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by George J. Bedard and Stephen B. Lawton

THE BATTLE OVER ONTARIO'S BILL 160 AND THE SHAPE OF TEACHER COLLECTIVE BARGAINING

Le conflit qui a opposé les syndicats des enseignants et le gouvernement ontarien au sujet du projet de loi 160 mettait en jeu la nature de l'enseignement financé par les deniers publics. Les bouleversements causés par le gouvernement — en ce qui concerne, par exemple, les négociations collectives, les fusions de commissions scolaires, le nouveau modèle de financement, l'élaboration et l'évaluation des programmes — annoncent un modèle centralisateur qui replace le gouvernement et le ministère de l'éducation aux commandes du système financé par l'État. Les auteurs examinent les origines du conflit de l'automne dernier et analysent les changements qui ont été mis en place par le projet de loi 160.

In Ontario's battle over Bill 160, the *Education Quality Improvement Act*, a Biblical sense of righteousness motivated two organizational Goliaths as they girded their loins for the fight to the finish. During the autumn of 1997, on one side was the Progressive Conservative government of Premier Mike Harris and two Ministers

of Education and Training, John Snobelen and his successor, Dave Johnson. Their equally bellicose opponents were the executives of the five teacher unions and their umbrella organization that collectively spoke for 126,000 educators in public, separate and francophone components of the publicly funded education system. This system directly serves more than two million children and youth in Kindergarten to the end of secondary school, a public enterprise that in 1997 cost in excess of \$14 billion.

The Harris government's rhetoric reflected a neo-conservative spin on efficiency and accountability, the need to restore management rights, an assault on provider capture, and upholding the legitimate authority of a democratically elected government. On the other side, the teacher union heads appealed for the maintenance of equity and the protection of a public good, for the exercise of democratic rights in consensual policy making and for a respect for professional autonomy. In the absence of any compelling vision of education from either the government or the union to galvanize the public imagination, such claims and counter-claims were reflected through the media as war-cries and chanted slogans dimly heard, and less understood, in the tumult of a public sector war.

Front-page and lead-story media attention to Bill 160 focussed on the unfolding of a two-week "illegal strike" (the governments' description) or the "political protest" (the teacher unions' label) that was called by union executives to protest the Bill. The strike was larger than any teachers' strike in North American history, with more lost teaching days than the 1975 teachers' strike in New York City.

The battle over Bill 160 raises issues of interest to public policy makers on a national scale. One of these is the role of provincial governments and their agencies in labour relations, specifically for the public sector. Unlike the private sector, where a governmental agency may act as an intermediary in collective bargaining between corporations and unionized workers, public sector bargaining is more complicated because the government is either directly or indirectly the employer. The rules of collective bargaining for teachers, moreover, differ because they often are guided by various teaching profession or education acts as opposed to provincial Labour Relations Acts that govern most private and public collective bargaining. In effect, provinces and school boards now contract with unions, not teachers, to provide educational services, and for publicly funded education the vast majority of schools operate under a union contract that helps define, among other things, working conditions, staffing and staffing ratios, and the length of the working day. Legislation in most provinces grants the right to strike to teachers who provide a necessary service to the public, fostering an environment in which even provincial governments have been afraid to say "no" to their well-financed and politically powerful unions.

In the critics' view, teacher unions have a hidden

agenda: under the guise of achieving professional status and autonomy for their members, teachers' unions have, over the past two decades, usurped control from management over many aspects of the public education system, including finances, curriculum, teaching methods and professional development of teachers and administrators.

These critics give voice to a growing public concern about "provider capture," that is that teachers, union bureaucrats and school trustees are the primary beneficiaries of public funding to education, not students in schools. From these voices we hear that the telltale signs of provider capture can be found in a variety of phenomena: "Taj Mahal" school board offices presided over by scores of educrats whose salaries are often in the range of \$100,000 or more per annum; trustees whose first concern seems to be voting themselves pay raises and who seem unwilling to restrain ever-rising spending and taxation; better salaries and earlier pensions for teachers whose compensation package differs little within one province, regardless of wide variations in the costs of living; Cadillac costs for Edsel results in student achievement; and the consistent shrinking percentage of funds that are used for in-class resources such as books and materials.

