Submission to

The Standing Committee on Social Policy

on

the Education Statute Law

Amendment Act (Student Performance), 2006 ("Bill 78")

May 15, 2006

Ontario Catholic School
Trustees' Association

ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

Founded in 1930, the Ontario Catholic School Trustees' Association (OCSTA) represents 29 English-language Catholic district school boards and five English-language Catholic school authorities. Collectively, these school boards educate over 600,000 students from Junior Kindergarten to Grade 12.

The Mission of all Catholic school boards and their schools is to create a faith community where religious instruction, religious practice, value formation and faith development are integral to every area of the curriculum. This is in addition to providing a complete curriculum as defined by the Ministry of Education.

A major activity of OCSTA is to represent the point of view, the aspirations and the needs of Catholic school boards and school authorities to the provincial government.

Introduction

Bill 78 is a mixture of new policy thrusts and housekeeping changes to delete redundant sections of the *Education Act*. It is therefore difficult for OCSTA to express a general or thematic view about the Bill. Instead, this brief will address each of the Bill's components in the sequence in which they appear in the Bill. The brief does not address all of the initiatives in Bill 78, but only those of particular interest to OCSTA.

1. Confidentiality and the Collection of Personal Information – Section 8

The Bill would amend s. 8 of the *Education Act* to enhance the Minister's powers to collect personal information. The amendment is intended to support the proposed new regulatory powers given to Cabinet and the Minister of Education. The effect of this amendment is to give school boards an exemption from compliance with the *Municipal Freedom of Information and Protection of Privacy Act* when they are responding to information requests of the Minister.

The difficulty with the proposed provisions concerning personal information is that they may be simply too broad. All public authorities are particularly concerned about the maintenance of privacy and confidentiality. Most people believe that there is a right to privacy that should only be displaced in unusual circumstances, subject to the scrutiny of qualified and disinterested authority like the Information and Privacy Commissioner. Indeed, the *Municipal Freedom of Information and Protection of Privacy Act*, which applies to school boards, provides that one of its purposes is to "protect the privacy of individuals with respect to personal information about themselves held by institutions….". This purpose is echoed in the *Freedom of Information and Protection of Privacy Act*, which, according to s. 70, binds the Crown.

While OCSTA does not have particular difficulty with the accumulation of statistical or generic information that does not identify individuals directly, school boards maintain much personal information. As major employers, every individual employee of the board has a personnel file, the contents of which range from the simply generic, such as the employee's qualifications, to the deeply personal. OCSTA does not see any particular reason why the Ministry of Education would need to have access to the personnel files of individual employees. If there are extraordinary circumstances in which such information is required, then the legislation referred to above and other legislation contains ample power to access such information through the appropriate procedures. OCSTA believes that it should not be accessible through the mechanisms established under s. 8 of the *Education Act*.

OCSTA recommends that s. 8 be further amended as follows:

> **(2.3) Subsections (2), (2.1) and (2.2) do not apply to the individual personnel records of current or former employees of the educational and training institutions that are prescribed for the purposes of s. 266.2 to 266.5.**

Instructional Days and Professional Activity Days – s. 11(7)

Bill 78 would amend s. 11 to provide the Ministry with regulation-making power over instructional days and professional activity days. OCSTA supports the proposed amendment. OCSTA points out, however, that collective agreements may have language in them that may be inconsistent with a proposed regulation.

The proposed amendment to Bill 78 would provide:

> S. 11(7) is subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations:
>
> (a) prescribing and governing the school year, school terms, school holidays, instructional days and professional activity days. …

In order to avoid local difficulties respecting collective agreements, **OCSTA recommends that a further amendment be made to s.11(7) (a) as follows:**

> **(a) prescribing and governing the school year, school terms, school holidays, instructional days and professional activity days, <u>including collective agreement compliance.</u>**

The purpose of the amendment is to permit the regulation to directly address collective agreement compliance and to avoid grievances relating to differences between a collective agreement and the regulation.

Even though section 227.13 of the *Education Act* provides that: "in case of conflict this Act and regulation may prevail over the provisions of the collective agreement", it would be better to be more explicit in this particular context.

