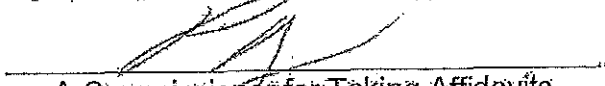


This is Exhibit "6" referred to in the.....
.....Affidavit of Christopher Paul Bloye.....
Affirmed before me, this 27th day of July, 2018



A Commissioner for Taking Affidavits
Padraic Ryan
LSO# 61687J

**Report of the Education Development
Charge Consultation Committee to the
Minister of Education**

**Review of the Existing Education
Development Charge Scheme &
Recommendation**

The province's pupil accommodation funding model provides grants to school boards to cover the costs to construct and furnish new schools. Under the *Education Act*, school boards are responsible for the provision of sites for new schools. Boards may acquire new sites by several means including using proceeds from the sale of surplus properties, savings from its operating budget, as part of long-term lease or partnership arrangements with municipalities or the private sector, and imposing Education Development Charges (EDCs). This last method of acquiring sites is the subject of the current review.

The EDC scheme provides an eligible school board with the option of imposing education development charges on new residential and/or non-residential development. If, as a result of residential development expected to occur within its area of jurisdiction, a board will need to build additional school facilities, it may use EDCs to finance up to 100 percent of the required land costs.

Legislative Authority

School boards are provided with the general authority to impose EDCs for new school sites under Division E of Part IX of the *Education Act*. Ontario Regulation 20/98 (referred to as the EDC Regulation from this point forward) outlines the ability of a school board to impose EDCs on new development and provides the methodology to determine the charge.

Because the recommendations below make frequent reference to the municipal development charges, a brief description of these is provided. The *Development Charges Act* provides the legal basis for Ontario municipalities to impose growth-related development charges in order to recover some or all of the capital costs of new municipal infrastructure requirements resulting from new development. The services eligible to be funded from this source include transportation (roads and transit), sewer, water and other services that must be provided to serve residential and non-residential growth.

Similar to EDCs, Development Charges (DCs) are levied on a per unit of construction basis. Ontario Regulation 82/98 (referred to as the DC Regulation from this point forward) outlines eligibility to impose DCs.

Municipalities have the option of imposing DCs to recover these capital costs or they may use the financial resources available to them through the property tax base. In contrast, school boards do not have recourse to the property tax base as a means of financing the purchase of school sites.

Process and Methodology

The maximum term of an EDC bylaw is five years. Before imposing EDCs, a board is required to prepare a background study documenting:

- Information regarding current capacity and enrolment of each of the board's elementary and secondary schools.
- Projections of total elementary and secondary enrolment for the board for a fifteen-year period. A fifteen-year planning horizon is used rather than the five year maximum of the bylaw period for two reasons:
 1. To take into account both elementary and secondary school requirements which would be generated by the proposed development; and
 2. To smooth fluctuations in EDC values over time.
- Projections of residential housing starts, and projections of the number of elementary and secondary students expected to attend the board's schools as a result of this development.
- The board's plans for new schools to accommodate the projected enrolment increases.
- The land required for each of the proposed schools and the estimated cost to acquire this land.
- The calculations of unit charges for both residential and (if applicable) non-residential development.

The Background Study is submitted for review by the Ministry to ensure that the eligibility criteria have been met prior to the Minister of Education or her delegate granting approval. This approval encompasses a review of the reasonableness of a board's:

- Projected enrolment increases resulting from the anticipated development in the area, and
- The number of new school sites required to accommodate this enrolment.

EDC Review Process

In the spring of 2001, the Minister of Education requested that Ministry staff consult with stakeholders to review the existing EDC Regulation and recommend amendments as appropriate to ensure that it is fair and equitable, and that boards have the resources they need to purchase new school sites.