Bill 160 attracted a lot of public heat for a number of reasons. Relative to the Bill's size (two hundred plus pages) and complexity, the government allowed only four weeks for discussion. Often major pieces of legislation are preceded by a white or green paper that outlines the issues and options and that invites public discussion. Bill 160 had no such papers, and its public discussion was truncated. The haste attending to the evolution and discussion of the Bill sparked criticism that this government deviated from the consensus-building approach to public policy that had been a fixture of Ontario politics since the 1960s, and that the present approach is an affront to the notion of natural justice.

The commitment of the Harris government to Bill 160 was nevertheless unshakable: it conformed with the efficiency and cost-cutting vision of the Progressive Conservatives' election platform, *The Common Sense Revolution*. Bill 160 emerged as a central piece in the government's overall strategy of restructuring public services, downsizing budgets and downloading the provincial responsibility for welfare, public housing and policy in tandem with the amalgamation of a number of municipalities on January 1, 1998. Simultaneously, the Minister of Health restructured the publicly funded health care system by merging and closing hospitals. To make all this possible, the province needed to assume a larger share of educational funding out of its general revenue in order to provide tax room on the property tax for municipalities. Effectively, the property tax for education is being cut in half and school boards are barred from access to it to raise funds. For this "tax swap" to occur, Bill 160 — or at least key parts of Bill 160 — had to be passed.

While Ontario school boards are technically the employers of educators, the Harris government had no faith in trustees' ability and desire to rein in the escalating costs and taxes required to underwrite them. It would thus fall to the government's side to publicly champion the rights of management to define the parameters of the bargaining process. Management in this context meant the Ministry of Education and Training and educational administrators and trustees at school board levels, but the battle for Bill 160 also stretched that role to include principals and vice-principals at the school level. The scope of teacher contracts from other provinces was used to justify a renorming of management rights. From the Harris perspective, "working conditions" negotiable in Ontario teacher contracts, such as the length of the school day and teacher preparation time, were too favourable to teachers and did not make efficient use of teacher time or numbers. Bill 160 was fashioned to address these issues.

Bill 160 also replaced Bill 100, *The School Boards and Teachers Collective Negotiations Act*, passed in 1975, that had defined the collective bargaining between school boards and teacher federations. Scrapping Bill 100 was one of 14 recommendations of the 1996 review of collective bargaining in education by Windsor lawyer Leon Paroian. Paroian found that over the past two decades, teacher unions had used their collective muscle and professional negotiating expertise, with implicit or explicit threats of working to rule and strikes, to exact favourable contracts from local trustees. He recommended revising the definition of a teachers' working day to include extracurricular activities, adopting a regional model of collective bargaining, excluding principals and vice-principals from bargaining units, providing conciliation and mediation services under the *Labour Relations Act*, eliminating the Education Relations Commission, constraining the right to strike or lock-out, and using mandatory arbitration to settle disputes.

Some clauses of Bill 160 drew recommendations from the Education Improvement Commission (EIC) to increase learning time by extending the work day and the school year and to use differentiated staffing, with non-certificated individuals to assist in teaching subjects such as computer science and physical education.

As introduced by Minister of Education and Training John Snobelen on September 23, 1997, Bill 160 would allow the Ontario government and the Ministry of Education and Training to: set limits on class size; cut teachers' preparation time (for the secondary panel) by as much as 50 percent; increase the number of days students and teachers spend in class each year; have teachers come back to work the last week of August to prepare for the school year; expand the use of non-certified instructors in specialty programs; take over the setting of educational property tax rates from school boards; fund students equally whether they are in public or separate schools; and establish advisory school councils for every school in the province. Bill 160 also

would have required that future collective negotiations would take place under the Labour Relations Act rather than the current School Boards and Teachers Collective Negotiations Act.

For their part, teacher federations, who formed the core opposition to Bill 160, countered with the following demands: retain the negotiation of preparation time and pupil teacher ratios; no layoffs of teachers; no non-certified staff replacing teachers; and school boards to maintain control of property tax rates.

