
APPROPRIATE EDUCATIONAL PROGRAMMING IN MANITOBA

A Formal Dispute Resolution Process

2006

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Resolution Process*

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PHILOSOPHY OF INCLUSIVE EDUCATION

Manitoba Philosophy of Inclusion

Manitoba Education, Citizenship and Youth is committed to fostering inclusion for all people.

Inclusion is a way of thinking and acting that allows every individual to feel accepted, valued and safe. An inclusive community consciously evolves to meet the changing needs of its members. Through recognition and support, an inclusive community provides meaningful involvement and equal access to the benefits of citizenship.

In Manitoba, we embrace inclusion as a means of enhancing the well-being of every member of the community. By working together, we strengthen our capacity to provide the foundation for a richer future for all of us.

The Public Schools Amendment Act (Appropriate Educational Programming), S.M. 2004, c.9, proclaimed on October 28, 2005, reflects Manitoba's commitment to providing all students with appropriate programming that supports student participation in both the academic and social life of schools. The legislation and regulations affirm what many school divisions already practise and clarify for parents and school divisions the obligation to provide appropriate educational programming for each student.

The changes to the act have been developed with the input of hundreds of parents, teachers, students and others involved in the province's educational system. Numerous organizations and individual Manitobans contributed significant time and effort to shape this legislation, which sets the framework for appropriate programming for students with diverse needs. It also provides a dispute resolution process if disagreements arise about the appropriateness of the educational programming a school board provides to a student with an individual education plan (IEP) in place.

The consultation process defined appropriate educational programming as:

a collaborative school-family-community process where school communities create learning environments and provide resources and services that are responsive to the lifelong learning, social and emotional needs of all students.

This philosophy of inclusive education is integral to *Appropriate Educational Programming in Manitoba: A Formal Dispute Resolution Process*.

OVERVIEW: RESOLVING DIFFERENCES

In Manitoba, children and youth have a right to appropriate educational programming* and appropriate educational placement. This right is legislated in *The Public Schools Act* and supporting regulations. In making decisions about educational programming and placement for students, school teams, including parents,** work together. In some situations, differences of opinion will occur. Typically, these differences can be resolved by the people directly involved. However, some differences may require a more formal process.

Processes for Resolving Differences

Manitoba school divisions and school boards, in collaboration with parents, are required to make every reasonable effort at the school and division levels to resolve concerns. Parents should also work with school division staff to arrive at reasonable solutions. If there is a dispute about the education of students with exceptional learning needs, the parties involved have several options:

- **Resolution at the school level:** An attempt to resolve differences at the local school level is typically the best approach. It offers the possibility of a solution that is acceptable to everyone in a reasonable period of time. This would involve the teacher, other in-school personnel and administrators.
- **Resolution at the school division level:** This process involves a formal appeal to the school board that results in a board decision. This may involve divisional staff, the superintendent and the school board.
- **Resolution at the departmental level:** This level of dispute resolution involves a formal review of the school board decision about appropriate educational programming by a review committee appointed by the Minister of Manitoba Education, Citizenship and Youth.

Information about informal problem solving and the formal appeal process to the school board will be made available by the school division to school division staff and parents.

* In this document, the term “programming” is inclusive of both curriculum and placement.

** The term “parents” refers to both parents and guardians and is used with the recognition that in some cases only one parent may be involved in a child’s education. This term may also apply to a student who has reached the age of majority.

Departmental Resources

For further suggestions on informal approaches to problem solving and dispute resolution, refer to the following resource produced by Manitoba Education, Citizenship and Youth:

- *Working Together: A Guide to Positive Problem Solving for Schools, Families, and Communities*

Other departmental resources on appropriate educational programming in Manitoba are available on the website at:

<<http://www.edu.gov.mb.ca/ks4/specedu/documents.html>>.

RESOLUTION AT THE SCHOOL LEVEL: INFORMAL PROBLEM SOLVING

When concerns and differences arise between parents and the school, they should first be dealt with in an informal way at the local school level.

Resolving issues on students' education should begin with the people most directly involved. This usually means a discussion among the parents (and, where possible, the student) and the teacher or the school team. At the school level, problem solving has the greatest chance to result in a solution that is acceptable to everyone involved.

