

Brief to the Education Equality Task Force

**The Education Funding Model &
Catholic Education in Ontario**

August 14, 2002



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INTRODUCTION

The Ontario Catholic School Trustees' Association ("OCSTA") represents 29 Catholic English-language District school boards and five Catholic school authorities. Collectively, we educate over 600,000 students from junior kindergarten to grade 12/OAC. OCSTA is the largest provincial association representing the interests of Roman Catholic separate school electors, who are the "Class of Persons" protected by s. 93(1) of the *Constitution Act*, 1867. The text that follows represent the views of Ontario's English-language Catholic education system.

The OCSTA, known formerly as the Ontario Separate School Trustees' Association, was officially organized on April 2, 1930, and was incorporated under the *Corporations Act (Ontario)* by letters patent dated July 30, 1969. Its objects are, *inter alia*:

- To maintain the constitutional rights of Roman Catholic separate school boards and their supporters,
- To recommend improvements in the legislation and regulations affecting Roman Catholic separate schools of Ontario.

In discharging this mandate, OCSTA has been a vigorous participant in public policy debates concerning the system of education in Ontario throughout its history, particularly in relation to school governance and financing.¹

OCSTA and our member boards played a key role in persuading the Ontario government that the time had come to replace the old funding model with something that worked more equitably. Our main document was a brief dated July 6, 1992 entitled "Education Financing Reform: A Matter of Principle". In the brief, we outlined four educational principles as follows:

Principle 1: There is a right to publicly-funded education;

Principle 2: Responsibility for education is shared among parents, school boards and the province;

Principle 3: There must be respect for parental choice and constitutional rights. In particular, parental choice should not be influenced by unfairness in the financing system; and

Principle 4: The basic role of the system of education in Ontario must be to provide equality of educational opportunity to each individual student.

We also set out what we continue to believe to be the basic principles of the education funding model.

Principle 1: Funding for Education should be adequate, stable and predictable

Principle 2: Access to education funding should be equal on a provincial basis.

Principle 3: There should be an agreed upon package of services to be provided by or through the system of education.

Principle 4: Students anywhere in Ontario should have access to equivalent services through the school board of which they are resident pupils.

Principle 5: The autonomy of school boards must be respected.

Principle 6: School boards and the Ministry of Education must be accountable.

We worked tirelessly to prepare the Minority Report of the Property Tax Working Group of the Ontario Fair Tax Commission, entitled “Bringing Fairness to Payers of Education Taxes in Ontario”, dated November, 1992. This Report sets out in graphic detail the fundamental inequities in the old funding model. We urge the Task Force to re-visit the Minority Report in order to understand that there must be no going back from the new funding model to the old funding model.

Most recently OCSTA submitted a comprehensive brief to the Minister of Education in November, 2001 entitled “Student-Focused Funding: Addressing Adequacy”.

Throughout the process of education finance reform and in the months prior to the release of the new funding formula, OCSTA highlighted four critical standards for assessing any model of education funding:

1. A funding formula must distribute education dollars **equitably** among all Ontario school boards and their students.

2. The level of funding for education must be **adequate** to meet the needs of today's students and their boards.
3. The model must allow school boards the **autonomy** and **flexibility** in spending that they require to achieve the distinctive goals of their system, and to meet local needs.
4. The educational funding model must include mechanisms that ensure **accountability** of all parties in regard to the efficient and effective use of educational resources for students.

OCSTA has consistently emphasized that these principles must be reflected in the funding model. We acknowledge the many very positive steps that have been taken to realize these principles, particularly with respect to equity.

We support the commitment of the Government of Ontario and the Minister of Education to review the funding formula for Ontario's publicly funded schools. We also support the mandate given to the Task Force and look forward to cooperating in its task of improving education funding in Ontario. We appreciate especially the direction to the Task Force in the mandate to:

Respect the constitutional and statutory framework for education in Ontario which includes public, Catholic and English- and French-language school boards.

OCSTA intends to submit to the Task Force a detailed brief critiquing the level of funding within the current funding model.

This brief will address the following subjects:

- The constitutional principles
- The nature and purpose of Catholic education
- Section 93(1) of the *Constitution Act, 1867* and the Education Funding Model
- The structure of s. 234 of the *Education Act*
- The prospect of a return to local taxation by school boards

THE CONSTITUTIONAL PRINCIPLES

The purpose of this brief is to assist the Task Force in understanding certain basic principles concerning Catholic education in the province of Ontario that must be respected in any review of the funding model.

