October 23, 2017

Dear Applicant:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File #: EECD/063/2017)

On October 3, 2017 the Department of Education and Early Childhood Development received your request for access to the following records/information:

A copy of the following briefing notes: Ruling of the NL court of appeal regarding the NLESD decision to close Whitbourne Elementary; Proposal from SABRI regarding the use of former Harriet Curtis Collegiate; NL participation in 2019 Trends in International Mathematics; and Science Study Vacant School Properties (August 25).

A decision has been made by the Deputy Minister for the Department of Education and Early Childhood Development to provide access to some of the requested information and the appropriate copies have been enclosed.

Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

Policy advice or recommendations

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;

Legal advice

30.(1) The head of a public body may refuse to disclose to an applicant information

(a) that is subject to solicitor and client privilege or litigation privilege of a public body; or
(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.

Disclosure harmful to the financial or economic interests of a public body

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;
(g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body;

.../2
Disclosure harmful to personal privacy

40.(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

Please note that pages 16 and 17 have been removed in its entirety under Section 30 - Legal Advice - s30.(1)(a) and s30.(1)(b).

As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

You may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act. A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, N.L. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact the undersigned by telephone at 709-729-841 or by e-mail at brian.evans@gov.nl.ca.

Sincerely,

Brian Evans, CIPP/C
Director of Policy & Information Management
ATIPP Coordinator

Enclosure
Information Note
Department of Education and Early Childhood Development

Title: Ruling of the NL Court of Appeal regarding the Newfoundland and Labrador English School District (NLESD) decision to close Whitbourne Elementary School

Issue: To provide the Minister of Education and Early Childhood Development and the Premier’s Office with an update on the decision of the NL Court of Appeal regarding closure of Whitbourne Elementary.

Background and Current Status:
- School closure decisions are within the sole jurisdiction/authority of school boards and subject only to a parent consultation process. NLESD follows a formal school review process for school closures.
- Whitbourne Elementary is located in the Town of Whitbourne and has a current enrolment of 92 students, as per NLESD enrolment information.
- There have been 3 notices of motion to close Whitbourne Elementary School since 2013.
  - On July 10, 2013, the Board of Trustees for the former Eastern School District voted to keep Whitbourne Elementary open.
  - On April 16, 2016, the Board of Trustees for the NLESD voted to close the school. This decision was overturned by Justice Valerie Marshall on July 29, 2016 on the grounds that parents did not have enough time or information to prepare appropriate information to use in presentations to the board on the vote.
  - On September 20, 2016, the NLESD board of trustees voted to close Whitbourne Elementary effective June 2017. Parents had requested that the board defer the motion to close Whitbourne Elementary until after school board elections in November 22, 2016. The board proceeded with the vote and the motion to close.
- The initial motion of July 10, 2013 to close Whitbourne Elementary was voted on by the Board of Trustees of the former Eastern School District. In 2013, the four regional English school districts were consolidated to become the Newfoundland and Labrador English School District.
- In accordance with Section 59 of the School's Act, 1997, in April 2013 government established a School Board Transition Committee and an Interim Board of Trustees. This board was comprised of 8 previously elected trustees from the former regional boards.
- The initial interim board of trustees recommended to government the addition of 8 trustees to ensure greater geographical representation. In accordance with Section 59, Government appointed 7 new members to the Board of Trustees for NLESD effective October 4, 2013. These members were appointed “until the next general school board elections”.
- Fixed date school board elections under the School Board Elections Regulations scheduled for early November, 2013 were deferred by then Minister of Education through issuance of a press release indicating elections would be held in 2014.
- The Board of Trustees submitted the Constitution for NLESD in September 2014 with a request for the addition of two new trustee zones for a total of 17 trustees to ensure
appropriate representation. This request was granted approval and a new Composition of School Board Order was issued; however, additional trustees were not appointed to fill the vacant positions. As provincial elections were to be held in November 2015 it was determined that school board elections would be further deferred.

- Upon election in 2015, Premier Dwight Ball issued a mandate letter to the Minister of Education and Early Childhood Development to hold School Board Elections within the calendar year of 2016. The School Board Elections proceeded on November 22, 2016.

- Following a process of consultation with parents and other community stakeholders, NLESD voted on April 14, 2016 to close the Whitbourne Elementary School (the School) effective June 30, 2016. In a court proceeding against NLESD the parent group applied to the Supreme Court Trial Division for an order to quash NLESD’s decision on 2 grounds: (i) lack of opportunity to make meaningful representations to NLESD and (ii) lack of NLESD statutory authority to make the decision as NLESD trustees were appointed and not elected. A general election had not been held on the fixed date for election in November 2013 under the School Board Elections Regulations (the Regulation). This second ground was based on the alleged failure of the then Minister of Education to direct NLESD to defer the date of the election as required by the Regulation. Section 3(1) of the Regulation states: An election of Trustees to a board shall be held on November 3, 2009, and afterward on the first Tuesday in November every four years, unless the minister otherwise directs.

