



Fourth Session - Thirty-Fifth Legislature  
of the  
**Legislative Assembly of Manitoba**

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**STANDING COMMITTEE**

on

**LAW AMENDMENTS**

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42 Elizabeth II

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*Chairperson  
Mr. Bob Rose  
Constituency of Turtle Mountain*



**VOL. XLII No. 10 - 9 a.m., TUESDAY, JULY 13, 1993**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Fifth Legislature**

**Members, Constituencies and Political Affiliation**

NAME	CONSTITUENCY	PARTY
ALCOCK, Reg	Osborne	Liberal
ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
CERILLI, Marianne	Radisson	NDP
CHOMIAK, Dave	Kildonan	NDP
CUMMINGS, Glen, Hon.	Ste. Rose	PC
DACQUAY, Louise	Seine River	PC
DERKACH, Leonard, Hon.	Roblin-Russell	PC
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EVANS, Leonard S.	Brandon East	NDP
FILMON, Gary, Hon.	Tuxedo	PC
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GAUDRY, Neil	St. Boniface	Liberal
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GRAY, Avis	Crescentwood	Liberal
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LAMOUREUX, Kevin	Inkster	Liberal
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MALOWAY, Jim	Elmwood	NDP
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McALPINE, Gerry	Sturgeon Creek	PC
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McINTOSH, Linda, Hon.	Assiniboia	PC
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PRAZNIK, Darren, Hon.	Lac du Bonnet	PC
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WASYLYCIA-LEIS, Judy	St. Johns	NDP
WOWCHUK, Rosann	Swan River	NDP
Vacant	Rossmere	
Vacant	Rupertsland	
Vacant	The Maples	

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON LAW AMENDMENTS**

**Tuesday, July 13, 1993**

**TIME — 9 a.m.**

**LOCATION — Winnipeg, Manitoba**

**CHAIRPERSON — Bob Rose (Turtle Mountain)**

**ATTENDANCE - 11 — QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Ducharme, Praznik, Mrs. Vodrey  
 Mrs. Dacquay, Mr. Gaudry, Ms. Gray, Messrs.  
 Helwer, Plohman, Rose, Storie, Sveinson

**APPEARING:**

Jack Penner, MLA for Emerson

**WITNESSES:**

Bill 25—The Public Schools Amendment Act (4)

David Turner, The Manitoba Teachers' Society

Gerry Dureault, The Manitoba Teachers' Society

Bill 34—The Public Schools Amendment (Francophone Schools Governance) Act

Jean Allard, Private Citizen

David Turner, The Manitoba Teachers' Society

Guy Boulianne, President, Les Educatrices et Educateurs Francophones du Manitoba

George Wall, Manitoba Association of School Superintendents

Gerald McConaghy, Manitoba Association of School Superintendents

Gilbert Savard, La Fédération provinciale des comités de parents (FPCP)

Armand Bédard, La Commission nationale des parents francophones (CNPF)

Georges Druwé, La Société franco-manitobaine

Alain Boucher, Le Conseil jeunesse provincial  
 Estelle St-Hilaire, L'Association des directeurs et directrices des écoles franco-manitobaines (ADEFM)

Gérard Lécuyer, Fédération provinciale des comités de parents (FPCP)

Laurent Roy, La Fédération provinciale des comités de parents (FPCP)

**MATTERS UNDER DISCUSSION:**

Bill 25—The Public Schools Amendment Act (4)

Bill 34—The Public Schools Amendment (Francophone Schools Governance) Act

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**Mr. Chairperson:** Order, please. Will the Standing Committee on Law Amendments please come to order. Before we get underway this morning, I would like to inform committee members and the public who are present here this morning that simultaneous translation is being provided for this committee meeting and for the meeting scheduled this evening at seven o'clock if that meeting is necessary.

I believe all the committee members now have headsets. There are more headsets available at the back if any of the members of the public would like a headset to hear the simultaneous translation. You will have to sign it out and return it, of course, before you leave the room.

I would also like to ask committee members and also public presenters, because of the simultaneous translation, we need to move slowly in our presentations. So I would ask you all to speak at a moderate pace, and I would also ask you all to be sure that you are very close to your microphone so that the translators will be able to clearly pick up what you are saying.

Also for the public presenters, if you are reading from a written submission and referring to a particular page, would you please identify that page by number or letter or whatever. If any of the presenters have written presentations which they would like to have copied for distribution to the committee members, would you please turn them in to staff either at the back or to the Clerk at my right, and they will be copied and provided, I think, in both languages—I guess at this point, just copied for distribution to the committee members.

This morning the committee will be considering the following bills: Bill 25, The Public Schools Amendment Act (4); Bill 34, The Public Schools Amendment (Francophone Schools Governance) Act. For the committee's information, copies of the bill are available on the table behind me.

It is, of course, our custom to hear presentations from the public before detailed consideration of the bill. I have before me a list of persons' names registered to speak to Bills 25 and 34.

For the committee's benefit, copies of the lists have been distributed, and for the public's benefit, copies of the lists are at the table at the back of the room for you to view.

At this time I would canvass the audience and ask if there are any other persons present who would like to make a presentation to the committee, to either Bill 25 or 34 and who are not on the list at the back of the room. Please let staff know at the back of the room and your name will be added to the list.

I will now ask the committee in which order they wish to deal with the bills. Shall we deal with Bill 25 first? [agreed]

I will also ask the committee if it is their will to hear the presenters on both bills before we move into detailed clause-by-clause consideration of either? [agreed]

Does the committee wish to put a time limit on presentations? No?

It is our practice at these committee hearings to hear from out-of-town presenters first. I have no indication on my list of which of the presenters are from out of town. Could you please identify yourselves if there are from out of town?

We will be considering Bill 25 first and we only have one presenter in for Bill 25. In the interim, could those people from out of town who are presenting to Bill 34, please identify themselves with the Clerk so we can schedule you in proper order.

### **Bill 25—The Public Schools Amendment Act (4)**

**Mr. Chalrperson:** I will now call for presentations on Bill 25. Mr. David Turner, Manitoba Teachers' Society. When you are ready, Mr. Turner.

**Mr. David Turner (The Manitoba Teachers' Society):** Good morning. I am accompanied by

staff officer Gerry Dureault from the Manitoba Teachers' Society, who may assist me perhaps if you have questions later on.

This is a submission from the Manitoba Teachers' Society on Bill 25. The Manitoba Teachers' Society welcomes the opportunity to appear before the Law Amendments committee to comment on Bill 25. The society endorses the concept of school committees and area advisory committees as it applies to Frontier School Division No. 48, provided however that there be a clear delineation of their powers, duties, and responsibilities, and an explicit limitation of their powers with regard to the employment, supervision and evaluation of the school division's employees.

The society therefore recommends:

Number 1. That subsection 17(6)(a) be amended to read as follows:

(a) make recommendations to the school board respecting criteria for the selection of principals, teachers, and other school personnel.

Number 2. That subsection 17(6)(b) be deleted and that the following be substituted therefor:

(b) develop, jointly, with the administrators and teachers of the school, criteria and procedures for the evaluation of school personnel.

Number 3. That a new subsection 17(6)(g) be added:

(g) act at all times in good faith, and in a fair and reasonable manner.

Number 4. That subsection 17(10)(a) be amended to read as follows: make recommendations to the school board respecting criteria for the selection of the area superintendent, the area liaison officer and area support staff.

Number 5. That subsection 10(b) be deleted and the following substituted therefor: develop, jointly with the area superintendent, the superintendent and the teachers' division association, as well as general criteria and procedures to be followed in those evaluations.

Number 6. That a new subsection 17(10)(g) be added: act at all times in good faith, and in a fair and reasonable manner.

Please note that pursuant to recommendations 1 and 4, subsections 17(6)(a) and 17(10)(a) respectively, these should be the objects of new subsections, since they provide advice to the

school board rather than to school and area administrators.

The society is making these recommendations because, under the provisions of subsections 17(6), 17(10) and 17(11), there appear to be opportunities for the local school committees, the area advisory committees and the school board to believe that each has the authority of the employer and that each has the responsibility for personnel.

\* (0910)

It is normal for an employee to be responsible to one employer. However, in the case of Bill 25, there will be situations in which the employees will receive directions from the school committees, the area advisory committees and the school division board, and made to feel responsible to each of those bodies. The local school committees and the area advisory committees are not accountable in law and should have responsibility or authority with regard to the employment, supervision or evaluation of personnel. The employer is the school division board, and the legislation must be clear in this respect.

The society believes that the local school committees and the area advisory committees have a legitimate interest in the development of criteria for the selection of school and area personnel respectively and in the development of general criteria and procedures for their evaluation. The concept of local school committees and area school committees working co-operatively with other interested parties on these matters should be recognized in legislation.

In addition to those areas of concern, the society notes that Bill 25 gives the minister discretionary power to establish local school committees and area advisory committees but that it is mandatory for the members of those committees to elect a school board.

The society recommends that the word "may" in each of subsections 17(3) and 17(7) be replaced by the word "shall."

In conclusion, the society reiterates its support for Bill 25 and requests the Legislative Assembly to make the amendments recommended in this brief. These amendments should increase the effectiveness of both local school committees and the area advisory committees, and minimize problems and conflicts pertaining to jurisdiction and employer-employee relations.

**Mr. Chairperson:** Thank you very much, Mr. Turner. Do the committee members have any questions or comments?

**Mr. Jerry Storie (Flin Flon):** Mr. Chairperson, I want to thank Mr. Turner for the presentation. I think some of the amendments that the Manitoba Teachers' Society are putting forward are good amendments and should be considered by the committee very carefully.

I have a couple of questions, though, about, I guess, the intent of this legislation. I do not know whether Mr. Turner has had a chance to read the minister's remarks when this bill was introduced, but it was my understanding that essentially this bill was to legitimize, in some sense, what is current practice in many Frontier School Division communities. I am wondering whether the Teachers' Society is opposed to local school committees actually being able to, in co-operation with the area superintendent and, indirectly, school boards, choose their teachers?

**Mr. Turner:** In response to the question, the society is not opposed to the concept of local school committees and local area advisory committees involving themselves in joint co-operative efforts along with not only the area superintendent but also with the teachers' association and developing criteria for the selection of these areas.

I am conscious, talking to the executive of the teachers' association, of Frontier teachers' association, that they are concerned about—and the submission I have just made touches on this—the fact that sometimes they do not know how many bosses they have, and that is a concern they have.

The bill we think would be improved if it was clear that the school board was the real boss, the real employer, which it is obviously in law in other jurisdictions. We see a very legitimate role for the school committees and the area advisory committees, but we do not think that role is necessarily the direct hiring of school personnel.

**Mr. Storie:** I guess historically and in point of fact, school committees actually do, albeit indirectly, make the choice in many communities.

I am wondering whether the Teachers' Society has had an inordinate number of problems with the selection process as it exists?

**Mr. Turner:** I would like to call upon the staff officer Gerry Dureault to refer to that since he has a lot more experience in this area than I do in handling some of the personnel cases coming out of Frontier School Division. So with the Chair's permission, I would like Gerry Dureault to respond to that question.

**Mr. Gerry Dureault (The Manitoba Teachers' Society):** Mr. Storie, in response to your question, there is a difference between participation in the establishment of a selection process and then the further supervision and administration of that personnel, and the problem historically has been trying to draw that line.

Once you have people who have participated in that selection process, and it has gone in some cases up to participating in the selection committee and having a vote, I suppose, in the final say as to which of the potential candidates was selected as an employee, and then sometime down the road, when there is a need to do some personnel administration vis-à-vis that same person, then how do you, when you have blurred that line, redraw it to everyone's satisfaction?

Now, those are the situations, without going into any specifics of personnel cases, where we have encountered a great deal of difficulty.

**Mr. Storie:** This is an important issue for a lot of small communities who want to gain some control over, I guess, the process.

I agree with the point you are making, and that leads me to the second question, which I think is an appropriate amendment dealing with evaluation. I think you make the point that it should not be simply recommendations from the committee. I support that point in your brief.

The final question I have that I think requires amendment is Section 17(10). In your brief, you are recommending that where the bill says, "make recommendations respecting the hiring of the area superintendent, the area liaison officer and area support staff" the advice is supposed to be given to the area superintendent, and I think, clearly, the legislation should be much broader than that and should refer to the school board directly. I think that is your amendment for Section 17(10)(a), and I think that was a good amendment.

The final one was a concern that in both sections of the bill you are suggesting adding, "act at all

times in good faith, and in a fair and reasonable manner."

I am wondering if that is not an obligation for every elected official, and I am wondering if that is an obligation, for example, under the current Public Schools Act for school boards. Is it necessary to include those words? Is that not assumed?

\* (0920)

**Mr. Turner:** In response to the question, unfortunately, no, it is not assumed. Those words are taken out of The Labour Relations Act of 1956, and at that point, The Public Schools Act and The Labour Relations Act went their different ways. The Public Schools Act has never incorporated those words, and in fact, in our negotiations, when we have tried to have these words put into collective agreements with employing school divisions, there has been massive and organized resistance to those words appearing. They seem innocuous, but unfortunately, we do not, as teachers, have the same rights as those covered by The Labour Relations Act.

**Mr. John Plohman (Dauphin):** Yes, just a question on the amendment dealing with "may" and "shall", the final one. Is there instances that you know about where local school committees have not been established up to now, and what is the reason that they are not in place? Is it because the community does not want it, or are they not organized in a way that makes it possible?—because if the word is changed and the amendment is accepted that you are recommending, that the minister shall establish local school committees, then that would have to be done in every case. Are there instances now where it is not the case, and can you tell us why?

**Mr. Turner:** Mr. Plohman, in response to your question, I think the previous questioner referred to the fact that this bill, Bill 25, is putting into legislation practice, and in response to your question, therefore, I should tell you that I am not aware of any particular problems of that nature. However, if you look at the differences we point out between "may" and "shall," it just seemed logical that the minister should do this rather than have the option of doing it.

**Mr. Plohman:** Yes, I was just trying to determine if there was any logical reason why "may" was used instead of "shall" in terms of some specific

instances, but I agree with you that it should be the practice, and "shall" would be a better word.

**Hon. Rosemary Vodrey (Minister of Education and Training):** Mr. Chairperson, I am not sure if Mr. Turner had a response. No? Okay. Thank you.

I would just like to say thank you very much for your presentation this morning and for the amendments that you have put forward. You have given some areas for consideration, and we will have a look at those.

**Mr. Turner:** On a point of personal privilege, Chair, I have claimed out-of-town status for the next bill because I am supposed to be in Regina. My bags are packed, and as soon as I finish here, I am supposed to go to a Canadian Teachers' Federation annual general meeting there.

**Mr. Chairperson:** Thank you very much for your presentation this morning, Mr. Turner.

That completes public presentations on Bill 25.

### **Bill 34—The Public Schools Amendment (Francophone Schools Governance) Act**

**Mr. Chairperson:** With the committee's indulgence, we will then move to public presentations on Bill 34.

We have one out-of-town presenter identified, but before we call that individual, perhaps the committee could deal with the request of Mr. Turner. You will note that on the schedule he is listed as the last presenter on Bill 34, and he has requested the committee to hear his presentation this morning as they have a conference somewhere else.

I guess if I may be permitted a comment from the Chair, I would remind committee members that it is expected that each and every one of the public presenters have very busy schedules and we would find it very difficult, I think, to fit it into everyone's schedules. I leave that decision to the committee.

Is it the will of the committee to treat Mr. Turner as an out-of-town presenter and have him make his presentation after the next presenter?

**Mr. Edward Helwer (Gimli):** Mr. Chairperson, seeing as there are only three out of town, or two is it, I suggest that we try to accommodate Mr. Turner this morning, if it is at all possible.

**Floor Comment:** Oh, oh.

**Mr. Chairperson:** Order, please. I would remind the public that only committee members can take part in this discussion. Is it the will of the committee then to hear Mr. Turner as the second presenter on Bill 34? [agreed]

I will then first call Mr. Jean Allard, private citizen. You may begin when you are ready, sir.

**Mr. Jean Allard (Private Citizen):** Good morning, bonjour Mesdames, Messieurs. Ladies and gentlemen, I will try to be as brief as I possibly can. In the interests of practical results, like Louis Riel, I will speak in English. I think you all understand English. I could speak in French or English, but in the interests of brevity and the interests of others who would like to speak.

If I may introduce myself, I am the former MLA for Rupertsland and legislative assistant to the Premier of this province. I was a school trustee from '80-83 and from '86-89 in Whitehorse Plains. In latter life I have become the father of five children. I had one before. I was a widower. I have five children in the school system, and I do not speak as president of Union Métis but I am, as a by, as a comment. I would like to have your questions and I would like to limit myself to one issue on the subject before you this morning, and that is the question of hiring and letting teachers go within this bill.

It is my observation as a school trustee that parents are effectively excluded from our schools, and I think that is the root cause of the problems that we have in education, that parents are excluded, effectively excluded. Committees who advise are not inclusion. They are just a bit of smoke that have no effect, and I speak as a school trustee, and I want to tell you that as a school trustee I found myself excluded as well.

This may seem strange, but in practice we did not have much to say about how the division was run or anything else. The bureaucracy runs things, and I see what you have before you is even more prone to this because you have three levels. The bureaucracy will be sitting way up there running everything, and parents will be excluded, and I believe that is our biggest problem.

You could deal with this in the same way as 20 years ago we dealt with a problem of putting hard liquor into beverage rooms by a seven-word amendment in Law Amendments, and it was done.

It seems to me that the hiring should be done by as close to parents as possible, the local committee

of each school. I am not talking about running the school division. I am not talking about anything else. I am just talking about the hiring and firing of teachers should be done by the local committee. It should have that power. It may delegate it to a more central body, to the regional level, but it should have that power. The teachers should know that the parents run the school. That is the important thing. Parents must run the school for the benefit of our children.

I have children in school. I know what we face and how tempting it is for the profession to set itself up as part of the power making, or the decision-making power, and after a while, to take over the whole thing, the bureaucracy and the profession, run our school. Parents are excluded effectively.

With all due respect to you gentlemen, I do not think you have much more power than we did when we sat here. Effectively the system worked. That is how you could make some little amendments here and there, but you do not have the ultimate power that existed when I was a child, because my uncle and two other neighbours hired the teacher. The teacher knew that they had to answer to parents, and if they did not, it was goodbye.

I know that we should respect the professional rights and the careers of teachers, but on the other hand, the primary purpose of education is the child. We are not here to give jobs to teachers, we are here to provide the best education for children possible. I would not exclude the possibility at the local level of the committee, of the local committee, the elected parents, adding to itself a principal or a teacher in their decisions of hiring and firing. Remember, I am not asking that this committee do anything but that, besides electing the regional and the regional electing the top unit.

\* (0930)

Gentlemen, thank you. I would like to have your questions if you have any. Maybe I am not clear. Maybe you think I am crazy. I would like you to tell me that. I would like to have some response. It is part of the democracy we live in to be able to communicate.

**Mr. Chairperson:** Thank you, Mr. Allard. As a former politician, I think you can rest assured that there will be some questions and comments for you.

**Mr. Jerry Storle (Flin Flon):** Did Mr. Allard ask me to judge whether he is crazy, because I am not—

**Mr. Allard:** That decision has been made a long time ago by others probably better qualified.

**Mr. Storle:** Mr. Chairperson, I think Mr. Allard raises a very interesting point. It is sort of a nice comparison to the bill we have just passed because, of course, in the bill we have just passed—not passed at this point, but considered. Certainly it is very consistent with the wording. Mr. Allard's point is very consistent with the wording that is actually in Bill 25. Basically, what Mr. Allard is suggesting is that local schools should be as much as possible, and where possible, governed by the people who send their children there.

I am wondering whether the government and the minister have noticed the inconsistency in we now have regional committees that only set criteria, and in the bill we have just considered, Bill 25, the committees actually get to make recommendations respecting individual personnel to be hired. It seems to me that is more consistent with what Mr. Allard is saying and maybe more consistent for the communities that may have schools established in their areas. I think it is something we should certainly consider, and perhaps other presenters on Bill 34 will want to comment on it. I would like to thank Mr. Allard for raising the issue.