In the complicated topography of Ontario educational politics, the fractured nature of federation memberships reflected a number of factors related to panel (elementary or secondary), gender, secularity and religion, and language that were paved over, at least temporarily, through the formation of a united front against Bill 160 under the Ontario Teachers' Federation (OTF), the umbrella organization for all 126,000 teachers. Individual federations included the Ontario Secondary School Teachers' Federation (OSSTF, 35,000 public educators); *Association des enseignantes et des enseignants franco-ontariens* (AEFO, 6,500 educators); Ontario Public School Teachers' Federation (OPSTF, 13,000 elementary male educators); Ontario English Catholic Teachers' Association (OECTA, 31,500 educators); and the Federation of Women Teachers' Associations of Ontario (FWTAO, 40,000 elementary female educators). OSSTF shared with OECTA the distinction of joining the Ontario Federation of Labour and touting the union label.

Following the 1993 imposition of the Social Contract by the Rae Government that cut public sector wages, some public sector unions, including the OSSTF, carved out a role for themselves as an extra-parliamentary opposition and worked to turf out their erstwhile allies in the New Democratic Party government who they accused of betraying social democratic principles. Public sector union executives were even less inclined to cooperate with the Progressive Conservative Harris Government, elected in June 1995, whose prescription for renewing fiscal health to Ontario was considered more repugnant. Direct political action and confrontation would be their answer to Harris's agenda.

Bill 160 threatened the five teacher unions differently, and it was these differences that prompted the breaking of ranks during the strike. All of the federations would be of less value to their members if the list of negotiable items in a contract was shortened. All unions would lose an undetermined number of members but those representing public secondary school teachers would be the hardest hit, since some specific clauses were aimed only at the secondary panel. OSSTF, which represents public secondary teachers exclusively, was the most directly affected due to proposed reductions in preparation time, elimination of examination days, the elimination of the Ontario Academic Credit year, previously Grade 13. OECTA, which bargains for Separate educators, also had a healthy secondary contingent, as did the much smaller AEFO.

Reducing preparation time for secondary school teachers would not only change their working conditions but would also reduce the numbers of teachers needed to cover all classes, although hard numbers were not forthcoming from either side. The elimination of the OAC year would also cost jobs and induce considerable "bumping" based on seniority.

The strike to protest Bill 160 lasted 10 teaching days, from Monday October 27 to Friday November 7. On-and-off negotiations between teachers' federations and the government ended on November 5 when teachers withdrew from negotiations. In between, a judge refused a government-sought injunction to end the strike. Members of all five federations went on strike, and more than 60,000 unionized custodians, secretaries and other non-teaching personnel honoured their picket lines. The decision by unions to return to work, however, was not collectively reached but was triggered when elementary school teachers' spokespersons (FWTAO, OPSTF, and AEFO) decided to throw in the towel, thus forcing their more aggrieved counterparts in OSSTF and OEFTA to follow suit.

Public opinion during the strike began to swing more favourably toward the educators when a leaked performance contract of the deputy minister indicated that the government indeed had some hard numbers to suggest that a further cost-cutting of around \$670 million was anticipated, a revelation that enforced the claim of the government's critics who contended all along that beneath the smoke and mirrors, Bill 160 was about "gutting public education" to finance an overambitious tax cut. The uncertainty about the magnitude of the change was heightened because the new funding model that would specify per pupil and program funding would not be in place until March 1998, several months after Bill 160 had been passed.

After the dust had settled upon the battle field with the collapse of the strike, the government claimed victory, having used its hefty majority to push Bill 160 to third reading over the raucous denunciations of opposition party members; the federations' spokespeople cited polls to proclaim that teacher organizations had won the battle for public opinion. While teachers probably earned a public relations victory thanks to perceived government skulduggery on the cost-cutting agenda, they were able to coax few substantial changes from the government.

To quell accusations that the cabinet would have too much power over staffing levels, the government introduced amendments to specify average class sizes (25 secondary and 22 elementary) and reductions in preparation time for secondary teachers (a one-third reduction). However, the government expressed its dismay at seeing principals leaving schools along with teachers for the picket lines by an amendment that would remove principals and vice principals from teacher federations. The government also quickly passed legislation, after Bill 160 received third reading, granting affected parents \$40 for each school child 13 years-old-

and-under for up to 10 days but attached a clause to protect teachers who crossed the picket line from union reprisals.