The rights of the Roman Catholic minority in Ontario respecting education are protected by s. 93(1) of the *Constitution Act*, 1867 and by s. 29 of the *Canadian Charter of Rights and Freedoms*. Section 93(1) of the *Constitution Act*, 1867, provides:

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province of Ontario at the Union:

When the *Canadian Charter of Rights and Freedoms* was drafted in the early 1980s, the rights protected by s. 93 were specifically preserved. Section 29 of the *Charter* reads:

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

In the *Bill 160* decision, the Supreme Court of Canada took its customary “purposive” approach and said:

[28]. The original purpose of s. 93 was to give the provinces plenary jurisdiction over education while protecting the religious education of the Protestant minority in Quebec and the Catholic minority outside Quebec. As the Lord Chancellor stated in *Brophy, supra*, at p. 214, these minority communities

...regarded it as essential that the education of their children should be in accordance with the teaching of their Church, and considered that such an education could not be obtained in public schools designed for all the members of the community alike, whatever their creed, but could only be secured in schools conducted under the influence and guidance of the authorities of their Church.

The animating principles were, and are, religious freedom and equitable treatment.²

Although there has been much jurisprudence on proper interpretation of s. 93(1), in the *Bill 160* the Supreme Court of Canada expressed its approach most succinctly:

[32]. ... In other words, the rights guaranteed by s. 93(1) do not replicate the law word for word as it stood in 1867. It is the broader purpose of the laws in force which continues to be protected. Therefore, s. 93(1) should be viewed as protecting the denominational aspects of education, as well as those non-denominational aspects necessary to deliver the denominational elements.³

Adequate funding is one of those aspects necessary to deliver the denominational elements. The design of the funding model can have an impact on the denominational aspects of education, particularly accessibility. There are other implications which we explore in this brief.

The Supreme Court has indicated that what is to be protected by S. 93(1) of the *Constitution Act*, 1867, is the ability of Catholic school boards to provide Catholic education.

THE NATURE AND PURPOSE OF CATHOLIC EDUCATION

It has been the experience of the OCSTA that some see Catholic schools as being the same as public schools with a class in religion tacked on from time to time. This is not, however, Catholic education as it is understood by the Catholic community or by the Courts. The purpose of Catholic schools is to provide Catholic education, being education in which the teachers are expected to inculcate the faith.

In all that it does, the Association works to protect the mission of Catholic school boards, which 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.

Our school boards and our schools expect Catholic school graduates to be able to evaluate society with a critical and even counter-cultural eye. We expect our graduates to have developed positive attitudes which motivate them to contribute to the common good of a society that cares about the rights and the well-being of individuals, whatever their race, color, sex, creed or station. The Catholic community believes that respect and tolerance for the person, as created in God's image, is essential for school and for society.

From a Catholic perspective, the purpose of education is not only the transmission of knowledge, but also the formation of the whole person, that brings students to a personal integration of faith and life. Catholic schools are responsible for imparting Christian doctrine in a faithful and systematic way, in order to initiate students into the fullness of Christian life and to elicit in response a personal commitment to that way of life.

This comprehensive understanding of the pervasive nature of Catholic education has been accepted by the courts as illustrated in a number of court cases.⁴ The *Education Act*, as amended by *Bill 160*, takes denominational rights seriously. For example, subsections 1(4) and 1(4.1) of the *Education Act* provide that:

(4) Effect on separate schools – This Act does not adversely affect any right or privilege guaranteed by s. 93 of the *Constitution Act, 1867* or by s. 23 of the *Canadian Charter of Rights and Freedoms*.

(4.1) Same - Every authority given by this Act, including but not limited to every authority to make a regulation, decision or order and every authority to issue a directive or guideline, shall be exercised in a manner consistent with and respectful

of the rights and privileges guaranteed by s. 93 of *The Constitution Act, 1867* and by s. 23 of *The Canadian Charter of Rights and Freedoms*.⁵

These protective provisions and the real respect for Catholic education shown by *Bill 160* led OCSTA to support it and to support the position of the Government of Ontario in the constitutional challenge of *Bill 160*.

OCSTA believes that the principles of the current *Education Act* are sound and bind the Task Force in its deliberations.