Ministry staff subsequently contacted and invited stakeholders to form a consultation committee that would review the existing EDC Regulation and prepare recommendations for amending the EDC legislation where appropriate/necessary. These stakeholders include: school boards that currently have, or are in the process of implementing an EDC bylaw and their legal counsel; representatives from the

development industry; consultants hired by school boards to prepare Background Studies and calculate EDCs; and municipal representation through the Ministry of Municipal Affairs and Housing and the Association of Municipalities of Ontario. Appendix A provides a list of participants involved in the consultation.

The current EDC Regulation has been in place since 1998 and was prepared in consultation with the Urban Development Institute (UDI) and a group of school board staff representing those boards who had been levying EDCs under the previous regulation. Since then, twenty-three school boards have passed EDC bylaws and are collecting funds to pay for new school sites.

The EDC Regulation was initially developed with the intent of following similar provisions that were being drafted at the time with respect to municipal development charges wherever feasible. Due in large part to timing issues, the EDC Regulation came into force before the DC Regulation. As a result, some inconsistencies exist with respect to both pieces of legislation. Addressing these inconsistencies, where feasible, has been an overarching theme in the review of the EDC Regulation.

Committee Recommendations

The consultation committee (see Appendix A) reviewed the current EDC scheme between June and November 2001.

- June 18, 2001: At the initial meeting, the committee developed and discussed a list of issues to be addressed in the consultation process.
- September 21, 2001: At this second meeting, the committee reviewed and achieved consensus on the list of recommendations.
- October 29, 2001: At the third meeting, the committee finalized all recommendations.

The recommendations brought forward by the consultation committee impact three areas of the EDC legislative framework:

1. Amendments to the EDC Regulation
2. Development of EDC Guidelines
3. Statutory Amendments (amendments to the *Education Act*)

For each of these three areas, a list of sub-categories that the proposed recommendations address is provided below.

Amendments to the EDC Regulation

- A. Calculation of the Charge/Differentiated Charges
- B. Gross Floor Area Definitions and Determination
- C. Eligibility to Impose an EDC bylaw
- D. Administration
- E. Interest Rates Payable
- F. Bylaw Amendments resulting in a Change to the Charge

Development of EDC Guidelines

- A. Administration
- B. Eligibility to Impose EDCs
- C. Calculation/Collection of the Charge
- D. Timing/Information Sharing
- E. Background Study
- F. Review Areas
- G. Public Meetings
- H. Refunds and Interest Rates

Statutory Amendments

- A. Public Meetings
- B. Agreements between boards and other parties
- C. Appeals
- D. Complaint Process

The specific recommendations are presented in the following sections and are grouped according to the specific sub-categories outlined above. The text in the left margin provides the legislative or regulatory reference that would require amendment. For the EDC Guidelines, the text in the left margin provides a description of the general issue addressed by the recommendation provided.

Regulatory Amendments

The committee recommends the following amendments to the EDC Regulation (O.Reg. 20/98). The regulatory amendments have been grouped according to the area of impact and fall into the following categories:

- A. Calculation of the Charge/Differentiated Charges
- B. Gross Floor Area Definitions and Determination
- C. Eligibility to Impose an EDC bylaw
- D. Administration
- E. Interest Rates Payable
- F. Bylaw Amendments resulting in a Change to the Charge

A. Calculation of the Charge (Differentiated Charges)

1. The current EDC Regulation requires that boards impose a uniform charge on each unit of residential construction. This practice disregards that different types of residences (apartments, single family dwellings, etc.) will generate different levels of need for new pupil places. The *Development Charges Act* (DCA) enables municipalities to have a uniform charge or differentiated charges (charges that vary according to the type of residential construction) if the municipality believes it is appropriate to recognize that different residential types may generate different levels of need for municipal services.

School boards should also have the opportunity to impose differentiated charges if, in their judgement, this is appropriate.

The Consultation Committee therefore recommends that school boards be provided with the option of calculating differentiated residential charges or a uniform residential charge.