Regulations re Provincial Interest – s. 11.1

The balance of power between Queen's Park, particularly the office of the Minister of Education, and school boards is always delicate. Over the years, that power has sometimes been centralized in the Ministry, and at other times has devolved more to the school boards. Bill 78 represents a substantial thrust towards centralization of power.

Like the Chair of the Toronto CDSB, who addressed the Committee last week, OCSTA believes that the Government has proposed these changes with the best of intentions and that the current Minister would exercise her authority with caution. However, any law once enacted is subject to abuse.

The Technical Briefing provided to school boards by the Ministry of Education dated March 3, 2006 on this subject notes that s. 11.1 "would permit regulations to clarify Ministry and board responsibilities related to those goals" set out in s. 11.1. OCSTA certainly favours clarity. We note, however, that a number of the powers proposed in s. 11.1 already exist elsewhere in the *Education Act*. Attached as an appendix to this brief is a table correlating s. 11.1 and existing provisions under the *Education Act*. The passage of s. 11.1 and regulations under it would immediately trigger significant overlap with the existing provisions of the *Education Act,* leading to an inevitable degree of confusion. There is no effort in Bill 78 to co-ordinate and integrate those provisions in this enormously complex statute.

On balance, OCSTA could support s. 11.1 if it were amended to include an explicit obligation for significant consultation between the Ministry and school boards as regulations are drafted. This would be consistent with the Technical Briefing, which promised that "regulations would be developed after significant consultation between the Ministry and school boards".

From a policy perspective, such consultation is critical, since the Ministry of Education needs the information and co-operation of school boards to have effective regulations.

This government has recognized the importance of such consultation in other legislation. Section 35 of the *Commitment to the Future of Medicare Act*, 2004 is an excellent example.

OCSTA therefore recommends that Bill 78 be amended to add s. 11.2. The language below is recommended:

> **11.2** (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 11.1 unless,
>
> (a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;
>
> (b) the notice complies with the requirements of this section;

(c) the time periods specified in the notice, during which persons may make comments, have expired;

(d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation, or an accurate synopsis of such comments; and

(e) the Minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate.

Contents of notice

(2) The notice mentioned in clause (1) (a) shall contain,

(a) a description of the proposed regulation and the text of it;

(b) a statement of the time period during which a person may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a description of any other methods by which a person may comment on the proposed regulation and the manner in which and the time period during which they may do so;

(d) a statement of where and when members of the public may review written information about the proposed regulation;

(e) any prescribed information; and

(f) any other information that the Minister considers appropriate.

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4).

Shorter time period for comments

(4) The Minister may shorten the time period if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Part or the regulations; or

(c) the proposed regulation is of a minor or technical nature.

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (e), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with any changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report.

No public consultation

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 11.1 if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or

(c) the proposed regulation is of a minor or technical nature.

Same

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 11.1,

(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

(b) the Minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate.

Publication of notice

(9) The Minister shall publish the notice mentioned in clause (7) (b) in *The Ontario Gazette* and give the notice by all other means that the Minister considers appropriate.

Temporary regulation

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 11.1 because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,

(a) be identified as a temporary regulation in the text of the regulation; and

(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force.

OCSTA believes that the system of education would be better off with an ability to provide input to the regulation-making process, than it is under the current regulatory model. The proposed amendment is consistent with the intention of the Ministry as set out in the Technical Briefing of March 3, 2006. OCSTA would not, on the other hand, oppose the deletion of s. 11.1 from Bill 78.

Student Trustees (s. 55)

OCSTA is aware that student trustees have asked to be given the same power to vote that is held by adult trustees elected by ratepayers. Section 55 as amended by Bill 78 represents a careful and sensitive effort on the part of the Ministry to respond to the aspirations of student trustees to influence school board votes, without giving them a legal vote. OCSTA supports the provisions in s. 55, subject to our concerns about the attendance of student trustees at private meetings.

Proposed s. 55(5) provides that "A student trustee is not entitled to be present at a meeting that is closed to the public under s. 207 (2) (b)."

