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RESPONSIBILITIES OF THE PROVISIONAL COUNCILS

This presentation of various aspects of the organization of the new school boards attempts to outline some of the actions to be taken by the provisional council. It does not reflect the more recent changes or modifications made by the government to by-laws or administrative directives.

Pursuant to section 516 of the Education Act (hereinafter E.A.), it is the responsibility of the provisional council to take all the necessary measures to organize the first year of the new school board which will start on July 1, 1998.

In this regard, the provisional council has all the powers of the school board as if it were the council of commissioners of this school board.

“ Sec. 516 The provisional council is responsible for taking the preliminary measures leading to the operation of the new school board in its territory from 1 July in the year following the year of publication of the order respecting territorial division and the measures necessary for organizing the first school year commencing on that date.

For this purpose, the provisional council shall exercise the functions and powers of the new school board as if it were the council of commissioners thereof.”

The first action to be taken by the provisional council at its first meeting is the appointment or the election of the chairman and vice-chairman of the provisional council (sec. 514.4). Subsequently, it appoints a director general who assumes his or her duties as soon as the appointment is made. The appointment of the director general

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by the provisional council must be made in accordance with section 200 E.A. The director general thus appointed must consequently have been designated by a vote of at least two-thirds of the members of the council of commissioners having the right to vote. It is not necessary for the director general to be appointed at the first meeting.

The director general remains in office until he or she is dismissed or the mandate is terminated. Thus, the director general appointed by the provisional council may hold the office of director general of the provisional council of the new school board and continue to be the director general of the new school board without the latter having to make a new appointment after July 1, 1998. In addition, if the director general comes from an existing school board in the territory of the new school board, this person can continue to carry out his duties as director general of the existing school board as these two positions are not incompatible. Thus, section 201 provides that the director general exercises his duties full time. This part of section 201 contains no provision whatsoever indicating that the director general has an exclusive contract with the school board.

The director general is the sole officer of the provisional council of the new school board to whom the provisional council can delegate its functions and powers pursuant to section 518 E.A. The Education Act does not provide a time limit for appointing the director general. This appointment can therefore be made at any time. We suggest however that it be done as quickly as possible so that the provisional council can start organizing the new school board.

The operation of the provisional council is governed by sections 158 to 173 and 175 to 178 of the Education Act (sec. 515 E.A.).

These sections provide that the provisional council must, by by-law, determine the day, time and place of its regular meetings. It can also hold special meetings.

Both the regular and special meetings are public and the provisional council must provide a question period for the public (sec. 168).

The Education Act provides for a number of important tasks to be carried out by the provisional council so that the new school board can begin operating as of July 1, 1998.

Among these tasks, are the following:

- the allocation of the rights of ownership in the immovables situated in the territory of the provisional council;
- the establishment of a three-year plan of allocation and destination of immovables;
- the determination of a list of schools and adult education centres;
- the issuance of the deeds of establishment;
- the allocation of the rights and obligations, other than the immovable properties, of the existing school boards;
- the allocation of educational services among the schools and adult education centres;
- the determination of enrolment criteria for students;
- the enrolment of students;
- the allocation of financial resources among the schools;
- the determination of the budget of the schools and adult education centres;
- the adoption of the new school board's budget;

- the obtaining of approval of the budget by the minister;
- the determination of the school tax rate;
- the distribution and transfer of personnel in accordance with the applicable transfer and reassignment standards and procedures;
- the division of the territory into electoral divisions;
- the establishment of standards and procedures for the evaluation of student achievement;
- the recognition of extracurricular learning;
- the establishment of rules for the placement of students;
- the adoption of standards for the organization of services for handicapped students and students with social maladjustments and learning disabilities;
- the allocation of time allotted to each subject;
- the establishment of the school calendar;
- the negotiation and conclusion of school transportation contracts where applicable.