While the editors of the *Toronto Star* took an increasingly critical tone about the government's agenda, their counterparts at the *Globe and Mail* and the *Sun* were more positively inclined. Both the government and the unions in the war for public opinion had used print and television to argue for or against. Some of this propaganda was of questionable taste or veracity. After the strike, the unions launched a libel suit over the government's portrayal in the media of their positions. OEFTA commenced litigation to clarify the legal status of principals and vice-principals who also teach who would now be performing designated union positions.

In March 1998, the OSSTF executive announced its plans to influence the outcome of the next provincial election, and OEFTA agreed to join in the effort: they will identify 25 to 40 key ridings where the Tories are vulnerable, provide special training to members and make them available to candidates, and lobby and possibly publicly boycott corporations that have contributed \$1000 or more to Conservative re-election coffers. Spokespeople for the other teacher federations were less enthusiastic for this type of electioneering. OSSTF head Earl Manners proposed merging all teacher unions and support staff unions into one big union. Other teacher union heads, however, have publicly distanced themselves from Manners' plan.

Also in March 1998, the Johnson Ministry announced the details of its long-awaited funding formula for schools. The government's objective with this model is threefold: to provide adequate and uniform funding to meet the needs of all students; to bump up the amount of spending that goes directly to the classroom and at the same time reduce non-classroom spending, especially central office administrative costs; and to stabilize class sizes. The good news for school boards is that no substantial cuts of the type imposed in the last two years are included for total educational spending which will remain at the same level for each of the next three years — \$14.4 billion. Separate boards are pleased because the new uniformity in provincial funding ends decades of unequal funding. At the same time, for public boards, especially big city boards, this budget imposes a decrease in per student funding. Also bad news for all types of school boards is that this funding is targeted by grants to specific envelopes (such as classroom foundation, special education, early learning, central administration, etc.) and boards will have no discretion to move funds from one envelope to another.

In terms of the distribution of power within the educational policy community, the Harris government's changes in collective bargaining, in school board amalgamations, in a new funding model, in curriculum development and assessment, all point to a degree of centralization that puts the government and the Ministry of Education and Training back in the driver's seat

of publicly funded education. The logic of this centralization seems to suggest that uniformity and standardization are the main criteria by which the Harris government assesses its policy initiatives. Some of these initiatives were a recent legacy of the former government and all of them reflect national trends in governance by which school boards' discretion has been steadily eroded. The accountability movement of the 1990s, pushing and pulling from the outside until governments got the message, demanded clearer provincial educational standards, better quality assurance and a lid on escalating costs of education and the taxes levied to finance them. Seen in this light, Ontario educational governance is being moved rather abruptly away from a model of policy interdependence that has dominated centre-local relationships since the late 1960s and is being pulled toward the administrative agency model in which local school boards are seen as faithful executors of the centre's policies. How well this model fits with the reality of collective bargaining is problematic.

Presently, models of teacher collective bargaining differ across Canada. Newfoundland, Prince Edward Island, New Brunswick and Quebec have provincial bargaining; Nova Scotia, Saskatchewan and BC have shared provincial and local bargaining; and Ontario, Manitoba and Alberta employ local bargaining. Each model has its strengths and weaknesses. More centralized systems lead toward more uniform practices, reflect economic and political priorities of provincial governments and engender a province-wide teacher identity. More localized bargaining emphasizes relationships between local teacher groups and trustees, and reflect local political and economic priorities. Often, local bargaining is paired with province-wide activities coordinated by provincial teacher federations, trustee associations and sometimes agencies of the provincial government.

Decentralized arrangements for education seemed to disappoint in recent decades. Local economic control has not led to efficiency, as predicted by the theory of subsidiarity. Local decisions have often seemed irresponsible, leading to tax and expenditure increases at a time when other levels of government had committed themselves to deficit reduction and reduced program spending. One could argue that, with the relatively decentralized approach to local educational governance in a number of provinces, it was the provincial government's responsibility to offer strong tutelage as to the fiscal parameters within which school boards needed to operate. Perhaps provincial governments believed that they had made such efforts and that they had failed to override the immediate concerns of school boards to maintain labour peace at any cost. In any case, in Ontario, policy interdependence and tutelage have now been replaced by direction and regulation.