Section 207 provides:

(2) A meeting of a committee of a board, including a committee of the whole board, may be closed to the public when the subject-matter under consideration involves,

(a) the security of the property of the board;

(b) the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;

(c) the acquisition or disposal of a school site;

(d) decisions in respect of negotiations with employees of the board; or

(e) litigation affecting the board.

Section 55 (5) would exclude students from meetings where the issues in clause (b) were under discussion. It would permit student trustees to be present at private meetings where the subject matter includes the other matters listed in s. 207 (2), being the security of the property of the board, the acquisition or disposal of a school site, decisions in respect of negotiations with employees of the board; or litigation affecting the board. It would also permit student trustees to receive agenda material on these sensitive matters.

OCSTA believes that it would be inappropriate for student trustees to be present for board meetings where any of the matters listed in s. 207 (2) are addressed, or to receive the agenda material. These matters do not address directly the kinds of educational issues that are of particular concern to students, and on which they should be consulted. The business end of board responsibilities truly belongs to the adult trustees who are elected by the ratepayers and can be held accountable by them. Student trustees lack the experience and accountability important for participation in discussion of these matters.

Concerns about confidentiality, which presumably motivated the limited exclusion from private meetings in proposed s. 55 (5), are as critical in these other areas as they are in respect of the matters listed in paragraph (b).

Negotiations with employees of the board are often highly charged. Teachers, who constitute the largest employee group at any school board, undoubtedly have considerable influence on students. Putting students in the position to possibly be approached by employees to take certain positions in bargaining or to release confidential information about bargaining positions and strategy is both unfair to the students and unwise.

OCSTA recommends that s. 55(5) be amended to provide:

> **(5) A student trustee is not entitled to be present at a meeting that is closed to the public under section 207(2).**

Certain working conditions moved to the regulations (s. 10, 11 of Bill 78)

OCSTA supports the transfer of the working condition provisions now found in s. 170.1 – 170.2.2 to the regulations. This change would give Cabinet more flexibility in dealing with working conditions and to deal with issues as they arise without the need for a cumbersome statutory amendment.

Trustee honoraria (s. 191)

OCSTA was generally pleased with the positive attitude shown in the Ministry document entitled "Respect for Ontario School Trustees" issued March 28, 2006. The document notes:

> The Ministry well recognizes that we have many hard-working trustees that are fulfilling their role through extraordinary effort. … (page 2)
>
> It is a great credit to trustees that publicly-funded education in Ontario has turned a corner toward progress in the last two years. The accomplishments achieved by the entire system have much to do with dedication of the elected people who work tirelessly

> on its behalf. Students are the beneficiaries of this hard work and commitment, and Ontario will be the beneficiary of their success.
>
> As the need for education increases, so too must the support for trustees as essential contributors to the Ontario Education Advantage. (page 7)

OCSTA applauds these sentiments and strongly endorses them.

OCSTA is therefore pleased to support the provision for an increase in trustee honoraria in Bill 78. OCSTA agrees that there is a basis for consideration of different maximum levels of honoraria that vary according to the complexity of the board. Complexity of the board, and therefore trustee workload, however, do not co-relate directly to student enrolment. Regardless of student enrolment, the trustees of coterminous or predominantly coterminous boards serving the same community deal with similar and equally complex issues, for example, those related to socio-economic challenges or immigration patterns.

OCSTA recommends that the maximum honoraria of coterminous or predominantly coterminous boards be the same.

OCSTA also recommends that the base for trustee honoraria be increased from $5,900 to $10,000, and that the size of complexity factors be adjusted to maintain the proposed $26,000 maximum.

OCSTA does not support the provisions in s. 191(4) for regulations:

> (b) requiring a board to engage in public consultations before adopting or amending a policy providing for the payment of honoraria under this section;
>
> (c) governing the form of the public consultations, the manner in which they are conducted and their timing, including notice requirements;
>
> (d) respecting the establishment of bodies to represent the public for the purpose of the public consultations;

Trustees are democratically elected officials and are accountable to their electorate for the way in which they exercise their powers, including the power to set honoraria. Trustees already dedicate, as the Ministry document notes, considerable amounts of time to their responsibilities. Adding yet another layer of consultation, and yet more consultative structures, is an unnecessary and unwelcome bureaucratisation. **OCSTA recommends that paragraphs (b) to (d) of proposed s. 191(4) be deleted.**

Ontario College of Teachers Act – Public Interest Committee

Section 17.1 of Bill 78 amends the Education Act to provide for a new Public Interest Committee, consisting of persons appointed by the Minister who are not members of the College. The Committee shall advise the Governing Council of the Ontario College of Teachers with respect to the duty of the College and the members of the Council to serve and protect the public interest in carrying out the College's objectives. It is important that the membership of the Public Interest Committee represent a cross-section of Ontario's diverse population, including the province's sizeable Catholic community.