All these tasks must be carried out by the provisional council so that the new school board can begin functioning as of July 1, 1998. It is important to note that the decisions taken by the existing school boards dealing with the same matters cease to be in effect as of June 30, 1998, as the legislator has not provided terms in Bill 109 for the continuation of the resolutions and by-laws of the existing school boards. Thus, to avoid a legal vacuum in certain aspects of the functioning of the new school board, it is important for the provisional council to take the measures which may become necessary as a result. For example, the

standards for the organization of services for handicapped students and students with maladjustments and learning disabilities adopted by the existing school board will no longer exist as of July 1, 1998.

CONSULTATION

Apart from subjects requiring consultation in virtue of collective agreements, the provisional council is under no obligation to consult any committees whatsoever in order to make decisions on the matters mentioned above.

Thus, section 39 of Bill 109 provides for the striking out of the first paragraph of section 523 which reads as follows:

“Sec. 523 In addition, the provisional council shall

- 1. See to the establishment of the advisory committees of the new school board;”*

By virtue of the striking out of this paragraph, the provisional council is not required to form advisory committees for the new school board. Nor, in our view, can it form such advisory committees since the schools of the new school board have not been created and will have no students registered in and attending them prior to July 1, 1998, whereas all the decisions mentioned above will have to be made well before this date.

Therefore, for each matter mentioned above requiring a decision by the provisional council of the new school board, there are no requirements whatsoever for consulting advisory committees of the existing school boards, or an advisory committee of the provisional council of the new school board. In this regard, the provisional council is completely autonomous.

However, as of July 1, 1998, the decisions taken by the provisional council may be modified by the new school board and the latter will then be bound by the obligations to consult provided for in the Education Act now in force.

THE BY-LAWS

Some of the matters mentioned above in respect of which a decision is required by the provisional council of the new school board must be adopted by a by-law of the provisional council. For example, we will consider the case already mentioned, namely the adoption of standards for the organization of services for handicapped students and students with maladjustments and learning disabilities provided for in section 235 of the Education Act. This section provides that the standards of organization are to be adopted by by-law.

Each time a decision must be made by by-law, the procedure provided for in section 392 of the Education Act must be followed to the extent that it is compatible with the provisions of Bill 109.

Thus, only the first paragraph of section 392 will apply:

“Sec. 392 No by-law may be adopted by a school board where this procedure is provided for in this Act, unless the school board gives public notice of 30 days before adoption, indicating the object of the by-law, the day appointed for its adoption and the place where the draft may be examined.”

For each decision that must be adopted by by-law, the provisional council must give a prior notice of at least thirty days indicating the object of the draft by-law, the date set for its adoption and the place where the draft may be examined.

However, this obligation does not apply to the by-law respecting the delegation of powers to the director general which the provisional council will have adopted.

SCHEDULE

You will find below a schedule of the different steps to be completed by the provisional council during 1997-1998. This schedule is based on the one suggested by the Ministère.

ACTIVITIES	TARGET DATE
First meeting of the provisional council	September-October 1997
Appointment of the chairman and vice-chairman of the provisional council	September-October 1997
Appointment and assumption of duties of the director general of the new school board	October-November 1997
Adoption of the by-law delegating powers and functions to the director general	October-November 1997
Allocation of the rights of ownership in the immovables of the existing school boards	March 1998
Establishment of a three-year plan of allocation and destination of the immovables	April 1998
Issuance of the deeds of establishment	April 1998