- On July 29, 2016 Justice Marshall issued a decision quashing the NLESD closure decision on the basis that NLESD had not provided the parents with sufficient information on a timely basis in order to allow the parents to make meaningful representations. On the issue of NLESD statutory authority Justice Marshall held that the appointed trustees were duly constituted and NLESD had the authority to vote on the closure of the School on April 14, 2016. She found that the language of the Orders in Council appointing the trustees and ministerial statements in Hansard sufficed as ministerial direction under the Regulation. Although she did not make a specific finding regarding the then Minister’s related September 24, 2013 Press Release where he advised the election would be deferred to 2014, it is also in evidence and relied upon by NLESD in the appeal.

- Following the July 2016 Supreme Court Decision NLESD announced it would conduct another consultation process respecting the closure of the school. The parent group filed a Notice of Appeal on August 17, 2016 appealing the decision upholding the statutory authority of NLESD trustees. On September 20, 2016, the NLESD board of trustees voted to close Whitbourne Elementary effective June 2017. An appeal was not filed in relation to the second closure decision;

- The appeal was not pursued by the parent group until early March 2017. The Court of Appeal hearing took place May 11, 2017 and the court issued a decision on June 23, 2017. The court ruled that the April 2016 and the September 2016 decisions of the board of trustees to close Whitbourne Elementary was not made by a duly constituted board and must be rescinded.
Key findings of the court concluded:

- The Board, as comprised of appointed (unelected) trustees, did not have authority to order the closure of Whitbourne Elementary in 2016 due to the failure of Government / the Minister to comply with section 3(1) of the School Board Election Regulations, either by failing to issue a ministerial directive to defer the fixed date (November, 2013) election or, a second ministerial directive to extend an election deferral beyond 2014. The basis for this finding is that compliance with this provision is essential in order to override the fundamental premise that parents will be represented by a trustee elected for their zone.

- The decision to call an election must be considered in light of several factors, including the following. First, the clear legislative intention is that the school board is to be an elected board (section 53). Second, while section 59(1) allows for the appointment of a board when a new district is created, it may be inferred that the intention is that an election should be held within a reasonable time. The size of the district, encompassing the entire Island and Labrador, and the legislative directive that the board must determine zones to ensure representation for various regions, is particularly telling. Third, the Board had no power to remedy the situation by calling an election since that authority was reserved to government. Fourth, the question of whether a school should be closed is of critical importance to the parents of children attending that school. School closure is an issue of a different kind when compared with the responsibility of the Board generally to exercise the powers and duties set out in sections 75 and 76 of the Act.

- The applications judge erred in determining that the appointed Board had authority on April 16, 2016 to order the closure of the Whitbourne Elementary School. The Court decision also applies to the decision of September 20, 2016, though that decision was not before the Court of Appeal.

- If the Board elected on November 22, 2016 wishes to close the school, it will be necessary for that Board to provide the parents of children attending the school with an opportunity to make representations.

- A complete copy of the courts finding is attached as Annex A.

- The Newfoundland and Labrador English School District has stated they are preparing for the school to open in September.

- NLESD advises that 2.5 units will be needed to re-establish the staffing levels at Whitbourne Elementary for September 2017. This is contingent on all teachers reassigned to Woodland Elementary accepting the district's offer to rescind their reassignment and place them back at Whitbourne Elementary. A table of other costs associated with re-opening Whitbourne Elementary in September is attached as Annex C.

Action Being Taken:

Prepared/Approved by: S. Antle/B. Clarke/E. Walsh/B. Gardiner

Ministerial Approval: Received from Hon. Dale Kirby

JUN 30, 2017
BN/17/64
ANNEX A

RULING OF THE NL COURT OF APPEAL
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

Citation: Young et al. v. Newfoundland and Labrador English School District, 2017 NLCA 39
Date: June 23, 2017
Docket: 201601H0084

BETWEEN:

ANTHONY YOUNG, RUDY MERCER,
NATASHA DROVER and NANCY RODRIGUES APPELLANTS

AND:

NEWFOUNDLAND AND LABRADOR ENGLISH SCHOOL DISTRICT RESPONDENT

Coram: Welsh, White and Hoegg JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201601G3738
(2016 NLTD(G) 147)

Appeal Heard: May 11, 2017
Judgment Rendered: June 23, 2017

Reasons for Judgment by Welsh J.A.
Concurred in by White and Hoegg JJ.A.

Counsel for the Appellants: Daniel W. Simmons Q.C.
Counsel for the Respondent: Ian C. Wallace

Filed June 23, 2017
Welsh J.A.:

[1] At issue in this appeal is whether the Board of the Newfoundland and Labrador English School District, comprised of appointed rather than elected trustees, had authority to order the closure of Whitbourne Elementary School.

BACKGROUND

[2] As a result of reorganization in 2013, four school boards with defined areas of jurisdiction in the Province were replaced with one English School District Board for the entire Province. Nine trustees were appointed to the Board on September 1, 2013 by Order-in-Council. An additional seven trustees were appointed on October 4, 2013.

[3] On April 16, 2016, the Board decided to close Whitbourne Elementary School effective September 1, 2016. Following judicial review by a judge of the Trial Division, that decision was set aside on July 29, 2016. The applications judge considered two issues: first, whether the Board, comprised of appointed trustees, had authority to decide that the school would close; and, second, whether the Board satisfied the duty to give the parents an adequate opportunity to make representations about the proposed closure. On the first issue, the judge determined (2016 NLTD(G) 147):

[23] Based on the foregoing, I therefore find that the appointed Board was duly constituted, and that it had the authority to vote on the school closure. ...