If this process does not resolve the issue, the next step is to hold a meeting that involves the parents, the teacher, the school principal and, where possible, the student. Both parties in a dispute should inform the school principal of their concerns and indicate that an earlier attempt has been made to find a solution. This will ensure all parties can contribute information, perspectives and ideas for the best possible solution.

If the issue cannot be resolved at the school level, a telephone call or letter to the school division should be the next step.

RESOLUTION AT THE SCHOOL DIVISION LEVEL: APPEAL TO THE SCHOOL BOARD

At the school division level, a telephone call or letter will be referred to the appropriate divisional staff member to consider the concern. This person may be a subject specialist, supervisor or superintendent. The divisional staff member will review the case and look for solutions to the issue. In most cases a solution will be found. However, in a few situations the next step would be to request a formal review by the school board. This process will vary from school division to school division, so please check locally to determine the process in place.

School boards have an obligation to inform parents and school staff of their right to appeal decisions that significantly affect a student's education. This includes disagreements about appropriate educational programming. The local decision-making process may vary from one school division to another, but the goal is to resolve issues in the best interest of the student.

The school division policy should describe the local decision-making process, including an avenue of appeal to the school board. The appeal process should be fair, timely and open. It should ensure parents and school division staff know in advance how the process works and have a reasonable opportunity to prepare and present their case.

The school board will make a final decision and advise all parties in writing. School boards have an obligation to advise parents of their right to request a review of the board's decision by a review committee if the dispute is about appropriate educational programming.

RESOLUTION AT THE DEPARTMENTAL LEVEL: MINISTER'S REVIEW COMMITTEE

When the Minister of Education, Citizenship and Youth receives a request from parents about a school board decision made as part of the appeal process, a review co-ordinator is assigned to the case. The review co-ordinator contacts the parents and the school board for any required additional information, and decides whether or not to review the school board's decision.

Determining the Need for a Review

To determine whether a minister's review is appropriate, the review co-ordinator considers such questions as:

- Does the matter concern appropriate educational programming or placement within the context of individual education planning?
- Is there a documented decision by the school board on the matter?
- What are the issues? Are there other more appropriate processes for resolving the dispute?
- Has the matter been previously considered by a review committee?
- Has the timeline for filing a complaint been met?
- Have local dispute resolution processes outlined in school board policy been followed by parents and school division staff? Have all parties made a reasonable effort to resolve the issues in a fair, timely and open way?
- Are there investigations (for example, police investigations), actions or decisions related to this issue that affect the process?

The review co-ordinator also assesses the possibility of using mediation or another method to resolve the dispute. Whenever possible, it is preferable that a dispute between parents and the school division be settled with an agreement that both parties accept.

If the review co-ordinator decides resolution at the departmental level is not appropriate, the parents and school board will be informed in writing of the reasons for not acting on the complaint.

Appointment and Role of the Review Committee

If the dispute is to be reviewed, the minister appoints the chair and two other persons to the review committee. The review co-ordinator serves as secretary and facilitator for the committee but does not have voting rights on the committee.

A review conducted by the review committee is an independent assessment of a decision made by a school board to resolve a disagreement between parents and school division staff. A review is intended to provide a decision that is reasonable and appropriate in meeting the educational needs of the child.

Phases of the Review Process

The review process will usually be divided into phases:

- preparation phase
- investigation/hearing phase
- reporting/recommendation phase

In the **preparation phase**, the committee looks at the information submitted for the appeal. It will identify and share with the parties what it considers to be the relevant issues. The committee may ask both the parents and the school board to provide any additional information to support the review. This may include reports, results from assessments, correspondence, the student's IEP and other information on the student's educational programming.

The committee provides a copy of each party's submission to the other party for consideration. It then reviews the information. Both the parents and the school board provide a list of people the review committee could interview. The review committee then decides whom to interview and what questions to ask. Information gathered will be made available to both parties in the reporting/recommendation phase.

In the **investigation/hearing phase**, the review committee conducts interviews, examines materials and engages in activities to gain information in order to develop an understanding of the student's learning needs and the educational programming offered. The review is not a trial, nor is it conducted like a court of law. It is a review to develop a clear understanding of the circumstances that led to the school board's decision. The review committee may also visit the student's current or proposed educational placement.