One important implication is that changes to the funding model must respect the principles of autonomy and separation. OCSTA would oppose, for example, financial incentives to reward joint efforts with other boards that would impinge on the ability of Catholic boards to provide Catholic education.

**SECTION 93(1) OF THE CONSTITUTION ACT, 1867 AND THE
EDUCATION FUNDING MODEL**

OCSTA strongly supports s. 234 of the *Education Act* because it embodies the constitutional standard for funding set by s. 93(1) of the *Constitution Act, 1867* as interpreted by the Supreme Court of Canada.

The decision of the Court in the *Bill 160* case was the culmination of a progression of cases that steadily refined the law. We can do no better than to quote the *Bill 160* decision, in which the Supreme Court of Canada set out the basic principles that must govern a funding model in relation to denominational schools. We highlight certain key passages:

[49]...Section 93(1) protects the right to funding for denominational education, not the specific mechanism through which that funding is delivered. As Gonthier J. stated in the *Quebec Education Reference, supra*, at p. 590:

...fundamentally what matters is having the financial and physical resources to operate school boards. The taxing power is only one possible means of attaining this end. If it can be done otherwise, such as by an equal, or at least appropriate and equitable, allocation of financing sources, it is hard to speak of a prejudicial effect.

[50] The *Scott Act* includes two funding mechanisms for denominational schools in Ontario: local taxation (s.7) and provincial grants (s. 20). **The province is generally free to alter the funding allocation between these sources as it sees fit, provided that the source relied on provides sufficient funds to operate a denominational education system which is equivalent to the public education system in place at the time. The animating principle is equality of educational opportunity.** I need not decide the constitutionality of removing the local tax base altogether, as the *EQIA* does not attempt to do so. While it removes the ability of school boards to set the rate that is to be applied to raise funds through local taxation, it does not remove the funding mechanism of property taxation.

[51] Provincial education grants have long been used to supplement funds raised through local taxation in an attempt to achieve equality in Ontario's education system. I agree with the Ontario Court of Appeal's observations, at p. 21,

that such grants were necessary because of the practical limitations separate school boards faced in raising funds through local taxation:

[The separate school system's] poorer assessment base and the risk of taxpayer migration away from the system have always placed very significant practical constraints on the power of separate school boards to tax their supporters. The right to tax has never provided separate school boards with more than limited financial autonomy.

[52] Section 20 of the *Scott Act* requires that provincial education grants be distributed on a fair and equitable basis between the public and separate school systems. This Court canvassed the protections provided by s. 20 of the *Scott Act*, as constitutionally entrenched through s. 93(1) of the *Constitution Act, 1867*, in *Reference Re Bill 30, supra*, and in *Ontario Home Builders', supra*. In the *Reference Re Bill 30*, Wilson J. stated, at pp. 1195-96:

It is clear that if the foregoing right [to provide denominational education at a secondary level of instruction] was to be meaningful an adequate level of funding was required to support it. This Court held unanimously in *Attorney General of Quebec v. Greater Hull School Board*, [1984] 2 S.C.R. 575, that the right of dissentient schools in Quebec to a proportionate share of government funding was a right protected by s. 93 of the *Constitution Act, 1867*. Likewise, in my view, the right of separate schools in Ontario. They were entitled to the proportionate funding provided for in s. 20 of the *Scott Act*. This conclusion, it seems to me, is fully consistent with the clear purpose of s. 93, namely that the denominational minority's interest in a separate but suitable education for its children be protected into the future.

In *Ontario Home Builders'*, at para. 73, our Court affirmed this view:

...when one reviews the history and purpose of s. 93(1), the principle of proportionality can be seen for what it really is, namely, the means to a constitutional end which is equality of educational opportunity. Moreover, as I have noted above, the entire system of provincial grants in Ontario has not been based on

actual proportionality since early in the century. The departure from strict, formalistic proportionality was made because it had led to a serious inequality of educational opportunity. While the notion of proportionality contained in s. 20 of the *Scott Act* is a constitutional right embodied in s. 93(1), **the substantive purpose of this notion must be borne in mind: the achievement of an education system that distributes provincial funds in a fair and non-discriminatory manner to common and separate schools alike. This is the substantive guarantee offered by s. 93(1).** As the Court per Gonthier J. stated in *Reference re Education Act (Que.)*, [1993] 2 S.C.R. 511, at p. 567:

“When we speak of equality, this must be understood in the sense of equivalence and not that of strict quantitative identity, as Chouinard J. noted in *Greater Hull, supra*, at p. 591:

‘Proportionality is more significant. Whether on the basis of total population or that of school attendance, **the principle of a fair and non-discriminatory distribution is recognized**’. [Italicized emphasis added by Gonthier, J.]

