SCHOOL DISTRICT BUSINESS ENTITY REVIEW

submitted to:

Honourable Shirley Bond Minister of Education and Deputy Premier and Minister responsible for Early Learning and Literacy

by:

Doug Hibbins TRILLIUM Business Strategies Inc.



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1. INTRODUCTION

In May 2002, the *School Amendment Act, 2002* containing a number of amendments to the *School Act* was enacted. Among the changes included in the *School Amendment Act, 2002* were provisions enabling school boards to create separate entities to engage in entrepreneurial activities such as offshore schools.

Prior to the enactment of the *School Amendment Act, 2002*, many school boards in British Columbia already engaged in entrepreneurial activities in support of public education. Examples of such activities include warehousing and distribution of supplies, marketing and sale of locally developed learning resources, enrolment of international students, provision of education and business services on a fee-for-service basis to other school districts, and generation of additional revenues through surplus assets. These entrepreneurial activities may be within the powers and duties of school boards as set out in Part 6 Division 2 of the *School Act*.

The provisions set out in the School Amendment Act, 2002 were apparently enacted in response to ongoing requests from school boards. It appears that the intent was to provide more latitude in the types of entrepreneurial activities school boards could be involved in, and to provide school districts with a measure of protection from liabilities that could arise out of various business ventures.

Since the enactment of the *School Amendment Act*, 2002, more than a dozen school boards have decided to proceed with the incorporation of business entities. These companies have embarked on a variety of business ventures in Canada and abroad.

In April 2006, Hon. Shirley Bond, Minister of Education announced that the Province had ordered an independent review of the policies and procedures of school district business companies. Specifically, the review was to examine the governance and operation of school district business companies, and to assess the extent to which these companies are serving the public interest. The Terms of Reference for the business company review are presented in Appendix A.

It should be noted that the review was not intended to be an audit of individual business companies. Nor was it intended to be a critique of decisions made by individual school boards or business company boards. Rather it was intended to be an assessment of the extent to which business companies are serving the public interest.

Douglas Hibbins of TRILLIUM *Business Strategies Inc.* was engaged by the Province to complete this review. Doug is a business and public policy consultant with extensive experience in the education sector. Information about Doug's background is presented in Appendix B.

This report presents the findings of the review and makes specific recommendations regarding the framework for school district business companies.



APPROACH

Following a review of the legislation, school district financial statements, and relevant records, a request was sent to the secretary-treasurers of those school districts which have incorporated business companies.

Each secretary-treasurer was asked to assemble and make the following information available for review:

- (a) any reports submitted to the Board of School Trustees regarding the establishment, modification, operation or dissolution of its school district business company (SDBC);
- (b) all School Board resolutions regarding its SDBC;
- (c) all School Board policies and procedures relating to its SDBC;
- (d) all correspondence between the School Board and its SDBC;
- (e) the articles of the SDBC;
- (f) the minutes of the SDBC;
- (g) the financial statements and records of the SDBC;
- (h) details of any transactions, contracts or commitments between the School District and its SDBC; and
- (i) any other information that may be relevant to the review.

Meetings were requested with each secretary-treasurer and any other staff involved in the operation of a school district business company, and with each business company Board of Directors.

Each secretary-treasurer was asked to inform trustees and the District Parent Advisory Council (DPAC) that meetings could be arranged to receive input regarding school district business companies. Secretary-treasurers were also requested to make contact information available to any interested persons wishing to provide input to the review.

Specific times were arranged to review school district records and to meet with staff, trustees, and parents. In some cases, parents and other members of the public requested a specific opportunity to provide input. These requests were accommodated with additional meetings in some school districts.

As the purpose of this review was to assess the extent to which school district business companies are serving the public interest, the work did not involve a detailed review of school district and school district business company records.

Meetings which took place as part of this review are listed in Appendix C.

3. GENERAL OBSERVATIONS

While more than a dozen school boards have chosen to set up school district business companies since the enactment of the *School Amendment Act*, 2002, some of these companies are inactive today or have remained largely inactive since the date of incorporation.