**Mr. Allard:** May I make a comment? I think you have the opportunity here to do some pilot-project work, and it is something that can be reversed without difficulty if you think there is a difficulty, but I think it is imperative that you try this in this situation. The decision will be at the level of one board across this province, and I think that the community is anxious because of that. There is a deep anxiety which has already surfaced with political actions, and I find it serious that the people responsible have not approached the minister responsible or whatever to correct the problem that exists.

I feel anxious about my children, teachers being chosen by one group in charge of all the Francophone people in this province. First of all, I feel anxious about being sort of plugged in without much of a say-so somewhere along the line, but I think you have a chance to do pilot-project work.

**Mr. Storle:** Well, just one final comment. As Mr. Allard knows, the model that we are discussing



here that will become law as a result of Bill 34 is a Frontier School Division model, a model that has many years of experience, and through trial and error almost, we have come to the conclusion, and the school committees have come to the conclusion, that they need those powers. It would seem to make sense to use that model as much as possible when you actually develop the Francophone school system, and your suggestion is a good one.

**Mr. Neil Gaudry (St. Boniface):** Oui, Monsieur Allard. Premièrement, j'aimerais te remercier pour avoir fait ta présentation. Vu que tu as mentionné Louis Riel au commencement, il faut souligner que Louis Riel était un grand défenseur de la langue française puis je sais que tu en as toujours été fier. Puis j'aimerais te donner la chance de répondre en français. Je sais que tu n'as pas de problème de parler en français. Est-ce qu'il y a d'autres inquiétudes dans le projet de loi no 34 au point de vue de toi-même personnellement?

**[Translation]**

Yes, Mr. Allard. First of all, I would like to thank you for your presentation. Since you mentioned Louis Riel when you began, it should be reiterated that Louis Riel was a great defender of the French language, and I know you have always been proud of that language. I would like to give you the opportunity to answer in French. I know that you do not have any problem speaking French. Do you have any other concerns about Bill 34 from a personal level?

**Mr. Allard:** Et bien, je te remercie, Neil. Au sujet de ta question, je me suis aperçu dans le passé que quand je commence à mettre toutes mes inquiétudes en avant, je perds la valeur de ma grande inquiétude. Ça fait que je pense que je ne mentionnerai pas les autres petits problèmes que je pourrais voir, mettons, parce que je veux me concentrer sur celui-ci qui est fondamental et puis qui est le grand problème que je vois dans ce projet de loi. Okay? Merci.

**[Translation]**

Well, thank you, Neil. Regarding your question, I have noticed in the past that when I start bringing all of my concerns to the fore, my major concern loses its impact. And so I think that I will not mention the other small problems that I might see, so to speak, because I want to focus in on this one,

which is a fundamental one and the biggest one that I see in the bill. Okay? Thank you.

**Mr. Gaudry:** Merci.

**Mr. John Plohman (Dauphin):** Well, in light of that answer, I will just ask one question. Mr. Allard, would you have any comments on the issue of the bill providing for parallel programming, in other words, français programming by existing divisions, even though the Francophone division will be set up in Manitoba to provide that for parents who would desire that for their children? Existing divisions will still be required to continue to offer français programming if parents would like it. Do you have any comments on whether that is necessary, or whether the exclusive jurisdiction for français programming should be turned over to this new division?

**Mr. Allard:** Let me answer by saying that I think the dual track, if you want to call it that, that is developing here is probably caused by the anxieties of people who are afraid of exactly what I am talking about and who would sooner stay under some system over which they have some effective control.

**Hon. Rosemary Vodrey (Minister of Education and Training):** Mr. Allard, I want to thank you for your presentation this morning.

I would just like to start by saying that we think parents are important, too, and we think it is important for parents to have an active role within the education of their children. The two bills that we have been discussing this morning have been looking for a formal mechanism to make sure that that happens. So we will certainly give consideration to the discussion that you have brought forward this morning.

I want to thank you very much for your time. Thank you.

**Mr. Allard:** Ladies and gentlemen, thank you very much. I appreciate it.

**Mr. Chalrperson:** Thank you for your presentation this morning, Mr. Allard.

As previously agreed, we will now call David Turner, The Manitoba Teachers' Society.

**Mr. David Turner (The Manitoba Teachers' Society):** I am accompanied by our general secretary, Mr. Jean Gisiger, and the president of les Educatrices et Educateurs francophones du Manitoba, Monsieur Guy Boulainne.

The Manitoba Teachers' Society and its agency les Educatrices et Educateurs francophones du Manitoba welcome the opportunity to comment on Bill 34, The Public Schools Amendment (Francophone Schools Governance) Act.

The society supports the principle of a Francophone school division governed by Francophones. The society supports the following provisions of Bill 34:

- 1) the overall structure for the governance of the Francophone school division;
- 2) the eligibility and entitlement rights and requirements;
- 3) the framework for the transfer of programs in schools from the provided divisions to the Francophone school division;
- 4) the requirements for French as the language of instruction administration; and
- 5) the conferring of duties and powers to the Francophone school board that are equal to those of all other school boards in the province with the exception of the power to levy taxes.

On the other hand, the society has some concerns about certain aspects of Bill 34 and recommends amendments to deal with some of those concerns.

1) The area of the Francophone school division. Under subsection 21.2(1), the Lieutenant-Governor-in-Council shall establish a Francophone school division and specify its boundaries and area. However, Manitoba Education and Training has already issued an information booklet in which it outlines the areas and boundaries of the division.

Recommendation: That the Francophone school division be superimposed over all other Manitoba school divisions and include the area of the entire province, and that in consequence, all references to resident students, nonresident students within its boundaries and outside its boundaries be deleted from Bill 34.

\* (0940)

In this way, all students who are entitled persons or children of entitled persons will have the right to attend schools operated by the Francophone school division without having recourse to subsections 41(5) and 41(6) of The Public Schools Act. All rights holders under Section 23 of the Charter of Rights and Freedoms of the Canadian Constitution will be residents of the Francophone

school division and have a right to request appropriate educational services.

2) Delegation of powers. Subsection 21.8 provides for the delegation of powers and duties by the school board to the regional committees with the exception of powers and duties that must be exercised or performed by by-law or resolution. Matters pertaining to the employment, supervision and evaluation of personnel are likely included in this exception. However, for the sake of clarity and to avoid future legal conflicts, such matters pertaining to personnel should be specifically excluded from the powers that may be delegated to the regional committees.

Recommendation: that subsection 21.8 be amended by adding thereto the following:

(c) the employment, supervision and evaluation of teachers and other employees.

3) School committees. Subsection 21.13(1) requires the establishment of school committees and subsection 21.13(2) requires the Francophone school board to determine by by-law the formation, composition and mandate of such school committees. Subsection 21.14 outlines the matters on which the regional committees must consult the school committees.

The society supports the concept of community schools and sees school committees as essential components for the successful operation of such schools. School committees should be representative of the community and should provide opportunities for information, discussion, consultation and collaborative recommendations.

Recommendations: That the following subsections be added to subsection 21.13:

21.13(3) School committees shall not deal with matters pertaining to the employment, supervision and evaluation of personnel; and

21.13(4) At all times school committees shall act in good faith and in a fair and reasonable manner.

The society suggests:

(1) that school committee membership include community members, parents, school administrators, teachers and students.

(2) that school committees be provided sufficient funding to defray out-of-pocket expenses and operating expenses.

(3) that school committees participate with division administration, school administration and

the teachers division association in the development of criteria for the selection of staff and in the development of criteria and procedures for the evaluation of school personnel.

4. Regional committees. The society concurs with the establishment of regional committees with the responsibilities given to them in subsection 21.9(2). The need to ensure that regional committees do not deal with matters of personnel has already been raised. The school board is the employer and should be the one dealing with such issues. In addition, there is a need for the regional committees to act and be perceived to act in a fair and reasonable manner.

**Recommendations:**

(1) That Bill 34 be amended by adding a new subsection:

21.9(3) At all times, regional committees shall act in good faith and in a fair and reasonable manner.

(2) Subsection 21.10(g) be renumbered 21.10(h), and that a new subsection 21.10(g) be added:

(3) 21.10(g) Jointly with school division administrators and the teachers division association, participate in the development of policies, general criteria and procedures for the evaluation of school personnel.

5) Admission of nonfluent children. The society supports the provision of programme d'accueil as indicated in subsection 21.15(2)(a). Such programs will be necessary during the years of implementation of the Francophone division. It will also be essential to continue to offer such programs on an ongoing basis. Bill 34 makes no provision for the funding of programme d'accueil, which will by their very nature be more expensive than regular programs.

Subsection 21.15(2)(b) makes provision for possible attendance in a French Immersion program offered in another school division under certain circumstances. The society does not support such a practice on the grounds that the objectives, pedagogy and climate of French Immersion programs are not appropriate in this situation. The programme d'accueil specified in subsection 21.15(2)(a) should be the approach followed in all cases.

**Recommendations:**

(1) that Bill 34 be amended to ensure that the government of Manitoba provides sufficient funding for the development and delivery of effective programme d'accueil as required.

(2) subsection 21.15(2)(b) be deleted.

6) Transfer of Schools. The society would have preferred to see all the schools currently offering a français program transferred to the Francophone school division with a proviso that the parents who did not wish to have their children in the Francophone school division could opt out. However, it appears that the Francophone community has accepted the government's position of asking parents to opt in. This will make the transfer more complex and may cause conflicts in some communities.

The society agrees with the various provisions of subsections 21.19 to 21.24(6) dealing with the transfer of programs in schools, including lands, buildings, furnishings, equipment, teaching materials and other property used primarily in connection with the Francophone programs located in those schools, with one exception.

Subsections 21.22(3) and (4) indicate that these transfers will be without compensation to the provider divisions and will include liabilities and obligations the provider divisions had with regard to the transferred schools. These subsections clearly favour the provider divisions in that no provisions are made to share, on a pro rata basis, those assets of the school division which were not attached to the schools, which were there to serve all the students in the school division, including the Francophone students. These assets include: school division officers and their equipment; vehicles to transport students or materials; and school division financial reserves.

**Recommendation:** That subsection 21.22 be amended by adding:

21.22(5) School Division Assets

Each provider school division shall transfer to the Francophone school division a portion of its financial reserves equal to the percentage of the students that are transferred to the Francophone school division; and

21.22(6) Francophone School Division Offices and Equipment

Not later than six months after the Francophone school division is established, in accordance with

subsection 21.21, the government of Manitoba shall provide sufficient funds to the Francophone school division to construct and equip school division headquarters and to provide for divisional services equal to what it could have provided had it received its proportion of assets from all provider boards.

7) Financial Matters. The society has serious concerns about the funding provisions for the Francophone school division. In addition to the funding to be provided, as outlined in subsection 21.34(a) and 21.34(b), the Francophone school division must be provided with supplementary funding:

(a) to develop and deliver programmes d'accueil on an ongoing basis;

(b) to construct and equip division headquarters;

(c) to establish the services of consultants, resource persons and resource material centres as required; and

(d) an appropriate share of the financial reserves of the provider divisions.

In addition, the society believes that the fifth financial principle developed by the Gallant work group needs to be restated and adopted by the government of Manitoba, and I am quoting now from the report on the Manitoba task force on Francophone school governance, page 25: "Given that education is exclusively a provincial jurisdiction, and to ensure adequate funding for a French education system on a long term basis, the francophone division must be guaranteed, by legislation, full support annually for legitimate additional expenditures for the preservation and promotion of minority language and culture in line with Section 23 of the Charter."

Recommendation: That the government of Manitoba include in Bill 34 a legislated guarantee of support for funding beyond the support in grants provided under Parts IX and X of The Public Schools Act to ensure that the Francophone school division can deliver educational services equal to those offered by other school divisions and offer programs as they are required under the Charter.

\* (0950)

Finally, the provisions of Bill 34 with regard to the transportations of students may be inadequate to meet the needs of the Francophone school division

and to ensure appropriate access to the rights-holders across the province.

As an alternative to the provisions of subsection 21.34 of Bill 34, and of the society's recommendations for additional funding, the government of Manitoba might consider the development and application of a total program funding formula whereby it will totally fund the entire program of the Francophone school division.

8. Transitional Provisions for Employees. The society expects that some of the persons who will become designated teachers under subsection 21.44 will decide to remain with their current employer, particularly if they have considerable seniority in that school division. The decision to remain with the current employer will be encouraged by the fact they will be unsure of the salaries and working conditions to be expected after the negotiation of the first collective agreement between the Francophone school division and the teachers' new division association.

If designated teachers decide to remain with their current employer, this will result in other teachers being laid off by the provider board. The society believes that other teachers from the provider division should then be given the opportunity to apply for vacant positions in the Francophone school divisions, and if offered the position, be transferred to the Francophone school division with all the protection provided in subsections 21.45(1) to 21.45(4) inclusively.

The society is concerned the designated teachers fear the transfer to the Francophone school division. To minimize this fear, we recommend the following amendment.

Recommendation—and with apologies to the committee, there is a slight addition in the first sentence. That subsection 21.44 be amended in order that all the teachers teaching—and if you, please, would add "in a transferred program." So I will read that sentence again:

That subsection 21.44 be amended in order that all the teachers teaching in a transferred program be seconded by the Francophone school division from the provider division. The secondment should remain in effect until the Francophone school division and the seconded teachers projected association have negotiated a collective agreement. At that point, the teachers concerned would decide to transfer to the Francophone school

division or to remain with their current employers. In addition, the society recommends that the following amendments be made with regard to this section of Bill 34.

**Recommendations:**

(1) That subsection 21.44 of Bill 34 be amended by the addition of "or" at the end of subsection (b) and of a subsection (c) as follows: (c) in a position in another program with a provider school board and applies to a transfer with a vacancy in a Francophone program that results from a teacher referred to in (b) above declining to accept a position with a Francophone school board.

(2) That subsection 21.44(1) be amended by the addition of the following, after the word "position" in the last line of the subsection: or a person who works from the school division office in providing services to students or teachers in the Francophone program.

(3) That subsections 21.45(1), 21.45(4), and 21.45(5) be amended so as to refer to one collective bargaining unit and to one collective agreement.

The society is also concerned that the school division, or school divisions, might find itself left with so few students after the transfer of some or all of its students to the Francophone school division that it could no longer function as a division or employ its current central office staff.

It seems appropriate that in those circumstances the employees of such a division would also receive offers of positions from the Francophone school division and be given first rights of refusal.

In conclusion, the Manitoba Teachers' Society and its agency, Les Educatrices et Educateurs Francophones du Manitoba support the establishment of the Francophone school division and will co-operate wholeheartedly in its establishment if the changes recommended in this brief are included in the final legislation.

**Mr. Chairperson:** Thank you very much, Mr. Turner. Are there any questions or comments for the presenter?

**Mr. Plohman:** Mr. Chairperson, I thank Mr. Turner and the Teachers' Society for that excellent presentation. I just wanted to ask a couple of questions in a couple of areas—one dealing with the boundaries and one dealing with financial matters.

The first, dealing with the boundaries: I note that you believe, I guess—I do not know whether I am putting words in your mouth, but this particular document is the one that you referred to about the boundaries that the government has somehow defined of the Francophone school division, that this is really not a realistic or relevant document and that the boundary should apply to the whole province.

I am a little confused by this as a result of questions or answers that we received from the minister on this issue, as well as from what you have said today as to what the purpose or meaning of this particular map is at this particular time. Do you have any comments about what this is exactly trying to explain to the public?

**Mr. Turner:** In response, I do not particularly want to comment on the map that you have there. I, too, have a copy of that. We are conscious at the society that Section 23 of the Charter covers all Manitobans. Likewise, we think that the Francophone school division should be covering all Manitobans. Therefore, it should cover the whole of the province rather than certain geographical sections.

**Mr. Plohman:** I would think that what you are saying then is where numbers warrant. Would you agree with the government's decision to apply the division in their own mind to where there are at least 50 Section 23 Francophone people per municipality, because that is apparently the criteria they used for at least a portion of this map, or are you saying, throughout the province?

**Mr. Turner:** I just have to reiterate our point on that matter, Mr. Plohman. I do not want to comment on that particular ratio that you have raised there.

**Mr. Plohman:** So, Mr. Chairperson, we are to assume then that you would agree with the sufficient numbers or where numbers warrant. Is that correct?

**Mr. Turner:** I am going to ask Mr. Guy Boullanne to respond to that question.

**Mr. Guy Boullanne (President, Educatrices et Educateurs francophones du Manitoba):** Merci, nous croyons que la province devrait être le territoire couvert par la division scolaire francophone puisqu'il y aurait possibilité que certains élèves ne soient pas admis à cause du territoire, de la limite. Et c'est pour cela, pour cette

raison-là que nous demandons que la division scolaire homogène francophone soit provinciale au lieu de territoriale.

**[Translation]**

We believe that the province should be the territory covered by the Francophone school division since there would be a possibility that some pupils would not be admitted because of the territory, because of the boundary. And that is why, it is for that reason that we are requesting that the homogeneous Francophone school division be provincial rather than territorial.

**Mr. Plohman:** Mr. Chairperson, I think that that is more realistic and this certainly is not realistic. That is really my point. It does not reflect the whole province. Your point is that this would also eliminate this kind of second-class nonresident status of students by going this route. Is that correct?

**Mr. Boullanne:** En réponse. Oui, il semble qu'il y ait une deuxième classe de non-résidents et, aussi, probablement ce serait aussi facile pour le côté administratif en déterminant où les argents iraient et on n'aurait pas besoin de travailler sur le fait d'aller voir les divisions scolaires pour avoir les argents qui devraient être présentés par la division scolaire cédante à la division scolaire francophone. Ça pourrait causer beaucoup de problèmes d'administration. Il y en a de toute façon mais je crois que ce serait peut-être plus facile.

**[Translation]**

In response, yes, it seems that there would be a second class of nonresidents and, as well, it would probably be as easy from the administrative viewpoint to determine where the monies would go, and you would not have to spend a lot of time going to see each of the school divisions to get the money that should be handed over by the provider school board to the Francophone school board. That could cause a lot of administrative problems. There are problems anyways but I think that that would perhaps be easier.

**Mr. Plohman:** Also, with regard to the financial matters, this is an area that we have serious concerns about, both for the funding of the new Francophone division and also the impact on existing school divisions.

You have provided some outline of concerns about ensuring that there is an equal opportunity for students in the Francophone division, that there be

proper reserves, transferred to funding, proper funding mechanisms in place. Do you have any idea of what the cost is for the establishment of this division? Do you have any suggestions as to where the money for that should come from, especially if there is a drain on existing school divisions?

\* (1000)

**Mr. Turner:** In response, the society is conscious of the fact that the federal government is allocating funds to those provinces, such as Saskatchewan and Manitoba, which are implementing a Francophone school division. Presumably, many of the start-up costs, if not the ongoing costs, but the start-up costs that we have outlined in our brief could be met by federal funds set up for that purpose.

**Mr. Boullanne:** Si je pouvais ajouter quelque chose aussi. Le jugement de la Cour Suprême parle d'esprit réparatoire, de redressement et le gouvernement fédéral se doit de fournir des argents à la requête du gouvernement provincial pour s'assurer le bon fonctionnement de la division scolaire homogène francophone.

**[Translation]**

If I may add something as well. The Supreme Court judgment speaks of a spirit of reparation, of redress and the federal government is obligated to provide funds at the request of the provincial government in order to ensure the proper operation of the homogeneous Francophone school board.

**Mr. Plohman:** He did not touch on how this should be dealt with insofar as existing school divisions being impacted in terms of loss of funds as a result of the transference of dollars. Do you have any recommendations on that?

**Mr. Turner:** In response, the discussion on one of the previous bills, and you will forgive me if I forget which one, since this is the fifth bill that I have presented on and presumably you have got even more bills to concern yourselves with, but in the discussion on one of those previous bills, I did quote the society's policy on a review of the boundaries of school divisions.