O. Reg. 20/98,
 Section 7

2. The current regulation requires that the charges be calculated using a forecast of municipal building permits for the review areas considered for an EDC bylaw. Confusion over whether the calculation should be based on the forecast of building permits or actual issuance has given rise to complaints that charges may be incorrectly calculated.

A. Calculation of the Charge (Differentiated Charges)

This change would provide clarification that EDCs (expressed as a rate per dwelling unit, and/or non-residential rate applied to the gross floor area or the declared value of the development) are calculated based on the *forecasted or estimated* residential and non-residential EDC revenues and not actual collections. At the time of calculation, boards cannot determine actual collection, and therefore, can only base the calculation on forecasted or estimated residential and non-residential EDC revenues.

The Consultation Committee therefore recommends that the wording in the EDC Regulation, s.7 paragraph 9 (iii) and paragraph 10 (vi) be changed from "the percentage of the growth-related net education land cost" to "the percentage of the forecasted growth-related net education land cost".

O. Reg. 20/98,
 Section 7,
 paragraph 9(iii)
 and paragraph 10
 (vi)

B. Gross Floor Area Definitions and Determination

3. As a result of timing issues around the drafting of the current DC Regulation and the existing EDC Regulation, inconsistencies now exist with respect to the definition of "existing industrial building" between the two pieces of legislation.

Addressing this inconsistency will assist in simplifying the calculation and collection of charges and create harmony in the definitions used for development charges.

The Consultation Committee therefore recommends that the EDC Regulation be amended to adopt a definition of "existing industrial building" that is consistent with that found in the DCA.

O. Reg. 20/98,
 Section 1

4. In cases where boards elect to calculate a non-residential EDC based on gross floor area (GFA), boards are required to calculate (and levy) the non-residential EDC on the basis of GFA as defined in Section 1 of the Regulation. The DCA, however, only requires municipalities to use the definition of GFA provided in its legislation as it applies to "existing industrial building" exemptions. Municipalities are therefore left to determine their own definition of

B. Gross Floor Area Definitions and Determination

GFA outside of the restriction of "existing industrial building".

School boards obtain non-residential growth forecasts based upon the definition of GFA determined by the municipality, which in many cases, varies from that outlined in the EDC Regulation. (For example, some municipalities provided these forecasts of GFA net of building components such as corridors, elevators, etc). This has resulted in inconsistencies in the calculation of the non-residential component of the charge.

Restricting this definition would allow school boards to adopt a definition of GFA that is most applicable to the local treatment of GFA.

The Consultation Committee therefore recommends that the definition of the existing gross floor area provided in the EDC Regulation be restricted to refer only to the gross floor area of industrial building expansions to achieve consistency with the DC Regulation.

O. Reg. 20/98,
 Section 1

C. Eligibility to Impose EDCs

5.

As part of the flexibility in decision making that boards are granted with respect to pupil accommodation, some boards may elect to fast track the purchase of some of their sites with debt financing and build those schools in the first five years of the fifteen year enrolment projection period. As a result, it is possible that a board may have a deficit in its EDC reserve fund at the commencement of a second bylaw period, but has sufficient school capacity to accommodate enrolment from anticipated development. Under this circumstance, there would be no means of recovering the debt.

Under the existing regulation, a school board becomes eligible to pass an EDC bylaw only if the board's average elementary and/or secondary enrolment within its jurisdiction exceeds the board's elementary and/or secondary capacity over the proposed five-year term of the bylaw. In the scenario described above, the board would not be eligible to pass a second bylaw.

Allowing boards the flexibility to buy sites and construct schools earlier than projected can create greater efficiency in providing for pupil places in growth areas.

The Consultation Committee therefore recommends that the

EDC Regulation be amended such that boards be eligible to pass a second EDC bylaw if they meet either the eligibility criteria as currently specified in the EDC Regulation or have a deficit in the EDC reserve fund.