[4] Nonetheless, relying on the second issue, the judge concluded that the Board’s decision to close the school could not be given effect:

[109] ... I have found that the parents were therefore denied the opportunity to make meaningful representations on a significant issue being considered by the Board. As a result, the Court hereby grants the order in the nature of certiorari quashing the Board’s decision to close Whitbourne Elementary School made on April 16, 2016.

[5] The four appellants (the “Parents”), parents of children attending the school, appeal the decision on the first of these issues, that is, the authority of the Board to close the school. They submit that the judge erred on the basis that the appointed trustees could not make that decision because the legislation required an election of trustees, which had not been held. They
submit that this impediment to the Board's authority would also apply to a subsequent decision by the appointed trustees, on September 20, 2016, to order closure of the school effective September 1, 2017. It is unusual to appeal a decision on one issue where a party has succeeded for other reasons. However, in this case, it was important for the Parents to obtain a decision on the question of the Board's authority to close the school since the appointed Board, after hearing representations from the Parents, could, and did, proceed again to order closure of the school.

[6] An election to replace the appointed trustees was held on November 22, 2016. The Parents concede that the elected Board would have authority to consider the closure of the school. However, if the Parents' appeal is successful and the elected Board wishes to close the school, it will be necessary for that Board to provide the Parents with an opportunity to make representations.

ANALYSIS

The Legislation


The Lieutenant-Governor in Council may by order dissolve a board on a specified date and that board shall be considered to be dissolved on that date.

Pursuant to section 57(5), a successor board is the successor in law with the attendant rights and obligations.

[8] In this case, an order was made under section 57(1) dissolving the four existing boards effective September 1, 2013.

[9] Section 59(1) of the Act provides for the appointment of trustees in particular circumstances:

Where

(a) a new district is created;

(b) all the trustees of a board are dismissed;

(c) a trustee position is vacant; or
(d) a board does not have a sufficient number of trustees for a quorum,

the Lieutenant-Governor in Council shall

(c) appoint a board or a trustee; or

(f) order that there be an election of a board or of a trustee.

(Emphasis added.)

Section 59(2) provides that section 53 of the Act applies with the necessary changes to the appointment or election of a board.

[10] Section 53 deals with boards and trustees generally:

(1) There shall be a school board elected for each district.

(2) Each board is a corporation.

(3) A board shall be elected at the time and in the manner directed by the minister subject to the approval of the Lieutenant-Governor in Council.

(4) The number of trustees to be elected for each district shall be set and may be changed by order of the Lieutenant-Governor in Council.

(5) Where fewer trustees are elected to a board than the number required by an order made under subsection (4), the Lieutenant-Governor in Council shall appoint those trustees necessary in order to satisfy the order.

(6) The trustees shall elect from among their members a chairperson and other officers, and the chairperson shall hold office until the next annual general meeting of the board.

(7) A person shall not be elected or serve as a trustee where that person ...

(8) The chairperson, or in his or her absence, the vice chairperson or a chairperson elected for that meeting ... shall have the same right to vote as other trustees.

(9) Where a vote is tied, the question shall be considered as resolved in the negative.

(Emphasis added.)
[11]  Section 60 of the Act requires a board to adopt a constitution regarding its duties and responsibilities. A newly constituted board has six months to accomplish this. The constitution must be approved by the minister before it becomes effective. Under section 60(2)(c), the constitution "shall include provisions respecting the description of zones".

[12]  Section 54 of the Act addresses the delineation of zones:

For the purpose of ensuring that all parts of a district are represented by trustees, the board shall divide the district into 2 or more zones and shall define the boundaries of those zones.

[13]  In a press release issued by the Provincial government, dated September 24, 2013, since zones had not yet been established by the Board, the public was advised that trustees being appointed to the new Board "were selected based on regional levels of student enrolment, and on ensuring broad geographic representation".

[14]  Sections 75 and 76 of the Act, respectively, set out the duties and powers of a board. Section 76(2) deals separately with the authority to close a school:

Notwithstanding section 75 or subsection (1) of this section, a board may close a school only after the parents of students affected have been given an opportunity to make representations to the board.

[15]  Section 118 of the Act authorizes the Lieutenant-Governor in Council to make regulations, among other things, "(c) respecting the election and appointment of trustees". The School Board Election Regulations, 1998, NLR 146/97, address the details of how an election is to be held. Section 39 of the Regulations provides for the minister to prescribe dates, including for an election:

Notwithstanding subsections 7(1) and (2), 8(1) and (4), section 10, subsections 12(2) and (3), section 13 and subsection 34(1), the minister may, with the approval of the Lieutenant-Governor in Council, set dates and prescribe time periods for the purposes of these regulations.