One would imagine that the implementation of Bill 34, the creation of a new school division, hopefully to cover the entire province, would be the trigger that starts off a boundary review which would consider surely the kinds of concerns that you have raised with your question there.

**Mr. Plohman:** Mr. Chairperson, the society mentions on the bottom of page 13 that perhaps there should be an alternate way of funding rather than the section that provides for 21.34 in Bill 34, which provides for funding of the division. What kind of system is the society envisaging in that particular case?

**Mr. Turner:** This is taken from our policy on education finance, and what we are advocating here is, and I quote the words, the application of a total program funding formula. So that if a school division has a program, that it be funded by the province.

Again, I refer to a previous presentation that I made on a different bill, the society's policy on education finance is that 100 percent of the total program budget should be covered by the provincial government with an additional 5 percent up to the local jurisdictions, the local school division taxpayers.

**Mr. Plohman:** So would this be in place of transferring out the per student grants? Is that really what you are saying? The government is planning to transfer the grants with the students to the new Francophone division. Instead of that, it would be a complete funding from the province for the Francophone programming and division in its entirety.

**Mr. Turner:** Yes, it would be a program funding. So this idea of taking money with a particular student would not apply. The program would be funded. It would not be funded on a per capita basis as it now is.

**Mr. Plohman:** Do you have any serious concerns about the impact of the loss of students and those grants from existing divisions in terms of the quality of the educational programming that can be offered by existing divisions, particularly some small divisions where there might be a significant number of students transferred to the new division? Do you have any serious concerns about how this might impact on their ability to continue to offer quality programming?

**Mr. Turner:** Yes, we do, and I think that concern is addressed on page 17.

**Mr. Plohman:** Mr. Chairperson, I understood that to be primarily dealing with staff with the current central office staff and the employing of teachers. I am thinking more of the quality of education, what mechanism you would see put in place other than

boundary review to offset the cost. Do you believe that the government of Manitoba should be providing offsetting grants to ensure that the impacts of declining enrollment would not be felt to the degree that they might in some divisions?

**Mr. Turner:** The society is conscious of when a new division such as the one envisaged by Bill 34, whether it is the one that follows the details of the map that you were showing before or whether it follows the details outlined in our brief, it is a very radical departure from anything that presently exists, and clearly, there will be—and you are touching on one—tremendous implications in certain isolated pockets.

We are also conscious of the funding that is necessary both from the federal government and the provincial government, particularly with the ongoing costs of the provincial government to look after the kinds of concerns that you are raising both for the employees and, of course, for the students who are affected in the provided divisions, many of which will be made much smaller, almost redundant perhaps in some cases.

**Mr. Plohman:** A final question, Mr. Chairperson. Are you aware of any commitment or announcement by the provincial government that they would ensure that there would be offsetting funding to protect against negative impacts on existing divisions? Are you aware of any such pronouncement or policy by this government?

**Mr. Turner:** No.

**Mr. Plohman:** Thank you.

**Mr. Jack Penner (Emerson):** First of all, do I understand you correctly that the Manitoba Teachers' Society is proposing that there be two school division governing bodies established including the total province, that there be an Anglophone school system established with the boundaries being the provincial boundaries and that there be a Francophone school governance model established including the provincial boundaries as the school division area boundary?

**Mr. Turner:** The Manitoba Teachers' Society is not advocating two school divisions for the entire province. The Manitoba Teachers' Society is recommending that the Francophone school division have the entire province as its area, its catchment area, but not the rest of it being one school division. That is not the case.

**Mr. Penner:** But for the Francophone school division, you would have one division covering the total province?

**Mr. Turner:** Bill 34 has set up a structure that we approve of in terms of the central board and the area committees and the school committees that we can accept, yes.

**Mr. Penner:** The Anglophone instruction then, you would recommend remain as it is under the division area.

**Mr. Turner:** Within many divisions, within many existing school divisions, yes. I want to re-emphasize the fact that when we are asking for a boundary review of school divisions, we do have certain criteria that we are prepared to share with the government, but those criteria do not envisage one single Anglophone school division.

**Mr. Penner:** I just wanted to be clear on that because it appeared to me that you were recommending for the Francophones one school division including the total province, and I was wondering whether you in fact were also then going to recommend at some future date the establishment of one school division for the rest of the educational programs.

Now, secondly, how would you recommend that the province provide linguistic education to those that would not be governed under the Francophone school board? How would my children or other children that would not qualify under the criteria spelled out here receive linguistic education?

\* (1010)

**Mr. Turner:** I would believe that the immersion programs that are presently in existence would continue within the provided school divisions or all school divisions in that matter.

**Mr. Penner:** How would you provide then for, for instance, those that would not qualify in those areas where there is a very concentrated number of people for education of other? For instance, in some of the school divisions, we have a very concentrated Francophone community. If we, in fact, did what you are recommending here, how would you provide then for the education of those that would not qualify to be educated under the Francophone governance model?

**Mr. Turner:** The provider school division, presumably, would have assets in the form of buildings, staff, to continue the programs to those

students who were not part of the new Francophone school division.

**Mr. Penner:** I am assuming that there might be very few students left in some of the areas that might not be governed by the Francophone and therefore administered by the Francophone governance model and the Francophone school division. So would you transport these students to some other area, or how would you deal with these within the confines of that type of a—

**Mr. Turner:** I think the concern that you are raising is the concern that Mr. Plohman raised a few minutes ago. I think the answer that I would have to give here is the same answer I gave to Mr. Plohman.

Very close to the implementation of Bill 34 should be an examination of existing school division boundaries, particularly in light of the effects of Bill 34 on those boundaries, so that in fact, perhaps with new school division boundaries, those students that you are describing in your question can be adequately serviced.

**Mr. Penner:** Is it your position then that there should be fewer school divisions in this province? Is that the position you are putting forward?

**Mr. Turner:** Not necessarily so. We are asking for a review, a continuous review by a committee of the Legislature, not just a one-shot deal for the next generation, but a continuing thing to examine school division boundaries. However, we are aware at the society that where such reviews are being conducted in other provinces, the result has been a reduction in school divisions.

**Mr. Penner:** In your view, how far can a student be transported every day in order that it becomes feasible, both economically as well as physically, for this person to attend school? What distances should a student travel?

**Mr. Turner:** I am not sure if we have a policy on this, but in discussions on this matter with our boundary review, the figure that we picked in response to your question was one hour's travel in each direction. We are conscious of the fact that for some students at the end or the beginning of the bus route that is already broken.

**Mr. Penner:** I find it very interesting. I do not want to argue the point with you, but I find it very interesting that some people find it almost unacceptable to travel to work one hour every morning and one hour back to their homes every



evening. They try to accommodate either within jobs or that sort of thing or where they live. Yet we expect young children, age of five or six years of age, to get on a bus and spend an hour every morning, an hour every evening, on buses to attend a place of education. Are there some other ways that could be used to educate these students in a more economical and maybe in a better way to provide that education as far as you are concerned?

**Mr. Turner:** In response, we seem to be talking about the effects of boundary review here. So to answer your question, I will try to get back to the point you are making. A boundary review, which may or may not result in fewer school divisions, should not have an effect of closing small schools.

In fact, through greater efficiencies of scale, it should be able to provide more support for small schools. I am also conscious of the fact that in the last few years, the Department of Education has been making some progress in Distance Education, particularly for students in the senior years.

**Mr. Penner:** Could the Distance Education program also be used to teach linguistic programs?

**Mr. Turner:** In response, and here I am drawing on my experience of the open university in Britain, the answer is yes, through interactive radio and TV, yes.

**Mr. Penner:** So you are suggesting that we might rethink how we, in fact, provide educational programs, be they linguistic or otherwise, very dramatically in this province.

**Mr. Turner:** I understand that some of that dramatic reappraisal is underway. There is not very much funding as yet in Distance Education, but that seems to be the way of the future in a province which is as large as Manitoba, which has so few students.

**Mr. Penner:** Is your society thinking along those lines?

**Mr. Turner:** At our last annual general meeting in May, we had accepted for the first time policy on Distance Education which we generally accept.

**Mrs. Vodrey:** Mr. Turner, thank you for your presentation and the issues that you have raised.

The issue of the boundaries, I might comment on. In the initial task force report by Gallant, it was never recommended to Manitoba that the

Francophone school division encompass the whole province, but in fact was always seen to have had a territory and a service area. Also, as you look at what has been circulated in terms of a proposed territory, which would be set up by regulation, you probably noticed that included in that are the areas in which français programs are offered. I do not believe there are français programs at the moment offered outside of the area which has been identified. However, I will remind you that will be defined by regulation.

Just in closing, I appreciated the final remarks in your presentation, and we too look forward to your co-operation as we implement the Francophone school division.

**Mr. Chalrperson:** Thank you very much for your presentation this morning, Mr. Turner.

I will now call Mr. Sidney Green. George Wall and Gerald McConaghy?

**Mr. George Wall (Manitoba Association of School Superintendents):** First of all, let me express our appreciation for the opportunity to present to this committee.

My name is George Wall. I am representing the Manitoba Association of School Superintendents. I have with me Dr. Gerald McConaghy, who will possibly be assisting with questions should they arise later on.

The presentation I am about to give is submitted by the Manitoba Association of School Superintendents. I believe there are copies available that are being distributed at the present time.

The Manitoba Association of School Superintendents supports the concept that Francophones have a responsibility for the governance of their schools. We therefore support the general principles reflected in Bill 34. We do have concerns about various sections and would like to speak to them at this time.

No. 1. Consultation regarding transfer of programs. That is Section 21.18(1) and (2). The first section states that the minister shall consult with parents, and the section gives her unlimited powers to consult in any way that she sees fit.

Section 21.18(2) states that consultation may take place in any manner that the minister considers appropriate.

The result has been that even though this bill had only received first reading, a booklet was written entitled *Francophone Schools Governance*, which detailed the manner in which consultation would be carried out. We recognize the fact that the government has been pressed for time and that consultation had to begin this spring if a new school board was to be created by the fall of '93. However, we think the act should have been clearer in spelling out the consultation process.

We are concerned, first of all, that this section, which gives the minister unrestrained power, establishes a dangerous precedent. We believe, as a matter of principle, that while the minister needs discretionary power at times, there should be limits on that power.

(Mr. Ben Sveinson, Acting Chairperson, in the Chair)

As well, we believe that the consultation process established in the *Francophone Schools Governance* booklet is flawed. It states that a majority of 50 percent plus one of the completed registrations in a school will be sufficient to determine that the school should be transferred to the Francophone school board.

\* (1020)

The registrations are based on the number of pupils who register and not on the number of parents in the school. We believe that the registration should have been based on parents rather than individual students. As well, we believe it should have been based on 50 percent plus one or more of all parents in the school, not just those who registered.

Many Francophones have not been able to attend the meetings of the implementation committee. Although they may have received the booklet, they do not realize the importance of their registering yes or no. We believe a mechanism should have been put in place for all parents to be contacted by telephone and that the registration count should have been based on a majority from all of the parents.

We realize it is now too late to change the process for the 13 fast-track schools, but it is not too late to change the process for the other schools to be consulted in September. We also believe that the results of those 13 schools should not be made known until consultation has taken place with the other schools. The registrations in these

schools should not be swayed one way or another by what has happened in the first schools to be consulted.

Transfer of ownership, Section 21.22(1) and (2). Section 21.22(1) is about the transfer of a school for the exclusive use of the Francophone school board, whereas Section 21.22(2) is about the shared use of a school between the Francophone school board and a provider board.

We believe that the wording about what is to be transferred should be very carefully reviewed. We question what "all other property on or used in connection with the school" means in Section 21.22(1). We prefer the wording in Section 21.22(2) where it speaks about "the furnishings, equipment, teaching materials and other property used primarily in connection with the Francophone programs . . ."

It has been argued in some circles that a proportion of any reserve funds a provider school board has should go to the new school board based on the number of students from that board. We believe that this should not be so.

Firstly, we do not believe that it is the intention of this legislation to oblige school boards to give part of their reserve to the new board. There certainly was no discussion of this when the bill was first introduced and explained. The question has only arisen after the implementation committee began its work.

Secondly, the new board will be receiving special grants through the Secretary of State's offices to help cover the cost of implementation.

Thirdly, there would be confusion as to which boards would have to pay from their reserve. Some provider boards have a number of nonresident students attending their Francophone schools. The school divisions from which these nonresidents come are not defined as provider boards in this bill. On what basis then does one determine the proportion of students and does that mean that these other school divisions should also provide a portion of their reserve fund to the new school board?

Fourthly, in the bill the new Francophone school board has no taxing authority. All residents of existing school divisions will continue to pay taxes to the school division where they are resident. This means then that the existing board's ability to raise funds remains the same. From these funds

provided through local taxes, existing boards will pay a proportion to the new school board based on the number of Francophone students going to that new school board. The bill should be clear that with the transfer of a school building it is the furnishings and any other materials in the building plus the land that go with it and nothing else.

Number 3. Request to transfer school or program, Section 21.25. We note that the request to transfer a school or a program after the initial two years of the creation of the new school board is based on a request made by the provider school board, that is Section 21.25(2), or by entitled parents of at least 10 pupils in a program of less than a hundred pupils, or by 10 percent or more in the case of a program of more than a hundred pupils.

We wonder why the rules should be different in two years time. We believe that the 50 percent-plus-one registration should be the basis by which any school transfers if that is the basis by which schools first transfer to the new Francophone school board. We also do not believe that this is a role which should involve the board of reference which, until this bill, has never been involved in determining what program there should be in a school.

Number 4. Regarding transportation, Section 21.30(2). This bill does not make clear whether the Francophone board will have any buses of its own, although it is clear under Section 21.30 that it must meet its obligation under the act for the transportation of pupils.

Again, we have concern about the unlimited authority of the minister. The minister has given in Section 21.30(2) which states that she may direct the Francophone school board and any provider school board to reach an agreement and she can direct the terms of such an agreement. Surely this power needs to be restricted. For instance, in the city of Winnipeg, school boards are not obliged to transport most students and the cost for transportation far exceeds any grants received from the government. This section gives the minister the power to direct the provider board in metro Winnipeg to provide transportation for the Francophone school board even though it may not be providing the same transportation for its own students. This section should be changed so that the minister refers matters to the committee where it is essential that students have to be transported.

We have another concern about transportation. The new Francophone school board covers a very large territory and outside of Winnipeg the schools are of great distances apart. We know that the cost of transportation would be enormous if a separate system were set up for the Francophone students in the new board. On the other hand, transportation has become the determining factor as to when schools open in the morning, as to when students leave at the end of the day and as to the days that the schools are closed for students.

Transportation has also become a key factor in bringing students together for sports and cultural events, as well as providing the means for them to go on field trips. If the Francophone school board does not have any buses, it is going to be at a serious disadvantage in bringing students together for various activities and determining the schedule for schools.

The provider board's first priority will be for its own students. There is likely to be conflict and frustration between the provider board and the Francophone school board over transportation. For instance, who will have priority in booking buses for field trips, after-school events, et cetera? We think a compromise solution would be for the Francophone school board to have some buses, and we think this bill should spell that out.

Number 5. Transfer of employees. In the section under Transitional Provisions for Employees, teachers who have seniority and have a sufficient working knowledge of French have the right, in effect, to determine whether to go with the new school board or to stay with the provider board. While we recognize that the Francophone school board must have some flexibility in determining the number of teachers it needs, we believe that the principle should be established that when a school is transferred to a new school division, the teaching and other personnel in the building transfer with it. We believe that this is an important principle which would be used if other boards in metro Winnipeg or elsewhere in the province were amalgamated.

Our greatest concern, however, is to ensure that teachers do not lose their positions because of teachers in français schools wishing to remain in the provider school board. The argument has been used in the past that immersion schools would take care of any teachers wishing to remain with provider boards. However, in this past year, there

have been very few immersion positions which have opened.

This bill should guarantee that no teacher in an English or immersion school of a provider school board will lose employment because of teachers who are in français schools, which have transferred to the new school board, remaining with the provider board. The cost to maintain this guarantee should be paid from the implementation funds established to create the new board.

\* (1030)

In conclusion, we wish to reiterate that we support, in principle, Bill 34. We have tried to bring to your attention some of the sections which we feel need to be reviewed and rephrased so that disputes and misunderstandings can be as few as possible as this new school board is given birth. Respectfully submitted.

**The Acting Chairperson (Mr. Sveinsson):** Thank you for your presentation, Mr. Wall. Are you prepared to answer questions from the committee?

**Mr. Wall:** I am prepared to answer questions and so is Dr. McConaghy who is with me here today.

**Mr. Plohman:** Thank you, Mr. Wall, for the presentation.

I just have a few questions. First of all, dealing with consultation, I just wanted to get straight that you are talking about consultation which would involve all eligible parents I would think. You are talking about français schools only, not all parents of schools where there is a mixture.

**Mr. Wall:** All eligible parents, yes.

**Mr. Plohman:** What is your experience up to the present time, what percentage would you say of parents really have not been involved in the process because of the system that has been set up?

**Mr. Wall:** I will ask Mr. McConaghy to respond to that.

**Mr. Gerald McConaghy (Manitoba Association of School Superintendents):** We would have no way of knowing those figures.

**Mr. Plohman:** The concern is that there are large numbers, to your knowledge, of parents—or some numbers of parents who have not been involved for whatever reasons, either not knowing that this was going on or just were not able to do it, or they just chose not to get involved?

**Mr. McConaghy:** The concern from members of the association is that it should have been spelled out clearly enough so that all parents would have been involved in that process.

**Mr. Plohman:** And your suggestion is that can still be done for other schools other than what you call the 13 fast-track schools?

**Mr. McConaghy:** Yes.

**Mr. Plohman:** Secondly, your comments about restricting the powers of the minister in a number of instances. You are simply saying that these matters of, perhaps, dispute or sensitive matters, rather than having the minister making those final decisions and directing the solutions to them as the minister sees fit, this should be as a matter of course contained in the legislation referred to the implementation committee? Is that what you are talking about, or some other committee that would be set up to adjudicate disputes?

**Mr. McConaghy:** I think with the minister's powers, first of all, we are saying that they should be somewhat circumscribed in legislation. Secondly, that when it comes to disputes, there is a mechanism set up for transportation, for example. But in that we think as well that it should be clear that it will be where transportation is necessary, and we recognize that in most of rural Manitoba that is the case but a difference can be made in terms of what happens in the city.

So in answer to your question then, first, that the minister's power should be within parameters, and second, that the transportation issue should be more carefully defined as to whether it is obligatory or not and that should be cleared to the committee which would look after that area.

**Mr. Plohman:** It is clear that you also believe there should be additional buses owned and operated by the Francophone school division, and they should not be taken from existing divisions but provided as additional means of transportation through other sources of funding.

**Mr. McConaghy:** We think that without the Francophone school board having a way of providing transportation and having its own buses, it is going to put it at a serious disadvantage in terms of many of the events that it would want to carry on.

**Mr. Plohman:** I take it you believe this funding should come from the federal dollars that have been announced and whatever agreement that the

province reaches in that regard? That is the source of funds for that kind of thing?

**Mr. McConaghy:** We did not speak of funding in relation to transportation. We do recognize that to set up a separate transportation system for the Francophone school board would be very, very expensive.

We think there should be some recognition that there should be at least some buses which would allow the school board to provide those additional kinds of things outside school, et cetera, that would need to take place.

**Mr. Plohman:** You also mention the issue of reserves, that some circles are arguing that this should be the case, and that this matter has arisen recently.

Can you give any idea of where this is coming from? I know the Teachers' Society presented it in their particular brief. Are there other sources that are suggesting that existing reserves from school divisions should be transferred on a proportionate basis?

**Mr. McConaghy:** It has been reported in *La Liberté*, the Francophone newspaper, and it has been discussed I understand at various meetings of the implementation committee with the 13 schools.