ACTIVITIES	TARGET DATE
Enrolment of the students in the schools	April 1998
Registration of the notices of transfer of the rights of ownership in the immovables at the registry office	July 1998
Allocation of the rights and obligations, other than the immovable properties, of the existing school boards	July 1998
Allocation of educational services among the schools and adult education centres	April 1998
Determination of the enrolment criteria for students	January-February 1998
Admission of the students in the new school board	No later than March 1, 1998
Allocation of financial resources among the schools and adult education centres	June 1998
Determination of the budget of the schools and adult education centres	June 1998
Adoption of the budget of the new school board	June 1998
Determination of the school tax rate	June 1998
Distribution and transfer of personnel in accordance with the applicable transfer and reassignment standards and procedures	January to June 1998
Establishment of standards and procedures for the evaluation of student achievement	June 1998
Recognition of extracurricular learning	June 1998
Establishment of the rules for the placement of students	June 1998
Adoption of standards for the organization of services for handicapped students and students with social maladjustments and learning disabilities	June 1998
Determination of the allocation of time allotted to each subject	June 1998
Establishment of the school calendar	June 1998

RESPONSIBILITIES OF THE EXISTING SCHOOL BOARDS

The existing school boards have very limited responsibilities during this transitional year.

Since they will cease to exist on June 30, 1998, they can make no decision or grant any contract which would produce effects after June 30, 1998 without first obtaining the consent of the provisional council of the new school board.

During this transitional period, the existing school boards must limit themselves to expediting current matters and meeting the requests of the provisional councils.

The existing school board must in particular:

- 1° Make an inventory of its immovable properties and send this inventory to the interested provisional councils of the new school boards;
- 2° Make an inventory of its rights and obligations other than its immovable properties and direct it to the interested provisional councils of the new school boards;
- 3° Provide interested provisional councils with any information or document which they may request from it.

ALLOCATION OF THE TRANSFERS OF IMMOVABLES

The allocation of immovables is done in accordance with the terms of the agreement concluded between the interested provisional councils (sec. 519).

The transfer of the immovable is done by filing a notice of transfer at the registry office in the registration division where the immovable is located containing the

description of the immovable and the facts establishing the transfer (sec. 121 E.A. and art. 2969, 2982 and 3007 C.C.Q.).

We strongly suggest that this transfer be done with the assistance of legal counsel because if the notice of transfer does not meet all the requirements of the Civil Code of Quebec, the registrar may refuse the registration (art. 3010 C.C.Q.).

THE 1998 SCHOOL ELECTIONS

Section 529.2 of the Education Act provides that the government determines the polling date and the dates of the various steps leading to the polling.

The division of the new school board's territory into electoral divisions must be done between January 1, 1998 and March 1, 1998.

As indicated in section 6 of the Act respecting School Elections, to determine the number of electoral divisions reference must be made to the number of students on September 30, 1997 residing or placed in the territory of the new school board and admitted in a school to receive instruction in the language over which the new school board has jurisdiction.

It should be noted that the Act respecting School Elections applies to this election. Thus, to be a candidate in the election, one must be entitled to be registered on the list of electors of the new school board where one wishes to be a candidate and have resided there for at least 6 months (sec. 20 A.S.E.).

To have the right to be registered on the list of electors, one must:

- 1° Be 18 years of age;
- 2° Be a Canadian citizen;

- 3° Have resided in Quebec for 6 months;
- 4° Not have forfeited one's election rights.

In addition, sections 15, 17 and 18 of the Act respecting School Elections provide for other criteria depending on whether or not the candidate has a child who has been admitted to a school belonging to the school board.

Thus, a person can only be registered on the list of electors of the French or English language school board in which the school attended by the child is found.

The general principle of the act is that all children are admitted into schools under the jurisdiction of French language school boards with one exception, namely the child eligible for education in English in accordance with the Charter of the French Language and who has been admitted into a school under the jurisdiction of the English language school board.

Therefore, where a child is eligible for education in English, but has been admitted into a school under the jurisdiction of the French language school board, the parent would not be eligible to be elected in the English language school board.

It should be noted that it is sufficient to have one child admitted to a school under the jurisdiction of the English language school board to be a candidate in this school board.

The elector having no children admitted into a school in the French or English language school board may be registered on the list of electors of either one of the school boards where he or she resides. This option remains as long as the elector does not revoke it or until he or she has a child who is admitted to a school in a French or English language school board.

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