The review committee may also hold a hearing at which both parties could present additional information. Such a hearing, if held, would be an additional opportunity for the review committee to gather information from the parties.

Parents who want a supporting person to accompany them to an interview and/or a hearing should inform the review co-ordinator before the event so that the role of the supporting person can be clarified. The supporting person might be a family member, a friend or anyone willing to provide information and/or support at the interview or hearing.

In the **reporting/recommendation phase**, the review committee considers the information it has gathered, and writes a report that includes:

- terms of reference for the review
- summary of information and recommendations
- statements of agreement or disagreement from either party
- review committee's responses to statements of disagreement
- the recommendation

The review co-ordinator sends the report and recommendations to both parties involved in the appeal. If parents or the school board disagree with any information or recommendations in the summary of information and recommendations, they must provide in writing to the review co-ordinator the reasons for their disagreement. The recommendation may be amended as a result of the new information.

The recommendations and report are then filed with the Deputy Minister of Manitoba Education, Citizenship and Youth, and the review committee's decision is conveyed in writing to both parties.

The Review Committee's Decision

Parties must be advised of their right to appeal the review committee's decision to the deputy minister within 30 days of the date of the decision. The appeal must be in writing, with the party making the appeal providing a copy to the other party. Written submissions with respect to the appeal must be filed within 14 days of the filing date of the appeal.

After having received the review committee's report and final recommendations, and after considering any submissions made by parties to the appeal, the deputy minister may make any decision he or she determines appropriate regarding the matter. The deputy minister's decision is final; however, *The Public Schools Act* does not preclude an application to the Court of Queen's Bench for judicial review.

APPENDIX

APPENDIX

THE PUBLIC SCHOOLS ACT*
(C.C.S.M. c. P250)

**Appropriate Educational Programming
Regulation**

Regulation 155/2005
Registered October 26, 2005

LOI SUR LES ÉCOLES PUBLIQUES
(c. P250 de la C.P.L.M.)

**Règlement sur les programmes d'éducation
appropriés**

Règlement 155/2005
Date d'enregistrement : le 26 octobre 2005

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* This is not an official copy of *The Public Schools Act/Regulation 155/2005*.

PART 3

DISPUTE RESOLUTION

Appointment of review coordinator

9 The minister must appoint a person as the review coordinator.

Complaint may be made to the review coordinator

10(1) A parent of a pupil, or a pupil who is over the age of 18, may complain to the review coordinator about the appropriateness of the following, as identified in the pupil's individual education plan:

- (a) how the pupil's programming requirements for meeting or approximating the expected learning outcomes, or the outcomes the pupil can reasonably be expected to meet, are addressed;
- (b) where a pupil is placed in relation to his or her receiving educational programming.

10(2) A complaint must be in writing and must specify

- (a) the complainant's name and address;
- (b) the name of the pupil, where the complaint is made by the pupil's parent; and
- (c) the reason or reasons why the complaint is made.

Preliminary inquiries by review coordinator

11(1) The review coordinator must, as soon as reasonably practicable after receiving a complaint, make any preliminary inquiries that he or she considers necessary to determine if

- (a) the complaint relates to a matter set out in subsection 10(1); and
- (b) the complainant has attempted to resolve the matter
 - (i) with the pupil's principal,
 - (ii) with the superintendent, and
 - (iii) by following the appeal process established by the school board, if any.

PARTIE 3

RÈGLEMENT DES DIFFÉRENDS

Nomination d'un coordonnateur des révisions

9 Le ministre nomme une personne à titre de coordonnateur des révisions.

Plainte

10(1) L'élève — s'il est âgé de plus de 18 ans — ou son parent peut déposer une plainte auprès du coordonnateur des révisions au sujet des éléments suivants du plan d'éducation personnalisé :

- a) la façon dont les besoins de l'élève sont comblés pour qu'il puisse atteindre complètement ou presque les résultats d'apprentissage prévus ou les résultats qu'il devrait normalement atteindre;
- b) l'endroit où l'élève est placé relativement au programme d'éducation.

10(2) La plainte est écrite et indique :

- a) le nom et l'adresse du plaignant;
- b) le nom de l'élève, si elle est déposée par son parent;
- c) les raisons pour lesquelles elle est déposée.