**Mr. Plohman:** Mr. McConaghy or Mr. Wall, have you any idea or any estimate from your members' various school divisions as to concerns or impact on existing ability to provide programming as a result of the transfer of students and with them grants from existing divisions? Is there any concern out there about how existing divisions will be impacted upon?

**Mr. McConaghy:** Yes, there is a concern. It has been discussed by our members. There has been no detailed study made of that. We recognize that if a school board loses a percentage of its students, then that has a direct impact on the amount of money that it will receive and will therefore have a direct impact on the support that it can provide to the schools that remain. That will vary depending upon the number of students that the provided school boards lose. But there will definitely be an impact.

**Mr. Plohman:** Do you see the impact on all programs potentially or just on the ability to provide a parallel track of français programming in existing divisions where that is requested?

**Mr. McConaghy:** I am not quite understanding your question.

**Mr. Plohman:** It has been argued that the existing school divisions will not be impacted on negatively because they are just not going to have to provide an education to those students that are moving out.

So the grants go and the students go, but of course we all understand I think the impact of declining enrollment and how that will impact with a smaller base on the ability of existing school divisions to provide programming with fewer numbers, as you I think referred to in your answer earlier.

I am just trying to explore with you whether this will manifest itself insofar as the ability of school divisions to provide programming other than français programming, or is it also a factor that the bill provides for existing school divisions to continue to offer français programming even though the Francophone division will be set up to do that?

**Mr. McConaghy:** In relation to the impact on the existing schools, we would expect that the number of teachers in the existing schools would remain the same. The impact would be in terms of the services that a school board can provide. I am talking here things like student services, consulting services, those kinds of things. Those will have to be very carefully reviewed by each school board to determine which of those services we will have to reduce or eliminate as a result.

In terms of the question of those Francophone students who may remain, that remains very much an unknown at this point. The legislation provides for transfer of buildings with 50 percent plus one. We have not taken a position on that as an association.

(Mr. Chairperson in the Chair)

\* (1040)

I think many of us would have preferred that if the transfer was going to take place, it would take place with all students so that the provider board would then no longer have the obligation to either make arrangements with the new school board or to provide for French language itself.

**Mr. Plohman:** Are you familiar with the proposals by Saskatchewan in that regard and other provinces in implementing these requirements?

**Mr. McConaghy:** I understand that in those provinces the new school board has an obligation for all of the Francophone students.

**Mr. Plohman:** Just one final question. Do you have any idea of the cost of the setting up of the new division? Have you done any estimates and where do you believe that money should come from, exclusively federal and provincial governments or what do you see happening there?

**Mr. McConaghy:** I do not know of any detailed study that has been done other than some work that was done within the Comité Gallant. I believe the approach of having each board where there are Francophone students contribute a certain amount per pupil is a sound way to go based on the number of Francophones in the province and the inability of a Francophone school board to be able to provide just by a local taxation. As Article 23 of the Charter and as the judgments from the Supreme Court indicate, there should certainly be provision made for that Francophone school board to be able to provide services at the same level as any other school board, and that is going to be more expensive to do than with regular students, I believe. There should be then an obligation on the part of the federal government to provide part of that funding as well.

**Mrs. Vodrey:** Mr. Chair, I would just like to thank Mr. Wall and Dr. McConaghy for their presentation and for the issues that you have raised, also for your support in principle as we move towards the formation of the Francophone school division in Manitoba. Again, I thank you for your time.

**Mr. Chalrperson:** Thank you very much, Mr. Wall and Dr. McConaghy, for your presentation this morning.

I would call Gilbert Savard. A copy of your written presentation is being distributed, Mr. Savard. You may begin when you are ready.

**Mr. Gilbert Savard (La Fédération provinciale des comités de parents (FPCP)):** Merci beaucoup. Bonjour, je m'appelle Gilbert Savard. Je suis devant vous à titre de président de la Fédération provinciale des comités de parents.

De façon générale les Franco-manitobains ont accueilli favorablement le projet de loi 34 et nous tenons à remercier le gouvernement pour l'avoir déposé. C'est un projet de loi qui permet d'avancer dans le dossier de l'éducation; un projet qui permettra à la province du Manitoba de répondre à

ses obligations constitutionnelles en matière d'éducation; un projet de loi qui, avec certaines modifications, deviendra une solution manitobaine à une injustice qui dure depuis déjà 103 ans.

Les francophones du Manitoba et en particulier les parents francophones attendent depuis longtemps que les droits qui leur sont reconnus à l'article 23 de la Charte des droits leur soient accordés dans les faits. Les comités de parents et leur organisme provincial, la Fédération provinciale des comités de parents, de concert avec les autres organismes francophones provinciaux directement impliqués dans le secteur de l'éducation, mènent depuis 1986 une campagne sans relâche pour obtenir le droit de gérer leur système scolaire.

Le projet de loi semble, en général, conforme à l'article 23 de la Charte des droits et aux jugements de la Cour suprême du Canada dans le cas Mahé rendu le 15 mars 1990 et dans le cas du renvoi des parents manitobains rendu le 4 mars 1993. Mais, c'est seulement lorsque nous verrons les règlements régissant la mise en oeuvre de la loi que nous pourrons vraiment juger si elle est réellement conforme. En attendant, nous devons faire confiance qu'il y a une sincère volonté politique de nous faire justice. Nous avançons donc dans cet esprit et nous collaborons au processus devant mener à cette finalité.

Cependant, nous croyons qu'il peut et doit y avoir certaines améliorations apportées au projet de loi. Nous profitons de cette occasion qui est fournie au public pour recommander certains changements qui visent à améliorer la qualité du projet de loi. Dans certains cas, il s'agit de précisions au texte actuel qui ont pour but d'assurer que la loi sur la gérance des écoles franco-manitobaines soit claire et réponde aux besoins de la communauté qu'elle desservira en conformité avec l'article 23 de la Charte des droits et aux jugements de la Cour suprême. Nos recommandations sont aussi faites en fonction du jugement de la Cour suprême le 4 mars dernier qui dit à la page 6, et je cite:

"Il faut éviter toutes dispositions et structures qui portent atteinte, font obstacle ou ne répondent tout simplement pas aux besoins de la minorité; il faudrait examiner et mettre en oeuvre des mesures qui favorisent la création et l'utilisation d'établissements pour la minorité linguistique." Fin de citation.

Comme nous l'avons indiqué plus haut, ce sont l'ensemble des organismes francophones directement impliqués dans le secteur de l'éducation qui ont collaboré de près dans toutes les démarches reliées à ce dossier remontant à 1986. Aujourd'hui, nous continuons donc avec cette même approche. C'est ainsi une présentation conjointe de plusieurs organismes que nous vous faisons. Il s'agit de la Commission nationale des parents francophones, la Fédération provinciale des comités de parents, la Société franco-manitobaine, les Educatrices et Educateurs franco-manitobains, les Commissaires d'école franco-manitobains, le Conseil jeunesse provincial, l'Association des directeurs et directrices d'écoles franco-manitobaines, ainsi que les comités de parents des écoles francophones et des groupes préscolaires.

Tous ces groupes s'accordent sur les recommandations que nous allons vous proposer à titre de changements au projet de loi 34. Cependant, pour éviter que nous ayons à nous répéter sur chacun des points, un représentant de chacun des groupes mentionnés fera une partie des commentaires au nom de tous les groupes.

Voici maintenant les commentaires et les suggestions d'amendements que nous faisons dans le but d'assurer que la loi sur la gestion des écoles franco-manitobaines soit claire, qu'elle réponde aux besoins de la communauté qu'elle desservira, qu'elle soit conforme aux exigences de l'article 23 de la Charte tel qu'interprété par la Cour suprême et enfin qu'elle serve de modèle, en matière de gestion, aux autres provinces.

Je tiens à vous faire noter que la version originale, c'est la version française. Si il y des écarts entre les deux textes français et anglais, c'est la version française qui prévaudra comme texte officiel.

\* (1050)

Article 21.1: "ayant droit". La version française du paragraphe a) devrait employer la même formulation que dans la version anglaise. Donc, au lieu de dire, et je cite : "qu'il a apprise et qu'il comprend encore", fin de citation, il faudrait dire "apprise et encore comprise." C'est d'ailleurs cette formulation que l'on retrouve dans l'article 23.

Dans le paragraphe b), il doit y avoir, il semble y avoir une erreur de traduction. Dans la version anglaise on dit: "who has received at least four

years...". La version française devrait être identique et pour cela il faudrait enlever les mots "ou qui reçoit".

"Programme français". La définition d'un programme français telle que présentée en page 3 porte à confusion. Selon celle-ci, à peu près n'importe quel programme, selon toutes sortes de définitions, pourrait être considéré programme français. Pour clarifier cette définition, il suffirait de tout simplement faire référence à l'article 21.31, paragraphes 1) et 2), ou utiliser la définition de l'école française retenue par le Bureau de l'éducation française ou celle retenue dans le rapport Gallant. Nous proposons d'ajouter le mot "intensif" qui donne l'indication d'une programmation en français se rapprochant d'un pourcentage d'enseignement en français maximum plutôt que d'un pourcentage minimum. Ce n'est pas un terme précis mais les mots "nombre suffisant" de l'article 23 ne l'est pas non plus et pourtant il figure dans la Charte des droits.

Proposition d'amendement : à la deuxième ligne après le mot "d'enseignement", il faut ajouter le mot "intensif"; à la 6e ligne après le mot "et", il faut ajouter le mot "encore"; après le mot "français" dans la 6e ligne, ajouter "tel que décrit aux paragraphes 21.31(1) et (2); dans la version anglaise de la définition de "francophone program", dans la 2e ligne après le mot "secondary", il faut ajouter le mot "intensive"; à la 5e ligne après le mot "and", il faut ajouter le mot "still"; après le mot "français" dans la 6e ligne il faut ajouter "as described in subsection 23.31(1) et (2)".

Finalement, côté définition, nous tenons à féliciter les rédacteurs du projet de loi pour ce qui est de l'inclusion des programme d'accueil dans la loi.

#### [Translation]

Thank you very much. Good morning. My name is Gilbert Savard, and I am appearing before you in my capacity as president of the Fédération provinciale des comités de parents.

Generally, Franco-Manitobans have welcomed Bill 34 and are thankful to the government for having tabled it in the Legislature. We view the bill as a step forward in the educational field, a bill which will enable the Province of Manitoba to live up to its constitutional obligations, a bill which, with certain modifications, will provide a Manitoba

solution to an injustice which has been ongoing for 103 years.

Franco-Manitobans, and especially Francophone parents, have been waiting for a long time for the rights acquired under Section 23 of the Charter of Rights to become a reality. The parents' committees and their parent organization, the Fédération provinciale des comités de parents, in concert with the other provincial Francophone organizations directly involved in the field of education, have not relented in their efforts to obtain governance of their school system since 1986.

The bill, in general, seems to conform with Section 23 of the Charter of Rights, and with the decisions of the Supreme Court in the Mahé case of March 15, 1990, and with the decision on the reference brought by Manitoba parents, rendered on March 4, 1993. But we will only be in a position to determine whether the bill truly conforms when we see the regulations which guide the implementation process. Meanwhile, we must be confident that there is a sincere will to do justice. It is therefore in this spirit that we participate in the process which should lead to that goal.

Having said that, we believe that there can and that there must be certain improvements made to the bill. We take this opportunity afforded to the public to recommend certain changes with a view to improving the quality of the bill. In some cases, we recommend technical changes so that the Francophone schools governance legislation will be clear and will respond to the needs of the community it is intended for, in conformity with the Charter of Rights and the Supreme Court decisions. Our recommendations are provided in accordance with the Supreme Court decision of March 4 last, which states on page 5, and I quote:

"Arrangements and structures which are prejudicial, hamper, or simply are not responsive to the needs of the minority, must be avoided and measures which encourage the development and the use of minority language facilities should be considered and implemented."

As indicated above, the Francophone organizations as a group directly involved in the educational field have worked closely in all the steps related to this issue since 1986. Today we continue with this same approach. Therefore our presentation is the joint effort of many groups.

These groups are: the Commission nationale des parents francophones [National Commission of Francophone Parents]; the Fédération provinciale des comités de parents [Provincial Federation of Parent Committees]; the Société franco-manitobaine [Franco-Manitoban Society]; the Éducatrices et Éducateurs franco-manitobains [Franco-Manitoban Educators]; the Commissaires d'écoles franco-manitobaines [Franco-Manitoban School Trustees]; the Conseil jeunesse provincial [Provincial Youth Council]; the Association des directeurs et directrices d'écoles franco-manitobaines [Association of Franco-Manitoban School Principals]; the parent committees of Francophone schools and of preschool groups.

All these groups agree on the recommendations which we are about to propose as changes to Bill 34. But in order to avoid repeating ourselves in each section, one representative of each of the groups mentioned will read a portion of the presentation in the name of all the organizations.

Here, then, are our comments and suggestions intended to ensure that the Francophone schools governance legislation will be specific, that it will conform to the requirements of Section 23 of the Charter of Rights, as interpreted by the Supreme Court and, finally, in order to ensure that it will serve as a model for other provinces in the matter of governance.

I would like to point out to you that the French version is the original version. If there are any differences between the two French and English texts, the French version will prevail as the official text.

Section 21.1: "entitled person". The French version of subsection (a) should be the exact translation of the English version, which states: "... learned and still understood ..." Therefore, instead of "... qu'il a appris et qu'il comprend encore ...," it should say: "... appris et encore compris ..." This also conforms with the wording in Section 23.

In subsection (b), there must be, there seems to be an error in translation. In the English versions, it reads: "... who has received at least four years ..." The French version should be identical, and for that we must delete the words: "... ou qui reçoit ..."

"Francophone program": The definition of a Francophone program leads to confusion.



According to this definition, just about any program, according to a variety of definitions, could be considered to be a Francophone program. In order to make this definition clearer, reference could be made to Section 21.31, subsections (1) and (2). Or the definition could be the one selected by the Bureau de l'éducation française or the one provided in the Gallant Report. We propose the addition of the word "intensive" which provides an indication of a program which is closer to a maximum percentage of instruction in French rather than a minimum of instruction in French. Although it is not a very definite term, it is useful in the sense that the expression "where numbers warrant" is also not precise wording, but still it is used in Section 23 of the Charter of Rights.

Proposed amendment: In the French version, in the 2nd line after the word "d'enseignement", the word "intensif" must be added, and in the 6th line after the word "et", the word "encore" must be added, and in the 6th line after the word "français", add the words "tel que décrit aux paragraphes 21.31(1) et (2)."; in the English version of the definition of "francophone program", the word "intensive" must be added, and in line 5 after the word "and", the word "still" must be added, and in line 6 after the word "français", the words "as described in subsections 21.31(1) and (2)" must be added.

A final word of appreciation goes to the persons responsible for drafting the bill for having included "programme d'accueil" as a definition.

**Mr. Armand Bédard (La Commission nationale des parents francophones (CNPF)):** Mon nom est Armand Bédard. Je représente la Commission nationale des parents francophones que vous retrouvez en liste à la page 2.

Article 21.2(1). Cet article tel que rédigé n'est pas acceptable et n'est pas conforme à l'article 23 de la Charte des droits et libertés du Canada. Le projet de loi tel que rédigé ne crée pas une division scolaire francophone provinciale sur l'ensemble du territoire manitobain. Le cahier d'information produit par le gouvernement et distribué aux parents par le comité Monnin inclut une carte délimitant les zones sur lesquelles la commission scolaire de langue française pourra offrir le programme de français aux ayants droit qui pourraient s'y retrouver en nombre "suffisant".

L'article 23 de la Charte indique bien que le facteur qui doit déclencher une obligation par rapport à la gestion est le nombre suffisant. Même si aujourd'hui il n'y a peut-être pas un nombre "suffisant" dans toutes les régions du territoire provincial, la loi devrait quand même refléter ce qui est conforme à l'article 23. Il ne s'agit pas d'offrir un programme en français dans toutes les régions sans raison de nombre "suffisant", mais il faudrait quand même prévoir cette éventualité à un endroit ou un autre de la province à l'avenir s'il y avait un nombre suffisant. La commission scolaire de langue française doit pouvoir faire la promotion de l'enseignement en français tel que précisé dans les articles du projet de loi 34 pour tous les ayants droit qui désirent l'instruction en français maintenant ou plus tard. La loi devrait être conçue de façon à prévoir les éventualités futures et réelles.

Cet article pose des limites territoriales arbitraires clairement inacceptables. La Cour suprême du Canada, dans sa décision du 4 mars dernier et dans le Renvoi des parents du Manitoba, a été très précise à ce sujet : aucune démarcation artificielle et pré-déterminée ne peut entrer en jeu et limiter la possibilité du regroupement maximum. Ici, je cite le jugement de la Cour suprême du 4 décembre — du 4 mars de cette année — à la page 21:

"En fait, le gouvernement du Manitoba a jugé approprié d'établir un conseil scolaire francophone unique qui sera responsable de l'instruction en français dans la province."

Encore une fois je cite ceci, la version française en bas de la page 3, la version française en haut de la page 4:

"Le pourvoi actuel a été présenté aussi pour un autre motif, à savoir l'annonce du gouvernement du Manitoba de la création d'une division scolaire française pour l'ensemble de la province qui réunira initialement des collectivités où existent des écoles établies en vertu de l'art. 23, intéressées à en faire partie".

Et cette citation vient du mémoire de la province du Manitoba devant la Cour suprême le 3 décembre 1992.

L'article 23 de la Charte ainsi que le projet de loi 34 visent tous les ayants droit du Manitoba. Le comité Gallant, en 1991, avait fortement recommandé une division scolaire de langue française couvrant le territoire manitobain. Tel que

rédigé, l'article 21.2(1) crée deux sortes d'ayants droit, c'est-à-dire, les ayants droit qui sont des résidents et les ayants droit devenus non-résidents. Cette distinction n'est pas nécessaire et ne fait qu'ajouter plus de "red tape" dans un système qui en a déjà beaucoup. La rédaction et la présence de cet article ont obligé les rédacteurs à inventer les articles 21.5(1), 21.15(1), 21.15(6) et 21.34 qui, eux aussi, ne contribuent rien à l'harmonie communautaire et la validité de la loi.

Je cite de la page 25 de la Cour suprême, le 4 mars 1993:

"Il est extrêmement important que les parents de la minorité linguistique ou leurs représentants participent à la détermination des besoins en matière d'instruction et à l'établissement de structures et de services qui répondent le mieux possible à ces besoins."

La délimitation de zones sur la carte du Manitoba pouvant être desservies par la division scolaire de langue française ne permettra pas à la Commission scolaire de langue française de faire la promotion de ses programmes à l'égard de tous les ayants droits réels ou potentiels. De plus, loin de faciliter la tâche de la Commission de langue française, la création de zones limitées crée une classe d'ayants droits, et je répète ici, ainsi que d'ayants droits non-résidents. Un nombre important d'étudiants qui fréquentent présentement des écoles françaises deviendront des non-résidents.

Pour tous ces non-résidents la Commission de langue française devra établir des frais résiduels que les divisions scolaires existantes devront lui remettre. C'est une approche qui ne facilitera pas, pour les ayants droit, l'accès à la division scolaire de langue française. Selon — et je quitte le texte un peu ici — selon la carte qui est présentée présentement, il nous apparaît très évident que la division scolaire telle que proposée se retrouverait probablement dans l'obligation de négocier avec presque toutes les autres divisions scolaires, à l'exception de quelques-unes seulement.

Alors, la proposition d'amendement est très simple : à la ligne 4 après le mot "scolaire", il faut ajouter le mot "provinciale".

Article 21.2(3) : proposition d'amendement. Cet article devrait être enlevé. Et pourquoi?

Le lieutenant-gouverneur en conseil peut modifier les règlements pris en fonction du présent article de la présente loi quand il juge utile ou

nécessaire de le faire sans qu'il soit nécessaire d'avoir l'article 21.2(3). D'ailleurs, l'article 21.43 accorde au lieutenant-gouverneur en conseil le pouvoir de modifier par règlement toutes les clauses de la présente partie de la loi.

