June 29, 2018

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/013/2018)

This is to confirm that on June 1, 2018, the Department of Education and Early Childhood Development (EECD) received your request for access to the following records/information:

"Copies of any lawsuit filed by Thomas Carey, ATC Enterprises Ltd. and/or Carey Buslines against the English School District of Newfoundland and Labrador, (NLESD) and copies of any legal documents relating to such filing whether filed by either party. Any correspondence, both electronic and written, related to settling of any such lawsuit".

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

The department has provided the Statement of Claim, Defense and Notice of Discontinuance (see attached), as per your request. However, the terms and conditions of the settlement, and some “correspondence, both electronic and written, related to settling of any such lawsuit” are afforded settlement privilege under common law. Settlement privilege is a rule of evidence that protects communications exchanged by the parties as they try to settle a dispute. The scope of settlement privilege was clarified in the Supreme Court of Canada's decision in Sable Offshore Energy v. Ameron International Corp., 2013 SCC 37 at para.2:

"The purpose of settlement privilege is to promote settlement. The privilege wraps a protective veil around the efforts parties make to settle their disputes by ensuring that communications made in the course of these negotiations are inadmissible".

As recently recognized by the British Columbia Supreme Court in Richmond (City) v. Campbell, 2017 BCSC 331, this common law privilege continues to apply unless it has been abrogated by clear and explicit legislative language. Settlement privilege has not been abrogated or abolished by ATIPPA.

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):

Section 29: Policy, Advice and Recommendation

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.

.../2
Section 30: 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.

(2) The head of a public body shall refuse to disclose to an applicant information that is subject to solicitor and client privilege or litigation privilege of a person other than a public body.

Section 35: 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

(f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;

(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.

Section 40: 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 be advised that the following pages have been redacted in its entirety:

<table>
<thead>
<tr>
<th>Page Numbers</th>
<th>Section of the ATIPPA</th>
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<td>30-45</td>
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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, NL 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 709-729-7425 or by e-mail at KimArstey-Stockwood@gov.nl.ca.

Sincerely,

Kim Arstey-Stockwood
Manager of Information Services
ATIPP Coordinator
Discovery - Education and Early Childhood Development

From: Vivian-Walsh, Janet
Sent: Wednesday, October 19, 2016 9:53 PM
To: Rose, Anne Marie
Subject: Fw: NLESD- Claim by Carey's Bus Service Ltd.

FYI

Janet
Sent from my BlackBerry 10 smartphone on the Bell network.  

s.30.(1)(a)
Sending FYI. Perhaps we can discuss the Bd's request next week? Thanks.
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

CAREY'S BUS SERVICE LIMITED
FIRST PLAINTIFF

AND:

ATC ENTERPRISES LTD.
SECOND PLAINTIFF

AND:

NEWFOUNDLAND AND LABRADOR
ENGLISH SCHOOL DISTRICT
DEFENDANT

STATEMENT OF CLAIM

1. The First Plaintiff is a body corporate duly incorporated pursuant to the laws of the Province of Newfoundland and Labrador with its registered office at PO Box 180, Witless Bay, Newfoundland and Labrador, A0A 4K0. At all material times to this action, the First Plaintiff was in the business of providing school bus transportation services.

2. The Second Plaintiff is a body corporate duly incorporated pursuant to the laws of the Province of Newfoundland and Labrador with its registered office at Main Road, Witless Bay, Newfoundland and Labrador. At all material times to this action, the Second Plaintiff was in the business of providing school bus transportation services.

3. The Defendant, previously operating as the Eastern School District, is a school district created under the authority of section 52 of the Schools Act, 1997, SNL
1997, c S-12.2 with its eastern regional office located at Suite 601 Atlantic Place, 215 Water Street, St. John's, Newfoundland and Labrador, A1C 6C9.