O. Reg. 20/98,
 Section 10, (2)

D. Administration

6. The area of a board's jurisdiction is divided into regions which correspond with existing municipal regions that may include counties, cities, regional municipalities, etc. To define the jurisdiction of an EDC bylaw, boards are required to make reference to the regions as defined in the EDC regulation. Over the past four years, many municipalities in the province have been restructured and/or amalgamated. As a result, the Schedule of Regions contained in the current EDC regulation no longer accurately reflects appropriate boundaries. In restructured municipalities (i.e.: Hamilton, Ottawa) "regions" are eliminated altogether.

Amending the Schedule of Regions as municipalities are restructured would ensure that when municipalities in separate regions are restructured in the future, the EDC Regulation is kept up-to-date.

The Consultation Committee therefore recommends that if municipal regions change, the Schedule of Regions in the EDC Regulation be updated annually.

O. Reg. 20/98,
 Schedule
 (Regions)

E. Interest Rates Payable

7. As a result of timing issues around the drafting of the current DC Regulation and the existing EDC Regulation, inconsistencies now exist with respect to interest rates payable on the refund of collected charges or borrowing from the reserve.

The DCA Regulation states interest is payable at the Bank of Canada rate the date a DC bylaw comes into force. The EDC Regulation states the rate is the Bank of Canada rate on the day interest becomes payable.

Consistency between the EDC Regulation and the DCA Regulations regarding interest rates payable on refunds simplifies administrative processes surrounding DC and EDC bylaws.

O. Reg. 20/98,
Section 18

The Consultation Committee therefore recommends that the EDC Regulation be amended to include similar wording found in the DCA Regulation concerning interest rates payable on refunds and borrowings. The Committee further recommends that such an amendment not be retroactive to any bylaw currently in force.

F. Bylaw Amendments Resulting in a Change to the Charge

8.

Section 13 of the EDC Regulation refers to EDC bylaw amendments that would result in a change in the charge. The section requires boards to compare actual building permits issued versus the number forecasted. Where there is a variance, the rate would change, despite site acquisition and preparation costs remaining the same.

To prevent instability in the rate, it is recommended that any reconciliation between issued building permits and forecasted permits be done at the end of the bylaw period.

O. Reg. 20/98,
Section 13.

The Consultation Committee therefore recommends that Section 13 of the EDC Regulation be amended to remove the distorting effect on EDCs.

Guidelines

The committee recommended that the Ministry develop detailed EDC Guidelines to assist school boards in preparing EDC Background Studies. The Guidelines should be developed so as to ensure consistency in the application of the EDC Regulation, and provide the necessary clarification to school boards. These guidelines will form part of the annual *Pupil Accommodation Grant Technical Paper* and will be made available on the Ministry's FTP site: <ftp://ftp.edu.gov.on.ca/sfis/edc>. A general recommendation was also made to include in the EDC Guidelines updated versions of existing EDC forms once amendments to the Regulation have been finalized.

The recommendations for the Guidelines have been grouped according to the area of impact and fall into the following categories:

- A. Administration
- B. Eligibility to Impose EDCs
- C. Calculation/Collection of the Charge
- D. Timing/Information Sharing
- E. Background Study
- F. Review Areas
- G. Public Meetings
- H. Refunds and Interest Rates

A. Administration

9.

*Municipalities
 imposing
 administrative fees*

Under Division E of Part IX of the *Education Act*, municipalities are required to collect EDCs at building permit issuance and forward those funds to boards on a monthly basis. Some municipalities have expressed a desire to impose an administrative fee to cover staff costs associated with this requirement.

Municipalities do not have the authority to impose an administrative fee. The *Education Act* s.58(1) renders bylaws passed under the *Municipal Act* s.220.1(2) inapplicable to school boards (i.e. user fees).

Municipalities are required to transfer EDC revenues to school boards on a monthly basis. Municipalities may, however, retain the interest earned on that money.

The Consultation Committee therefore recommends that the EDC Guidelines clearly state that municipalities, as per the Education Act, may not charge an administrative fee for the collection of EDCs.