Article 21.3: proposition d'amendement. Il faut modifier cet article pour que le paragraphe c) se lise comme suit: "c) le paragraphe 9(4)". C'est un changement de désignation.

Selon le paragraphe c) de l'article 21.3, les dispositions présentement prévues à l'article 9, paragraphes (6) à (12) inclusivement de la présente loi scolaire, ne s'appliqueraient plus. Nous ne voyons pas pourquoi le droit d'appel devrait pas être maintenu. Si les décisions de la commission des renvois sont susceptibles d'un appel par les commissions scolaires existantes, ce même droit doit être maintenu pour la commission scolaire de langue française.

\* (1100)

Article 21.5(1): proposition d'amendement. Dans les paragraphes a) et b) dans les lignes 1 et 2, il faut enlever les mots "résidents".

Ces changements sont conformes, sont tout simplement conformes à ce qui a été proposé à l'article 21.2(1).

Article 21.5(3) : proposition d'amendement. La version anglaise dit "duties". Il n'y a pas lieu de traduire ce mot par "L'exécution des obligations" mais plutôt par, simplement, "Les obligations", qui est une traduction plus précise.

Il est incorrect d'insinuer que les obligations d'offrir l'instruction en français conformément à l'article 23 commencent le 1er juillet de l'année qui suit l'élection de la commission scolaire de langue française. Ces obligations existent depuis l'adoption de la Charte des droits. Aussi, il faut bien que la commission de langue française puisse agir et se préparer, sans tarder, tous les changements qui devront avoir lieu en préparation pour le transfert légal des programmes et des établissements pour le 1er juillet de l'année après son élection.

Article 21.6(1): proposition d'amendement. Dans le paragraphe a), il faut enlever dans les lignes 2 et 3, les mots "à l'extérieur de ses limites territoriales". Encore une fois ce changement est conforme au changement effectué ou proposé, c'est-à-dire, à l'article 21.2(1).

Après le paragraphe b), il faut ajouter un paragraphe c) qui se lira comme suit : "Si un désaccord persiste quant aux conditions visées au paragraphe b), le Ministre peut référer le différend au comité visé à l'article 21.24".

Article 21.6(2). Cet article a tout le potentiel d'une bombe à retardement. Ici je fais référence non pas seulement au présent, encore moins au passé, mais au futur. Il accorde au ministre de l'Éducation le pouvoir d'interpréter l'article 23. La question que nous devons nous poser, c'est à partir de quoi? A partir du jugement de la Cour suprême dans le renvoi manitobain de mars 1993? Or, la majorité des provinces canadiennes, à un temps ou à un autre, ont contesté le sens et la portée de l'article 23 et ce, dans deux cas, jusqu'en Cour suprême.

Même aujourd'hui, au Canada il y en a toujours qui ne souscrivent pas aux interprétations de la Cour suprême en matière linguistique. Nous savons tous qu'au Canada, et parfois au Manitoba, les questions linguistiques produisent des résultats dont personne ne peut être fier. Pourquoi ne pas dépolitiser de telles questions autant que possible en ayant une procédure qui permettrait, au juge en chef de la province, par exemple, de trancher des questions d'ordre constitutionnel.

#### [Translation]

My name is Armand Bédard. I represent the Commission nationale des parents francophones, which you will find listed on page 2.

Section 21.2(1): This section as written is not acceptable and does not conform with Section 23 of the Charter of Rights. The bill in its present form does not create a provincial Francophone school division for the province of Manitoba. The information booklet produced by the government and distributed by the Monnin committee includes a map limiting the regions wherein the Francophone school board will be authorized to offer a Francophone program to entitled persons who might be located therein in "sufficient" numbers.

Section 23 of the Charter clearly indicates that the factor which determines an obligation in matters of governance is "sufficient" numbers. Even if there may not be "sufficient" numbers in all regions of the provincial territory today, the bill should reflect conformity with Section 23. That does not imply the need to offer a Francophone program in all regions without the justification of "sufficient"

numbers, but it simply leaves open the possibility of offering such a program in whatever region, in the eventuality that there are "sufficient" numbers in the future. The Francophone school board must be in a position to promote French instruction for all entitled persons who desire access to such instruction now or in the future. The legislation must be so construed as to provide for real future eventualities.

This section creates clearly unacceptable and arbitrary boundaries. The Supreme Court of Canada in its March 4 decision and in the reference brought by Manitoba parents was very specific on this issue: no predetermined nor artificial boundaries can be used to limit the possibility of a maximum grouping. And here I am citing the Supreme Court judgment of December 4—March 4—of this year, at page 21:

"Indeed, the Government of Manitoba has accepted as appropriate the establishment of a single Francophone school board to be responsible for Francophone education in the province . . . ."

And a further citation from the French version at the bottom of page 3, top of page 4:

"[This appeal was also brought on an another ground, this being] Manitoba's announcement that the Province will establish a province-wide Francophone school division which will initially consist of the s. 23 school communities."

This citation is from the Factum of the Province of Manitoba, presented before the Supreme Court on December 3, 1992.

Section 23 and Bill 34 apply to all entitled persons in Manitoba. The Gallant Working Group, in its 1991 report, recommended a Francophone school division for Manitoba as a whole. As it is presently drafted, Section 21.2(1) creates two types of entitled persons, resident entitled persons and nonresident entitled persons. The differentiation is not necessary and only adds more red tape in a system where there is already a lot. The drafting and the presence of this section made it necessary for the drafters to invent Sections 21.5(1), 21.15(1), 21.15(6) and 21.34, and these sections do not contribute toward community harmony or to the validity of the law.

I now cite from page 25 of the March 4, 1993, Supreme Court decision:

"The participation of minority language parents or their representatives in the assessment of

educational needs and the setting up of structures and services which best respond to them is most important."

The establishment of limited zones on the map of Manitoba to be served by the Francophone school division does not allow the Francophone school board to promote its programs to all existing and potential entitled persons. Further, far from facilitating the task of the Francophone school board, these limited zones create a class of entitled persons and, I reiterate here, of nonresident entitled persons. A significant number of students who presently attend français schools will become nonresidents. The Francophone school board will have to establish and collect residual fees from existing school divisions for all these nonresidents.

This approach will not facilitate access to the Francophone school division for nonresident entitled students. According to—and I am deviating somewhat from the text here—according to the map as it now stands, it seems to us quite obvious that the proposed school division would be required to enter into negotiations with virtually all the other school divisions, with only one or two exceptions.

The proposed amendment is therefore very simple: In line 3 after the words "establish a", the word "provincial" is to be added.

Section 21.2(3), proposed amendment: This section should be deleted. For what reason?

The Lieutenant-Governor-in-Council can change the regulation under this section when it is considered useful or necessary to do so without the need of having subsection 21.2(3). Furthermore, Section 21.43 gives the Lieutenant-Governor-in-Council the power to modify all sections of the present act.

Section 21.3, proposed amendment: This section must be modified to read as follows: "c) subsection 9(4)". This is a change in designation.

According to subsection c), the provisions of subsections (6) to (12) of Section 9 of the existing act would no longer apply. We do not see why the right of appeal should not be maintained. If the decisions of the Board of Reference are appealable by existing school boards, the same right must be maintained for the Francophone school board.

Section 21.5(1), proposed amendment: In paragraphs a) and b), in lines 1 and 2, delete the word "residents".

These changes comply, simply comply, with what was proposed for Section 21.2(1).

Section 21.5(3), proposed amendment: The English versions say "duties." There is no reason to translate this word by "L'exécution des obligations" but simply by "Les obligations," which is a more accurate translation.

It is incorrect to imply that the duties to fulfill the obligation to provide instruction in French as per Section 23 begin on July 1 of the year that follows the election of the Francophone school board. These obligations exist since the adoption of the Charter of Rights. As well, it is necessary that the Francophone school board be able to act and ready itself, without delay, for all the changes that will have to occur in preparation for the legal transfer of the programs and facilities by July 1 of the year after it is elected.

Section 21.6(1), proposed amendment: In lines 2 and 3 of paragraph a), delete the words "outside its boundaries". Again, this change complies with the proposed amendment to Section 21.2(1).

After paragraph b), a paragraph c) must be added as follows: "c) If the parties cannot come to terms as per paragraph b), the Minister may refer the dispute to the committees described in Section 21.24."

Section 21.6(2): This section has the potential of a time bomb. Here I am referring not only to the present, still less the past, but to the future. It leaves it up to the Minister of Education to interpret Section 23. On what shall such an interpretation be based? Will it be based on the March 1993 decision of the Supreme Court? The majority of Canadian provinces at one time or another have contested the meaning and scope of Section 23, involving the Supreme Court in two cases. Even today, some provinces still do not subscribe to the Supreme Court interpretations in linguistic matters. We all know that in Canada, and sometimes in Manitoba, linguistic issues sometimes produce results of which no one can be proud. Why not remove such questions, as much as possible, from the political arena, through a procedure that, for instance, would allow the Chief Justice of the province to settle constitutional matters?

**Mr. Georges Druwé (La Société franco-manitobaine):** Bonjour. Je suis Georges Druwé, président de la Société franco-manitobaine. Alors, je continue la présentation de mes collègues

A l'article 21.7 a), il faut remplacer le mot "peut" dans la ligne 2 par le mot "doit". Et dans la version anglaise, il faut remplacer le mot "may" dans la ligne 1 par le mot "shall".

Le jugement de la Cour suprême du 4 mars dernier dit à la page 21:

"Puisqu'il est établi que les chiffres justifient l'établissement d'un système d'enseignement exigeant la création d'un conseil scolaire pour la minorité linguistique, le programme doit être offert. La province a l'obligation positive de l'établir, et elle doit, pour se conformer aux devoirs que lui impose la Charte, offrir le système sans retard."

Dans le paragraphe a) de la version anglaise, à la ligne 2, il faut remplacer les mots "available" par les mots "provided".

Aussi la version anglaise deviendrait conforme à la version française. Il est incorrect de traduire le mot "offert" par "available" en anglais.

Article 21.8, à la page 6. Il faudrait ajouter un paragraphe d) qui se lirait comme suit: "du pouvoir de l'embauche et de l'emploi du personnel".

L'embauche et l'emploi du personnel sont des questions d'ordre privé que la commission scolaire peut déléguer au directeur général, et aux directeurs d'écoles et, fondamentalement, c'est le conseil scolaire élu qui a la responsabilité de ses deux fonctions.

A la page 9, l'article 21.15(1). Dans le paragraphe a), il faudrait rayer le mot "résident" pour être consistant avec les changements proposés à 21.21, et le paragraphe 2) doit être rayé complètement puisque nous parlons d'un conseil scolaire provincial et le suggérons.

Tout élève ayant droit doit avoir accès à l'instruction dans sa langue maternelle si les parents le désirent. L'article 23 et l'article 79 de la Loi sur les écoles publiques leur garantissent le droit d'accès.

A la page 9 également, l'article 21.15(2). Nous avons déjà reconnu l'excellente initiative d'inclure un tel paragraphe s'adressant au programme d'accueil. Par contre, nous jugeons qu'il faudrait rayer la paragraphe b) au complet car nous croyons que cette option représente une contradiction. Le programme d'immersion n'est pas un programme d'instruction dans la langue maternelle. Si les parents sont ayants droit et veulent que leurs enfants soient éduqués dans leur

langue maternelle, on ne doit pas les envoyer dans un programme de langue seconde. Le programme d'immersion ne poursuit pas les objectifs ni la mission culturelle que doit avoir une école française. Si l'enfant est déjà en partie assimilé, il lui faut plutôt le programme d'accueil. S'il est placé dans un programme d'immersion, il sera encore moins préparé à l'école française trois ans plus tard. Enfin, le parent ayant droit a le droit constitutionnel de refuser que son enfant soit envoyé dans un programme d'immersion.

A la page 9, l'article 21.15(4). Nous suggérons que ce paragraphe, que cet article soit enlevé car il est contradictoire; on ne peut inclure un non ayant droit sans se mettre en contradiction avec la Charte des droits. Il y a déjà prévision, avec l'ajout du nouveau paragraphe c) de l'article 21.1, pour les élèves que l'on voudrait inclure au moyen de cet article. Ce paragraphe n'est donc pas nécessaire, et il est de toute façon contradictoire tel que rédigé. Par contre, si le paragraphe a pour objectif d'inclure des citoyens qui ne sont pas Canadiens et dont la langue maternelle est le français, il faudrait le spécifier en ce sens.

A la page 10, l'article 21.15(6). Cet article devrait être enlevé complètement. Tenant compte encore une fois des changements proposés à 21.15(1), il n'y aurait plus, dans cette éventualité, question de non-résidents.

Sous ce rapport, le jugement de la Cour suprême du 4 mars dernier dit à la page 26:

"Il faut éviter toutes dispositions et structures qui portent atteinte, font obstacle ou ne répondent tout simplement pas aux besoins de la minorité; il faudrait examiner et mettre en oeuvre des mesures qui favorisent la création et l'utilisation d'établissements d'enseignement pour la minorité linguistique. Par exemple, si la province décide d'offrir aux parents d'un groupe linguistique minoritaire un choix d'écoles où sera dispensée l'instruction dans la langue de la minorité, elle ne doit pas le faire aux dépens de services offerts par un conseil scolaire de langue française ni empêcher ce conseil d'offrir des services reposant sur le principe d'égalité que je viens de décrire. De même, il ne serait pas loisible au gouvernement du Manitoba de délimiter des districts scolaires de façon à empêcher indûment un tel conseil scolaire d'attirer des élèves".

[Translation]

Good morning. I am Georges Druwé, president of the Société franco-manitobaine. I shall continue on with my colleagues' presentation.

In Section 21.7 a), the word "peut" in line 2 should be replaced by the word "doit," and in the English version, the word "may" in line 1 should be replaced by the word "shall."

The March 1993 Supreme Court decision states as follows, at page 21:

"Since it is determined that the numbers warrant an education system requiring the establishment of a minority language school board, then such a program must be delivered. There is a positive obligation on the province to discharge that obligation, and it must, if it is to comply with its duties under the Charter, deliver the system without delay."

In paragraph a) of the English version, in line 2, delete the word "available" and replace it with the word "provided."

This change would bring the English text closer to the French version. It is incorrect to translate the word "offrir" by "available" in English.

Section 21.8, at page 6: A paragraph d) must be added, which would read as follows: "d) the power to hire and employ personnel".

Hiring and employing personnel are questions of a private nature which the school board can delegate to the superintendent and the school principals, and it is the elected school board which is fundamentally responsible for these two functions.

Section 21.15(1), at page 9: In paragraph a), delete the word "resident" to be consistent with the proposed changes to 21.21, and subsection (2) must be completely deleted since we are talking about and proposing a provincial school board.

All entitled students must have access to instruction in their mother tongue if the parents so desire. Section 23 of the Charter and Section 79 of The Public Schools Act guarantee the right of access.

Section 21.15(2), also at page 9: We have already acknowledged the excellent initiative of including such a provision contemplating the programme d'accueil. On the other hand, we consider it necessary to delete paragraph b) completely because we feel this option is a contradiction. The immersion program is not a

program of instruction in the mother tongue. If the parents are entitled persons and wish that their children receive their instruction in their mother tongue, then the children must not be sent into a second-language program.

The immersion program has neither the ultimate objective nor the cultural mission of a français school. If the child is already partly assimilated, he needs a "programme d'accueil." If he is placed in an immersion program, he will be even less prepared for the français school three years later. An entitled parent also has the constitutional right to refuse that his child be sent into an immersion program.

Section 21.15(4), at page 9: We suggest that this subsection, this section be deleted because it is contradictory; a nonentitled person cannot be included without being in contradiction with the Charter of Rights. There is already provision, with the proposed addition of paragraph c) in subsection 21.1, for the students that we would like to include on the basis of this subsection. The subsection is therefore not necessary and, at any rate, as worded, it would be contradictory. If the intent of this section was to include non-Canadian citizens whose first language is French, then this should be specified in accordance with the intent.

Section 21.15(6), at page 10: This section should be deleted completely. Again, given the changes proposed to 21.15(1), there would be no need to refer to nonresidents.

On this topic, the Supreme Court decision of March 4, 1993, reads as follows, at page 26:

"Arrangements and structures which are prejudicial, hamper, or simply are not responsive to the needs of the minority, are to be avoided and measures which encourage the development and use of minority language facilities should be considered and implemented. For instance, if the province chooses to allow minority language parents a choice of school for instruction in the minority language, this should not be at the expense of the services provided by a French-language school board or hamper this board in its ability to provide services on a basis of equality as described above. Likewise, it would not be open to the Government of Manitoba to carve school districts which unduly hamper such a school board from attracting students."

**Mr. Alain Boucher (Le Conseil jeunesse provincial):** Bonjour, je suis Alain Boucher. Je représente le Conseil jeunesse provincial. J'aimerais continuer avec les articles 21.18(1) et 21.18(2).

La proposition d'amendement serait que ces deux articles soient enlevés car la consultation et le mode de consultation ont été établis par ordre en conseil. Le comité de mise en oeuvre fait son travail sans que ces articles existent et pourra toujours continuer son travail. Après tout, les actions et les modalités proposées par ces deux articles auront, en grande partie, été accomplies lorsque ce projet deviendra loi.

Article 21.19(1). La proposition d'amendement est qu'il faut enlever au début de la 1re ligne les mots suivants : "Après la consultation, mais" et maintenant commencer la phrase avec le mot "Avant". Ca va avec l'autre proposition d'amendement.

Article 21.21(4). Dans la dernière ligne, il faut enlever les mots "un arbitre de trancher la question" et les remplacer par les mots "un arbitre qui sera le juge francophone senior du système judiciaire manitobain de trancher la question".

Nous croyons que la nomination d'un arbitre pourrait assez facilement devenir épineuse. Nous ne contestons pas la prérogative du ministre d'agir de la sorte mais nous avons de sérieuses réserves quant à l'absence de lignes directrices sur lesquelles le ministre pourrait s'inspirer. Nous proposons que l'arbitre soit une personne non vulnérable au niveau carrière, communautaire ou politique. Le juge senior francophone dans le système judiciaire manitobain serait un choix propice.

\* (1110)

Article 21.21(6). Nous proposons qu'il faille enlever ce paragraphe.

Normalement, on ne retrouve pas des "objectifs" dans des lois. Dans toute la Loi sur les écoles publiques on ne retrouve pas un article décrivant des "objectifs". Donc, notre recommandation est que cet article soit retranché.

Si cet article doit demeurer, il faut alors que le premier objectif soit le suivant : "a) se conformer à l'article 23 de la Charte des droits". Et le paragraphe a) deviendrait maintenant le paragraphe b), le paragraphe b) deviendrait le paragraphe c).

Article 21.22(3) : proposition d'amendement. Dans la 6e ligne après le mot "biens", il faut ajouter les mots "approuvées par la Commission des finances sur les écoles publiques".

Nous comprenons que les dettes et obligations contractuelles sont généralement assumées par la Commission des finances sur les écoles publiques. Cependant, il est possible, que durant l'année fiscale en cours durant laquelle se feront les transferts (entre le 1er janvier et le 1er juillet) que le cédant ait contracté des obligations contractuelles qu'il doit assumer à même son propre budget. Ces obligations ne doivent pas être transférées à la commission scolaire francophone puisqu'elle ne pourrait recevoir les fonds de la Commission sur les écoles publiques et elle n'a pas le pouvoir de prélever des taxes pour couvrir des obligations qu'elle n'aurait pas elle-même contractées.

Ensuite l'article 21.22(5). Nous proposons un nouvel article.

Le titre serait "Les surplus accumulés" et il serait numéroté 21.22(5). Le texte serait au paragraphe a) : "En date de l'adoption de la partie 1.1 de la présente loi, les sommes et les biens détenus en commun par le cédant seront transférés au pro rata du nombre d'élèves transférés".