The dynamics of collective bargaining play a major role in directing regulatory change. In Ontario, the existing framework was developed in the mid-1970s

when Bill 100 conferred upon teachers the right to strike. This legislation resolved a crisis that involved de facto strikes by teachers' federations in the form of mass resignations and a march on Queen's Park. Subsequently, it became evident that the two sides in bargaining — trustees and teachers' federations — were not equally matched. Local teachers' unions drew upon the resources of provincial offices staffed by seasoned experts, "whipsawing" school boards so that each felt compelled to match the clauses won by teachers in neighbouring boards. When little was to be had in terms of wages, job security in the form of better staffing ratios was sought. The results were costs that outstripped increases in provincial funding, thereby necessitating local tax increases.

Trustees had to run for election every three years; their provincial organizations fought among themselves over issues such as the financing of Roman Catholic schools. The trustees' province-wide coordinating organization collapsed over conflict about the extension of funding to Catholic high schools beyond Grade 10 and trustee associations lacked the tens of millions of dollars in dues collected by teachers' unions. At one point, the Ontario government extended to trustees the right to set their own compensation in the hope that more confident and capable trustees would be able to match the challenge; instead, a new breed of full-time politicians arose, some of whom had close ties to teachers and their federations.

The new regime in Ontario rectifies many of these problems, but certainly not by providing increased tutelage. While collective bargaining will still be at the local level, there will be significant differences. Key parameters affecting the numbers of teachers will now be set provincially, not locally.

The net result is a very restricted arena in which collective bargaining can take place. The province, with its controls on spending and how many teachers are employed, now determines the compensation budget — salaries and benefits — for teachers. Locally, the primary matters to be negotiated are how these funds will be allocated between salary and benefit, and how funds are distributed on the salary grid. The narrowed scope for bargaining may direct the bargaining process to focus increasingly on "non-financial" matters. Among these will be issues such as grievance procedures, the authority of principals and the structure of schools and school programs. Ultimately, bargaining on such non-financial issues can result in a diminution of management rights to the point where all decisions of substance are settled by collective agreements, not school board policy or administrative action. To defend the contracts, complex grievance procedures will result in expensive arbitration and forestall the ability of principals and others to manage.

The Harris government's solutions to its political and administrative problems may provide the grip on the educational system the government seeks. Yet, this grip may prove inadequate if the power to manage slips

away through a collective bargaining process that leaves trustees nothing to bargain away except their own authority. The need for provincial attention and tutelage therefore remains. And, of course, we underscore that while a centralized approach may serve to bolster management rights with this current government, the same distribution of power can easily be used by a future government to undermine these rights. In other words, all power to the centre is by no means a sure remedy to what ails centre-local relationships and teacher collective bargaining in Ontario, and its application in this context in the next few years merits close scrutiny.

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PUBLIC SCHOOL CONTRACTING

Les auteurs proposent de transformer toutes les écoles publiques en institutions indépendantes, financées suivant le nombre d'étudiants et offrant un plan ou une stratégie d'enseignement établis dans un contrat avec la commission scolaire locale. Le gouvernement financerait la construction des écoles mais ne les exploiterait pas. Toute école financée par des fonds publics et exploitée aux termes d'un contrat avec une commission scolaire dûment constituée serait considérée une école publique. Le modèle proposé par les auteurs établirait une distinction entre la responsabilité à l'égard du financement et de la formulation de la politique générale (qui resterait entre les mains des autorités publiques de l'éducation) et la responsabilité relative à l'exploitation de l'école (qui serait confiée à des intérêts privés).

Despite 10 years of effort, America's big city public schools are still failing, and reformers remain split about what should be done. An effective reform plan must encourage the development of new schools in place of the many failed ones. It should also balance community and family interests in education, by both holding schools to high standards and allowing parents to choose among public schools.