A. Administration

10. *Communication with municipal staff*
- Collecting EDCs may be new for some municipalities. As a result, some municipal staff have expressed concern that they have not been provided with enough advance notice and clear information with respect to the amount of charges to be collected.
- The administration of collecting EDCs should be made as simple as possible for municipalities. EDC Guidelines should encourage boards to work with municipalities and developers to ensure that after bylaw passage, the correct charge is applied at the issuance of building permits and that all parties know and understand the quantum of the charges and the exemptions.
- The Consultation Committee therefore recommends that the EDC Guidelines advise that school boards provide municipalities with advance notice of EDCs and clear information concerning the amount of EDCs to be collected by the municipality in order to simplify the administration for the municipalities.***

B. Eligibility to Impose EDCs

11. *EDC financial obligation & Subsequent Bylaw*
- As part of the flexibility in decision making that boards are granted with respect to pupil accommodation, some boards may elect to fast track the purchase of some of their sites with debt financing and build those schools in the first five years of the fifteen year enrolment projection period. As a result, it is possible that a board may have a deficit in their EDC reserve fund at the commencement of a second bylaw period, but has sufficient school capacity to accommodate enrolment from anticipated development. Under this circumstance, there would be no means of recovering the debt.
- Under the existing regulation, a school board becomes eligible to pass an EDC bylaw only if the board's average elementary and/or secondary enrolment within its jurisdiction exceeds the board's elementary and/or secondary capacity over the proposed five-year term of the bylaw. In the scenario described above, the board would not be eligible to pass a second bylaw.
- Allowing boards the flexibility to buy sites and construct schools earlier than projected can create greater efficiency in providing for pupil places in growth areas. In order to establish whether a board has an EDC financial obligation, the board must provide the necessary background material to demonstrate that the board is eligible to pass a subsequent EDC bylaw.

B. Eligibility to Impose EDCs

The Consultation Committee therefore recommends that in conjunction with Regulatory Amendment #5 ("[It is] recommended that the EDC Regulation be amended such that boards be eligible to pass a second EDC bylaw if they meet either the eligibility criteria as currently specified in the EDC Regulation or have a deficit in the EDC reserve fund."), it is also recommended that in cases where a board becomes eligible to pass a second EDC bylaw as a result of having a deficit in the EDC reserve, the EDC Guidelines provide clarification that a list of school sites with deficit situations be identified and that a reconciliation of the EDC Reserve Fund be provided.

C. Calculation of the Charge

12.

Methodology for determining enrolment projections

Enrolment projections are calculated using a variety of methods and various source data. Of principal concern is that the board's projections for growth are consistent with that of the municipality. Boards require flexibility when designing their forecasting to take into account variables unique to their jurisdiction that impact enrolment projections.

EDC Guidelines would advise boards that their projections must make reference to the relevant municipality's growth forecasts. This would promote consistency with the types of growth projections being used by boards and area municipalities.

The Consultation Committee therefore recommends that the EDC Guidelines include comments regarding the use of source data and the methodology used to calculate enrolment projections.

13.

Differentiated charges scheme used by area municipalities

The EDC regulation allows boards to determine the type of residential EDC that a board will impose on new development. Boards are entitled to choose between a unique charge and a differentiated charge.

For greater consistency in the application of development charges, school boards are encouraged, where possible, to adopt the differentiation scheme employed by the area municipality.

C. Calculation of the Charge

The Consultation Committee therefore recommends that in conjunction with Regulatory Amendment #1 ("[It is] recommended that school boards be provided with the opportunity to calculate differentiated charges"), it is also recommended that the EDC Guidelines encourage school boards to adopt a method for calculating the charge that is consistent with the practices used by area municipalities wherever possible.

14.

Site Preparation

Site preparation costs vary from site to site, across the province and across municipalities. Current EDC legislation broadly defines costs thereby acknowledging differences and permitting boards to recover all site preparation costs to ensure the site is building ready, has the necessary services, and is level for playing fields.