Generally school district business companies have focused their efforts on one or more of the following activities:

- delivery of international education programs (involving the enrolment of international students in BC schools);
- delivery of services in respect of BC certified education programs in off-shore schools;
- delivery of non-credit English as a Second Language (ESL) programs;
- delivery of other non-credit education and training programs locally and abroad:
- delivery of credit and non-credit courses through the internet and video conferencing; and
- production, marketing and distribution of locally developed programs and learning resources both locally and abroad.

Some school district business companies have incorporated subsidiary companies. These companies are owned either in whole or in part by the school district business company.

Governance

All school boards that have incorporated a school district business company appear to be in compliance with the provision of the *School Act* requiring that the board of directors be comprised of a minimum of three directors. They also appear to be in compliance with the requirement that a school trustee or the school district secretary-treasurer be one of the directors of the company.

Some school boards have appointed directors to the business company board who are independent and arms-length from the school district. Other school boards have appointed a board of directors comprised of a mix of school trustees and district staff.

Transparency and Accountability

Corporations typically operate in a competitive environment, each seeking to generate income through the collective business acumen of their directors, management and staff. This also holds true for school district business companies.

By necessity, school district business companies must operate with a degree of secrecy in order to take full advantage of emerging business opportunities, safeguard the entity from business risks, and serve the business interests of the shareholder.

This is in marked contrast to the typical operation of school districts. Over the past quarter century, school boards have become increasingly more open, transparent, consultative, and accountable to the public.

Public education stakeholders are generally dissatisfied with the lack of information that is available regarding the activities and affairs of school district business companies, and view the boards of school district business companies as less accountable than school boards.

It should be noted that the board of directors of a school district business company is accountable to the shareholder (the school board). This may not be clear to some members of the public. In some instances, this accountability is not fully understood by the staffs and trustees of the school district.

In some instances, school boards have become overly involved in the day-to-day operations of school district business companies.

The board of directors of a school district business company is appointed by the shareholder (the school board), and must manage or supervise the management of the business and affairs of the company. This may involve the setting of business objectives, the development of business plans, the establishment of budgets, the engagement and deployment of resources, and the analysis of results.

School boards need to delegate direction and management of business companies to the boards of directors, and need to hold the boards of directors accountable for achieving profitable results.

Business Activities

A substantial number of school boards in British Columbia have operated successful international education programs for many years. Revenues generated by these programs typically exceed incremental costs and school boards have been able to allocate program surpluses to local education priorities. In some cases, the enrolment of international students has softened the impact of declining enrolments, and has provided a means for school districts to continue to offer a wide array of course offerings and the full spectrum of student services.

International education programs provide intangible benefits as well. Interactions between international and local students as well as international students and host families are culturally enriching for everyone involved.

Some school boards have elected to transfer responsibility for international education programs to their school district business company. In making such decisions, school boards have considered the merits of managing home stays and other components of the international education programs through their school district business company and the opportunity to potentially limit the financial consequences of any liability claims arising from the programs.

Additionally, the transfer of responsibility for international education programs enables school boards to generate income in the business company, thereby giving the business company equity that may be used to fund new business ventures.

Public education stakeholders generally do not support this approach, as funds that were previously available to enhance education programs and services to students are held and invested in business ventures.

Some school district business companies have endeavoured to establish BC certified education programs where foreign students resident in their own country complete a program that meets the British Columbia requirements for graduation.

It is noted that the BC Dogwood Certificate (the graduation certificate) is coveted in other countries, and over the past decade, a number of schools in foreign countries have begun delivering education programs meeting the BC requirements for graduation.

While a number of school district business companies have identified off-shore schooling as a business opportunity, most of these companies have under-estimated the level of effort and costs associated with finalizing business arrangements, recruiting staff, enrolling sufficient numbers of students, and providing the learning supports necessary in order for foreign students to be successful studying the BC curriculum. In general, these companies have failed to achieve their financial targets.

School district business companies have achieved a measure of success offering non-credit courses, particularly ESL courses, and short professional development programs to teachers. These non-credit courses and programs may be delivered off-shore, here in British Columbia, or through the internet and teleconferencing.

School district business companies have also achieved success in the marketing and distribution of locally developed programs and learning resources to other school districts in British Columbia, in other parts of Canada, and in other countries.