[16]  Section 7 of the Regulations, duties of the Board, is the only one of the provisions mentioned in section 39 that may be relevant for purposes of this case. Subsection (1) deals with appointing a returning officer and determining the number of polling divisions; subsection (2), with
designating polling stations and appointing a deputy returning officer and poll clerk; and subsections (3) and (4), with coordinating with municipal elections. None of these duties extends to setting a date for an election.

[17] Rather, section 3(1) of the Regulations, until repealed on August 16, 2016 by NLR 43/16, provided for set election dates:

An election of trustees to a board shall be held on November 3, 2009, and afterward on the first Tuesday in November every four years, unless the minister otherwise directs.

[18] Finally, the Orders-in-Council appointing the two sets of trustees stated that, pursuant to section 59 of the Act, the named persons were appointed as trustees effective September 1 or October 4, 2013 as the case may be, “until the next general school board elections”.

Interpretation and Application of the Legislation

[19] It is clear from reading the Schools Act and the School Board Election Regulations as a whole, and section 53(1) of the Act in particular, that the legislative intention is that the Board is to be comprised of trustees elected by zone. Election is consistent with democratic principles underlying the expectation that those affected by governmental decisions will have a voice in choosing the decision-makers. However, in the Act, the legislature has allowed for the appointment of trustees in specified situations. Indeed, in this case, the appointment of trustees upon the creation of a new district is not challenged. Rather, it is the length of time before an election was held to which the Parents object.

[20] Relying on section 3(1) of the Regulations, the Parents submit that an election, to be held on the first Tuesday in November 2013, was mandated “unless the minister otherwise directs”. The Board submits that it was not realistically possible to hold the election on that day and that, in any event, the minister had given the necessary direction.

[21] The first difficulty in concluding that an election could have been held on the first Tuesday in November 2013 is determining when the Board was constituted. The first nine trustees were appointed on September 1st, but an additional seven were appointed on October 4th. The timelines for a school board election set out in the Regulations could technically have been met if the critical date is September 1st, but could not have been met if October 4th is the relevant date. Because the zones would be an important component in
ensuring local or regional representation on the Board, it is difficult to conclude that it was the intention that the zones would be established before the appointment process had been completed on October 4th. This factor supports the inference that it was not possible to hold an election on the first Tuesday in November 2013.

[22] In any event, the Board submits, the September 24, 2013 press release constituted notice from the minister which would amount to compliance with section 3(1) of the Regulations, that is, a direction from the minister overriding the requirement for an election on the specified date. The press release stated:

The Newfoundland and Labrador English School Board will soon be at full strength, with 15 trustees in place. The Honourable Clyde Jackman, Minister of Education, announced today that seven individuals will be added to the board, joining the eight members of the School Board Transition Committee who became trustees of the school board on September 1. The new trustee appointments will be effective as of the board meeting on October 4.

...

Minister Jackman noted the additional trustees were selected based on regional levels of student enrolment, and on ensuring broad geographic representation. The trustees will serve until an election in 2014, an exact date for which will be determined in consultation with the new board chair and the Newfoundland and Labrador School Boards Association.

(Emphasis added.)

[23] The first question is whether the statement in the press release is sufficient to constitute a direction by the minister as contemplated by section 3(1) of the Regulations. There is nothing in the Act or Regulations specifying the method to be used. A press release is not the method the citizens of the Province would expect to be used by a minister to give a direction that overrides the operation of legislation, including subordinate legislation. Generally, a press release would be characterized simply as a notice to the public. For the reasons that follow, it is unnecessary to determine whether the press release was sufficient to constitute a direction by the minister to the Board. However, I would caution that this is not a desirable approach and may not prove sufficient should the issue come before the courts in the future.
[24] Even assuming the press release was sufficient to constitute a direction by the minister under section 3(1) of the Regulations, the direction was that the appointments would have effect “until an election in 2014”. There is no evidence that the minister followed with a subsequent direction when the election did not occur in 2014. Indeed, the election was not held until November 22, 2016. This failure resulted in a conundrum for the Board.

[25] The Board had no authority to call or set a date for an election. That was in the hands of the government (section 53(3) of the Act). On the other hand, the business of the Board in operating the school system had to continue. However, the date specified in the Regulations for holding the first election had passed and the Regulations did not specify a procedure that would apply in a situation such as this. It was, in fact, a failure of government and the minister to comply with the legislation.

[26] There were clear options available under the Act and Regulations. Section 3(1) of the Regulations could have been repealed when an election was not set for a date in 2014, or the minister could have issued a subsequent direction in proper form.

[27] The failure to call an election must be considered in light of several factors, including the following. First, the clear legislative intention is that the school board is to be an elected board (section 53). Second, while section 59(1) allows for the appointment of a board when a new district is created, it may be inferred that the intention is that an election should be held within a reasonable time. The size of the district, encompassing the entire Island and Labrador, and the legislative directive that the board must determine zones to ensure representation for various regions, is particularly telling. Third, the Board had no power to remedy the situation by calling an election since that authority was reserved to government. Fourth, the question of whether a school should be closed is of critical importance to the parents of children attending that school. It is an issue of a different kind when compared with the responsibility of the Board generally to exercise the powers and duties set out in sections 75 and 76 of the Act.