Providing a list of examples of site preparation activities that may be included in the calculation of net education land costs would assist boards in determining what type of activities can be recovered with respect to site preparation.

The Consultation Committee therefore recommends that the EDC Guidelines include examples of site preparation activities that may be included in the calculation of net education land costs.

15.

Capacity determination

The Ministry of Education uses two definitions of capacity in the determination of Pupil Accommodation Grants provided to school boards. For the purpose of EDCs, the capacity to be used for all calculations (trigger, net new pupil places, etc.) is the current capacity of all schools of the board on the day the bylaw comes into force, with some adjustments (leased facilities, facilities set to open within one year of bylaw passage, etc.).

Boards have often consulted with the Ministry in determining their capacity calculations for EDC purposes. Nevertheless, some confusion has existed with respect to these determinations.

The Consultation Committee therefore recommends that the EDC Guidelines provide an outline of what should be included in the calculation of the capacity for EDC purposes

C. Calculation of the Charge

16.

*Credits/Refunds
for the conversion
of land use*

The EDC Regulation currently does not allow boards to give credit for EDCs already paid in instances of redevelopment. This becomes relevant when the site is rezoned and the land use converted from non-residential to residential or vice versa. At that point, the land may be redeveloped and subject to EDC charges but it is suggested that the charge be reduced by the EDC amount already paid for by the original development.

The Consultation Committee therefore recommends that the EDC Guidelines provide clarification that boards have the ability to extend credits (through a recalculation of the EDC amount owing) in their bylaw for the conversion of land use (partial or whole) where the EDC has already been paid.

D. Timing/Information Sharing

17.

*Timing of
submission of
Background Study
to Minister of
Education*

Ministry staff are required to complete a detailed analysis of EDC Background Studies. In many cases, Ministry staff identify issues that need to be addressed and/or reviewed before the bylaw can be passed.

Experience within the Ministry indicates that forty business days is a reasonable amount of time between the receipt of a Background Study and completion of the necessary analysis. Providing the Ministry with a minimum of forty business days to review a Background Study would allow sufficient time to ensure that all Background Studies receive the same detailed consideration, including the review of these materials and any discussion of relevant issues with board staff.

The Consultation Committee therefore recommends that the EDC Guidelines include clarification that a minimum of forty business days is required between the Ministry's receipt of a Background Study, the completion of the necessary analysis, and the Minister's approval.

18.

Timing of bylaw

There has been some confusion with respect to timing provisions concerning the passage of EDC bylaws:

Board staff and consultants should be aware of the conditions of bylaw passage. Section 257.62 of the *Education Act* stipulates that passage of the bylaw must be within one year of completing the

D. Timing/Information Sharing

Background Study. It is incumbent on board staff and their consulting firms to properly advise trustees.

Clarification that the EDC Background Study is completed when received by the board in public session would address any uncertainties in this regard.

The Consultation Committee therefore recommends that the EDC Guidelines include clarification that under s.257.62, the EDC Background Study is considered complete when received by the board in public session.

19.
 Information
 sharing

The current EDC legislation and DCA state two weeks are required between the release of the Background Study and the first public meeting. In some cases, relevant EDC materials have not been shared with interested parties prior to the release of the Background Study.

School boards should be encouraged to include stakeholders in their discussions regarding the imposition of EDCs in their jurisdiction. Local developers should be contacted prior to the commencement of the EDC process to ensure they are made aware of the potential EDC in the jurisdiction of the board.

The Consultation Committee therefore recommends that the EDC Guidelines encourage boards to ensure that their processes are open and that information is shared with all stakeholders in a timely manner. The EDC Guidelines should encourage boards to allow four weeks between the public release of the Background Study and the first public meeting.

E. Background Study

20.
 Combining
 Background
 Studies

Boards with one or more regions within their jurisdiction may be in a position to impose more than one EDC bylaw.