Il est possible que le cédant ait accumulé des réserves et que des biens communs (bureaux divisionnaires, autobus, équipement, etc.) aient été accumulés ou achetés à partir des surplus accumulés, en partie, à partir de la taxe foncière ou des subventions et même à partir des subventions accordées par le Secrétariat d'Etat pour l'enseignement de la langue de la minorité. Il serait injuste qu'une partie au pro rata des élèves transférés ne soient aussi transférés. C'est une injustice. Après tout, ces réserves ont été accumulées à même les taxes de tous les résidents, incluant celles des ayants droits actuels.

Au paragraphe b), ajouter : "En l'absence d'un accord dans les douze mois suivant l'élection de la première commission scolaire de langue française, le Ministre charge l'arbitre visé à l'article 21.21(4) de trancher le différend."

Et maintenant, j'aimerais juste ajouter que la Division scolaire de la rivière Seine à déjà approuvé une proposition en ce sens et propose de transférer un pro rata d'environ 25 % des surplus accumulés à la division scolaire francophone. Merci.

**[Translation]**

Good morning. My name is Alain Boucher, and I represent the Conseil jeunesse provincial. I would like to continue on with Sections 21.18(1) and 21.18(2).

The proposed amendment would be that both these sections be deleted since both the consultation and the type of consultation were established by Order-in-Council. The implementation team is carrying out its mandate in the absence of these sections and will continue to do so. After all, the actions, ways and means proposed in these sections will be, for the most part, completed by the time Bill 34 becomes law.

Section 21.19(1): The proposed amendment is that at the beginning of the first line, the words "After consultation takes place" must be deleted, and the sentence would then begin with the word "Before". This goes together with the other proposed amendment.

Section 21.21(4): In the last line, the words "to determine the matter" should be replaced by the words "who shall be the senior Francophone judge in the Manitoba judicial system to determine the matter".

We believe that the appointment of an arbitrator could quite easily cause difficulties. We do not question the right of the minister to take such action, but we do have reservations insofar as the absence of guidelines is concerned. We submit that the arbitrator be a person who is not vulnerable insofar as career, politics or the community is concerned. The senior Francophone judge in Manitoba's judicial system would appear to be a wise choice.

Section 21.21(6): We propose the deletion of this section.

Normally, one does not find "objectives" in a law. In the entire Public Schools Act, there are no sections describing "objectives." We therefore recommend that this section be removed.

If the section must remain, the first objective must be as follows: "a) in order to comply with Section 23 of the Charter of Rights and Freedoms". And the present paragraph a) would then become paragraph b), and paragraph b) would become paragraph c).

Section 21.22(3), proposed amendment: In the sixth line after the word "property", add the words

"and approved by the Public Schools Finance Board".

We understand that liabilities and obligations are usually the responsibility of the Public Schools Finance Board. However, it is possible that during the fiscal year in which transfers will be made—between January 1 and July 1—a provider school board may have contracted certain obligations which have to be met from their current budget. Those obligations cannot be transferred to the Francophone school board as the latter could not recover these same funds from the Public Schools Finance Board, nor does it have the power to raise taxes to cover such obligations which it has not itself contracted.

Next, Section 21.22(5): We propose a new section.

The title would be "Accumulated Surpluses", and it would be numbered 21.22(5). The wording would be as follows in paragraph a): "As of the adoption date of the proposed law, all goods and funds held in common by the provider school board will be transferred on a per capita basis based on the number of students transferred."

It is possible that provider school boards have accumulated reserves or have purchased goods in common—divisional offices, school buses, equipment, et cetera—using funds collected through special levies, special grants and even grants from the Secretary of State destined for minority language instruction. It would be unjust and unfair if these funds and goods held in common were not also transferred on a per capita basis in accordance with the number of transferred students. After all, the accumulated reserves were obtained from the taxes of all existing taxpayers, including the existing entitled residents.

To paragraph b) would be added: "If an agreement cannot be reached during the first twelve months following the election of the first francophone school board, the Minister shall submit the case to the arbitrator described in subsection 21.21(4)."

Now I would like to add that Red River School Division has already approved a proposal similar to the provisions in our new section, and proposes to transfer on a per capita basis approximately 25 percent of the accumulated surpluses to the Francophone school division. Thank you.



**Ms. Estelle St-Hilaire (L'Association des directeurs et directrices des écoles franco-manitobaines (ADEFM)):** Je suis Estelle St. Hilaire. Je me présente devant vous à titre de présidente de l'Association des directeurs et directrices des écoles franco-manitobaines. J'aimerais continuer avec les propositions d'amendement de l'article 21.25(1).

Aux 3<sup>e</sup> et 4<sup>e</sup> lignes, il faut enlever les mots "pendant une période de deux ans, il est permis de demander au Ministre" et les remplacer par ", il est permis de lui demander".

Cet article tel que rédigé est carrément anticonstitutionnel. On ne peut, en aucun temps, nier un droit constitutionnel et cela inclut l'article 23. Tel que rédigé, le présent article empêcherait effectivement une école ou un programme de se joindre à la commission scolaire de langue française pour une période de trois ou quatre ans. Le facteur déterminant selon l'article 23 de la Charte est le "nombre suffisant". Il serait donc inconstitutionnel d'introduire tout autre facteur arbitraire.

Article 21.26(6) : proposition d'amendement. Cet article doit être enlevé complètement.

Cet article n'est pas constitutionnel. On ne peut imposer une restriction artificielle de ce genre. Les droits acquis sous l'article 23 retardent à être accordés depuis déjà un temps irraisonnable. Il ne serait donc pas juste que les ayants droit soient obligés d'attendre trois ans et plus si la situation changeait (par exemple, dû à l'ouverture d'une usine, d'une mine, etc.) dans l'intervalle et qu'il y avait un nombre suffisant.

Article 21.28 : le paragraphe a) devrait être enlevé complètement.

"L'article 23 de la Charte impose aux législatures provinciales l'obligation positive d'édicter des dispositions législatives précises pour fournir une instruction dans la langue de la minorité et des établissements d'enseignement de la minorité linguistique lorsque le nombre le justifie".

Le paragraphe b) devrait être modifié comme ceci : dans la ligne 3 après le mot "l'instruction", il faut enlever les mots "qui peut être nécessaire dans les circonstances" et les remplacer par le mot "requis".

Il ne doit pas être exigé que, pour avoir accès à l'instruction en français, un ayant droit soit obligé

de demander. Un droit s'applique par lui-même— on n'a pas besoin de le demander, ce droit.

On semble dire que le régime prévu est acceptable en droit dans la mesure où le parent protégé a accès à un programme et à un établissement français; cela n'est pas conforme aux obligations élaborées par la Cour suprême de ne pas nuire à la Commission de langue française, de favoriser celle-ci, etc.

Article 21.30(1) : cet article peut demeurer comme tel à condition que les changements requis soient apportés à l'article 21.34 (Aide financière) en ce qui a trait aux coûts additionnels que pourrait avoir la division scolaire de langue française reliés au transport des élèves sur un territoire plus vaste.

Article 21.33(1) : proposition d'amendement. Il faut ajouter au dernier mot de la ligne 3 les mots suivants : "afin de déterminer le financement additionnel dont elle devra disposer".

\* (1120)

Le chapitre 7 du rapport Gallant élabore certains principes et procédures à suivre qu'on ne peut ignorer si la division scolaire francophone espère pouvoir fonctionner de façon efficace et conformément aux principes élaborés dans les jugements de la Cour suprême.

Entre autres, il faut relire les principes élaborés à la page 25 du rapport Gallant, en particulier le principe 5 qui suit :

"Puisque le domaine de l'éducation relève de la compétence exclusive des provinces et en vue d'assurer un financement suffisant à long terme au système éducatif francophone, la division scolaire francophone devrait se voir garantir, par voie législative, un soutien annuel total pour les dépenses légitimes qu'elle ferait pour répondre aux besoins spéciaux".

A la page 26 du rapport Gallant, il est dit :

"Etant donné que la commission scolaire francophone ne dispose pas du pouvoir de prélever des impôts locaux, elle aura également besoin d'être protégée par une entente avec le gouvernement provincial qui lui garantira des financements spéciaux en cas de nécessité. Dans cette mesure, sa situation sera semblable à celle de la division scolaire Frontier qui a très peu accès à la taxation foncière locale. . . . la division francophone disposera du financement de base nécessaire pour l'enseignement en français au

Manitoba. Cependant, il y aura des frais supplémentaires à couvrir.

Evidemment, on devra effectuer des dépenses ponctuelles de mise en œuvre afin de mettre sur pied le nouveau système. Il faudra également déboursier d'autres sommes pour les frais courants si l'on veut atteindre les objectifs de l'éducation dans la langue de la minorité. En raison de sa nature même, ce type d'éducation est plus coûteux dans une région où la minorité ne représente qu'une infime proportion de la population. Si nous voulons réellement fournir une éducation de qualité et préserver et promouvoir la langue et la culture de la minorité, nous devons y mettre le prix".

On mentionne aussi dans le chapitre 7 plusieurs items comme pouvant représenter des coûts additionnels, surtout au point de départ. Les items suivants sont mentionnés : l'administration générale; le transport; les coûts de base de l'enseignement en français; des mesures réparatrices; les coûts de mise en œuvre; les coûts des immobilisations.

A la page 28 du rapport Gallant, on conclut comme suit :

"Quoique le Groupe de travail convienne que la garantie en cause ne peut avoir pour effet que le gouvernement fournisse automatiquement chaque dollar qui lui est demandé, la loi devrait énoncer le principe qu'il existe des frais additionnels à assumer et qu'un cadre constant sera utilisé afin de déterminer le montant de financement additionnel qui permettra de respecter les exigences de la Charte.

La garantie législative assujettirait le gouvernement provincial à l'obligation en cause. Bien que cela outre-passe son mandat, le Groupe de travail souligne la possibilité que le gouvernement provincial pourrait, à son tour, entreprendre des négociations avec le gouvernement fédéral en vue de partager les frais additionnels se rapportant à l'éducation dans la langue de la minorité".

**[Translation]**

I am Estelle St-Hilaire and am appearing before you as president of the Association des directeurs et directrices des écoles franco-manitobaines. I would like to continue with the proposed amendments to Section 21.25(1).

In the third and fourth lines, delete the words "for more than two years a request may be made by the

minister" and replace them with the words "a request may be made to the said school board in order:".

This section as drafted is clearly unconstitutional. A constitutional right such as contained in Section 23 cannot be denied. As drafted, this section would prevent any français program or school from joining the Francophone school board for a period of three to four years. The determining factor under Section 23 of the Charter is "where numbers warrant". It would accordingly be unconstitutional to introduce any other arbitrary factor.

Section 21.26(6), proposed amendment: This section must be completely deleted.

This section is unconstitutional. This type of artificial restriction cannot be enforced. The rights guaranteed under Section 23 have for far too long been ignored. It would be unjust for entitled persons to be forced to wait three or more years if circumstances were to change—e.g. due to the opening of a factory, a mine, et cetera—in the meantime and for there to be sufficient numbers.

Section 21.28: Paragraph a) should be completely deleted.

"Section 23 of the Charter imposes on provincial legislatures the positive obligation of enacting precise legislative schemes providing for minority language instruction and educational facilities 'where numbers warrant'".

Paragraph b) should be amended as follows: In line 3 after the word "instruction", delete the words "as may be required in the circumstances" and replace them by "as required".

In order to receive French-language instruction, an entitled person should not be required to ask for same. This section seems to be saying that is legally acceptable that entitled persons have access to a "program" or an "établissement français." This does not comply with the Supreme Court's declaration that nothing should be placed in the way of the Francophone school board's ability to encourage and promote this, et cetera.

Section 21.30(1): This section may remain as is, provided that changes be made to Section 21.34, Financial Support, with regard to additional costs which could be caused by the fact that the Francophone school board may have to transport students over greater distances.

Section 21.33(1), proposed amendment: In line three after the word "year", the following words should be added: "in order to establish the amount of additional funding which may be required".

Chapter 7 of the Gallant Report is clear on a number of principles and procedures which cannot be ignored if the Francophone school division is to function efficiently and according to the requirements set out in the Supreme Court judgments.

The principles set out on page 25 of the Gallant Report, and in particular principle 5, should be reread:

"Given that education is exclusively a provincial jurisdiction, and to ensure adequate funding for a French education system on a long-term basis, the francophone division must be guaranteed, by legislation, full support annually for legitimate additional expenditures for preservation and promotion of minority language and culture in line with Section 23 of the Charter."

At page 26 of the Gallant Report, it is stated:

"The francophone school board will also need the protection of an arrangement with the provincial government for special funding, when appropriate, because of the absence of the local taxation power. In this respect, the situation will be similar to that of the Frontier School Division which has very little access to local property taxation . . . the francophone division should have the basic funding it will need to deliver francophone education in Manitoba. However, there will be additional costs to be met. There will, of course, be one-time implementation costs to bring the new component into being.

There will also be certain ongoing costs if the objectives of minority language education are to be achieved. By its very nature, minority language education is more costly in an area where the minority represents just a small proportion of the population. If we are truly to meet the objectives of equivalent quality of education and of preserving and promoting the minority language and culture, then the extra cost factor will have to be provided for."

Also in Chapter 7, we find a list of certain items involving extra funding requirements, especially at the time of start-up of the Francophone school division—general administration, transportation,

basic French education costs, remedial measures, implementation costs, capital costs.

At page 27 of the Gallant Report, it is stated as follows:

"While the Task Force recognized that this cannot imply that every dollar asked for will automatically be provided, the legislation should establish the principle that there are extra costs to be met and that a regular process will be followed to determine an extra level of funding that will ensure the requirements of the Charter are being adhered to.

"The legislative provision would place an obligation on the provincial government. While this is perhaps beyond its mandate, the Task Force has in mind that the provincial government, in turn, may wish to negotiate some federal participation in meeting the extra costs of minority education."

**Mr. Boullanne:** Je me présente. Je suis Guy Boulianne, président des Educatrices et Educateurs francophones du Manitoba et je poursuis avec l'article 21.34, à la page 21 de votre projet de loi.

Proposition d'amendement : dans le paragraphe a), il faut enlever dans la ligne 2 les mots "qui peuvent être" et les remplacer par les mots "qui doivent être".

Pourquoi faut-il laisser planer le doute que la commission scolaire de langue française puissent pouvoir fonctionner sans financement?

Dans le même article, il faut enlever tout ce qui vient après les mots "y compris" et les remplacer par "l'aide additionnelle garantie par la province qu'elle versera annuellement à la division scolaire de langue française afin qu'elle puisse se conformer aux exigences de l'article 23".

Proposition d'amendement : le paragraphe c) devrait être rayé au complet, conformément aux changements proposés précédemment concernant les "non-résidents".

Proposition d'amendement : le paragraphe d) actuel devient alors le paragraphe c) et doit être modifié en enlevant, dans les lignes 2, 3, et 4, les mots "à l'extérieur de la division scolaire de langue française ou".

Ce changement tient compte du changement proposé dans les articles 21.2(1), 21.5(1) et 21.6(1).

Et on proposerait d'ajouter un nouvel article à l'article 21.34(2) : "a) Le ministre de concert avec la division scolaire de langue française définira le cadre des frais additionnels que la province devra assumer afin de déterminer le montant de financement additionnel qui permettra à la division scolaire de langue française de respecter les exigences de la Charte des droits et libertés".

Proposition d'amendement, aussi un ajout : "b) le Lieutenant gouverneur en conseil établira par règlement les montants à être versés en vertu du paragraphe a)". Ce serait un ajout avec la section a).

A l'article 21.36(4), à la page 24 du projet de loi, une proposition d'amendement : cet article doit être enlevé au complet.

Dans les articles 21.36(2) et 21.36(3), on a décrit de façon détaillée les personnes habilitées à voter dans les élections. Il ne faudrait pas se donner ici le pouvoir de tout défaire ces articles précédents.

Article 21.44(1), page 28 : proposition d'amendement. Dans la 3e ligne après le mot "enseignant", il faut enlever le mot "ou" et le remplacer par une virgule.

Proposition d'amendement : dans la 3e ligne après le mot "directeur", il faut ajouter "de tout consultant ou de tout responsable de programme affecté en majeure partie au programme français dans une division scolaire cédante". Et ce puisque les consultants ne sont pas indiqués comme étant enseignants désignés.

A l'article 21.45(1), à la page 31 du projet de loi : proposition d'amendement. Dans les 1re et 2e lignes, il faut enlever les mots "ou de plusieurs nouvelles conventions collectives" et les remplacer par "nouvelle convention collective".

Ce changement est conforme avec la création d'une division scolaire de langue française. Il n'y a qu'un seul employeur et c'est la commission scolaire de langue française. Et il n'y a qu'une seule association qui représente les enseignants, c'est la Manitoba Teachers' Society, ou bien l'association locale. Il faut traiter les enseignants de cette nouvelle division scolaire de la même façon que sont traités tous les enseignants manitobains. On ne doit pas se servir des enseignants de la nouvelle entité pour rejoindre tout autre objectif que ce soit.

A l'article 21.45(4), il faut enlever le sous-paragraphe a) au complet, et le paragraphe

b) devient le paragraphe a) et, à la 2e ligne, il faut enlever le mot "locale".

Ces changements sont conformes au changement proposé au paragraphe 21.45(1).

Proposition d'amendement à l'article 21.45(5), page 31 : dans la ligne 1 après le mot "d'une", il faut enlever les mots "ou de plusieurs nouvelles conventions collectives" et les remplacer par les mots "nouvelle convention collective".

#### [Translation]

Allow me to introduce myself. I am Guy Boulianne, president of the Educatrices et Educateurs francophones du Manitoba, and I am continuing on with Section 21.34, at page 21 of your bill.

Proposed amendment: In paragraph a), line 2, the word "may" is to be replaced by the word "must".

There is absolutely no need to hint that the Francophone school board may be put in a position where it would be expected to function without funding.

In the same section, all the wording after "including" is to be deleted and replaced by "additional funding guaranteed by the province, transferred annually to the francophone school board, to enable it to assume its responsibilities under Section 23 of the Charter".

Proposed amendment: Paragraph c) should be deleted completely in accordance with the previous proposed changes regarding "non-residents".

Proposed amendment: The present paragraph d) now becomes paragraph c) and must be amended by deleting the words "outside the school division or" from lines 2, 3 and 4.

This change is in keeping with the proposed changes to Sections 21.2(1), 21.5(1) and 21.6(1).

And we would propose adding a new section to Section 21.34(2): "a) The Minister in concert with the francophone school board shall determine the extent of additional costs to be borne by the province which will allow the said school board to assume its responsibilities under Section 23 of the Charter".

Proposed amendment, also an addition: "b) The Lieutenant Governor in Council shall establish, by regulation, the amounts to disburse in reference to paragraph a)". This would be an addition, together with paragraph a).

A proposed amendment to Section 21.36(4), at page 24 of the bill: This section should be deleted.

Sections 21.36(2) and 21.36(3) already describe in detail the persons eligible to vote in school board elections. This section is not in keeping with these definitions and, in actual fact, can only serve to create confusion.

Section 21.44(1), at page 28, proposed amendment: In the third line after the word "teacher", the word "or" should be replaced by a comma.

Proposed amendment: In the second line after the word "principal" and before the word "who", add the words "special education consultants and program consultants whose major areas of responsibility are with the français program in a provider school board". This would be added because consultants are not indicated as being designated teachers.

Section 21.45(1), at page 31 of the bill, proposed amendment: In lines 1 and 2, the words "or agreements are" are to be replaced by the word "is".

This is in keeping with the idea of creating a Francophone school board. There is but one employer and it is the Francophone school board. And there is only one association representing the teachers and it is the Manitoba Teachers' Society or the local association. The teachers in this new school division must be treated in the same way as all other Manitoba teachers. The teachers in the new entity must not be used to pursue any other objective whatsoever.

In Section 21.45(4), paragraph a) should be deleted completely, and paragraph b) would become paragraph a), and in line 1, the word "local" replaced by the word "the".

These changes are in line with the proposed changes to Section 21.45(1).

Proposed amendment to Section 21.45(5), at page 31: All references to "collective agreements" in the plural form should be deleted.