[53] The *EQIA [Bill 160]* enacts a mixed system of funding in Ontario. Local taxation remains, but the Minister of Finance now sets the applicable tax rates throughout the province. Provincial education grants are used to equalize education funding between school boards. There is no evidence that this new funding model has a prejudicial affect on the right of Roman Catholics in Ontario to fair and equitable funding of their school system. As Lord Buckmaster L.C. pointed out in *Ottawa Separate Schools Trustees v. Ottawa Corporation, supra*, at p. 81, “an inference with a legal right or privilege may not in all cases imply that such right or privilege has been prejudicially affected”. The evidence is that the new funding model will enrich the separate school system in Ontario as it is intended to have a redistributive effect. Obviously, it is not the role of this Court to comment on this policy decision. The role of this Court is to determine if the legislation implementing the new education policy in Ontario prejudicially affects any protected denominational rights.

[54] As Meredith C.J.C.P. stated in *Ottawa Separate Schools Trustees v. City of Ottawa, supra*, at p. 630:

The right and privilege which the Separate Schools Act conferred when the Imperial enactment became law, and which the Separate Schools Act have ever since conferred, and still confers, was and is a right to separation, to separate public schools of the like character, and maintained in the like manner, as the general public schools.

The new funding model enacted by the *EQIA* treats separate schools in a “like manner” as public schools. In fact, all schools in the province are now treated equally under uniform legislation. **Section 234(2) of the *Education Act* specifically imports the standard for fair and equitable funding of separate schools set out by this Court in *Reference Re Bill 30, supra*, and *Ontario Home Builders’ supra*.**

...

[55] Section 93(1) of the *Constitution Act, 1867*, offers guarantees of the same nature as the guarantees provided by s. 23 of the *Charter*, but for denominational aspects of education instead of linguistic and cultural aspects.⁶

OCSTA emphasizes particularly the words of the Supreme Court of Canada in the *Ontario Home Builders’* case in which it said that:

The substantive purpose of this notion [of proportionality] must be borne in mind: the achievement of an education system that distributes provincial funds in a *fair and non-discriminatory manner* to common and separate schools alike. This is the substantive guarantee offered by s. 93(1). (emphasis added)

Any change to the funding model must respect this basic principle, which is faithfully expressed in s. 234 of the *Education Act*.

THE STRUCTURE OF SECTION 234 OF THE EDUCATION ACT

Section 234 of the Education Act provides:

234.(1) Regulations governing legislative grants. *Subject to subsections (2) and (3), the Lieutenant Governor in Council may make regulations governing the making of grants for educational purposes from money appropriated by the Legislature.*

(2) Same. *Regulations made under subsection (1) shall ensure that the legislation and regulations governing education funding operate in a fair and non-discriminatory manner,*

(a) as between English-language public boards and English-language Roman Catholic boards; and

(b) as between French-language public district school boards and French-language separate district school boards.

As noted above, the education funding model in Ontario must take account of three constitutional imperatives:

- (a) the Ontario Government's exclusive authority to make laws in respect of education under s. 93 of the *Constitution Act, 1867*;
- (b) the requirement that the Government respect the denominational rights of Roman Catholics under s. 93(1) of the *Constitution Act, 1867*; and
- (c) the requirement that the Government implement the constitutional rights conferred by s. 23 of the *Charter*.

Subsection 234(1) acknowledges the power of the province to make regulations concerning grants, but subjects that power to the constitutional rights of the Catholic minority and of the French-language minority.

Subsection 234(2) expresses the constitutional standard for education funding found by the Supreme Court of Canada in *re Ontario Homebuilders' Association and York Region Board of Education et al* and in *O.E.C.T.A. v. Attorney General of Ontario*, namely that education funding must operate in a fair and non-discriminatory manner.

While subsection 234(2) requires that the legislation and regulations governing “education funding” operate in a fair and non-discriminatory manner, subsection 234(14)⁷ makes it clear that this includes all grants under subsection 234(1), municipal taxes raised in support of education, and education development charges.

