



Ministry of Education
Capital Management Branch

Questions and Answers

Disposal of Land or Improvements Order (M193/08)

School Building Closure and Disposal Policy

1. What is the meaning of “broad consultation” regarding the disposal of land or improvements?

Just like consultation undertaken around school closures, a board must consult with local government, community organizations and the general public regarding alternative community uses and the disposal of land.

Such consultation should be in accordance with the board’s policies and procedures established for its school district with respect to the disposal of land or improvements.

Boards of education are in the best position to determine the type of community consultation that would be required for site-specific cases.

2. What are “community agencies or organizations” with respect to “alternative community use”?

Boards of education should consider the type of users that might be interested in leasing a board-owned property for a period of less than 10 years for a use other than the educational purposes of the board.

A board may define such agencies and organizations and acceptable alternative uses in the policies and procedures established for its school district with respect to the disposal of land or improvements through lease agreements.

3. Who has legal ownership of property?

A board of education is the owner of all school district property that is held in its own name. The exception is any school site being used for education purposes that is the subject of a Crown Land grant, as described under s. 99 of the *School Act*.

4. Is vacant land (i.e., no school was ever built) subject to the new Order?

Yes. All real property (land) owned by the board is affected by the Order, whether vacant or with a school or other building on it, except if the land is the subject of a Crown grant in trust for educational purposes.

5. Does this new order replace previous orders regarding property disposals?

The Disposal of Land or Improvements Order (Ministerial Order M193/08) repeals the previous Disposal of Land or Improvements Order (Ministerial Order M233/07), effective September 3, 2008.

6. What is the role, if any, of ARES in our projects?

ARES involvement with Ministry of Education projects, as per the previous Ministerial Order M233/07, was rescinded under the new Ministerial Order M193/08.

7. If a board has a sale agreement that was signed prior to September 3, 2008, is ministerial approval required to complete the transaction?

Ministerial approval is not required in cases where a legal commitment between the board and a purchaser was made prior to September 3, 2008, the date that the new Order came into effect.

8. Do the provisions of the new Order apply where a sales agreement in-principal has been reached, but not signed off, by the board and a purchaser?

The new Ministerial Order applies to any situation where there is no legally-binding agreement in place as at September 3, 2008.

9. How will disposals that are part of a Project Agreements signed by the Minister be affected?

Each of these situations will be considered on a case-by-case basis. A board will need to request ministerial approval before proceeding to disposal, as per section 5 of the Disposal of Land or Improvements Order. These requests should detail the situation, including the boards' consideration of the disposal in terms of an expanded mandate for early learning and the potential for alternative community uses.

Future project agreements may explicitly include ministerial approval of a related property disposal, providing that the provisions of the Order have been met.

10. What are the steps in the approval process?

A board of education must make a formal request to the Minister of Education for approval to dispose of a property by sale, exchange or lease of 10 years or more, unless that disposal is to another board or an independent school authority for educational purposes. That request must address the following issues:

- For schools, verification that the school closure was completed in accordance with the provisions under the current or a former School Opening and Closure Order
- Description of exceptional circumstances compelling the board to request ministerial approval for the disposal of the property
- Confirmation that the property will not be required for future educational purposes, including K-12 programming and new educational initiatives, such as early learning programs.
- Description of broad consultation that was undertaken with respect to the proposed disposal
- Description of how the property was first acquired for educational purposes by the board
- Confirmation that the property is owned by the board and not the subject of a Crown Land grant, as evidenced by the following documents obtained from the Land Title Office:
 - i. State of Title Certificate (certified copy of title); or
 - ii. Title Search Print (computer generated printout of a comprehensive title search, which must include a Parcel Identifier number)
- Address and legal description of the property
- Site plan showing the subject property clearly outlined in bold or in colour
- Property appraisal by two licensed property appraisers. In situations where it is not practical to obtain two comprehensive appraisals, the latest property assessment notice may be acceptable as one of the appraisals
- Statement of expected purchase price

A board's bylaw, as described under section 7 of the Disposal of Land or Improvements Order, is not required as part of a board's request for ministerial approval of a disposition of a property by sale or lease of 10 years or more. The adoption of such a bylaw by the board only becomes necessary after ministerial approval has been granted.

11. When do you ask for the Minister’s approval, before or after consultation?

Broad consultation with respect to the disposition of a particular school property must be completed prior to requesting the Minister’s approval.