4. For a period of approximately twenty five years, the First Plaintiff has been providing school bus transportation services for the Defendant. For the entire twenty five year period, Thomas Carey had been a shareholder, director and employee of the First Plaintiff. For the whole of the twenty five year period the First Plaintiff had always discharged its' obligations in a manner entirely satisfactory to the Defendant and the Defendants' predecessors.

5. For a period of approximately fifteen years, the Second Plaintiff has been providing school bus transportation services for the Defendant. For the entire fifteen year period, Thomas Carey had been a shareholder, director and employee of the Second Plaintiff. For the whole of the fifteen year period the Second Plaintiff had always discharged its' obligations in a manner entirely satisfactory to the Defendant and the Defendants' predecessors.

6. In 2006, the Defendant, then operating as the Eastern School District, invited contractors to submit a tender to provide bus transportation for pupils in the Mobile-Bay Bulls-Tors Cove Zone. The First Plaintiff was awarded two contracts; a five year contract from September 2006 to June 2011 for Route 1-6 at Mobile High and Route 7-9 at St. Bernard's Elementary (Tender Number ESD-06-048) as well as a contract from September 2006 to June 2011 for alternate needs at St. Bernard's Elementary (Tender Number ESD 10-009) (hereinafter collectively referred to as the "Original First Plaintiff Contracts"). The Original First Plaintiff Contracts contained an option to renew for a maximum of five years. This option was exercised by the parties, with the renewed contracts set to expire in June 2016.

7. In 2006, the Defendant invited contractors to submit a tender to provide bus transportation for Route 1-6 at Baltimore School, Tender Number ESD-06-023 (hereinafter, the "Original Second Plaintiff Contract"). The Second Plaintiff was awarded the five (5) year contract from September 2006 to June 2011. The
Original Second Plaintiff Contract contained an option to renew for a maximum of five years. This option was exercised by the parties and the renewed Contract was to expire in June 2016.

8. On the 28th of August, 2014, the First Plaintiff was informed by the Defendant that it had been awarded a new contract, through the public tendering process, for the school bus transportation services that the First Plaintiff had historically provided to the Defendant, Tender Number NLESD-ER-14-151 (hereinafter, the “2014 Contract”).

9. The unexecuted 2014 Contract as part of the Tender package had earlier been circulated to the bidding parties. The only difference between the 2014 Contract and the Original First Plaintiff Contracts was the inclusion of “morality” provisions. The First Plaintiff was agreeable to and accepted the inclusion of these new provisions in the 2014 Contract.

10. Immediately upon receipt of confirmation of being awarded the 2014 Contract, Christina Carey, in her capacity as Operations Manager of the First Plaintiff, immediately wrote a letter to the Defendant acknowledging the award of the 2014 Contract and advising the Defendant that she was available to execute the 2014 Contract.

11. Within the August 28, 2014 notice of award of the tender correspondence from the Defendant it was confirmed by Darrin Feehan, Director of Transportation with the Defendant, that Thomas Carey would not be providing any services on behalf of the First Plaintiff in connection with the 2014 Contract. Christina Carey responded on August 29th, 2014 assuring the Defendant that there would be full compliance with the 2014 Contract and further advising that Thomas Carey would not have any contact with any students, any access to student information and, as in the past, would not be driving any bus in connection with the carriage of students.
12. On September 2, 2014, and related to the 2014 Contract Christina Carey received a list of questions/concerns from Mr. Feehan regarding Thomas Carey’s involvement with the First Plaintiff, with a request for a response.

13. On or about September 5, 2014, the First Plaintiff received an “Investigation Questionnaire”, the contents of which focused on Thomas Carey’s role with the First Plaintiff. Through answers provided by Christina Carey, the Defendant was advised, *inter alia*, that:

   A) Thomas Carey had resigned as the First Plaintiff’s director;
   B) Thomas Carey had no involvement with the day to day operations of the First Plaintiff; and
   C) Thomas Carey, while still a Shareholder of the First Plaintiff, was in the process of transferring these shares, after which he would not own any shares in the First Plaintiff.