In short, the constitutional standards apply to virtually all revenues obtained by school boards.

Section 234 embodies in legislation the constitutional commitments of the province of Ontario. These must be respected in this funding review.

THE OLD FUNDING MODEL

In this part of the brief we review the shortcomings of the old funding model to show why the new funding model was necessary. We then discuss the implications of a return to local taxation, including a return to equalization by the province and a return to assessment competition by school boards. In our view, these developments would be a major step backwards.

Under the old funding model, the operations of school boards were funded by revenue from two basic sources. School boards levied rates on their ratepayers. The province provided grants.

The results were inequitable. The distribution of assessment among school boards was inequitable on a geographic basis. Some areas of the province, like Ottawa and Toronto, were assessment wealthy because of the presence of businesses and corporate assessment. School boards there could raise large amount of money at comparatively low tax rates. Boards elsewhere could not.

There was also coterminous inequity. Public English boards had disproportionately more assessment than the other boards. This was because of the operation of the assessment system. It had and continues to have a default mechanism built into it. Ratepayers who were legally entitled to support Catholic boards had to direct their assessment support. If they did not do so, then their assessment automatically went to the local public board. French Catholics had a double default, since assessment also defaulted to the English board. Catholic and French boards were therefore required to engage in recruitment campaigns for assessment to overcome the bias in the assessment system.

They used to have assessment departments whose function was to recruit designation of support from qualified ratepayers. Inevitably, public boards established assessment departments in order to keep as much assessment as they could. The result was competition for local assessment. The Fair Tax Commission noted

One manifestation of this pressure has been intense competition among neighbouring boards for school support and therefore assessment. A growing class of local officials devoted entirely to “assessment wars” with other boards has been created in public, separate, English and French boards across Ontario. This effort serves no purpose other than to shift resources from board to board, to the benefit of some students and the detriment of others. We consider this activity to be wasteful and destructive to the local

cooperation that is essential to make the system perform better and deliver its services more efficiently.⁸

The provincial grant system tried to equalize revenue to offset the geographic and coterminous inequities but it was only partly successful. Assessment wealthy English public boards were able to raise more money than the provincial grant entitlement, known as the “grant ceiling”. Because Catholic and French ratepayers had the ability to choose which school board they would support through their property taxes, coterminous boards had to set competitive tax rates or risk losing ratepayers and therefore assessment to the English public board. As a result, they always had less money to spend on a per pupil basis.

It is therefore no surprise that the system was described as “broken”. In a publication issued in 1992 entitled “ Toward Education Finance Reform”, the Ministry of Education stated frankly:

The current model for the funding of elementary and secondary education was developed in 1968. It is based on two principles: equality of educational opportunity for all pupils in Ontario and equality of tax burden on local ratepayers. In 1992, the model cannot adequately address these principles. Therefore, a new funding framework must be developed. The present model does not address equity in tax burden on local ratepayers nor does it address the requirements for equity on education for all of Ontario’s students.⁹

The Minority Report of the Property Tax Working Groups of the Fair Tax Commission and the 1992 Ministry publication showed the stunning degrees of inequity in the assessment system. For example, the poorest board in 1990 terms was the Kirkland Lake District RCSSB. It had equalized assessment per elementary pupil of \$50,644. By contrast, the public boards in Toronto had a 1990 equalized assessment per elementary pupil of \$734,863 per pupil and the Ottawa Board of Education had an equalized assessment per pupil of \$687,774 per pupil. By contrast, the Metropolitan Separate School Board in Toronto had only \$237,943 per pupil in equalized assessment and the Ottawa Roman Catholic Separate School Board had only \$329,215 per pupil. (It must be noted that these figures include commercial assessment as well as residential assessment.)

The need for a new funding model was obvious to all.

THE NEW FUNDING MODEL

Catholic and French school boards continue to have residential assessment bases consisting of those properties whose owners or tenants are entitled to and have directed support to the board, along with residential assessment directed by sole proprietors, partnerships and private corporations in the proportion of their ownership. English public boards have a residential assessment base consisting, by default, of all other residences. All business assessment is pooled within a municipality and is divided among the school boards in the proportion of their students.