**Mr. Savard:** Je me présente de nouveau. Gilbert Savard de la Fédération provinciale des comités de parents. La proposition d'amendement que vient de mentionner M. Guy Boulianne est conforme au changement proposé au paragraphe 21.45(1).

Maintenant, nous voulons passer à des suggestions à titre de mécanisme pour trancher les

différends. Nous avons, par rapport aux articles 21.17, 21.21(4), (5) et (6), 21.24 et 21.25, proposé certains mécanismes pour trancher les différends. Il est possible que ce qui suit serve encore mieux comme mécanisme à cette fin.

Le projet de loi contient au moins quatre situations où des différends doivent être soumis à un mécanisme d'arbitrage. D'aucuns argumenteront que de tels mécanismes n'ont pas leur place du point de vue efficacité et économie. Cependant ici, chaque différend à être tranché doit l'être avec l'objectif constitutionnel au premier plan. L'arbitre, le comité d'arbitrage ou la commission des renvois ne peuvent en aucun temps être saisis ou en pleine connaissance des énoncés de principes juridiques. C'est pourquoi nous sommes fermement d'avis que l'arbitrage est un mécanisme généralement inadéquat pour subvenir aux enjeux que contemple le projet de loi.

A notre avis, il suffirait que les différends soient tranchés par le processus de renvoi spécifique prévu à la partie II de la dite Loi sur l'arbitrage (Reference by Court Order) avec le corollaire précis que le "juge des renvois" mentionné à l'article 32 de la Loi sur l'arbitrage s'entend dès lors d'un juge de la Cour du banc de la Reine.

\* (1130)

Encore en raison de l'objectif constitutionnel, il serait fort utile de ne pas assujettir le projet de loi à des attaques collatérales en s'abstenant d'y insérer des clauses privatives qui rendraient les décisions arbitrales finales et exécutoires. Entre autres choses, de telles clauses portent atteinte au droit de recours qu'encadre bien clairement l'article 24 de la Charte. Il faudrait s'abstenir aussi d'enlever à la division scolaire francophone ou ses membres constituants accès aux dispositions de la Loi sur les écoles publiques dont jouissent les autres divisions. Ceci encore, en raison de prévenir des attaques sur la validité juridique de la loi. "[La Province ne doit pas] empêcher ce conseil d'offrir des services reposant sur le principe d'égalité que je viens de décrire". Citation du renvoi, à la page 863.

A la fin des années 1950, M. Alfred Monnin avait, en sa qualité de commissaire nommé par le gouvernement provincial, tenté un découpage de la carte géographique en vue d'accommoder les regroupements des Canadiens-français. Les mutations et l'assimilation ont vite fait en sorte que

ce découpage est devenu problématique et désuet à son soi-disant objectif. Pourquoi veut-on répéter dans le même sens? L'histoire démontre l'échec plutôt qu'un objectif réalisable. Pourquoi veut-on tenter de diviser en créant au départ deux catégories de visés (résidents et non-résidents)? Qu'est-ce qui fait qu'on veut morceler de la sorte? Il s'agit bien d'une entrave au plus grand regroupement et ça va clairement à l'encontre de l'objet réparateur.

Avant de terminer, je me dois de vous signaler que, malheureusement, certains représentants d'organismes nommés au début de cette présentation n'ont pu se joindre à nous ce matin en raison de la saison estivale.

Comme conclusion, nous vous remercions pour cette opportunité d'exprimer nos points de vue et espérons que vous les tiendrez en ligne de compte pour les incorporer au projet de loi 34. Je tiens aussi à vous rappeler qu'il y a plusieurs sondages d'Angus Reid, par exemple, qui confirment que les Manitobains et que les Canadiens reconnaissent et sont favorables au droit de la minorité de langue officielle en vertu de l'article 23. Je vous signale aussi bon nombre d'éditoriaux favorables également et, enfin, je termine en vous rappelant que la Saskatchewan vient d'adopter une loi qui reconnaît les droits de sa minorité de langue officielle.

Pour répondre à vos questions, j'aimerais que se joignent à moi ce matin, M. Gérard Lécuyer, M. Armand Bédard et Me Laurent Roy. Merci.

#### [Translation]

Allow me to introduce myself again. Gilbert Savard from the Fédération provinciale des comités de parents. The proposed amendment Mr. Guy Boulianne just mentioned is in line with the proposed change to Section 21.45(1).

We would now like to broach a few suggestions on mechanisms for the resolution of disputes. With regard to Sections 21.17, 21.21(4), (5) and (6) and 21.24 and 21.25, we propose certain mechanisms available for the resolution of potential disputes. The following might serve as better mechanisms.

Bill 34 contemplates at least four different situations where disputes would have to be submitted to the arbitration process. No one would argue that, generally, arbitration boards are resolution mechanisms that are economically efficient. Here, however, disputes must be

resolved in compliance with the underlying constitutional obligations and objectives. At no time will the arbitrator, the Arbitration Board or the Board of Reference be able to completely grasp all the underlying legal principles which are subject to the constitutional right within Bill 34. Therefore we are of the view that the arbitration process is, in the circumstances, an inadequate form of dispute resolution.

We submit that disputes can properly and effectively be resolved in the manner provided in Part II of The Arbitration Act, "Reference by Court Order." To that effect, and for the purposes of Bill 34, the "referee" contemplated in Section 32 of The Arbitration Act must be a judge of the Court of Queen's Bench.

Furthermore, and in keeping with the prime constitutional directive, Bill 34 must be subjected to any collateral attacks. Privative clauses that set out a mechanism whereby all decisions made on arbitration are final and executory must be avoided. Such clauses affect one's rights under Section 24 of the Charter. Furthermore, the Francophone school division and its constituent members must be entitled to the benefits of all other school divisions. In order to prevent any attacks on the constitutional validity of The Public Schools Act, "[The Province must] assure that the francophone school division is capable of providing services which are based on the equality principle which I have just described." This is a citation from page 863 of the Reference.

In the late 1950s, Mr. Alfred Monnin, in his capacity as trustee appointed by the Province of Manitoba, had attempted to reset all school boundaries with a view to accommodate the grouping of French-Canadians into unitary divisions. Population changes and assimilation rapidly made these groupings meaningless. Why would we want to repeat the same error when history demonstrates utter failure rather than an achievable objective? Why would we want to attempt to divide by creating two categories of parents, residents and nonresidents? Why do we want to parcel off in this manner? This is an obstacle to the province's obligation to group Section 23 parents as much as possible and therefore goes against the remedial aspect of Section 23 of the Charter.

Before concluding, I would like you to know that some representatives of the organizations named

at the start of this presentation were unfortunately unable to join us this morning due to the holiday season.

To conclude, we thank you for the opportunity to express our views and hope you will take them into consideration and incorporate them into Bill 34. I would also like to mention that there are a number of polls, Angus Reid polls for instance, which confirm that Manitobans and Canadians recognize and are in favour of official language minority rights under Section 23. I can also point to a goodly number of favourable editorials, and will end by reminding you that the Province of Saskatchewan has just passed a law that recognizes the rights of its official language minority.

I would ask Mr. Gérard Lécuyer, Mr. Armand Bédard and Mr. Laurent Roy, Q.C., to join me this morning to answer your questions.

**Mr. Chairperson:** Thank you very much for your presentation. Just for clarification, it is my understanding, as you pointed out in your brief, that on our list of presenters, from three to nine inclusive, they have all been included in the presentation of your brief.

In fact, all presented with the exception of No. 7, Ron Chartrand, I believe. Is that correct? Chantal Berard is replaced by Alain Boucher? [interjection] Thank you very much.

We will proceed then with questions and comments from the committee, and I would appreciate it for the sake of Hansard, as well as for the committee members, if you would identify which member of your group is responding to the question.

**Ms. Avis Gray (Crescentwood):** Thank you, Mr. Chairperson, and I thank this group for their excellent presentation and obviously their exhaustive work on this particular bill.

My question is a process question. Has this group had an opportunity to discuss with the minister and the government these proposed amendments prior to coming this morning?

**Mr. Savard:** Yes, we have.

**Ms. Gray:** What type of response did you receive, and I am asking that question because these are obviously very detailed amendments and some may be complex, and I am trying to get a sense of how best we may be proceeding, so my question really is, did you get a sense from the minister that

she was willing to look at some of these as amendments to this bill?

**Mr. Gérard Lécuyer (Fédération provinciale des comités de parents (FPCP)):** Oui, je pense que nous avons eu cette impression de la ministre. Par contre, nous avons présenté les propositions, ou presque toutes les propositions, que nous avons initialement une intention de présenter, parce qu'à notre avis il était important de les mettre toutes sur le record officiel.

[Translation]

Yes, I think that we got that impression from the minister. However, we presented the proposals, or almost all the proposals, that we had initially intended to present because, in our opinion, it was important to put them all on the official record.

**Mr. Chairperson:** Before I recognize Ms. Gray, I would again ask the members to identify themselves for the sake of Hansard and for the committee members as well.

**Mr. Lécuyer:** Sorry. I remembered just as I finished. Thank you. Je suis Gérard Lécuyer. Je suis directeur général de la Fédération provinciale des comités de parents.

[Translation]

My name is Gérard Lécuyer. I am executive director of the Fédération provinciale des comités de parents.

**Mr. Chairperson:** Thank you, and again I am afraid I will have to ask you to identify yourself each time when you respond.

**Ms. Gray:** One other question. Obviously, in looking at these amendments and particularly in some of the sections where you talk about a particular section being unconstitutional, I am assuming that you have sought legal opinion on those sections?

**Mr. Bédard:** Armand Bédard, Commission nationale des parents francophones. En effet, on a quatre ou cinq avis. Me Laurent Roy ici, qui est l'avocat de la Fédération en Cour suprême; notre avocat qui est Me Michel Bastarache, de Moncton; M. Pierre Fourcher, professeur en droit constitutionnel de l'Université de Moncton; Me Dale Gibson, de la Faculté de droit de l'Université de l'Alberta. Ils nous ont confirmé à l'unanimité lorsqu'on déclare que quelque chose serait, et je dis bien serait, anticonstitutionnel.

[Translation]

Armand Bédard, Commission nationale des parents francophones. We have in fact been given five or six legal opinions. Mr. Laurent Roy here, who is the Fédération's lawyer at the Supreme Court level, our lawyer, who is Mr. Michel Bastarache, from Moncton, Mr. Pierre Foucher, professor of constitutional law at the University of Moncton, Mr. Dale Gibson, from the Faculty of Law, University of Alberta. They unanimously confirmed it for us whenever we state that something might be, and I stress might be, unconstitutional.

**Ms. Gray:** Merci.

\* (1140)

**Mr. Plohman:** Mr. Savard and the remaining presenters, I want to thank you for a very exhaustive and detailed presentation. It leads me to wonder just a little further than what was just asked about consultation.

First of all, I would like to ask what was the nature of the consultation prior to the drafting of Bill 34, because you have so many amendments and changes that you are recommending. In many instances then, it does not reflect the thinking that you obviously had with regard to the implementation following the Supreme Court decisions. So I just ask you what was the nature and extent of consultation prior to the drafting of Bill 34?

**Mr. Lécuyer:** There were a number of meetings from the time the government made its pronouncement on March 26, 1992, and the introduction of the bill, but not specifically on the points included in the bill. These meetings have occurred recently, and we have—I wish to restate here, perhaps I forgot to also repeat that I am Gérard Lécuyer with the Fédération des parents—we have stated in the bill that we generally agree with the bill and the objectives that it will reach.

You will have noticed that many of the changes proposed are minor in the sense that they are intended to either bring both versions in line or to use what we felt was more specific language. In other areas, in the cases of all the mechanisms to settle disputes, they are not hard and fast changes that we have proposed.

We thought that there were four different mechanisms involved here, and that perhaps, especially in the case of mechanisms having to do with constitutional matters, there was a better way of doing it. To be very specific with how it could be done, we introduced this last section in which we

make recommendation to refer to The Arbitration Act and Queen's Bench to settle such disputes.

**Mr. Plohman:** Thank you, Mr. Lécuyer. My question was really whether there was a dialogue that went on with the drafting of the bill. In other words, was there a rough draft that was presented for consultation and comment and referred back to the minister in a kind of two-way communication prior to the actual final draft or form of this particular bill. Did that happen? That is simply my question.

**Mr. Savard :** Non, ça ne s'est pas produit comme ça.

[Translation]

No, it did not happen like that.

**Mr. Plohman:** Mr. Chairperson, I have a question for Armand Bédard, with regard to the issue of boundaries. I believe you made several references to the boundaries as set out and envisaged by this government in the booklet that was prepared. Others did as well. Is it your opinion that this map, with these boundaries, really has—and I gather from what you said this is true, but I would like your confirmation—it really has no force in law in that it would be struck down, that it simply is not consistent with the Supreme Court decision?

**Mr. Bédard:** Armand Bédard, Commission nationale. The Supreme Court speaks of the territory. Article 23 speaks of within the boundaries of a particular province, which would lead everyone to conclude that we are talking about the entire province. Whether the Supreme Court would strike it down would depend on whether the parents would take it there, but it is really quite inconvenient. Let me give you a few examples.

Where I was born and raised is a municipality only 12 miles wide, and people have been going to the school in La Broquerie ever since there was a school open which would be in the 1880s. Now a few miles this way you have Hanover School Division, and a few miles the other way you have the Local Government District of Reynolds. Students who have been attending this school forever—well, not the same students of course—all of a sudden after a hundred and so years to become nonresidents, it just does not make any sense.

Now, I think I mentioned in my part of the presentation that we are talking red tape here. If one student from Thompson, Manitoba, who is a 17-year-old, decides to finish off his or her studies



at Collège Louis-Riel, he or she is obviously a nonresident according to what is proposed. Now the Francophone school board—[interjection] I am sorry, Thompson is not a correct example. Flin Flon, because Thompson is on the map. A slip of the tongue. The Flin Flon school board would have to negotiate with the Francophone school board. If somebody from Pinawa, which is in itself a school district, had one student, they would have to open negotiations to establish what is the residual fee. Consolidated school district of Sprague, which is not impossible, would have to—it is just to me unnecessary.

Even in the areas that have been included in the map here, I do not know of any request that has come from Thompson, no request from The Pas ever. There have been no requests in areas which traditionally do not have sufficient numbers. I think we have made it quite clear that we accept that provision. It is in article 23, and we have always sought to have all provinces respect article 23, that being part, where numbers warrant, is included in that. It seems quite redundant, at least to me, where neighbours would be classified under two different categories. There is just a dirt road in between the two.

**Mr. Plohman:** Well, we have been somewhat concerned about the purpose of this map, and we have challenged the minister on that on other occasions. I just would like to ask what your comments or what you feel about this particular—is it harmful and misleading in any way insofar as the implementation of the Supreme Court decisions? Does it in fact give a misleading picture of what we are dealing with here?

**Mr. Bédard:** It does create sort of a qualifying aspect. If you live in a certain area, you are automatically entitled to exercise your right. If you live across the road, then being a nonresident somebody has to start negotiating on your behalf, and I do not think that was what the Supreme Court said.

**Mr. Plohman:** Mr. Chairperson, in my words, not yours, this is just a political map with no force in law and it has the impact of creating two classes of people, two classes of students under the act.

**Mr. Bédard:** I can see the rationale of where the map came from, and, for the most part, I believe the numbers. It was taken from Stats Can based on municipalities, and where there were 50 or more

qualifying, ayant droit, then they became part of that map, which is why, of course, we find Thompson in there, and there is not a "français" school in Thompson, never has been. We also find The Pas and Dauphin. Generally, the map fairly accurately reflects where the current population is. However, they spill over. So I understand where it comes from.

**Mr. Plohman:** Mr. Chairperson, I wanted to ask still, St. Hilaire, perhaps, or anyone else who wanted to answer, about the list of costs and obligations on page 12. There are no dollars attached to the number of funding requirements, and I am wondering if you have any estimate of actual costs of providing these particular services for the Francophone school division—general administration, transportation, basic French education costs, remedial costs, implementation costs, capital costs.

**Mr. Lécuyer:** Gérard Lécuyer, de la Fédération. Nous, personnellement comme Fédération, n'avons pas fait le travail ou un relevé complet des coûts qui pourraient être associés à chacune de ces catégories de coûts. Nous savons, par contre, pertinemment, qu'il y a ces coûts additionnels, et, en particulier, le rapport du comité Gallant - et de façon plus précise, le chapitre 7 - traite de ces coûts additionnels. Nous savons aussi qu'il y avait rattaché au comité Gallant un sous-comité qui devait faire le travail concernant le financement et que ce comité a évalué ce que pourraient représenter ces coûts additionnels. Par contre, nous n'avons pas ce rapport.

\* (1150)

**[Translation]**

Gérard Lécuyer, from the Fédération. We ourselves, the Fédération, did not perform the work or do a complete estimate of the costs that might be associated with each of the categories of costs. On the other hand, we know for a fact that there are additional costs, and the Gallant Committee Report deals specifically with those additional costs, in Chapter 7 as a matter of fact. We also know that the Gallant Committee had a subcommittee attached to it that was to focus on financing and that this subcommittee assessed what the additional costs might represent. We do not have this report, however.

**Mr. Plohma:** Have you asked for that information and not received it? Is that what you are saying, Mr. Lécuyer?

**Mr. Lécuyer:** Non, ça faisait partie du travail interne du comité Gallant, à ce que je sache, et ces travaux ou ces relevés n'ont pas nécessairement été inclus dans le rapport final. C'est le rapport final du comité auquel nous avons accès.

**[Translation]**

No, that was part of the work done internally by the Gallant Committee, as far as I know, and this work or these estimates were not necessarily included in the final report. What we have access to is the committee's final report.

**Mr. Plohma:** Nevertheless, to anyone who would answer, is it your view that the province has an obligation to fund these services that have been listed here. Is that a correct assumption on my part, that you are saying that the province has an obligation to fund those.

**Mr. Laurent Roy (Fédération provinciale des comités de parents (FPCP)):** Juste au simple libellé de l'article 23, il est bien clair que ces coûts rattachés à l'éducation doivent être à la charge de la province puisque le libellé le stipule bien clairement. Il dit "à même les fonds publiques", alors c'est bien clair que c'est la province qui a charge de ce dossier financier.

**[Translation]**

Just looking at the actual wording of Section 23, it is quite clear that the costs related to education must be assumed by the province because the wording very clearly stipulates it. It says "out of public funds," so it is very clear that it is the province that is responsible for this funding area.

**Mr. Plohma:** Mr. Chairperson, the reason we ask that is because we do not have a complete rundown of the costs; we have a figure from the minister of some \$560,000 for implementation. We know the federal government has announced \$112 million over six years for six provinces. We do not know what percentage would come to the province to assist with any of these costs over that time.

The minister said it could be somewhat more than 20 percent, but we have not got accurate figures on this, and that is why we are asking you if you have these figures, so that we get a better idea and perhaps the minister will feel somewhat

obliged to break her silence and provide some of that information.

Thank you for your presentation today, and we certainly would like to study a number of these recommendations that you have put forward today.

**Mr. Storie:** Mr. Chairperson, I, as well, would like to thank all of the presenters and for a detailed review, almost clause by clause, of some of the potential problems in the bill. I guess, as I think virtually everyone has said, in principle, this bill is to be supported. The devil lies in the implementation, I guess.

It seems to me there are two fundamental flaws as we proceed: No. 1, if I understand Mr. Savard correctly, and perhaps Mr. Bédard, that they had a legal opinion which says that if this bill were to be challenged, it would likely be found unconstitutional in that it establishes limits that were not originally intended by the Supreme Court decision, and as it has been implemented, I understand, in Saskatchewan, for example. So what we are doing here is perhaps doing work that will be undone if not by current parents, by some group of parents or some disgruntled parent or some parent who feels that, because they are not entitled in some way, their rights are being abrogated. It seems to me that is a fair assumption.

Mr. Bédard, I think, mentioned a number of legal opinions that he had. I am wondering whether in fact he has a legal opinion which says that the current boundary arrangement and the bill before us is unconstitutional in some respect.