14. On September 9, 2014, Christina Carey responded to a further series of questions from the Defendant and clearly indicated, *inter alia*, that Thomas Carey was not actively involved in the day-to-day operations of the First Plaintiff, nor did Mr. Carey have access to any personal information relating to students availing of the bus services.

15. On September 24, 2014 counsel for the First Plaintiff, Gerald O’Brien, Q.C., wrote Mr. Feehan and yet again reiterated to him the key aspects of Christina Carey’s earlier message, namely that Thomas Carey was not associated with, or involved with, the First Plaintiff and that Thomas Carey would be transferring his minority shares in the First Plaintiff, but the timing of such share transfer would be dependent on tax considerations.

16. On October 7, 2014, the Defendant wrote a letter to the First Plaintiff indicating the Defendant had now decided to rescind the awarding of the 2014 Contract and that the Defendant was within its rights to adopt this position pursuant to clauses 9 (the right to reject all bids) and 18 (the right to not accept the lowest or any bid) of
the tender documents. The Defendant further stated that it intended to provide the bussing service and operate the buses itself for the 2014-2015 school year.

17. It is the understanding of the First Plaintiff that the Defendant has not provided the bussing services on its own but has relied on other school bus companies to provide the bussing services at a cost significantly higher that the First Plaintiff had contracted to provide the service.

18. In a November 13, 2014 correspondence the Defendant contacted Christina Carey of the First Plaintiff about the inclusion of a morality clause in existing contracts between the Defendant and the First Plaintiff (ESD-06-048). The Defendant now was requesting that the contract be amended to include the “morality” provisions in order to ensure the First Plaintiff did not employ anyone convicted of a crime, the nature of which may be “constructed as jeopardizing the safety of the students of the District.” A revised contract was provided to the First Plaintiff on November 13, 2014. The Company did not wish to amend the existing contracts because it had a concern the Defendant was now trying to reopen the existing contracts only to then cancel them. As a result, the First Plaintiff refused to reopen the existing contracts.

19. The First Plaintiff states that no concrete reason (e.g. conduct of any employee of the First Plaintiff which was of concern of the Defendant) was given by the Defendant as to why it wanted to amend the existing contract (ESD-06-048) nor does there exist any legal basis that would require the reopening of the existing contracts.

20. On January 26, 2015, the First Plaintiff received correspondence from the Defendant indicating, among other things, that if the First Plaintiff and Second Plaintiff did not agree within 10 days to immediately revise all existing contracts with the Defendant, the Defendant would reserve the right to terminate all contracts. The Defendant later that day attempted to recall said letter.
21. On February 2, 2015, the Defendant wrote to the First Plaintiff indicating that that the Defendant had undertaken a review of the existing contracts as a result of the alleged involvement of Thomas Carey in the business. The letter cited the September 5, 2014 “Investigation Questionnaire” (ostensibly only applicable to the 2014 Contract) that was completed, which generally assured the Defendant that Thomas Carey would have no involvement in the business of the First Plaintiff. The Defendant claimed that the First Plaintiffs’ lack of a response to correspondence from the Defendant, as well as recent reports of Thomas Carey’s involvement in the operation of the business of the First Plaintiff, indicated that Thomas Carey was still involved in the business, which contravened the representations made pursuant to the questions raised in relation to the 2014 Contract. The letter further indicated that business and operations of the First Plaintiff and Second Plaintiff were indistinguishable. The Defendant then advised the contracts with the “Company” were terminated immediately for cause. In the alternative, the Defendant stated that the “Company” had not provided satisfactory transportation services and terminated the contracts as a result.

22. As a result the Defendant then moved forward with completing the existing contracts with another bus operator at a significantly higher price.