It is noted that school boards may be able to engage in some of the above business activities without forming a business company. However, any school board wishing to provide services in respect to the delivery of a BC certified education program in an off-shore school must do so through a business company.

Capital

New business ventures typically require capital. Corporations can raise capital through a variety of means including private placements and public offerings, joint ventures, debt instruments (usually requiring higher returns in exchange for higher risk profiles), and shareholder loans.

School district business companies are severely limited in their ability to raise capital.

All school district business companies must be wholly owned by a school district. School district business companies are not able to attract equity investors or joint venture partners directly, but may do so through the formation of a subsidiary to the business company.

School boards must not give, loan, or otherwise provide to a company, directly or indirectly money from a grant under the *School Act*. Nor can school boards provide property or services to their business companies at less than market value.

These restrictions have made it particularly challenging for school district business companies to raise capital. Furthermore, there is confusion as to what constitutes a grant under the *School Act*. While there seems to be widespread acceptance that operating revenues received from the Province constitute a grant, there is less consensus on other forms of revenue. For example, it is not clear whether interest income earned on funds received in the form of a provincial grant, income generated from the rental or lease of facilities funded in whole or in part by a provincial grant, or international student tuition earned through the delivery of education in facilities funded in whole or in part by a provincial grant, can be given, loaned or otherwise provided to a school district business company.

The restrictions on raising capital and the lack of clarity as to how school boards can provide start-up funding to a school district business company have made it especially difficult for school district business companies to establish solid financial foundations.

4. SPECIFIC FINDINGS AND RECOMMENDATIONS

The purpose of this review was to assess the extent to which school district business companies are serving the public interest.

Based on the successes achieved by school district business companies to date, there is little evidence suggesting that these entities are serving the public interest.

However, the marketing of education should remain an important provincial priority.

It is noted that education has been recognized as a tradeable commodity by the World Trade Organization since 1996. Since that time, a number of nations have commenced selling education services overseas to emerging markets in Asia and Europe. There is potential to generate a return to BC taxpayers and to BC students (in the form of additional resources for education) by continuing to offer international education programs in BC schools, and to make available BC certified education programs in off-shore schools.

In the United States, education accounts for 3.2 percent of total exports of services. In Australia, education is the eighth largest export industry.

In British Columbia, international education programs generate domestic employment, provide a return on previous public investments, and provide ongoing capacity utilization. Demand for such programs is booming.

Off-shore programs provide fewer economic benefits and the delivery of such programs are subject to an array of business risks. Nevertheless, the economic and other benefits of off-shore programs warrant continued involvement in these markets.

Furthermore, there appears to be a variety of opportunities available to school district business companies within North American markets. These opportunities include development, marketing and delivery of locally developed programs and learning resources; development and delivery of distributed learning; provision of services to other public agencies; development of capital assets through partnerships; and maximization of the values of surplus assets through joint-ventures and other business arrangements.

Accordingly, it is recommended that the Province of British Columbia take steps to strengthen the governance, transparency and accountability framework for school district business companies, and monitor the operating performance of these entities periodically to determine whether they are able to achieve reasonable levels of success in the pursuit of entrepreneurial activities.

Specific recommendations are as follows.

Governance

As stated earlier, some school boards have appointed people to the business company board who are independent and arms-length from the school district. Other school boards have appointed a board of directors comprised of a mix of school trustees and district staff.

It appears that there are significant benefits in having people who are independent and arms-length from school districts appointed to the boards of directors of school district business companies.

In those cases where a school board has appointed strong business leaders from outside the education system to the board of its business company, the shareholder has benefited from the business acumen and experience of the individuals, the board of directors of the business company has provided appropriate levels of due diligence to business decisions, and the affairs of the business company have been less intertwined with the affairs of the school district.

Recommendation #1

It is recommended that the Province take steps to require that a majority of the directors appointed to the board of a school district business company be independent and arms-length from the school board and its employees.

It is noted that school boards typically appoint their secretary-treasurers to the boards of school district business companies. This is not unexpected given the statutory requirement that a school trustee or the school district secretary-treasurer be appointed to the board of directors of the business company.

Some secretary-treasurers question the appropriateness of serving on the board of the school district business company, as appointment to the board of directors could conceivably compromise them in the performance of their duties as the corporate secretary and chief financial officer of the school board. Other secretary-treasurers feel there is a strong need to be on the board of directors, as it enables them to provide business acumen to the business company and have knowledge of the activities of the business entity.