Enquête préliminaire

11(1) Dès que possible après la réception de la plainte, le coordonnateur des révisions procède à toute enquête préliminaire qu'il estime nécessaire afin de déterminer si :

- a) d'une part, la plainte a trait à une question visée au paragraphe 10(1);
- b) d'autre part, le plaignant a tenté de régler la question :
 - (i) avec le directeur de l'élève,
 - (ii) avec le surintendant,
 - (iii) en suivant la procédure d'appel établie par la commission scolaire, le cas échéant.

11(2) The review coordinator must decline to take any further action in respect of the complaint, and advise the complainant in writing of the reason for doing so, if he or she determines

(a) the complaint does not relate to a matter set out in subsection 10(1);

(b) where the school board has established an appeal process,

(i) that appeal process has not been completed, or

(ii) more than 30 days have passed since the matter complained of was finally determined by the school board;

(c) a review committee has previously considered a complaint respecting the same pupil, and there has been no material change in the pupil's circumstances since that previous complaint was determined; or

(d) the complaint is frivolous, vexatious or made in bad faith.

Alternative dispute resolution

12(1) The review coordinator may, if he or she considers it appropriate in the circumstances, offer the complainant and the school board an alternative process for resolving the complaint.

12(2) Where a complaint is resolved through an alternative process,

(a) the school board must advise the review coordinator of the resolution in writing; and

(b) the review coordinator must confirm the resolution with the complainant.

Establishment of review committee

13(1) The minister must appoint a review committee when advised by the review coordinator that a complaint has been received and that

(a) in the circumstances, it is not appropriate to offer an alternative process for resolving the complaint;

(b) the complainant or the board do not agree to an alternative process to resolve the complaint; or

(c) the alternative process was unsuccessful in resolving the complaint.

11(2) Le coordonnateur des révisions refuse de donner suite à la plainte et avise le plaignant par écrit du motif de sa décision s'il détermine :

a) que la plainte n'a pas trait à une question visée au paragraphe 10(1);

b) dans le cas où la commission scolaire a établi une procédure d'appel :

(i) soit que cette procédure n'a pas été épuisée,

(ii) soit qu'une période de plus de 30 jours s'est écoulée depuis qu'elle a réglé la plainte de façon définitive;

c) qu'un comité de révision a déjà examiné une plainte concernant le même élève et que la situation de celui-ci n'a pas changé de façon importante depuis que cette plainte a été tranchée;

d) que la plainte est frivole, vexatoire ou déposée de mauvaise foi.

Autre mode de règlement des différends

12(1) S'il l'estime indiqué dans les circonstances, le coordonnateur des révisions peut offrir au plaignant et à la commission scolaire un autre mode en vue du règlement de la plainte.

12(2) Si la plainte est réglée au moyen d'un autre mode :

a) la commission scolaire avise par écrit le coordonnateur des révisions du règlement;

b) le coordonnateur des révisions confirme le règlement auprès du plaignant.

Constitution d'un comité de révision

13(1) Le ministre nomme un comité de révision lorsque le coordonnateur des révisions l'avise qu'une plainte a été reçue et que, selon le cas :

a) dans les circonstances, il n'est pas opportun d'offrir un autre mode en vue du règlement de la plainte;

b) le plaignant ou la commission refuse de recourir à un autre mode afin de régler la plainte;

c) l'autre mode n'a pas permis de régler la plainte.

13(2) A review committee must consist of three members, and the minister must designate one of the members as chair of the committee.

13(3) The minister may appoint a review committee for more than one complaint where the minister is satisfied

(a) the complaints are substantially similar in nature; and

b) it would be fair and reasonable in the circumstances for the complaints to be dealt with at the same time and by the same committee.

13(4) If a member of a review committee dies or is otherwise incapacitated, the minister must appoint a new review committee.

Role of review committee

14(1) Where a review committee is appointed in respect of a complaint, the committee must

(a) investigate the complaint; and

(b) prepare a written report that sets out

(i) the nature of the complaint and the respective positions of the complainant and the school board, and

(ii) the committee's recommendations for meeting the pupil's requirements, placement of the pupil, or both.

14(2) A review committee may investigate a complaint in any manner that the committee considers suitable in the circumstances, and may

(a) request any person, including the school board, to answer any questions and to produce for the committee any documents, papers, notes, records and other material relevant to the complaint or to appropriate education programming within the division or district; and

(b) copy and keep copies of any of the material that is produced under clause (a).