23. The First Plaintiff states that in consideration of the submission by the First Plaintiff of its tender documents to the Defendant for the 2014 Contract, and pursuant to the terms of the invitation for tenders issued by the Defendant and the terms of the Public Tender Act, R.S.N. 1990, Ch. P-45, as amended, the Defendant was obliged to consider the Plaintiff’s tender in good faith and in accordance with the invitation for tenders and tender documents associated therewith. The Defendant was also obligated, as it did, to award the 2014 Contract in accordance with the Public Tender Act, R.S.N. 1990, Ch. P-45, as amended.
24. The First Plaintiff states that the Defendant failed, contrary to its statutory and common law obligations owed to the Plaintiff, when it rescinded the 2014 Contract before the commencement date for school bus transportation services to the First Plaintiff and instead the Defendant cancelled the contracts and, in essence, awarded the contract to itself, which was not the lowest qualified bidder to provide the bus services.

25. The First Plaintiff repeats the foregoing and states the Defendant has breached its duty to award the contract for school bus transportation services in accordance with Public Tender Act and at common law to the First Plaintiff as the “preferred bidder”, by awarding the contract to itself. The First Plaintiff states that the Defendant acted unfairly and in bad faith in rescinding the awarding of the 2014 Contract and then awarding it to itself.

26. The First Plaintiff repeats the foregoing and states that, by awarding the 2014 Contract to itself and thus significantly varying the terms of the invitation to tender, the Defendant has breached its contractual obligations to the First Plaintiff to ensure that the tender was not awarded on the basis of undisclosed preferences or terms and, further, to award a contract in accordance with the terms of the tender call.

27. By reason of the failure of the Defendant to award the contract for school bus transportation services to the First Plaintiff, and by reason of the Defendant awarding the 2014 Contract to itself on terms that did not conform with the original tender call, the First Plaintiff has suffered losses and damages in an amount to be proven at trial, including in respect of the following matters:
   i) the costs, fees, and expenses incurred to prepare the tender; and
   ii) its lost profits that it would have earned on the contract to which it was entitled, for the term of the renewal of the 2014 Contract.
28. The First Plaintiff further states the Defendant had no legal basis on which to reopen the Original First Plaintiff Contracts nor did it have a legal basis on which to cancel the Original First Plaintiff Contracts between the First Plaintiff and the Defendant. The First Plaintiff states that at no point during the term of the Original First Plaintiff Contracts did the First Plaintiff breach any of its terms and that the school bus transportation services were completed in a satisfactory manner throughout the term of the Original First Plaintiff Contracts.

29. The Second Plaintiff states that the Defendant had no legal basis on which to reopen the Original Second Plaintiff Contract nor did it have a legal basis on which to cancel the Original Second Plaintiff Contract between the Second Plaintiff and the Defendant. The Second Plaintiff states that at no point during the term of the Original Second Plaintiff Contract did the Second Plaintiff breach any of its terms and that the school bus transportation services were completed in a satisfactory manner throughout the term of the Original Second Plaintiff Contract.

30. The First Plaintiff and Second Plaintiff repeats the foregoing and state that the Defendant’s dealings with the First Plaintiff and Second Plaintiff and its repeated attempts to coerce the First Plaintiff and Second Plaintiff into amending the existing contracts displayed the Defendant’s callous disregard for the rights of the First and Second Plaintiff and amounted to vindictive and reprehensible conduct that ought to be deterred with an award of punitive damages against the Defendant.

31. And the First Plaintiff therefore claims against the Defendant:
   (a) its costs, fees, and expenses incurred to prepare the tender in an amount to be determined;
   (b) the lost profits of the First Plaintiff that the First Plaintiff would have earned on the 2014 Contract to which it was entitled for the term of said 2014 Contract, in an amount to be determined;
(c) the lost profits of the First Plaintiff that it would have earned but for the early cancellation of the Original First Plaintiff Contracts, in an amount to be determined;

(d) exemplary damages;

(e) punitive damages;

(f) judgment interest pursuant to the Judgment Interest Act, R.S.N. 1990;

(g) costs on a solicitor and client, and party and party basis; and

(h) such further and other relief as this Honourable Court may deem fit and just.