The EDC Regulation states that there must be a Background Study for each bylaw. However, if a board has several regions within its jurisdiction and is developing separate EDC bylaws for each, those studies can be combined into a single volume provided that region-

E. Background Study

specific information is contained in separate and discrete chapters. Separate public meetings should be held for each bylaw, ideally in the region in which the bylaw will apply. This clarification can be provided in EDC Guidelines:

The Consultation Committee therefore recommends that the EDC Guidelines include a statement of clarification that boards may combine the Background Studies for more than one region within a board's jurisdiction into a single report.

F. Review Areas

21.

Review Areas

Boards typically examine growth-related needs on a review area basis governed by board-imposed boundaries or treat the entire area upon which EDCs are to be imposed as one review area. There has been some uncertainty around the permanence of these review area boundaries.

Typically, review areas are established by school boards to reflect natural dividers or major thoroughfares. Generally, these cover the entire region served by a board. Once review areas are established, there usually is minimal need to change them with some exceptions (i.e., the extension of a major road or highway which bisects an existing review area, a change in attendance patterns).

It is understood that the attendance attributed to a given review area for the purposes of calculating existing need and pupil availability should be consistent with attendance attribution for calculating need due to new development.

The EDC Guidelines should outline parameters for establishing review area boundaries.

The Consultation Committee therefore recommends that the EDC Guidelines encourage boards to ensure that review areas in subsequent EDC Background Studies are consistent with the previous study where feasible. If the board opts to modify review areas from the previous Background Study, an explanation is required.

G. Public Meeting

22.

Section 257.60 of the *Education Act* currently requires that for boards

G. Public Meeting

Review of Board policies

imposing second and subsequent bylaws, a review of the board's policy statements regarding operating budget savings and alternate pupil accommodation arrangements is required. The board is also required to hold at least one public meeting in conjunction with such a review.

Some boards have scheduled separate public meetings solely for the purpose of reviewing these policy statements. It is the experience of these school boards that separate meetings are costly and poorly attended.

Boards can, however, include these reviews as part of the public meeting that is required to be held before bylaw passage.

The Consultation Committee therefore recommends that the EDC Guidelines provide clarification that a board may review its policy statements regarding operating budget savings and alternate pupil accommodation arrangements as part of the public meeting that is required before bylaw passage.

H. Refunds and Interest Rates

23.

Bank of Canada Target Interest Rates

If an EDC bylaw is repealed (whether by the board under an order from the OMB or by the OMB directly) boards are required to refund the EDC paid. If the bylaw is amended and the amendment results in a lower EDC, the difference between the previous EDC and the new EDC is also to be refunded. Interest is payable on refunds retroactively from the time the EDC was paid until the refund was issued.

For consistency, the preceding section (Regulatory Amendments) recommended that both the EDC Regulation and the DCA Regulation follow similar provisions with respect to interest rates payable. In order to assist boards in the determination of the appropriate interest rate applied to refunds, a table outlining the Bank of Canada Target Rates, in effect since the introduction of the EDC scheme on September 1, 1999 would provide additional clarification.

The Consultation Committee therefore recommends that in conjunction with Regulatory Amendment #7 ("It is] recommended that the EDC Regulation be amended to include similar wording found in the DCA Regulation concerning interest rates payable on refunds and borrowings. The Committee further recommends that such an amendment not be retroactive to any

bylaw currently in force."), it is also recommended that the EDC Guidelines include a table of historical interest rates.

Statutory Amendments

The committee recommends the following amendments to Division E of Part IX of the *Education Act*. The statutory amendments have been grouped according to the area of impact and fall into the following categories:

- A. Public Meetings
- B. Agreements between Boards and Other Parties
- C. Appeals
- D. Complaint Process

A. Public Meeting

24. Under the *Education Act*, school boards are currently required to provide notice when contemplating an amendment to an EDC bylaw, and ensure that the Background Study and other sufficient information be made available to the public. There is no legislative requirement for a public meeting to be held before an amendment to an EDC bylaw is enacted.