14(3) A school board must comply with a request of a review committee described in subsection (2).

Hearing is optional

15(1) A review committee may hold a hearing but is not required to do so.

13(2) Le comité de révision se compose de trois membres, l'un d'entre eux étant désigné à titre de président par le ministre.

13(3) Le ministre peut nommer un comité de révision à l'égard de plus d'une plainte s'il est convaincu, à la fois :

a) que les plaintes sont à peu près de même nature;

b) qu'il serait juste et raisonnable dans les circonstances qu'un même comité les règle en même temps.

13(4) Si un des membres du comité de révision décède ou ne peut agir pour une autre raison, le ministre nomme un nouveau comité de révision.

Rôle du comité de révision

14(1) Le comité de révision a pour rôle :

a) d'enquêter sur la plainte;

b) d'établir un rapport écrit faisant état :

(i) de la nature de la plainte et du point de vue des parties,

(ii) de ses recommandations concernant la façon de répondre aux besoins de l'élève ou le placement de celui-ci, ou les deux.

14(2) Le comité de révision peut enquêter sur la plainte de la manière qu'il estime indiquée dans les circonstances et peut :

a) demander à toute personne, y compris la commission scolaire, de répondre à des questions et de lui produire des documents ayant trait à la plainte ou aux programmes d'éducation appropriés au sein de la division ou du district, notamment des notes et des dossiers;

b) reproduire les documents produits en vertu de l'alinéa a) et en garder des copies.

14(3) La commission scolaire est tenue de donner suite à la demande visée au paragraphe (2).

Audience facultative

15(1) Le comité de révision peut tenir une audience mais n'est pas obligé de le faire.

15(2) A review committee that decides to hold a hearing

(a) is not bound by the rules of evidence that apply to judicial proceedings; and

(b) may establish its own rules of practice and procedure for the hearing.

Parties to be provided report and recommendation

16(1) After preparing its written report and recommendation, the review committee must provide the complainant and the school board an opportunity to review and comment on it.

16(2) On receiving comments from the complainant, the school board or both, the review committee may confirm or amend its recommendation.

16(3) A recommendation of the review committee must be in accordance with the enactments of Manitoba.

16(4) The review committee must file a copy of its report and final recommendation with the deputy minister.

Final recommendation is decision

17(1) The final recommendation of a majority of the committee's members is the decision of the committee. Where there is no majority, the recommendation of the committee's chair is the decision of the committee.

17(2) The review committee must give the complainant and the school board a copy of the final decision and inform them of their right to appeal to the deputy minister.

17(3) The final decision must be given to the complainant and the school board personally, by regular lettermail or by another method acceptable to the review committee, the complainant and the school board.

Appeal to deputy minister

18(1) A complainant or a school board may appeal the review committee's decision to the deputy minister.

18(2) An appeal to the deputy minister must be made within 30 days after the date of the review committee's decision. The appeal must be made in writing and the party making the appeal must give a copy of it to the other party.

15(2) S'il décide de tenir une audience, le comité de révision :

a) n'est pas lié par les règles de preuve qui s'appliquent aux instances judiciaires;

b) peut établir ses propres règles de pratique et de procédure.

Remise d'un rapport aux parties

16(1) Après avoir établi par écrit son rapport, le comité de révision donne aux parties la possibilité de l'examiner et de le commenter.

16(2) Lorsqu'il reçoit les commentaires des parties, le comité de révision peut confirmer ou modifier ses recommandations.

16(3) Les recommandations du comité de révision sont conformes aux textes du Manitoba.

16(4) Le comité de révision dépose une copie de son rapport et de ses recommandations finales auprès du sous-ministre.

Décision du comité de révision

17(1) Les recommandations finales de la majorité des membres du comité de révision constituent la décision de celui-ci. En l'absence de majorité, les recommandations du président constituent la décision du comité.

17(2) Le comité de révision remet aux parties une copie de sa décision finale et les informe de leur droit d'en appeler auprès du sous-ministre.

17(3) La décision finale est remise aux parties en mains propres, par poste-lettres ordinaire ou par toute autre méthode que le comité de révision, le plaignant et la commission scolaire jugent acceptable.