32. And the Second Plaintiff therefore claims against the Defendant:

(a) the lost profits of the Second Plaintiff that it would have earned but for the early cancellation of the Original Second Plaintiff Contract, in an amount to be determined;

(b) exemplary damages;

(c) punitive damages;

(d) judgment interest pursuant to the Judgment Interest Act, R.S.N. 1990;

(e) costs on a solicitor and client, and party and party basis; and

(f) such further and other relief as this Honourable Court may deem fit and just.

33. 

DATED at St. John's, Newfoundland, this 21st day of 03.05.2015.

GOODLAND O'FLAHERTY
Solicitors for the Plaintiff

Per: DAVID P. GOODLAND

Whose Address for Service is:
16 Forest Road, Suite 200
St. John's, NL A1C 2B9
To: The Supreme Court of Newfoundland and Labrador
    Trial Division
    Duckworth Street
    St. John's, NL

And to: Eastern Regional Office
    Suite 601, Atlantic Place
    215 Water Street
    St. John's, NL
    A1C 6C9

ISSUED at St. John's, Newfoundland, this 28 day of May, A.D., 2015.

[Signature]
Clerk of the Supreme Court
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

CAREY'S BUS SERVICE LIMITED
FIRST PLAINTIFF

AND:

ATC ENTERPRISES LTD.
SECOND PLAINTIFF

AND:

NEWFOUNDLAND AND LABRADOR
ENGLISH SCHOOL DISTRICT
DEFENDANT

NOTICE TO THE DEFENDANT

You are hereby notified that the Plaintiff may enter judgment in accordance with the Statement of Claim or such order as according to the practice of the Court, the Plaintiff is entitled to, without further notice to you unless within ten (10) days, after service hereof upon, you cause to be filed in the Registry of the Supreme Court of Newfoundland at St. John's a defence and unless within the same time a copy of your defence is served upon the Plaintiff or the Plaintiff's solicitor at the Plaintiff's solicitor's address for service.

Provided that the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of $ (or such sum as may be allowed on taxation) for costs to the Plaintiff or the Plaintiff's solicitor within ten (10) days from the service of this notice upon you, then this proceeding will be stayed.

To: Eastern Regional Office
   Suite 601, Atlantic Place
   215 Water Street
   St. John's, NL
   A1C 6C9
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

CAREY'S BUS SERVICE LIMITED

FIRST PLAINTIFF

AND:

ATC ENTERPRISES LTD.

SECOND PLAINTIFF

AND:

NEWFOUNDLAND AND LABRADOR
ENGLISH SCHOOL DISTRICT

DEFENDANT

AFFIDAVIT OF SERVICE

I, of Newfoundland, make oath and say that I did on the day of A.D., 2015, at approximately serve with the attached Statement of Claim by leaving a true copy of the same with personally at .

SWORN TO at Newfoundland, this day of , A.D., 2015 before me:

__________________________
2015 01G 2788

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

CAREY'S BUS SERVICE LIMITED

FIRST PLAINTIFF

AND:

ATC ENTERPRISES LTD.

SECOND PLAINTIFF

AND:

NEWFOUNDLAND AND LABRADOR
ENGLISH SCHOOL DISTRICT

DEFENDANT

DEFENCE

1. The Defendant, Newfoundland and Labrador English School District, is a school district under the Schools Act, 1997, SNL 1997, c. 12-2 (the "Act"). The Defendant is successor to, inter alia, Eastern School District pursuant to the Act and Regulations and Orders made under the Act effective September 1, 2013. The school board for the Newfoundland and Labrador English School District is the body corporate under the Act and is responsible for organization and administration of primary, elementary and secondary education within the District.

2. The Defendant admits Paragraphs 1, 2, 3, 6 and 7 of the Statement of Claim, except as herein set out.

3. The Defendant does not admit or denies, in whole or in part, Paragraphs 4, 5, and 8 to 30 of the Statement of Claim, and puts the Plaintiffs to strict proof thereof.