Modifications to compliance provisions – Part VIII – (Sections 19-22 of Bill 78) and Division of Part IX – (Section 33 of Bill 78)

OCSTA supports the amendment to s. 230.12 to remove the possibility of a fine or conviction for an offence. We point out the need for a concurrent amendment to s. 230.12(5) which provides:

> 230.12(5) A board shall not indemnify any of its members, officers or employees with respect to any fine imposed on conviction for an offence under this Part or with respect to any liability under clause (3) (a).

OCSTA recommends that subsection s. 230.12(5) be amended to provide:

> **230.12(5) A board shall not indemnify any of its members, officers or employees with respect to any liability under clause (3).**

A similar housekeeping change needs to be made to s. 257.45 of the *Education Act*.

> **257.45(5) A board shall not indemnify any of its members, officers or employees with respect to any liability under clause (3).**

OCSTA welcomes the reduction of penalties for trustees proposed in these amendments.

No cross-reference to s. 11.1 regulations

Bill 78 proposes to amend s. 230 of the *Education Act* so that it would provide, among other things:

> 230. The Minister may direct an investigation of a board's affairs if the Minister has concerns that the board may have done or omitted to do something and that the act or omission,
>
> (a) contravenes, indicates an intention to contravene or might result in a contravention of paragraph 2 or 3 of subsection 8(1) or of a regulation made under section 11.1 or 170.1;

OCSTA does not support the inclusion of non-compliance with regulations under s. 11.1 in the list of matters authorizing the Ministry to direct an investigation of the Board's affairs under s. 230 of the *Education Act*.

Section 230 of the *Education Act* was enacted by the previous government in order to ensure the school boards complied with work load provisions, provisions concerning trustee honoraria and the financial obligations of a board.

Under this section, if there is a breach, the Minister may direct an investigation. The Minister may, upon receiving the investigator's report, give directions to the board under s. 230.3(1). If the board fails to comply, then Cabinet may make an order vesting control of the board in the Minister under s. 230.3(2). These powers are draconian.

Because of the extraordinary regulation-making power in s. 11.1 and the detailed nature of possible regulations, two different kinds of problems arise with the inclusion of s. 11.1 in s. 230. First, in view of the detail in a possible regulation, a relatively minor breach of a provision by a school board could trigger an investigation and ultimately the take over of the school board by the Minister. This seems to be a significantly disproportionate possible response. Second, the scope of the regulation-making power allows for introduction of matters that are, frankly, somewhat subjective in nature and on which professional disagreement is both likely and not unreasonable.

In the Ministry's document entitled "Respect for Ontario School Trustees", the following appears:

> The Ministry of Education is committed to building vital, constructive and positive relationships within public education focused on the new 3R's: respect, responsibility and results. Achieving excellence in education demands a genuine partnership in which there is shared respect, mutual responsibility-taking, and agreement about results at every level of the education system. Creating this partnership, and re-building trust and respect in the system following prior years of conflict, will not happen easily or without substantial groundwork.

The document goes on to criticize the previous government for evaluating the role of trustees and asserts that "the current government views the needs of education differently".

The inclusion of s. 11.1 in s. 230 of the *Education Act* is not consistent with the welcome sentiments in the "Respect for Ontario School Trustees" document.

OCSTA recommends that the reference to "a regulation made under s. 11.1" be deleted from the proposed amendment to s. 230 of the *Education Act*.

Concluding Observations

OCSTA appreciates the opportunity to express the views of Catholic School boards on Bill 78 to the Standing Committee on Social Policy.