the government stated in its White Paper: "The title, 'Education Act', appropriately reflects the government's concept of education as an integral part of society, reaching well beyond the schoolroom" (Yukon Government, 1988b, p. 1). But there appears to be no reference to education beyond the schoolroom. The absence of this important element is, I think, a serious one; and especially from a government that claims to be progressive and that recognized early on in its deliberations that "we live in a society characterized by continual change" and that planned for its Education Act to "promote an environment in which all Yukon people are given the opportunity to succeed, both in a positive and rewarding education system, and in the world around us" (Yukon Government, 1988b, p. 9).

There can be no doubt, however, about the increased powers that will be afforded both to individuals and to minority groups. Students and their parents will have certain rights enshrined in the law, as will the Yukon First Nations, and the small French-speaking minority. Individual teachers and principals, many of whom might run the risk of unfair evaluations or arbitrary dismissals, will be protected by laws and regulations concerning due process and by security of employment with the territorial government. Everyone, it seems, will also have the right to appeal. Many of these new arrangements, however, are primarily the result of new laws made elsewhere rather than in the Yukon. The Young Offenders Act, the Canadian Charter of Rights and Freedoms, and the Yukon First Nations Land-Claims Agreement are several examples that now find expression in the detailed clauses of the Yukon Education Act.

It is only fitting to give credit to the government for the reform process itself. The new Education Act for the Yukon is a culmination of several years of careful study and of extensive consultation. It is not something that has been put together overnight or without much thought. A five-stage process for the reform exercise was established in 1986 – the first stage involved the preparation and distribution of option papers; the second stage was the report of the Education Task Force; the third stage was the publication by the Government of the Yukon of a white paper or Plan of Action; the fourth stage was the drafting and release of a new Education Act, including a brief summary of the Act that was distributed to all Yukon households during December 1989; and the fifth and final stage is to be its adoption by the Yukon Legislature. To date, the first four stages have been accomplished and with what appears to have been considerable public input along the way. The Minister can now claim, with at least some degree of justification, that the

draft law "represents the wishes of the people of the Yukon." But if it doesn't, then the government has established an "Education Act Hotline" with a toll-free number, so that everyone's opinion may yet be heard. As an exercise in participatory democracy, the Education Act reform process in the Yukon could not have been bettered.

Some other features of the law also need to be underlined. The move towards a "made in the Yukon" curriculum will surely be welcomed by all who teach or learn in the territory. Of particular importance will be the course, or courses, on the history and culture of the Yukon First Nations and about the Yukon's ecology and natural environment. A particularly progressive feature of the law is the entitlement to an Individualized Education Plan (IEP) by students who, "by virtue of intellectual, communicative, behavioural, physical or multiple exceptionalities," are in need of specialized education programs. This element of the law is based in part on federal entitlement provisions in the United States and on similar provisions in the laws of Saskatchewan, Ontario, and Newfoundland. As this aspect of the law may be of particular interest to educators and lawmakers elsewhere, the IEP is defined as:

. . . a document which outlines the educational program for a student as determined by a school-based team, containing a description of the student's present level of functioning; long term or annual goals; short term goals or specific behavioural objectives; special resources required; suggested instructional materials, methods and strategies; IEP review dates; persons responsible for the implementation of the IEP, including parents; and parents' written, informed consent for implementation. (Yukon Government, 1989, Part 1, p. 1)

One other element of the IEP that deserves special comment is that all the parties concerned, but especially parents, will have the right to appeal virtually any decision regarding an IEP directly to the Educational Appeal Tribunal. This right of appeal is not restricted to the contents of the plan itself, but may involve the identification of students with special needs, the actual implementation of the plan, and the apportionment of costs including non-educational costs. The decision of the Educational Appeal Tribunal will be binding on the parties concerned, including the Minister or school authority.

By the time that these words find their way into print, it is quite possible that the Draft Education Act for the Yukon will have been approved by the Legislature and signed into law by the Territorial Commissioner. If this be the case, then one can but hope that the new Education Act will serve the

Yukon well and that it will not lead to increased litigation and get bogged down in complicated appeal procedures. Perhaps the next time that the Yukon revises its Education Act, it will have given substance to John Goodlad's observation that "continuing education throughout adult life will have become a normal expectation."

**Editor's Note:** The draft Education Act was passed into law by the Yukon territorial government in mid-May, 1990. A brief summary of any additions, revisions, or clarifications of the Act will be published in the Fall issue of the MJE.

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