4. The Defendant states, with respect to the Statement of Claim as a whole, the Plaintiffs provided transportation services to the Defendant and its predecessors, including Eastern School District, pursuant to School Bus Transportation Contracts and Special Transportation Contracts. Eastern School District was formed in September 2004 as a result of consolidation of school districts in eastern Newfoundland and Labrador. The
Defendant was formed in September 2013 as a result of consolidation of the English language school districts in the Province.

5. The Defendant admits, with respect to Paragraph 4 specifically, the First Plaintiff provided school bus transportation services to the Defendant and predecessor school boards for approximately 25 years. The Defendant does not have direct knowledge Thomas Carey was a shareholder, director and employee of the First Plaintiff for this entire period, but understands he had been the principal representative and directing mind of the First Plaintiff throughout this period. He was the principal representative and directing mind of the First Plaintiff from September 2006 to termination of the Contract referred to below, either solely or jointly with Christina Carey.

6. The Defendant admits, with respect to Paragraph 5 specifically, the Second Plaintiff provided school bus transportation services for approximately 15 years. The Defendant does not have direct knowledge Thomas Carey was a shareholder, director and employee of the Second Plaintiff for this entire period, but understands he had been the principal representative and directing mind of the Second Plaintiff throughout this period. He was the principal representative and directing mind of the Second Plaintiff from September 2006 to termination of the Contract referred to below, either solely or jointly with Aaron Carey.

7. The Defendant admits, with respect to Paragraph 6 specifically, by Invitation to Tender ESD-06-048 dated July 5, 2006 ("Tender ESD-06-048"), Eastern School District invited bids for school bus transportation for Mobile Central High School, Mobile, and St. Bernard’s Elementary, Witless Bay, for the five year term 2006 to 2011. The First Plaintiff was the successful bidder on Tender ESD-06-048 and was awarded School Bus Transportation Contract ESD-06-048 dated July 12, 2006 ("Contract ESD-06-048"). By Invitation to Tender ESD-010-079 dated July 16, 2010 ("Tender ESD-010-079"), Eastern School District invited bids for special transportation for St. Bernard’s Elementary for the two year term 2010 to 2012. The First Plaintiff was the successful bidder on Tender ESD-010-079 and was awarded Special Transportation Contract ESD-010-079 dated September 8, 2010 ("Contract ESD-010-079"). Contract ESD-010-079 was awarded for the two year term 2010 to 2012, not the five year term 2006 to 2011 set out in Paragraph 6 of the Statement of Claim, and identified as ESD-010-079, not ESD-010-009 set out in Paragraph 6 of the Statement of Claim.
8. The Defendant admits, with respect to Paragraph 7 specifically, by Invitation to Tender ESD-06-023 dated July 5, 2006 ("Tender ESD-06-023"), Eastern School District invited bids for school bus transportation for Baltimore School, Ferryland, for the five year term 2006 to 2011. The Second Plaintiff was the successful bidder on Tender ESD-06-023 and was awarded School Bus Transportation Contract ESD-06-023 dated July 12, 2006 ("Contract ESD-06-023").

9. The Defendant repeats the foregoing paragraphs and states Contract ESD-06-048, Contract ESD-06-023 and Contract ESD-010-079 (collectively the "Contracts") were revised and amended as follows:

   (a) Contract ESD-06-048:

   (i) by Amending Agreement dated September 2, 2010, the basis for calculation of fuel costs was amended;

   (ii) by Extension Agreement dated February 11, 2011, the term was extended for five years from September 2011 to June 2016;

   (iii) by Amending Agreement dated August 2, 2013, the documentation required for drivers was amended by addition of Schedule "B";

   (b) Contract ESD-06-023:

   (i) by Amending Agreement dated September 2, 2010, the basis for calculation of fuel costs was amended;

   (ii) by Extension Agreement dated February 11, 2011, the term was extended for five years from September 2011 to June 2016;

   (iii) by Amending Agreement dated August 2, 2013, the documentation required for drivers was amended by addition of Schedule "B";

   (c) Contract ESD-010-079:

   (i) by Extension Agreement, undated, the term was extended for one year from September 2012 to June 2013;
by Extension Agreement dated June 28, 2013, the term was extended for one year from September 2013 to June 2014;

(iii) by Amending Agreement dated August 15, 2013, the documentation required for drivers was amended by addition of Schedule "B";

(iv) by Addendum dated August 20, 2014, the term was extended for one year from September 2014 to June 2015.