**Mr. Bédard:** The word "unconstitutional" is not used. The words that are used could very well and easily be challenged and the complainant would likely win. No constitutional lawyer will ever give you 100 percent assurance that you can win. It just does not happen.

If I might just take the opportunity on added costs, a reference was made to the contribution that was announced by Monique Landry about a month and a half ago to assist provinces in putting together a system of education which meets the requirements and obligations under Article 23. I will just give you a few numbers. The amount that has been set aside for such projects is \$78 million to be shared, not equally—that is not what it says—by the four western provinces, Nova Scotia and Newfoundland. Okay?

We could speculate until we are blue in the face as to what Manitoba might get, but I can almost invite you to speculate in a two-digit number insofar as millions are concerned.

With regard to added costs that many people have attempted to evaluate, it is kind of hard but I remind you that in the existing system that we have, in excess of 90 percent of total education costs are already there. We have mentioned before that the teachers' salaries will not go down or up. They will be negotiated just like any other collective bargaining unit. The schools for the most part are already there. There are existing buses and bus routes.

Bill 34 here invites all parties involved to negotiate arrangements, which is fine as long as everybody is willing to negotiate. The Department of Education is already supplying funding with regard to school materials, so extra costs, most of them, except for the *accueil* would be, in my view, one-time costs. Let us not forget there could also be some long-term savings if we look at the numbers involved, possibly reduced administration costs.

**Mr. Storle:** I asked the question about the constitutionality of this because I think it is likely that it will be challenged given that it sets up two classes of students, but it seems to me that there is confusion in the bill itself, that in fact while attempting to present a picture of, in essence, limiting this right somehow, it puts the obligation on the Francophone school division to accept students.

For example, in Section 21.15, which is referenced in your brief, it says, the Francophone school board shall—the obligation is on the school board to admit to a program it provides under Section 21.5, if it is reasonably practical to do so, any nonresident pupil, at least one parent of whom is an entitled person.

So we get into the problem where in effect this right exists even in the bill, although on the surface the government is seeming to say, no, that is not right; we are designing this division. I am wondering is this not going to create a situation where virtually anyone who meets the requirement is entitled to—that the provider division has to negotiate with the Francophone school division, regional committee, whatever, to have those costs paid by the provider division. Does that not

happen? Is that not going to happen automatically?

**Mr. Bédard:** If I understand you correctly, what you are saying is that according to the current map, if people from outside the borders, whether they speak French or not, but are entitled, could attend or have a right to. I am not saying they could. The distance factors and the numbers factor would enter the picture, but should those two not enter the picture, the answer is, yes, there is an obligation, and they have the right to exercise that particular right.

Just as a reminder, Article 23 never once will mention the language spoken by the child. The right is given to parents, not the children.

\* (1200)

**Mr. Storle:** Well, Mr. Chairperson, I think that is exactly the point, that the government is trying to present this in a way that has it both ways, in the way that it limits its obligations, and yet obviously the bill itself contradicts that limitation.

The other question I have is, assuming that we take an example where there is a person from, let us say, Flin Flon, who is entitled and applies to take the program within a français school, wherever one is established—one may not be established in Thompson, but wherever there is one—and the Francophone school board says, yes, we want to accept that student, is there not going to be, at some point, pressure on, and would not you be putting pressure on, the provincial government to make sure that that right can be fulfilled, that it is not just a constitutional right, but it is a right that has some substance?

**Mr. Roy:** I think that we must be mindful of what the Supreme Court said on that topic, that Section 23 is a minimum, not a maximum. In your example, I think that the legislation has to be there to facilitate the greatest possible grouping of parents who are aimed, or who are Section 23 parents. That is very crucial, the example that you gave, that the mechanism must be there for that parent to have access.

Let me say something about the boundaries, since you asked a question a while ago, that the boundaries are artificial. I do not know where they come from. If they are based on Stats Can, Stats Can never asked the question: Are you a Section 23 parent? I mean, the norms are not there in Statistics Canada to determine who are Section 23

parents and where they are. So, generally speaking, the boundaries are very general or arbitrary. Furthermore, they are not based on anything, on a census that was taken or anything of that nature.

Now, you juxtapose that with Section 23 which talks about everywhere in the province. Why go and set arbitrary limits, geographic or otherwise, without any basis? It would simply cause more red tape; it will cause more problems than it will solve.

Another example of unconstitutionality is the four years. When we talk about parents who are qualified under Section 23, what is the four years, having followed four years? That is not in the Charter, but we find it in the proposed amendment.

**Mr. Storle:** Well, the presenter makes my point, that this is an artificial document, and it is presented to confuse the issue rather than to clarify it. The evidence is in the act itself.

**Floor Comment:** Only in your mind.

**Mr. Storle:** Well, I mean, you just heard. In fact, the proposed boundaries are unconstitutional. This was presented to the people of Manitoba, on behalf of the government, to limit their responsibility. The Supreme Court said that should not be done.

Not only that, the government, in drafting the legislation, has made it clear. The member for Emerson (Mr. Penner) may want to read the bill, Section 21.15(1) says: "Children of entitled persons to be admitted." In other words, there is an obligation. The question now becomes, is it the responsibility of the parents to ensure that this obligation is met or is it the responsibility of the provincial government?

I can assure the member for Emerson and others that our questions have been designed to protect the principle and to protect the school division, because this government has offloaded every opportunity it can get. This is not going to be an inexpensive process, and if it is going to be done and meet the obligations of the Charter and the Constitution, then the provincial government has to be committed to it. It cannot have it both ways. It cannot limit it and not limit it at the same time, so we are trying to clear that up, I think is what we are trying to do.

I guess my question is that if the Francophone school division has the obligation to accept the student—let us assume that this is a long distance

obligation, that someone is living in Garden Hill or Wabowden or some community that does not have access to a Francophone school or Francophone school division—should it be the obligation of the parent then to, for example, provide room and board? Is that not undermining the intent and the spirit of the constitutional question?

**Mr. Bédard:** The province already is to a certain extent in Grades 11 and 12, in cases like Laurier and St. Lazare. Where the complete high school program is not available, the Province of Manitoba already is and has been for about six or seven years providing funds for there.

What would happen to a Grade 2 student who is way beyond one hour of transportation, I have no idea. It is obvious that the program cannot be offered locally. Obviously no system is perfect in the sense that the numbers-warrant provision still applies, but other mechanisms have been developed and I suppose others will in order to ensure that the greatest number possible will receive full rights. I am not sure that we could ever dream of 100 percent.

**Mr. Storle:** My colleague had mentioned the question of the other costs, and they are referenced in your paper. I think the presentation makes it very clear that the obligation is on the provincial government. I guess our concern is that the obligation be on the provincial government, and the federal government, perhaps, which is also referenced, but that it not be at the expense, so to speak, of the public school system, that in fact there be special recognition of special, in some cases perhaps, as you suggest, one-time costs; there will be other ongoing costs that have to be the obligation of the provincial government. You can see the potential for incurring costs, because part of the legislation includes the establishment of facilities for the regional committees. Now it is not set yet in the legislation whether there are going to be three or four. Basically, it is left open to regulation.

How are we going to know that the costs that the provincial government ought to incur as a result of its obligation do not become a cost to other school divisions? How can we know that as legislators and as citizens?

**Mr. Lécuyer:** Il n'y a pas de garantie effectivement, ou ce n'est pas de façon précise déterminé dans le projet de loi. Mais mon collègue

toute à l'heure a fait allusion au fait que, de toute façon, pour la période initiale d'implantation, il y a une aide supplémentaire qui sera fournie par le gouvernement fédéral. Et il y a aussi dans la loi, ou dans ce projet de loi, des clauses qui obligent les deux systèmes à entrer en négociation. On pense, par exemple, dans les matières de transports, etc. Mais à savoir est-ce que, pour cette période de mise en œuvre, je pense que le financement supplémentaire dont on parle, à partir de cette entente qui devrait être négociée entre la province et le gouvernement, devrait couvrir ces coûts initiaux d'installation. Nous avons aussi demandé à ce que les surplus accumulés — et à notre avis c'est tout à fait dans un sens de justice et de légitimité, puisqu'ils l'ont été à partir des taxes de tous les contribuables dans ces systèmes à l'heure actuelle — soient aussi donc transférés à base pro rata. Et ces revenus additionnels contribueraient envers les frais d'installation des bureaux régionaux.

**[Translation]**

There is in fact no guarantee, or it is not precisely set out in the bill. But just now my colleague alluded to the fact that, in any event, for the initial implementation period, there is additional support that will be provided by the federal government. And also in the bill there are clauses that require the two systems to enter into negotiations. For example, we can think of such items as transportation, et cetera. But as to this initial implementation period, I think that the extra funding we are talking about, that flows from this agreement which is supposed to be negotiated between the province and the federal government, should cover these initial start-up costs. We also asked that the accumulated surpluses—and in our opinion we think our request is justified and legitimate since they were accumulated out of the taxes paid by all the taxpayers in the systems as they currently exist—also be transferred on a pro rata basis. And these additional revenues would contribute to the start-up costs of the regional offices.

**Mr. Storle:** Mr. Chairperson, I just have one further question. It deals with, I guess, the dispute settlement mechanism in the agreement when it comes to shared services, the provision of transportation and so forth.

I am wondering whether the suggestion, for example, that transportation be left with the Francophone school division is not something that

you would recommend be negotiated now between the province and the federal government, that it is going to be a very contentious issue, particularly in rural Manitoba, an expensive issue and a contentious one. I am wondering whether you are aware of any discussions, suggestions to this point that would have seen that obligation fall directly on the provincial and federal government.

\* (1210)

**Mr. Roy:** Si je comprends bien la question, c'est de savoir est-ce que ça devrait être négocié par la division scolaire ou est-ce que ça devrait être négocié par le gouvernement provincial? C'est ça la question?

**[Translation]**

If I understand the question, you want to know whether it should be negotiated by the school division or should it be negotiated by the provincial government. Is that the question?

**Mr. Storle:** Just for clarification, Mr. Chairperson, the question is, should this be an obligation that falls on the school board to negotiate, or should the province and the federal government not deal directly with the Francophone school division for the provision of those services? It is going to be very contentious in divisions where transportation is already a significant cost.

**Mr. Roy:** It is not something that we asked for, Mr. Storle. I do not think that the new school division should be left to negotiate with St. Boniface School Division, with Norwood School Division, with St. Vital School Division, and leave to Norwood the veto right to stymie its implementation plans. I think it would be a lot more efficient, cost efficient and otherwise, for the province to negotiate it—either that or give the hammer to the new school division, but to simply leave it to an arbitration board, it seems to me, is throwing the baby with the bath water. It is really a difficult situation. How can you do any planning for the upcoming school year if you are left to negotiate with 25 school divisions? It does not stand.

**Mr. Storle:** Just on a final note. The Saskatchewan resolution of this has been to provide the Francophone school division with their own transportation support, and it seems to be a lot more equitable and will lead to, I think, a much smoother transition. Having said that, I want to thank the presenters for an interesting challenge.

**Mr. Penner:** Mr. Chairperson, I simply could not remain quiet and leave the indication that the honourable member for Flin Flon left with the table or those who were listening to the presentations here that I had not read the bill. I want to say to the honourable member for Flin Flon, first of all, that had he read the bill as often as I had read the bill, he might in fact be more familiar with it.

However, I want to also express my appreciation to the members who have presented here on behalf of the Francophone community today. I think you have made an excellent presentation, have raised a number of issues—

**Mr. Chairperson:** Excuse me. Mr. Penner, could you bring your microphone up a little bit, please. Thank you.

**Mr. Penner:** —of interest to me, as well, being a member of the Legislature who represents a very significant number of the communities that you have indicated here, and we will certainly be taking that to heart when we make further consideration in this committee of the bill.

I also would like to know whether my assessment of the situation is correct insofar as determining that there is not total agreement within the Francophone community that this is the direction we should be heading in. I find, in discussions within the Francophone community, that there are hesitations and also reservations about the direction that we are heading in, and I think we need to seriously consider all aspects of the discussion around this issue and how we implement the instruction of linguistic services and how we govern those instructions so that they satisfy the broadest base of the Francophone community at all times. Would you agree with that?

**Mr. Roy:** I think it is important to remember that this is something new. There is an obligation on the province to foster, to promote the program and to make sure that everyone understands it and not sort of go on gut feeling that maybe perhaps there is dissension.

If you look for unanimity you will not get it, that is for sure. But if you have done everything in terms of promotion, the constitutional obligation is there for the province to do so. Once you have done that, I think you will find that you are close to unanimity.

**Mrs. Vodrey:** Mr. Chair, I would like to thank the presenters for their very sincere interest and presentation.

As one of the members earlier noted, we have had an opportunity to talk together about the issues that you have raised today and also to provide some information back regarding what you have proposed to us.

So I will not take time to go through recommendation by recommendation. We have already had several opportunities to do that. But I would like to thank you for your interest.

On the area on constitutionality, as we have discussed, you I am sure understand that we believe the bill will meet our constitutional obligations and has been constructed in order to do that, to meet our obligations and also to work with the community of Manitobans that this bill is intended for.

I know in our earlier discussions we spoke about the needs of all Manitobans and that when government had put together this bill and developed this bill we did so as legislators representing Manitobans, and we put together a bill that we believe does meet the needs of the people of Manitoba.

My colleagues on the other side have quite frequently discussed the Saskatchewan model, and I am sure that they would not mind distinctions being drawn between the approximately 1,500 students in Saskatchewan that the Saskatchewan model deals with versus the approximately 5,400 students in Manitoba that we are working to develop a bill for.

On the issue of the Saskatchewan comparison I would say as well, I would like to lead into a discussion on the territory.

Monsieur Gallant sat on the Saskatchewan committee which looked at what its model would be. He also chaired our task force in Manitoba regarding Francophone governance. That committee did not recommend that the whole province be seen as a territory.

In fact, the recommendations of that committee were for a territory and a service area, and though we did not accept the territory and service area recommended specifically by Gallant because it dealt with school divisions and we understood that relying on school divisions was perhaps a more

risky way to go constitutionally, we did then rely on census data by Canada Census.

(Mrs. Louise Dacquay, Acting Chairperson, in the Chair)

So just to answer the question of what did we rely upon in looking at drawing of the territory versus the service area, we did look at the census data, that census data identifying for us the potential students who would be part of the area most likely to enroll in Francophone school board.

I would then say that the Supreme Court did not comment on making the whole province of Manitoba a territory and in fact left that to the decision of government in developing the bill. So that just reiterates for you how it is that we came to the conclusions on how we would design the available area.

\* (1220)

In terms of the funding issues, we have spoken this morning a great deal about who is responsible for certain funding. Will it be the Province of Manitoba, will it be the federal government? I would just like to tell you and tell the committee that we are in negotiations with the federal government. The federal minister, the Secretary of State, has made an announcement that there is a certain amount of funding available. Manitoba has begun their negotiations, and we look forward to those negotiations being successful on behalf of Manitoba. To say more I would want to make sure that our position in negotiating was protected. So I can just tell you that, again, those negotiations are ongoing.

The issue of surplus has come up, and I would like to ask a question for whomever would like to answer. Can you tell me in what other jurisdiction the surpluses of school divisions have been transferred?

**Mr. Roy:** I am afraid I cannot answer that, Madam Minister.

**Mrs. Vodrey:** It is my understanding surpluses have not been transferred. I wondered if you had information that I did not have. My understanding is that legislation has not had that occur. It is left to the negotiation.

In the area of accommodation of students, I would say that there was a discussion around accommodating a student who might not be a part of the territory, and certainly this bill recognizes the

obligation, the right of that young person and their family to ask for that student to be included and to attend a school which is run by the Francophone school division.

So I am surprised at some of the discussion, because certainly we would be looking to accommodate that child and that child's family. That is the intention of the bill. We believe the territory does accommodate those young people who would attend. Should there be a child in another area, we would certainly be looking at the assistance to accommodate the parents' wishes to attend. However, in setting up a school, again, it is the where-numbers-warrant issue, and I know that you reference that in your discussion.

I have mentioned the Saskatchewan model that has been referred to, and there certainly are a number of differences. That Saskatchewan model was made for the people of Saskatchewan. It is a different model than the model of Manitoba; however, it does allow for the opting in of parents, parents who wish to choose to be part of a Francophone governance system. We may want to speak about the Saskatchewan model somewhat later.

Then in terms of comments by the other side of limiting responsibilities, I can tell you we believe that this bill certainly addresses the responsibilities and that it has moved Manitoba forward into creating the Francophone division. A colleague of mine, yesterday, coined the phrase that members on the other side, one in particular who sat at the cabinet table was a member of a could-have, should-have, would-have government, but they did not. So I would like to remind the members today, and the people present, that it is this government who is committed to moving forward with the establishment of the Francophone school division and with the legislation that we have brought forward and certainly with the discussion that we have had today and on the days previous. Thank you.

**Mr. Bédard:** Madam Minister, if I may pursue the question you asked before. When the current school boards, the 54 or 55 or so were created about 25, 26 years ago, as a result of an amalgamation of I believe 1,200 school boards, all debts and all surpluses were transferred.

**Mrs. Vodrey:** Madam Chairperson, this is not an amalgamation. Thank you, I was referring to the creation of a Francophone school division.

**Mr. Plohman:** Madam Chairperson, I have one other question. We have provided figures that we have estimated on the basis of total number of students likely to be transferred to the Francophone division and the per student grants, perhaps around 5,000 students, and you can correct me if your estimates are different than that, and the estimated cost transference or grant transference of about \$5,000 per student. We are talking about in the neighbourhood of \$25 million being transferred from existing divisions to the Francophone school division.

Would you feel that is a fairly accurate estimate or do you have figures on that?

(Mr. Chairperson in the Chair)

**Mr. Lécuyer:** I do not know what the exact figure of provincial grant is at the moment on a per student basis. Obviously that figure times the number of students who will transfer to the new school division will be the number of that grant going to the Francophone school division. I have heard numbers used in that regard, as well, that perhaps you have used, and I think that the figures are actually not as large as the ones I have heard.

On the other hand, you are transferring in many instances a school, the whole caboodle, the staff, facility, et cetera, and you are transferring the cost responsibilities to the new system. You are removing those cost facilities from the existing system. So in all fairness, who bears the costs gets the revenues from those costs. It seems logical to me.

You are saying, well, there may be, as a result of that, some reduced numbers in that school division and that will incur costs—perhaps. I have never seen any figures to show that these costs were real or how exact they were. I think perhaps we are exaggerating those costs in the sense that if the province proceeds to redefine the borders of the school divisions and creates fewer numbers, I think

it also creates opportunities there to level out these additional costs because I see in that economies of scale in many respects. That will, therefore, facilitate the existing school division to handle that incurred problem, if it is one. That is how we have looked at it.

**Mr. Plohman:** We have not estimated the residual cost to existing divisions as a result of students being taken out, but we are attempting to try and find out what they are. We have not given any figures, so we could not have exaggerated those figures. We have stated that there will be, in many instances, costs, and we wanted to know whether you had any figures on that because the minister has not given us any.

**Mr. Lécuyer:** Again, it is impossible to come up with hard fast numbers until you know what these numbers are.

We think we could have known more readily what the amounts were under a system where everybody was considered as a resident. Although in here it says that everybody will have access, there is obviously, in that clause, the statement made "wherever practical." In that sense, they are not being seen in the same category because some are residents and will automatically have a right to belong. Others are nonresident, they have a right to belong wherever practical. So that is not exactly in the same category.

**Mr. Chairperson:** If there are no other questions or comments for the presenters, I thank you very much this morning for your presentation.

The hour is 12:30, what is the will of the committee?

**An Honourable Member:** Committee rise.

**Mr. Chairperson:** I would remind committee members that the little machines for translation are not your property. Please leave them at your place.

Committee will resume consideration of these matters at 7 p.m. Committee rise.

**COMMITTEE ROSE AT: 12:29 p.m.**