The ability of school boards to tax their respective assessment bases has been rendered inoperative, and the education tax rate is set by the province. Funds generated from a school board's residential assessment base through the education tax rate flow from the municipality to the school board, as do the funds from pooled business assessment. The difference between the amount that a board receives from property taxes and the amount that it is entitled to receive under the new funding model is provided directly by the province in the form of grants. The province's authority and obligation in this respect is set out in s. 234 of the *Education Act*.

OCSTA continues to support the basic structure of the new funding model.

THE PROSPECT OF A RETURN TO LOCAL TAXATION

It may be recommended to the Task Force that school boards again be permitted to levy ratepayers in a limited way.

The policy argument in favour of a return to local assessment is that it would find new money for education without imposing a heavier burden on the Provincial budget.

OCSTA strongly opposes any return to local taxation as a means of funding education even on a restricted and seemingly modest basis.

The idea for some reliance on local taxation by school boards is found in the Ontario Fair Tax Commission Report entitled, "Fair Taxation in a Changing World" (1993). It recommended that school boards be able to assess the local rate base of residential supporters in a limited way:

Recommendation 77 – Ontario should permit school boards to raise funds to support local discretionary spending through a local levy on the Residential Property Tax Base. The amount of this local levy for each board should be restricted to a fixed percentage – not greater than 10% – of the total amount of provincial funding provided to that board.¹⁰

This recommendation was not accepted by the provincial Government. It is worth observing that Professor Neil Brooks commented, in his dissent:

I am in favour of full provincial funding for education. The commission's suggestion of "nearly" full provincial funding detracts from the entire concept.

The case for full provincial funding bears repeating, as much as to reiterate the importance of the commission's main recommendation as to call into question the qualification attached to it. The present Ontario system of school finance is inequitable, irrational, a blatant denial of equal educational opportunity, and an egregious anomaly in a province committed to liberal ideals. Students living in the wealthiest and most advantaged communities have much greater educational resources than students living in the poorest communities. In an economy that is indisputably provincial in character, we continue to treat educational funding as predominantly local function.

... In short, there is no case for allowing educational funding to vary at all between schools based upon the capacity or effort of local tax-payers.¹¹

OCSTA agrees with Professor Brooks' description of the old funding model and his policy argument in favour of full provincial funding for education.

The problem remedied by *Bill 160* was the inequity of assessment wealth as a source of education financing. Numerous studies over the years noted that the single largest impediment to the achievement of equality of educational opportunity in the past in Ontario was unequal access to assessment by school boards on a geographic basis, because urban areas are assessment wealthier than rural areas, and on a coterminous basis because, through the operation of the default mechanism in the assessment system, public boards are always assessment wealthier than Catholic boards, and English boards are always assessment wealthier than French boards.

Any funding model that permits access by school boards to the assessment base will inevitably produce inequity. It was in wrestling with this basic fact that the Government of Ontario reached the conclusion that access to the tax base on the part of school boards had to be stopped in order to achieve equity, and simply suspended the power of all school boards to levy rates in *Bill 160*.

While financial autonomy was theoretically available to Catholic and to French boards in the past given their unfettered ability to levy rates, it was not practically available because of their need to match local mill rates with the assessment-richer coterminous English and public boards in order to avoid an exodus of ratepayers. This inevitably yielded less revenue per student. The point that must never be forgotten is that a Catholic ratepayer can choose to support either the Catholic board or the public board. French-language rightholders are free to choose the school board they will support.

Mill rate competition would recur if boards could levy rates again, even at a limited level. English public boards could raise additional revenue with a comparatively modest tax effort, effectively setting a mill rate cap for the assessment poorer coterminous boards. The latter would raise less money at the same mill rate and there would be a lower amount of revenue per pupil available, again reproducing inequity.

A RETURN TO EQUALIZATION

As noted above, the policy argument in favour of a return to local assessment is that it would find new money for education without imposing a heavier burden on the Provincial budget.

This is in fact a fallacious argument¹².

Wide variations in assessment wealth among school boards caused significant inequities when school boards levied local taxes under the old funding model. These inequities would recur if local taxation were to return to post-Bill 160 Ontario.

Since Bill 160 the assessment base has eroded considerably with the ordinary operation of the default mechanism in the assessment system and the lack of an incentive for school boards to maintain the assessment base. We hope to be in a position to provide you with the information on this phenomenon in the near future. In any event, we urge you to obtain this information from the Minister of Education for the purpose of the Task Force's analysis of this issue.