Requiring that a public meeting be held in such circumstances would provide consistency between the *Education Act* and the DCA, and help to ensure that appropriate opportunities exist with respect to making oral or written submissions to school boards as part of the public process.

The Consultation Committee therefore recommends that the Education Act be amended to require a public meeting before an amendment to an EDC bylaw is enacted.

Education Act
 Section 257.72

B. Agreements Between Boards and Other Parties

25. The *Education Act* currently does not allow school boards to enter into agreements for early payments of EDCs. As a result, boards cannot consider accelerated land acquisitions to fast track school construction.

Consistency between the EDC Regulation and the DCA Regulation regarding the collection of charges simplifies administrative processes surrounding development bylaws. This amendment would provide such consistency between the EDC legislation and s. 27(1) of the DCA. Furthermore, the greater flexibility would allow Boards and developers to more effectively plan for pupil accommodation needs in

B. Agreements Between Boards and Other Parties

growth areas.

Education Act
 Section 257.84

The Consultation Committee therefore recommends that the Education Act be amended to allow boards to enter into agreements for early payment of EDCs in consideration for accelerated land acquisition and/or construction of schools.

26.

The current EDC legislation does not allow school boards to enter into deferred EDC payment agreements. Some boards have expressed concern that this limits their flexibility in decision making with respect to pupil accommodation issues.

Provisions in the DCA allow municipalities to enter into deferred payment agreements. An amendment to the *Education Act* would provide consistency between the EDC legislation and the DCA. Furthermore, the greater flexibility would allow developers more varied financing options.

Education Act
 Section 267.80

The Consultation Committee therefore recommends that the Education Act be amended to grant boards the legislative authority to enter into deferred EDC payment agreements.

C. Appeals

27.

School boards have expressed concern over the possibility of appeals being raised at the Ontario Municipal Board (OMB) by parties or individuals who have not raised objections or concerns with respect to the proposed EDC bylaw from the commencement of the public process.

Provisions in the *Planning Act* provide more comprehensive grounds for the dismissal of appeals by the OMB including vexatious appeals. The appeals process for EDCs should be governed by the same rules that exist under the *Planning Act*.

An amendment to the *Education Act* would guard against last minute appeals/issues raised by parties or individuals. Such an amendment would explicitly allow the OMB to dismiss an appeal in whole or in part, if the appellant did not make an oral or written submission to the school board as part of the public process, or offer a reasonable

explanation for not doing so, and if the appeal is not made in good faith.

Education Act
 Section 257.67

The Consultation Committee therefore recommends that the Education Act be amended to ensure that the legislative powers of the OMB regarding the dismissal of EDC appeals reflect those powers as outlined in Section 53 of the Planning Act.

D. Complaint Process

28. There have been instances where a municipal council has exempted a ratepayer from an EDC because council disagrees with the school board's bylaw. In this situation, boards cannot recover the lost revenue. Their recourse has been to go before the OMB in order for the ruling of a municipal council to be overturned.

In the case of municipal development charges, complaints are appealed to the municipality since these charges fall under their jurisdiction. In the case of education development charges, it would be appropriate for the same process to be followed so that EDCs are appealed to school boards.

An amendment to the *Education Act* would prevent municipalities from inappropriately exempting ratepayers from EDCs and would allow boards to make decisions on complaints in the same manner municipalities hear complaints regarding DCs.

Education Act
 Section 257.85

The Consultation Committee therefore recommends the Education Act be amended to grant boards the legislative authority to preside over the complaint process.

Ministry of Education Consultation on Education Development Charges 2001
 Participants

Name	Organization
Bennett, Dave	Waterloo Catholic District School Board
Benson, Ralph	York Region District School Board
Binning, Craig	CSB Inc.
Birett, Joe	Halton Catholic District School Board
Bjarnason, Beth	Dufferin-Peel Catholic District School Board
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**Ministry of Education Consultation on Education Development Charges 2001
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