All school district secretary-treasurers are required to provide their school boards with sound professional advice on a continual basis. Appointment to the board of a school district business company should not compromise the performance of their statutory duties, particularly if a majority of the directors appointed to the board of a school district business company are independent and arms-length from the school board.

Transparency and Accountability

As stated previously, school district business companies need to operate with a degree of secrecy in order to take full advantage of emerging business opportunities, safeguard the entity from business risks, and serve the business interests of the shareholder.

However, school boards, as shareholders, need to be informed of the general activities and the performance of their school district business companies. Similarly, since school boards are accountable to their constituents, an appropriate level of public disclosure of the general activities and performance of school district business companies is required.

Although it is logical for a school district business company to adopt the school district year-end (June 30th) as its year-end to simplify the preparation of consolidated financial statements, it is noted that there is no specific requirement that school district business companies do so.

Recommendation #2

It is recommended that the Province take steps to prescribe June 30th as the financial year end for school district business companies.

It is noted that school district business companies must appoint an audit committee, and must prepare audited financial statements annually. Not all business companies are complying with these requirements.

Recommendation #3

It is recommended that the Province take steps to clarify that school district business companies must appoint auditors and must prepare audited financial statements. The Province may also wish to remind school district business companies of audit committee requirements.

Since school district business companies are wholly owned by school boards, the financial statements of each school district are typically prepared on a consolidated basis. Under this approach, transactions between the school district and its business company are offset and are not disclosed on the school district balance sheet.

Recommendation #4

It is recommended that the Province take steps to require school district business companies to include a schedule of transactions between the business company and the school district in the audited financial statements of the school district business company.

The need for school district business companies to inform their shareholders and the publics they serve about the general activities and performance of the business entity is similar to the requirement for a publicly traded company to inform its shareholders and potential investors about the business activities of the entity.

Typically publicly traded companies inform shareholders and potential investors through the issuance of an annual report, along with information disclosures from time to time. These annual reports can frequently be accessed through company websites.

Recommendation #5

It is recommended that the Province take steps to require school district business companies to issue annual reports within three months of the end of each fiscal year. As a minimum, the annual reports should include:

- audited financial statements
- a management discussion and analysis section
- forward looking statements providing general information about business activities

Annual reports should be available to the public.

Section 182 (1) of the *Business Corporations Act* requires school district business companies to hold annual general meetings. However, Sections 182 (2) (c) and 182 (5) allow school boards to waive these requirements. There is no provision requiring annual general meetings of school district business companies to be open to the public.

Recommendation #6

It is recommended that the Province take steps to require school district business companies to:

- hold annual general meetings within three months of the end of each fiscal year;
- make annual general meetings open to the public; and
- provide notice of annual general meetings in the local media at least
 21 days in advance of each annual general meeting.

As a minimum, business conducted at an annual general meeting should include:

- presentation and consideration of the annual report including the audited financial statements;
- appointment of directors; and
- appointment of the auditor.

The Freedom of Information and Protection of Privacy Act provides access to school district information. School boards routinely process requests for information submitted under the provisions of this legislation.

The Freedom of Information and Protection of Privacy Act does not appear to apply to school district business companies.

As stated earlier, school district business companies operate in a competitive environment and must conduct business with a degree of secrecy in order to take full advantage of emerging opportunities, safeguard the entity from business risks, and serve the business interests of the shareholder.

Some might argue that in the case of school district business companies, the need for secrecy overrides the need for openness and transparency. However, the *Freedom of Information and Protection of Privacy Act* balances the need for access to the records of a public body with the need to withhold release of information that may be harmful to business interests.

Recommendation #7

It is recommended that the Province take steps to bring school district business companies, and any subsidiary corporations in which a school district business company holds a controlling interest, under the Freedom of Information and Protection of Privacy Act. The heads of school district business companies can be expected to apply sound judgment in responding to any requests for information submitted under the provisions of this Act.

Business Management

It is prudent for the directors, officers and management of any corporation to assess risks and ensure that appropriate levels of liability insurance are in place to protect the business entity and its directors and officers.