[28] Particularly with respect to the last of these factors, the Parents submit that section 76(2) of the Act confirms that the power to close a school is of a special type. On the one hand, it may be inferred that the purpose of this subsection is to reiterate for the board the requirement, endorsed by the courts, that parents must “have been given the opportunity to make
representations [regarding the closure of a school] to the board" (section 76(2) of the Act). Alternatively, as submitted by the Parents, the subsection may be interpreted to confirm the special nature of a determination to close a school.

[29] Regardless of which interpretation is adopted, I am satisfied that section 76(2) must be construed so as to ensure that parents will have a fair opportunity to challenge the Board’s decision to close the school attended by their children. This must include not only the opportunity to make representations to a board, but also, to make those representations to a board that is constituted so as to ensure that their representations are appropriately considered.

[30] The legislation provides for this. Subject to section 59(1) of the Act and compliance with the relevant provisions of the Election Regulations, section 53 of the Act specifies that the Board will be elected. Section 54 requires the Board to divide the district into zones "[f]or the purpose of ensuring that all parts of a district are represented by trustees". The delineation of zones is intended to achieve the election of trustees who will represent that zone on the Board, and is supported by section 4 of the Regulations which provides, in relevant parts:

(2) An elector is entitled to vote in only one zone established by a board.

(3) For the purpose of subsection (2), the zone in which an elector is entitled to vote shall be the zone in which the person is ordinarily resident.

[31] The election of trustees on this basis has the effect of confirming to parents that, when section 76(2) of the Act is engaged due to the potential closure of the school attended by their children, their voices will be heard by a trustee who is familiar with their zone. Where the Act and Regulations authorize the government and a board to proceed in the absence of an election, compliance with those provisions is essential in order to override the fundamental premise that parents will be represented by a trustee elected for their zone. That did not occur in this case due to the failure of government to comply with section 3(1) of the Regulations.

[32] In the result, I accept the Parents’ submission that the Board, comprised of appointed trustees, did not have authority to order the closure of the Whitbourne Elementary School. Potential closure of the school is a
matter of special concern to the Parents for which they have the right to make representations to a properly constituted board.

SUMMARY AND DISPOSITION

[33] For the reasons set out above, the applications judge erred in determining that the appointed Board had authority on April 16, 2016 to order the closure of the Whitbourne Elementary School. The above analysis would also apply to the decision of September 20, 2016, though that decision was not before this Court on appeal. If the Board that was elected on November 22, 2016 wishes to close the school, it will be necessary for that Board to provide the parents of children attending the school with an opportunity to make representations.

[34] Consistent with the decision of the applications judge in the Court appealed from, I would order that the Parents will have their costs under column 3 of the scale of costs.

B. G. Welsh J.A.

I Concur: C. W. White J.A.

I Concur: L. R. Hoegg J.A.
ANNEX B

LEGAL OPINION FROM JUSTICE AND PUBLIC SAFETY
ANNEX C

Costs Associated With Re-Opening Whitbourne Elementary
Financial Information Relating to Whitbourne Elementary 2017/18

<table>
<thead>
<tr>
<th>School</th>
<th>Square Footage</th>
<th>Enrolment</th>
<th>Utilities</th>
<th>Janitorial</th>
<th>Secretarial</th>
<th>Repairs and Maintenance</th>
<th>Instructional</th>
<th>Total</th>
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<tr>
<td>Whitbourne Elementary</td>
<td>28,900</td>
<td>89</td>
<td>82,737</td>
<td>114,554</td>
<td>40,094</td>
<td>25,292</td>
<td>19,915</td>
<td>282,593</td>
</tr>
</tbody>
</table>

Note: These totals represent the estimated operating grant for Whitbourne Elementary. The totals are not the actuals that will be spent on this particular school. The decision on how to fund the school is the responsibility of the Newfoundland and Labrador English School District.

NLESD had a tender award recently for busing Whitbourne students to Woodland Elementary; the cost, including the non-refundable portion of HST is $97,700 for two buses. If Whitbourne Elementary remains open, only one bus would be required for students living in the Markland area; in 2017-18 budget EECD projected an annual cost per bus of $56,000. This is a savings of $41,700, if the recently awarded contract can be cancelled. NLESD are currently exploring their options with legal counsel. EECD expects no savings and no additional cost for busing for keeping Whitbourne open given information available at this time.
Information Note
Department of Education and Early Childhood Development

Title: Proposal from SABRI Regarding use of Former Harriot Curtis Collegiate

Issue: To provide an overview of the status of the former Harriot Curtis Collegiate in St. Anthony and the proposal from St. Anthony Basin Resources Inc (SABRI) regarding use of the building as requested by the Premier's Office.