10. The Defendant states, with respect to Paragraphs 8 to 11 specifically, by Invitation to Tender NLES-D-ER-14-151 dated August 21, 2014 ("Tender NLES-D-ER-14-151"), the Defendant invited bids for school bus transportation for St. Bernard's Elementary, Witless Bay, for the two year term 2014 to 2016. The First Plaintiff was the sole bidder for Tender NLES-D-ER-14-151.

11. The Defendant repeats the forgoing paragraph and states it revised its form of School Bus Transportation Contract in 2014 to, inter alia, prohibit persons charged or convicted of any offence incompatible with the safety and well-being of students from providing services under the Contract or having access to students or student information (the "Revised Contract"). The Revised Contract was required to be entered into under Tender NLES-D-ER-14-151.

12. The Defendant's Director of Transportation, Darrin Feehan, spoke with Thomas Carey on August 28, 2014 following receipt of the bid of the First Plaintiff to determine if the First Plaintiff could comply with the terms of the Revised Contract. Thomas Carey assured Darrin Feehan he was removing himself as a director, officer, shareholder, and employee of the First Plaintiff and would not have any involvement in the Contract pursuant to Tender NLES-D-ER-14-151. Darrin Feehan further spoke with Christina Carey on August 29, 2014 and received further assurances Thomas Carey would not have any involvement in the Contract.

13. The Defendant provided the First Plaintiff with notice of award of Tender NLES-D-ER-14-151 by letter dated August 28, 2014 provided by email on September 2, 2014. The letter referenced the assurances provided that Thomas Carey would not provide any services in connection with the Contract and would not have access to student information, with specific reference to Clause 1 (t.1) to (t.6) of the Revised Contract.
14. The Defendant states, with respect to Paragraphs 12 to 15 specifically, it provided the First Plaintiff with a Questionnaire on September 5, 2014 for evaluation of the First Plaintiff's compliance with the conditions of the Revised Contract. The First Plaintiff provided the Defendant with the completed Questionnaire by letter dated September 5, 2014. Darrin Feehan met with Christina Carey on September 5, 2014 to review the responses to the Questionnaire. Darrin Feehan provided Christina Carey with additional questions for evaluation of compliance by email September 5, 2014. Christina Carey provided Darrin Feehan with a response to the additional questions by email September 9, 2014.

15. The Defendant repeats the forgoing paragraph and states the First Plaintiff provided repeated assurances, *inter alia*, Thomas Carey had no involvement in the operations of the First Plaintiff and would have no involvement in the Contract to be entered into pursuant to Tender NLES-D-ER-14-151. The First Plaintiff represented, *inter alia*, Thomas Carey:

(a) was in the process of disposing all of his shares in the First Plaintiff;

(b) did not have any responsibility for management of the Contracts;

(c) had resigned from any management position with the First Plaintiff;

(d) did not have any employment with the First Plaintiff related to school bus transportation;

(e) did not have access to the office of the First Plaintiff;

(f) did not have access to school bus transportation paper records of the First Plaintiff;

(g) did not have access to school bus transportation electronic records of the First Plaintiff.

16. The Defendant states, with respect to Paragraph 16 specifically, it received reports from parents and other interested individuals in the communities where the Plaintiffs provided school bus transportation and special transportation services that Thomas Carey had continuing involvement in the Plaintiffs and the Contracts. The Defendant investigated these reports and determined it could not be assured Thomas Carey had no involvement
in the operations of the First Plaintiff and would have no involvement in the Contract to be entered into pursuant to Tender NLESN-ER-14-151. The Defendant advised the First Plaintiff it decided not to award the Contract for Tender NLESN-ER-14-151 by letter dated October 7, 2014.