The Schools Protection Program administered by the Risk Management Branch of the Ministry of Finance provides blanket general liability coverage to school boards. The Program is self-insured. Funding for general liability coverage is included in the Ministry of Education voted appropriation for public education each year. The Ministry of Education holds back this funding from the school boards, and transfers the funds, on behalf of the school boards, to the Risk Management Branch to cover the costs of general liability coverage.

Most school district business companies have experienced some difficulties in obtaining insurance coverage. This may be due to the nature of their business activities, the extent of their capitalization, or misunderstandings of underwriters.

Under certain circumstances, the Risk Management Branch has provided an Indemnity Arrangement for school district business companies. Under this approach, liability is transferred from the school district business company to government. Liability claims incurred by a school district business company with an Indemnity Arrangement are funded by government.

While this approach has afforded a level of protection to school district business companies, it is questionable whether funding appropriated for public education and transferred to the Risk Management Branch on behalf of all school districts should be applied to fund liability claims incurred by a handful of business companies engaged in entrepreneurial activities.

While school district business companies may argue that it is difficult to arrange for general liability insurance through private insurers, this is not a compelling argument for funding claims out of funds appropriated for education. This is particularly relevant, given that one of the objectives of enabling school boards to incorporate business companies appears to have been to provide school districts with a measure of protection from liabilities that could arise out of various business ventures.

Recommendation #8

It is recommended that the Province take steps to ensure that the Risk Management Branch does not provide blanket liability coverage to school district business companies or indemnify school district business companies using funds appropriated for public education. The actual costs of such coverage should be borne solely by the school district business companies.

Capital

As stated earlier, school district business companies require some start-up capital. While it is expected that capital can be raised through partnerships and joint-ventures with private business, such capital typically cannot be secured without some initial effort by the school district business companies.

The School Act prohibits school boards from giving, loaning, or otherwise providing funds to their business companies from grants paid under the School Act.

School boards have provided funds to their school district business companies, but have been careful to do so from funds not comprising a grant paid under the School Act.

School boards have handled such transfers in a variety of ways. Some school districts are carrying a transfer as a trade receivable, not unlike an amount that might be receivable from an external organization which purchases goods or services from the district. Other school districts have recorded the transfer as a loan from the shareholder. Others have required the school district business company to arrange a credit facility with a financial institution, but the school board has provided a guarantee to that institution.

The provisions of the *School Act* appear to make it overly difficult for school boards to provide some start-up capital to school district business companies. While the resulting arrangements appear to be within the provisions of the *School Act*, they are not always clear to the public.

School boards should be able to provide some start-up capital to their school district business companies.

RECOMMENDATION #9

It is recommended that the Province take steps to simplify how school boards can provide start-up capital to their school district business companies.

The Province may wish to authorize school boards to provide start-up capital by means of a shareholder loan. The Province may wish to limit the amount of any shareholder loan to an amount not exceeding the unrestricted Operating Fund surplus balance.

School boards should be required to approve any shareholder loan by passage of a by-law.

By restricting the amount of any shareholder loan to an amount not exceeding the unrestricted Operating Fund surplus balance, school boards will only be authorized to make surplus funds available to their school district business companies. By requiring passage of a by-law to authorize a shareholder loan, the approval of a shareholder loan can only occur at a public board meeting, and will require 3 distinct readings.

This recommendation, coupled with the earlier recommendations relating to transparency and accountability, may largely address the concerns expressed by some parents regarding school board decisions to use education funds for entrepreneurial activities.

5. CONCLUSION

While it is arguable whether school district business companies have served the public interest to date, the perceived advantages of school district business companies that led to the enactment of enabling provisions in the *School Act* still exist today.

It is expected that with a stronger governance, transparency and accountability framework, school district business companies can achieve success in a broad range of entrepreneurial activities, and can serve the public interest in the future.

APPENDIX A

TERMS OF REFERENCE FOR BUSINESS ENTITY REVIEW

The purpose of the Review is to examine the governance and operation of school district business companies, and to assess the extent to which these companies are serving the public interest.