Background and Current Status:
- Harriot Curtis Collegiate is a former high school located in St. Anthony which closed in 2013 following construction of the new White Hills Academy.
- The Newfoundland and Labrador English School District (NLESĐ) had been maintaining heat in the building to prevent mould growth and building deterioration; however, as a cost saving measure the heating oil tank will no longer be refilled once it runs out.
- In July 2014, approval in principle was granted to NLESĐ by then Minister of Education and Early Childhood Development to dispose of the building.
- In 2015 Labrador-Grenfell Health expressed an interest in the property. Ministerial approval of the sale was granted in April of 2015 on an “as-is, where-is” basis; however, the sale never materialized. \[s.35(1)(d)\]
- In March 2016 SABRI contacted Minister Mitchelmore \[s.35(1)(d)\]
- In June 2016 an appraisal of the property indicated a value of $240,000. \[s.35(1)(d)\]
- In May 2017, SABRI provided a proposal to NLESĐ to \[s.35(1)(d)\]
- In June 2017 SABRI’s consultant wrote the Premier reiterating its proposal to NLESĐ and asking for consideration. SABRI also contacted Minister Mitchelmore to request a meeting to discuss its proposal.

Analysis:
- Under the Schools Act, 1997, title to school buildings is held by the province’s school boards except in cases where title is with a denominational authority and being used for educational purposes by a school board.
- There may also be circumstances where a conditional Crown Grant applies to the property. In those cases the district is responsible for working with the Crown Lands Administration Division, and the Department of Fisheries and Land Resources, to satisfy the conditions of the grant in order to possess clear title so as to dispose. This is primarily an issue in rural areas.
- In March 2015, NLESĐ and EECD legal counsel indicated that there was no denominational interest and that clear title existed for disposition.
- The Act empowers school boards to sell property, subject to approval from the Minister of EECD.

- At present there are 16 vacant school properties across the province in various stages of disposition.

- In 2016 NLESĐ disposed of the former I.J. Samson School in St. John’s through a public tender process. The tender received three bids, with the building being sold to the highest bidder at $189,000. Public concern was raised regarding the low sale price, given an appraisal commissioned by NLESĐ in 2013 valued the property and building at approximately $2 million. This appraisal did not take the presence of hazardous materials or other contamination into account.

- It is recommended that the sale of the Harriot Curtis property, and any further school properties, by NLESĐ be through a similar open and transparent process to ensure that other organizations have equal opportunity to acquire the building and to ensure that net proceeds from the sale/disposal are maximized through a competitive tender process.

- Notwithstanding the option for a competitive process, NLESĐ will also take into consideration proposals from other organizations (e.g., social enterprise, municipalities, community organizations) when disposing of a property.

- In some cases there may be an opportunity to consider disposal of a property based on a proposal from a municipality, community group or some other social enterprise organization.

**Action Being Taken:**

- NLESĐ is considering next steps with respect to the disposal of Harriot Curtis Collegiate and acknowledges that SABRI is interested in the property.

- EECD has advised Minister Mitchelmore to ask SABRI to contact EECD to arrange a meeting with the Deputy Minister of EECD and Director of Education for NLESĐ.

- EECD is also responding to SABRI’s consultant recommending that they contact NLESĐ board Chair to further discuss its proposal.

**Prepared/Approved by:**

H. Butt/P. Smith/R. Gardiner

**Ministerial Approval:**

Received from Hon. Dale Kirby

**July 26, 2017**

**BN/17/70**
Information Note
Department of Education and Early Childhood Development

Title: NL participation in 2019 Trends in International Mathematics and Science Study (TIMSS)

Issue: The Council of Ministers of Education, Canada (CMEC) is asking Canadian jurisdictions to identify their involvement in TIMSS 2019.

Background and Current Status:
• TIMSS is an assessment of science and mathematics skills of Grade 4 and Grade 8 students. It is sponsored by the International Association for the Evaluation of Educational Achievement (IEA) and has been administered every four years since 1995. The next administration is in 2019.

• NL participated in TIMSS 2015 at the Pan-Canadian level in Grade 4 and 8. Provincial results are not available to jurisdictions that participate at this level because the provincial sample size is too small.

• NL is already committed to participating in the Pan-Canadian Assessment Program (PCAP), the Programme for International Student Assessment (PISA), and the Progress in International Reading Literacy Study (PIRLS).

• PCAP is a national assessment of Grade 8 students in mathematics, reading, and science. PISA is an international assessment of 15 year-old students (mostly Grade 10) in mathematics, reading, and science. PIRLS is an international assessment of Grade 4 students in reading.

• At the present time, no other national or international program assesses students at the primary and intermediate levels in mathematics and science. TIMSS is recognized as the most prominent international assessment in these areas.

• Participation in TIMSS 2019 at Grade 4 would enable NL to address a data gap in numeracy and science at the early elementary level.

• CMEC is asking jurisdictions to indicate their interest in participating in TIMSS 2019, based on the following options:
  1. Part of a pan-Canadian sample only – this does not provide jurisdictional results
  2. Oversample in order to obtain jurisdictional results
  3. Oversample as a benchmarking participant for the purpose of international reporting and representation
  4. Do not participate

• These options are available to jurisdictions for the Grade 4 and Grade 8 assessments separately.

• Costs associated with each option are based on one or two grade levels being assessed and spread over four years (2017-18 to 2020-21).
  o One grade level:
    • Option 1 - $83,180
    • Option 2 - $147,127
    • Option 3 - $197,127
  o Two grade levels:
    • Option 1 - $152,792
    • Option 2 - $292,697
    • Option 3 - $392,697
- Option 4 – no cost

Action Being Taken:
- It is recommended that NL participate in TIMSS 2019 at only the Grade 4 level as part of a pan-Canadian sample, and oversample in order to obtain jurisdictional results (option 2, one grade level).