12. Is a board of education able to enter into an agreement-to-sell prior to receiving Ministerial approval?

No. Ministerial approval is required before entering into any such agreements for the sale, exchange or lease of 10 years or more of school property, except where the purchaser is another board of education or an independent school authority.

13. There is a public consultation process required for school closures under the School Opening and Closing Order (M194/08) and a broad consultation required for the disposition of school property under the School Building Closure and Disposal Policy. Can these consultations be the same?

No, these consultations must be undertaken separately and sequentially by a board.

As provided under s. 5 of the School Opening and Closure Order, the public consultation process for the closure of a school must include:

- (a) a fair consideration of the community’s input and adequate opportunity for the community to respond to a board’s proposal to close the school permanently;
- (b) consideration of future enrolment growth in the district of persons of school age, persons of less than school age and adults; and
- (c) consideration of possible alternative community use for all or part of the school.

As established by recent court decisions, a public consultation process with respect to surplus or underutilized school space must be completed prior to any final decision on closing a school being rendered by a board. Only after a decision to close a school has been finalized and the school has been properly closed in accordance with s. 5 of the School Opening and Closure, should the question of the potential disposition of the property be appropriately considered.

Similarly, procedural fairness would dictate that a predetermined decision regarding the disposal of a school property should not be made prior to considering the results of broad consultation.

As such, the school closure consultation and property disposal consultation should not be done simultaneously.

14. Will the Land Titles Office require a “certificate of disposal”?

Yes. The Ministry and Land Title Office will be re-introducing a process similar to that used in the past when Minister of Education approval was required for the disposal of land or improvements by boards.

15. What types of disposals are affected by the Order?

The Order applies to the disposition of land or improvements by sale and transfer in fee simple (where there is a change in legal ownership), or by way of a lease of 10 years or more (including the cumulative total of all options and rights to extend or renew the lease).

The Order does not apply to situations where there is a transfer of interest in a board property, such as rights-of-way and easements, which may be registered as a charge on title of the property, and leases of less than 10 years.

16. Do transactions such as partial sales, transfers of property or land swaps require broad consultation and ministerial approval?

Under the *Interpretation Act*, “dispose” means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things.

As partial sale, transfers of property or land swaps can be deemed to be property disposals, the provisions under the Order apply.

17. Does this Order pertain to Crown Land grants?

School sites that are the subject of a Crown Land grant are not affected by the Disposal of Land or Improvements Order. Crown Land grants no longer required for educational purposes revert to the Crown as per s. 99 of the *School Act*.

18. Will boards be required to sell/lease surplus school space to independent schools, which could result in further decreases in public education enrolment?

Boards are not required to sell or lease, for more than 10 years, any surplus schools to independent schools, but would be expected to consider the needs of other learners in their communities, including francophone and independent school students.

Under the Order, boards may dispose of land or improvements to another board or an independent school authority for educational purposes without seeking ministerial approval.

Such transactions would be in accordance with the board’s policies and procedures established for its school district with respect to the disposal of land or improvements.

19. Why would government allow public land to be sold or leased to independent schools at less than market value? Do independent schools have priority over other community groups?

Boards are not required to sell surplus property to independent schools. The Order simply provides boards with the authority to dispose of land or improvements, which will continue to be used for educational purposes, without ministerial approval.

Whereas the previous land disposal Order required any sale of surplus property to be at fair market value, the current policy does not place this condition on the disposal of surplus property to an independent school, another board of education, local government or community organization.

The value, as well as the priority, of such dispositions would be in accordance with policies and procedures established by a board for its school district with respect to the disposal of land or improvements. Those policies and procedures may consider the disposition of a board-owned property for an amount less than fair market value.

20. Are there Ministry expectations regarding prioritization of groups vying for surplus school space (e.g., daycare vs. independent school)?

Boards of education are in the best position to determine the types of alternative community uses or other educational purposes that might be suited for surplus school space available in their school districts.

Any decisions regarding prioritization of uses should be based on the results of broad community consultation and in accordance with the policies and procedures that must be developed by a board with respect to the disposal of land or improvements.

21. Will the change in the Order affect the allocation of proceeds from disposition under s. 100 of the *School Act*?

There are no impacts on the allocation of money between the minister and the board under s. 100 of the *School Act*.

22. Will the change in the Order affect the allocation of money received in respect of a lease to operating or capital expenditures under s. 100.1 of the *School Act*?

There are no impacts on the allocation of money under s. 100 of the *School Act*.