As a result, the residential assessment base of English public boards has increased significantly at the expense of the other boards.

Permitting school boards to levy ratepayers, even in a limited way, would inevitably result in significant per pupil inequities because of the unequal distribution of local assessment across Ontario and coterminously. The Government's stated and legal commitment to equality of education opportunity would preclude a return to local taxation without full equalization by the province through the Grant System. The fiscal burden for the Government to equalize would be significant.

It is to be expected, then, that the difficulties experienced under the old funding model would be resurrected if school boards could once again resort to the local tax base, even in a limited way. The flaws in the assessment system are irreparable. If the province did not commit itself to full equalization, then there would be a return to the wasteful competition for local assessment that characterized the old funding model. Any money spent on the resumption of local taxation would be much better spent on education.

The Government's objective of equality of educational opportunity across the province would be compromised if the right to raise local taxes were to return as a feature of the system of education finance.

SUMMARY AND CLOSING OBSERVATIONS

The OCSTA is grateful for the opportunity to submit this background brief to the Education Equality Task Force.

Our purpose is to bring to the attention of the Task Force certain basic principles concerning Catholic education in the Province of Ontario. These must be respected in any review of the funding model. We summarise these and the relevant implications in the following propositions:

- (1) Catholic education rights in Ontario are prescribed by s. 93(1) of the *Constitution Act*, 1867.
- (2) OCSTA generally supports the principles of the current funding model, particularly as those are reflected in s. 234 of the *Education Act*. It embodies the constitutional entitlements of the Catholic minority in Ontario in relation to education finance. The funding model must operate in a fair and non-discriminatory manner and must promote equality of educational opportunity.
- (3) Although we support the principles of the current funding model, it is in need of some renovation. More money is required. Our critique of the operation of the funding model will be set out in a subsequent brief.
- (4) OCSTA would oppose any return to taxation on the part of school boards for even a small portion of their revenue.
- (5) A return to taxation by school boards would compromise equality of educational opportunity, increase government expenses for equalization and cause a return to assessment competition that is wasteful and divisive. There is no good policy reason for restoring the access of the school boards to local taxation.
- (6) If the province does permit a return to school board taxation, despite our strenuous objections, then there must be a provincial commitment to full equalization, since access to the assessment base on the part of Catholic boards would be inadequate and inequitable, provincially and coterminously, given the way in which the assessment system currently operates.

OCSTA appreciates the Government's commitment to Catholic education and look forward to working with Dr. Rozanski as he carries out the

important task of ensuring that the level of funding is adequate, and the funds are distributed on an equitable basis.

OCSTA is ready to answer questions and to participate in any discussions that may be prompted by this brief.

ENDNOTES

¹ The Association has also been an active participant in numerous lawsuits seeking to protect Catholic denominational rights in education. Most recently, OCSTA supported the position of the government in the *Bill 160* case, *OECTA v. A.G. Ontario* (2001) 196 D.L.R. (4th) 577 (S.C.C.). Our other legal interventions include:

Daly v. AG Ontario (striking down s. 136 of the *Education Act*) (1997), 38 O.R. (3d) 37 (Gen. Div.), (1999), 44 O.R. (3d) 349 (C.A.) and (1999), 130 O.A.C. 200 (S.C.C.)

Public School Boards' Assn. Of Alberta v. Alberta (Attorney General) [2000] 2 S.C.R. 409

The Ontario Home Builders' Association v. The York Region Board of Education (concerning the constitutionality of education development charges, under the *Development Charges Act*): (1993), 103 D.L.R. (4th) 55, (Div. Ct.); (1994), 109 D.L.R. (4th) 289, (Ont.CA.); (1996), 137 D.L.R. (4th) 449, (S.C.C.)