- It is recommended that NL not participate at the Grade 8 level because the province already receives assessment data from this grade level from PCAP.

- This participation will fill assessment gaps in mathematics and science at the elementary level. Mathematics and science are already assessed in Grade 8 with the PCAP assessment.

- The costs associated with this option are $147,127 over four years. Payment schedule is below.
  - 2017-18: $27,687
  - 2018-19: $35,717
  - 2019-20: $60,649
  - 2020-21: $23,073

- The funding for this will come from the professional services budget of the Evaluation and Research Division.

Prepared / Approved by: Ron Smith/ Bob Gardiner
Approved by: Minister
July 26, 2017
Information Note
Department of Education and Early Childhood Development

Title: Vacant School Properties

Issue: To provide an overview of the status of vacant school properties in the province, as requested by the Premier's Office.

Background and Current Status:
- Under the Schools Act, 1997 (the Act), title to school buildings is held by the province's school boards except in cases where title is with a denominational authority (e.g., Roman Catholic Episcopal Corporation).

- There may be circumstances where a conditional Crown Grant applies to a property. In those cases the district is responsible for working with the Crown Lands Administration Division, Department of Fisheries and Land Resources, to satisfy the conditions of the grant in order to possess clear title so as to dispose. This is primarily an issue in rural areas.

- The Act empowers school boards to sell property, subject to approval from the Minister of Education and Early Childhood Development.

- Disposition of properties with a denominational interest must follow section 84 of the Act.

- There are many factors that impact approval of the disposition of these properties including if a denominational authority has title to the land, crown grant restrictions, and market conditions.

- In recent years, school districts have attempted to dispose of vacant buildings in a timelier manner. Currently, revenue gained from the sale of vacant buildings is retained with and used by the districts for educational purposes approved by the Minister.

- At present there are 17 school/school board properties across the province in various stages of disposition. (see Annex A).

Analysis:
- In 2016-17 it cost approximately $650,000 to maintain vacant properties, noting that costs fluctuate annually (e.g., higher heating costs for an abnormally cold winter)

- The Newfoundland and Labrador English School District (NLESD) is currently taking measures, including cutting heat and light to some vacant buildings, to reduce the annual cost of maintaining vacant school properties. In some cases, NLESD is in the process of running oil furnaces dry to mitigate the potential for oil spills.

- In 2016 NLESD disposed of the former I.J. Samson School in St. John's through a public tender process. The tender received three bids, with the building being sold to the highest bidder at $189,000. Public concern was raised regarding the low sale price, given an appraisal commissioned by NLESD in 2013 valued the property and building at approximately $2 million. This appraisal was premised, unrealistically, upon a pristine site (subsequent to building demolition) requiring virtually no preparation or remediation (i.e., did not take into account the presence of hazardous materials or other contamination).
• It is recommended that the sale of any further school properties by NLESD be through a similar open and transparent process to ensure that other individuals or organizations have equal opportunity to acquire buildings and to ensure that net proceeds from the sale/disposal are maximized through a competitive tender process.

• In some cases there may be an opportunity to consider disposal of a property based on a proposal from a municipality, community group or some other social enterprise organization.

Action Being Taken:
• NLESD is working to advance a number of school dispositions.
• EECD is working with NLESD and the Department of Justice and Public Safety to ensure that necessary due diligence has been carried out prior to approving final sale or disposition in accordance with the Act (e.g., title confirmation, appraisal, purchase and sale agreements).

Prepared/Approved by: H. Butt/P. Smith/R. Gardiner
Ministerial Approval: Received from Hon. Dale Kirby

