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A Reply to Professor Burgess

Abstract

In the Spring, 1990 (Vol. 25 No.2), issue of the Journal, Professor Donald Burgess, of McGill University, wrote a commentary on the Draft Education Act of the Yukon. The Act has since been passed by the territorial Legislative Assembly. Mr. Shakir Alwarid, Deputy Minister of Education in the Yukon, has responded to Professor Burgess' article with some explanations and clarifications of the new Education Act so that readers may have a more comprehensive understanding of certain sections of the Act.

Résumé

Dans le numéro de printemps 1990 (volume 25, no 2) du Journal, le professeur Donald Burgess de l'Université McGill a écrit un article sur le projet de loi sur l'éducation du Yukon. La Loi a depuis lors été adoptée par l'assemblée législative territoriale. M. Shakir Alwarid, sous-ministre de l'Éducation du Yukon, a répondu à l'article du professeur Burgess par des explications et des éclaircissements sur la nouvelle Loi afin que les lectures puissent mieux saisir le contenu de certains de ses articles.

I would like to take this opportunity to thank you for your inclusion of Professor Donald Burgess' review of the **Draft Yukon Education Act** in the *McGill Journal of Education*. I am pleased that Professor Burgess drew attention to many of the positive and progressive features of the draft and underscored the fact that it was the product of extensive, indeed almost exhaustive, consultation with the people of the Yukon. At the same time, however, his review contains a number of criticisms of the draft act that are, I believe, unfounded or unwarranted, and I would therefore like to challenge them and explain or clarify other points.

First of all, Professor Burgess makes the point that it is somewhat unusual to see whole sections in a proposed act dealing with collective bargaining, disputes, grievances, strikes, lay-offs, and other labour relations matters. The reason for inclusion of these sections is quite simply that the Territory has no separate labour legislation governing teacher-staff relations. The sections to which he refers are, except for minor changes and the provision of the right-to-strike clause and those clauses enabling teachers to bargain working conditions, duplicated from the current *School Act*. As for his speculation about the durability of these sections, I think the issue is irrelevant to the larger question of what the proposed Education Act is all about but will nonetheless point out that those chapters concerning labour relations were reviewed thoroughly by the Yukon Teachers' Association and have its endorsement.

Professor Burgess also suggested in his review of the draft Act that "the law proposes to retain a very centralized administration with the government controlling the curriculum, staffing and all of the pursestrings." This statement is, I believe, insupportable and I would therefore like to respond to it in detail:

A. As Professor Burgess noted, locally developed courses can be used in up to 20% of the educational program offered to a student in a year. Locally developed courses usually imply distinct courses, distinct units, or the application of concepts to local content. The curriculum itself, as envisaged by the government, could be Yukon specific or community specific. The concept of locally developed curriculum is not new to the Yukon, nor is the concept of non-departmentally derived curriculum. The Council for Yukon Indians, for example, developed and provides to elementary schools material on Indian culture for use as distinct units. What the draft act proposes is to expand the parameters of the option for local curriculum as well as involve the communities to a much greater extent in the decision to exercise the option. As the draft states, School Authorities would have the power to provide locally developed courses to students in their jurisdictions while School Councils would be able to recommend to the Minister inclusion of locally developed curriculum in the educational programs offered to the students in the schools they represent. Thus, the draft act does contemplate decentralization in decision-making with regard to school curriculum. The draft also states that School Authorities and Councils will be able to authorize the use of text books, instructional materials, apparatus or equipment for any course of study in addition to those that are standard for all public schools. These may appear to be mere "steps in the right direction" to Professor Burgess, but, in the context of Yukon education, they are major departures. What is only "very limited control" of curriculum matters to him is actually significant to communities unused to exercising decision-making in that area.

Burgess also took issue with an exception to, it seems, the fact that locally developed courses must first be approved by the Minister of Education. I should note, first of all, that the section of the draft to which he refers has been clarified so that **proposals** for locally developed courses are approved or rejected. These proposals could be prepared and submitted by School Authorities, School Councils, Local Indian Education Authorities or, for that matter, by any individual or organization. That is a leavening of the responsibility for curriculum development never before accomplished in Yukon. The ministerial check was included to ensure that proposals for locally developed courses have merit and that public funds were not expended on fruitless projects. Surely Professor Burgess would not suggest that ensuring students receive quality product is indefensible. As for the ability of the Education Appeal Tribunal to hear an appeal of a ministerial rejection of a locally developed course, I am at a loss as to why he would view this as problematic. Involving the tribunal is intended as a check on the possible subjectivity of ministerial decisions and not, as he seems to imply, a check on local control over curriculum.

B. To claim, as Professor Burgess does, that the government will continue to control staffing in the schools is erroneous, particularly in the case of School Authorities. It is true that teachers and principals will remain as employees of the Yukon government but that is only to spare them the trouble of administering benefits packages. Such powers as selection and dismissal of staff will be delegated to the local Authorities, which will not have to seek approval from the Department of Education or any other government agency for the decisions it makes. I readily admit that what is contemplated in the draft act is a hybrid but it is a system that makes sense in a jurisdiction that is as small as the Yukon.

C. As for the comment that local communities will have no real financial powers, I believe the situation needs to be assessed from a territorial perspective. That School Authorities will not have the power of taxation is true but the reason for withholding such a power is legitimate. In the Yukon there exists one large urban centre (Whitehorse) and a number of very small communities, only three of which have a population of at least 1000 (Dawson, Watson Lake, and Faro). These communities simply do not have the taxation base potential of Whitehorse and because they will be entitled to School Authorities, if desired, would be at a serious disadvantage with regard to funding. The government adhered to the *Report of the Education Task Force* in allowing each community to decide for itself the extent of responsibility for the school(s) it wanted but preferred to create a level financial playing field by retaining control of the pursestrings.

Nevertheless, communities will not be shorn of financial power altogether. School Authorities will, according to the draft, develop their own Operations and Maintenance budget, and will control the moneys disbursed

by the government. Latitude over expenditures is featured in the draft as is the right School Authorities will have to retain surplus funds from year to year. Again, what has arisen is a hybrid product but one that must be understood from a territorial perspective and viewed as acceptable in light of the geographic and economic dynamics of the Yukon.

Professor Burgess also referred in his article to the large number of appeal mechanisms featured in the draft act, leading him to wonder if the Education Act will cause an increase in litigation and a tendency for decisions to become mired in the bogs of appeal procedures. It should be borne in mind that appeal mechanisms in legislation are designed precisely to reduce litigation as they are cheaper and more expeditious for the parent, student, and employee. It is possible that certain of the appeal mechanisms featured in the draft act, particularly the Education Appeal Tribunal, will be overburdened in the first instance but that is a matter of speculation. The tribunal and other of the appeal mechanisms were not incorporated into the draft because Yukoners are an "argumentative lot," for they are no more argumentative than Canadians residing anywhere else in this country, but rather because the government wanted to ensure due process and fairness with regard to decisions that affect the education of students.

Finally, I would like to note that it is ironic that Professor Burgess' article protests the inclusion of so much legislation on labour relations in the draft but then chastises the Yukon government for omitting detailed references to adult and continuing education. The labour relations sections were necessary, as I said, because they do not exist elsewhere; extended sections on adult or continuing education were not included in the draft act because they are dealt with elsewhere in legislation, notably the College Act. There is also an impressive range of programs in both adult education and continuing education available in the Territory.

I hope that these comments help to clarify certain issues and provide some rationale for why the Government of the Yukon took a particular tack in the course of drafting the act.

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