The Bill 30 Reference [1987] 1 S.C.R. 1148 concerning the constitutionality of extending public funding to Catholic high schools, including the Reference to the Ontario Court of Appeal and the surrounding litigation concerning interim funding

Reference Re: Minority Language Education Rights (1984), 47 O.R. (2nd) 1 (Court of Appeal) concerning s. 23 of the *Canadian Charter of Rights and Freedoms*

² *Bill 160*, para. 28, p. 596

³ *Bill 160*, para. 32, p. 598

⁴ As the Ontario Court of Appeal observed in *Re Education Act (Ontario) and Minority Language Rights*, supra, at p. 55-56:

The province's power to regulate is, however, limited by the constitutional stipulation in s. 93(1) that it must not "prejudicially affect" the rights and privileges of Roman Catholics with respect to denominational schools. These rights and privileges include the large measure of autonomy in the control and management of their schools which Roman Catholics enjoyed at Confederation. But they involve more than the administrative structure, which, in itself, is intended only to be the means of preserving and fostering the religious and other values of denominational education. These values were eloquently expressed by Anglin C.J.C. in the *Tiny* case, [1927] S.C.R. 637 AT P. 656 [1927] 4 D.L.R. 857 at p. 860:

The idea that the denominational school is to be differentiated from the common school purely by the character of its religious exercises or religious studies is erroneous. Common and separate schools are based on fundamentally different conceptions of education. Undenominational schools are based on the idea that the separation of secular from religious education is advantageous. Supporters of denominational schools, on the other hand, maintain that religious instruction and influence should always accompany secular training.

In *Daly v. Ontario* (1999) 172 D.L.R. (4th) 241 (C.A.), the Court observed that:

The purpose of granting to Roman Catholics the right to funding for separate schools and the right to elect to manage their own schools was to enable the teachings of the Roman Catholic faith to be transmitted to the children of Roman Catholics while educating them in secular subjects.

In *Caldwell v. Stuart*, (1984), 15 D.L.R. (4th) 1 (S.C.C.) at 264, the Court recognized the pervasive nature of Catholic education:

As has been pointed out, the Catholic school is different from the public school. In addition to the ordinary academic program, a religious element which determines the true nature and character of the institution is present in the Catholic school. To carry out the purposes of the school, full effect must be given to this aspect of its nature and teachers are required to observe and comply with the religious standards and to be examples in the manner of their behaviour in the school so that the students see in practice the application of the principles of the Church on a daily basis and thereby receive what is called a Catholic education (p. 618-619)

The board found that the Catholic school differed from the public school. This difference does not consist in the mere addition of religious training to the academic curriculum. The religious or doctrinal aspect of the school lies at its very heart and colours all its activities and programs. The role of the teacher in this respect is fundamental to the whole effort of the school, as much in its spiritual nature as in the academic. (emphasis added)

⁵ In addition, s. 257.52 builds in additional protections for school boards whose financial affairs have been taken over by the Minister of Education:

257.52(1) Denominational, linguistic and cultural issues – Nothing in this Division authorizes the Minister to interfere with or control,

- a) The denominational aspects of a Roman Catholic board;
- b) The denominational aspects of a Protestant separate school board; or
- c) The linguistic or cultural aspects of a French-language district school board.

2) Same – The powers under this Division shall be exercised in a manner that is consistent with,

- a) the denominational aspect of Roman Catholic board;
- b) the denominational aspects of a Protestant separate school board; or
- c) the linguistic or cultural aspects of a French-language district school board.

Further, while s. 257.40 prevents the court from judicially reviewing orders, directions or decisions made in respect of a board in financial difficulty, this general prohibition does not apply to s. 257.52

⁶ *Bill 160*, paras. 49, 50, 51, 52, 54, 55, p. 606-609

⁷ S. 234(14) **Definition** – In subsections (2) and (3) and in Division F,
“education funding” means revenue available to a board,

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- (a) from grants made under subsection (1),
 - (b) from tax rates under Division B other than tax rates for the purposes of paying a board's share of the costs of rebates under s. 442.1 or 442.2 of the *Municipal Act* or paying rebates under regulations under s. 257.2.1 of this Act.
 - (b.1) from taxes under Part XXII.1 of the *Municipal Act* or Division B of Part XXII.2 of the *Municipal Act* other than taxes for the purposes of paying a board's share of the costs of rebates under s. 442.1 or 442.2 of the *Municipal Act* or paying rebates under regulations under s. 257.2.1. of this Act, and
 - (c) from education development charges under Division E.

8 Fair Tax Commission Report, p 684-685.

9 At page 47.

10 Fair Tax Commission Report, p. 685-686.

11 At pages 1017 and 1019.

12 This argument also ignores the reorganization of local responsibilities and local funding sources that resulted from the "who does what" exercise undertaken by the Government. Municipalities have taken over the "tax room" vacated by school boards and are likely to resist the return of school boards to the tax base.