August 22, 2017
BN/17/74
## Appendix A: Status of Ongoing Dispositions

<table>
<thead>
<tr>
<th>Property</th>
<th>Location</th>
<th>Applicable Denomination</th>
<th>Year Built</th>
<th>Year Closed</th>
<th>Intent</th>
<th>Current Status</th>
<th>Operating Cost</th>
<th>Appraised Value (Year Appraised)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Saints</td>
<td>Conception Bay South</td>
<td>Anglican Church</td>
<td>N/A</td>
<td>1999</td>
<td>To be disposed</td>
<td></td>
<td>$28,265</td>
<td>$640,000 (2013)</td>
</tr>
<tr>
<td>Baie Verte Primary</td>
<td>Baie Verte</td>
<td>Roman Catholic</td>
<td>1969</td>
<td>2011</td>
<td>To be disposed</td>
<td></td>
<td>$22,718</td>
<td>N/A</td>
</tr>
<tr>
<td>Bayview High</td>
<td>St. Lunaire - Griquet</td>
<td>Pentacostal Church</td>
<td>1966</td>
<td>2010</td>
<td>To be disposed</td>
<td>For sale by realtor.</td>
<td>$4,171</td>
<td>N/A</td>
</tr>
<tr>
<td>Bayview Primary</td>
<td>Nippard's Harbour</td>
<td>None</td>
<td>1972</td>
<td></td>
<td>To be disposed</td>
<td>School never went through official school closing process (no student enrolment). For sale signs have been placed on the building.</td>
<td>$13,354</td>
<td>N/A</td>
</tr>
<tr>
<td>Bishops Collegiate</td>
<td>St. John's</td>
<td>Anglican Church</td>
<td>1959</td>
<td>2015</td>
<td>To be disposed</td>
<td>Appraisal completed.</td>
<td>$128,360</td>
<td>$730,000 (2016)</td>
</tr>
<tr>
<td>Booth Memorial</td>
<td>St. John's</td>
<td>Salvation Army</td>
<td>1950</td>
<td>2015</td>
<td>To be disposed</td>
<td>Appraisal completed.</td>
<td>$43,646</td>
<td>$760,000 (2016)</td>
</tr>
<tr>
<td>Burin Regional Office</td>
<td>Burin</td>
<td>None</td>
<td>1972</td>
<td>2013</td>
<td>To be disposed</td>
<td>Land provided under a Crown Grant. Currently operates as an office building for community groups.</td>
<td>$38,230</td>
<td>$500,000 (2013)</td>
</tr>
<tr>
<td>Clarenville Primary</td>
<td>Clarenville</td>
<td>United Church</td>
<td>1964</td>
<td>2011</td>
<td>To be disposed</td>
<td></td>
<td>$28,799</td>
<td>N/A</td>
</tr>
<tr>
<td>Property</td>
<td>Location</td>
<td>Applicable Denomination</td>
<td>Year Built</td>
<td>Year Closed</td>
<td>Intent</td>
<td>Current Status</td>
<td>Operating Cost</td>
<td>Appraised Value (Year Appraised)</td>
</tr>
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</tr>
<tr>
<td>Clarenville Regional Office</td>
<td>Clarenville</td>
<td>N/A</td>
<td>1987</td>
<td>2013</td>
<td>To be disposed</td>
<td>Will need to be determined.</td>
<td>$44,640</td>
<td>$700,000 (2013)</td>
</tr>
<tr>
<td>Harriot Curtis Collegiate</td>
<td>St. Anthony</td>
<td>None</td>
<td>1961</td>
<td>2013</td>
<td>To be disposed</td>
<td>St. Anthony Basin Resources INC (SABRI).</td>
<td>$41,098</td>
<td>s.35(1)(d), s.35(1)(g)</td>
</tr>
<tr>
<td>Heritage Academy</td>
<td>Greenspond</td>
<td>None</td>
<td>1980</td>
<td>2016</td>
<td>To be disposed</td>
<td>No motion from the district to dispose of the property.</td>
<td>$17,810</td>
<td>N/A</td>
</tr>
<tr>
<td>Long Island Academy</td>
<td>Beaumont</td>
<td>None</td>
<td>1972</td>
<td>2016</td>
<td>To be disposed</td>
<td>No motion from the district to dispose of the property.</td>
<td>$33,469</td>
<td>N/A</td>
</tr>
<tr>
<td>MacPherson Jr. High</td>
<td>St. John’s</td>
<td>United Church</td>
<td>1948</td>
<td>2011</td>
<td>Retain building for future use</td>
<td>Has been used for storage. Appraisal completed.</td>
<td>$17,157</td>
<td>$750,000 (2016)</td>
</tr>
<tr>
<td>Millcrest Academy</td>
<td>Grand Falls - Windsor</td>
<td>Roman Catholic</td>
<td>1966</td>
<td>2016</td>
<td>To be disposed</td>
<td>No motion from the district to dispose of the property.</td>
<td>$88,722</td>
<td>N/A</td>
</tr>
<tr>
<td>Our Lady of Labrador</td>
<td>West St. Modeste</td>
<td>None</td>
<td>1964</td>
<td>2010</td>
<td>To be disposed</td>
<td>Recent request. Crown Grant Issue.</td>
<td>$8,162</td>
<td>N/A</td>
</tr>
<tr>
<td>Presentation Jr. High</td>
<td>Corner Brook</td>
<td>Roman Catholic</td>
<td>1966</td>
<td>2014</td>
<td>Retain building for future use</td>
<td>No motion from the district to dispose of the property.</td>
<td>$74,157</td>
<td>N/A</td>
</tr>
<tr>
<td>St. Teresa’s Elementary</td>
<td>Port aux Choix</td>
<td>Roman Catholic</td>
<td>1990</td>
<td>2010</td>
<td>To be disposed</td>
<td>For sale by realtor.</td>
<td>$17,297</td>
<td>N/A</td>
</tr>
</tbody>
</table>

1 Applicable Denomination: Disposition of properties with a denominational interest must follow s.84 of the School’s Act, 1997
2 Year Built: Indicator of materials/methods that may have been used in construction (i.e. Asbestos, Fuel Tank Storage) that will impact market value.
3 Year Closed: A building that has been closed for a long period may be prone to factors (i.e. mold, vandalism) that may impact market value.
4 Operating Cost: Updated costs for ongoing maintenance/utilities for school year 2016-17. Confirmed by NLESD.
5 Appraised Value: Represents the opinion of the appraiser at the time of appraisal and does not take fully into account environmental hazards/remediation costs that may impact market value.

TOTAL: $647,833