Appel au sous-ministre

18(1) Le plaignant ou la commission scolaire peut interjeter appel de la décision du comité de révision devant le sous-ministre.

18(2) L'appel est interjeté par écrit dans les 30 jours suivant la date de la décision du comité de révision. L'appelant en remet une copie à l'autre partie.

18(3) The parties may file submissions respecting the appeal with the deputy minister. Submissions must be in writing and must be filed within 14 days of the appeal being filed but, at the request of a party, the deputy minister may grant an extension.

Deputy's decision is final

19(1) After receiving the review committee's report and final recommendation, and after considering any submissions made by the parties to the appeal, the deputy minister may make any decision he or she determines appropriate regarding meeting the pupil's requirements, placement of the pupil, or both.

19(2) The deputy minister's decision is final and, if applicable, the school board must implement the decision as directed by the deputy minister.

19(3) For certainty, the deputy minister is not bound by the recommendation of the review committee and may make any decision that is in accordance with the enactments of Manitoba.

PART 4

TRANSITION AND COMING INTO FORCE

Previous determinations of board may be reviewed

20(1) Despite subclause 11(2)(b)(ii), the review coordinator may take further action in respect of a complaint – including advising the minister that a review committee needs to be appointed in respect of it – if

(a) the complaint, which complies with section 10, is filed with the review coordinator before December 16, 2005;

(b) the subject matter of the complaint

(i) was finally determined under the school board's appeal process before the coming into force of this regulation, and

(ii) relates to educational programming or placement for the 2005-06 school year; and

18(3) Les parties peuvent déposer leurs observations auprès du sous-ministre dans les 14 jours suivant le dépôt de l'appel. Le sous-ministre peut accorder une prorogation à la demande d'une partie.

Décision définitive

19(1) Après avoir reçu le rapport ainsi que les recommandations finales du comité de révision et après avoir examiné les observations des parties, le sous-ministre peut rendre toute décision qu'il estime indiquée concernant la façon de répondre aux besoins de l'élève ou le placement de celui-ci, ou les deux.

19(2) La décision du sous-ministre est définitive et doit, le cas échéant, être appliquée selon ses directives par la commission scolaire.

19(3) Le sous-ministre n'est pas lié par les recommandations du comité de révision et peut rendre toute décision conforme aux textes du Manitoba.

PARTIE 4

DISPOSITIONS TRANSITOIRES ET
ENTRÉE EN VIGUEUR

Révision des décisions antérieures de la commission scolaire

20(1) Par dérogation au sous-alinéa 11(2)b(ii), le coordonnateur des révisions peut donner suite à une plainte, notamment en avisant le ministre qu'un comité de révision doit être constitué à son égard, dans le cas suivant :

a) la plainte remplit les exigences énoncées à l'article 10 et est déposée auprès de lui avant le 16 décembre 2005;

b) la question faisant l'objet de la plainte a :

(i) d'une part, été tranchée de façon définitive dans le cadre de la procédure d'appel de la commission scolaire avant l'entrée en vigueur du présent règlement,

(ii) d'autre part, trait au programme d'éducation ou au placement pour l'année scolaire 2005-2006;

(c) the review coordinator is satisfied that

(i) there has been no change in circumstances that warrant the school board's reconsidering the matter, or

(ii) the school board has declined to reconsider the matter.

20(2) This section is repealed on December 16, 2005.

Coming into force

21 This regulation comes into force on the same day that *The Public Schools Amendment Act (Appropriate Educational Programming)*, S.M. 2004, c. 9, comes into force.

October 25, 2005
25 octobre 2005

**Minister of Education, Citizenship and Youth/
Le ministre de l'Éducation, de la Citoyenneté et de la Jeunesse,**

Peter Bjornson

c) il est convaincu :

(i) soit qu'il n'est survenu aucun changement de circonstances permettant de justifier un nouvel examen de la question par la commission scolaire,

(ii) soit que la commission scolaire a refusé d'examiner de nouveau la question.

20(2) Le présent article est abrogé le 16 décembre 2005.

Entrée en vigueur

21 Le présent règlement entre en vigueur en même temps que la *Loi modifiant la Loi sur les écoles publiques (programmes d'éducation appropriés)*, chapitre 9 des *L.M. 2004*.

L'Imprimeur de la Reine
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