The independent reviewer will:

- meet with the school districts that have business companies and other controlled and related entities;
- meet with school board corporate entities;
- meet with the district parent advisory councils of the school boards that have corporate entities;
- receive and review correspondence from interested persons; and
- prepare a report with recommendations for the Minister by July 15, 2006.

In carrying out the review, the independent reviewer will:

- consider the concerns that boards, corporate entities and the public may have;
- consider the relationship between school boards and their corporate entities;
- consider the policies and procedures of school boards with regard to dealings with their corporate entities for compliance with the provisions of the School Act, and
- consider how the operations and activities of corporate entities serve the public interest.

APPENDIX B

Douglas Hibbins, Principal TRILLIUM Business Strategies Inc.

Douglas Hibbins, Principal, TRILLIUM Business Strategies Inc., has extensive experience in the BC education sector.

Doug was employed by the Board of School Trustees, School District No. 15 (Penticton) from 1979 to 1989, serving first as Assistant Secretary-Treasurer and then as Secretary-Treasurer.

Doug served as Director, School Finance Branch, Ministry of Education from 1989 to 1990, and as Assistant Deputy Minister, Ministry of Education from 1990 to 1994. He was responsible for School Finance and School Facilities, and served as the Executive Financial Officer for the Ministry.

Doug served as the Senior Vice President, BC Transportation Financing Authority from 1994 to 1999. He was responsible for project development and financing, and served as the Executive Financial Officer. He also served on the board of directors of a wholly owned subsidiary of the BCTFA.

Doug founded TRILLIUM Business Strategies Inc. in 1999. This general consulting company specializes in:

- business planning
- program review
- > public policy development
- infrastructure development
- partnerships
- > facilitation

Doug currently serves as a director on the boards of Texas Gas and Oil Inc. ("TXG") and Legend Power Systems Inc.

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APPENDIX C

MEETINGS HELD TO GATHER INPUT

May 18, 2006	School District No. 68 (Nanaimo-Ladysmith) • Meeting with SDBC Directors • Meeting with Secretary-Treasurer
May 19, 2006	Lower Mainland • Joint meeting with various SDBC representatives
May 24, 2006	School District No. 34 (Abbotsford) • Meeting with SDBC Directors • Meeting with School Trustees & SDBC Staff • Meeting with Secretary-Treasurer
May 30, 2006	 School District No. 64 (Gulf Islands) Meeting with SDBC Directors Meeting with School Trustees and officials Meeting with Secretary-Treasurer Meeting with DPAC representative
May 31, 2006	 School District No. 35 (Langley) Meeting with SDBC Directors Meeting with Secretary-Treasurer Meeting with DPAC representatives
June 5, 2006	School District No. 6 (Rocky Mountain) Meeting with SDBC Director & representative Meeting with Secretary-Treasurer
June 6, 2006	 School District No. 36 (Surrey) Meeting with SDBC Directors Meeting with Secretary-Treasurer Meeting with DPAC representative
June 7, 2006	 School District No. 40 (New Westminster) Meeting with SDBC Directors Meeting with School Trustees Meeting with Secretary-Treasurer
June 9, 2006	School District No. 39 (Vancouver) • Meeting with Secretary-Treasurer

June 13, 2006	School District No. 43 (Coquitlam) Meeting with Secretary-Treasurer Meeting with DPAC representatives
June 16, 2006	School District No. 73 (Kamloops/Thompson) • Meeting with SDBC Directors & SDBC staff • Meeting with Secretary-Treasurer
June 17, 2006	School District No. 40 (New Westminster) • Meetings with parents, trustees, members of the public
June 21, 2006	School District No. 64 (Gulf Islands) • Meeting with parents, members of the public
June 23, 2006	School District No. 42 (Maple Ridge – Pitt Meadows) • Meeting with Secretary-Treasurer • Meeting with DPAC representatives
June 30, 2006	School District No. 60 (Peace River North) • Teleconference with Secretary-Treasurer
June 30, 2006	School District No. 23 (Central Okanagan) • Meeting with Secretary-Treasurer
June 30, 2006	School District No. 22 (Vernon) • Meeting with Secretary-Treasurer
July 5, 2006	School District No. 61 (Greater Victoria) • Meeting with Secretary-Treasurer

Input was also received electronically and by telephone from individuals wishing to express views regarding school district business companies.