17. The Defendant repeats the foregoing paragraph and states, pursuant to the terms of the Revised Contract issued with Tender NLESN-ER-14-151, the Defendant had the “sole and unfettered discretion” to determine whether, inter alia, Thomas Carey “may come into direct contact with students or may have access to student information in connection with the provision of services under this Agreement and whether or not any such offence is of a nature which may be construed as jeopardizing the safety and well-being of students”. The Defendant acted in accordance with the terms of the Tender in providing notice it would not award the Contract to the First Plaintiff or, in the alternative, in revoking award of the Tender.

18. The Defendant states, with respect to Paragraph 17 specifically, the Defendant delivered the school bus transportation to be provided under Tender NLESN-ER-14-151 using its own buses and personnel from September 5 to February 5, 2014.

19. The Defendant states, with respect to Paragraph 18 to 20 specifically, the Defendant continued to receive reports Thomas Carey was involved with the First Plaintiff and the Contracts, notwithstanding the assurances of Thomas Carey and Christina Carey to the contrary. The Defendant by letter dated November 13, 2014 requested the First Plaintiff agree to amend the Contracts to incorporate the covenants of the Contractor in the Revised Contract. The Defendant reiterated its request the First Plaintiff amend the Contracts on November 27 and December 5, 2014 and January 20, 2015. The First Plaintiff failed to respond to the requests of the Defendant to amend the Contracts.

20. The Defendant repeats the foregoing paragraph and states it determined Thomas Carey delivered a replacement school bus to a driver employed by the First Plaintiff to provide school bus transportation under Contract ESD-06-023 the morning of January 14, 2015. The school bus was driven by Thomas Carey during the normal hours of busing operations and over part of the route covered by Contract ESD-06-023. Thomas Carey was not authorized to operate a school bus under Contract ESD-06-023 and did not meet the requirements of the Contract for authorization as a driver. The Defendant further determined Thomas Carey provided other services to the First Plaintiff, including
snowclearing at the property where the First Plaintiff maintained its office and records related to the Contracts.

21. The Defendant states, with respect to Paragraph 20 specifically, by letter dated January 26, 2015, it requested the Plaintiffs agree to enter into the Revised Contract within 10 days of receipt of the letter. The Plaintiffs had not responded to the earlier requests of the Defendant to agree to amendment of the Contracts. The Defendant later advised the Plaintiffs this letter was revoked.

22. The Defendant states, with respect to Paragraph 21 specifically, representatives of the Defendant met with representatives of the Plaintiffs on January 27, 2015 to determine the involvement of Thomas Carey in the operations of the Plaintiffs. The Plaintiffs acknowledged at the meeting Thomas Carey drove a replacement school bus the morning of January 14, 2015 and was otherwise involved in providing services at the office of the First Plaintiff. The Plaintiffs further acknowledged that they could not control the activities of Thomas Carey and that they could not assure the Defendant he would not have access to their offices or facilities, would not give directions to the Plaintiffs’ personnel, and would not have access to student information. The Defendant, following consideration of the response of the Plaintiffs, provided notice of termination of the Contracts by letter dated February 2, 2015.

23. The Defendant repeats the forgoing paragraph and states notice of termination of the Contracts was in accordance with Article 4(a) of Contract ESD-06-048 and ESD-06-023, which permits termination without notice in event the transportation service endangers or is likely to endanger the safety of students and, in the alternative, on the basis the Plaintiffs had not provided a satisfactory transportation service, entitling the Defendant to terminated based on 30 days’ notice, and Article 4 of Contract ESD-010-079.

24. The Defendant states, with respect of Paragraph 22 specifically, it entered into a School Bus Transportation Contract dated February 5, 2015 with Dave Gulliver Cabs Limited for Mobile High School, St. Bernard’s Elementary, and Baltimore School, formerly served by the Contracts with the Plaintiffs. The Defendant acted appropriately in entering into the Contract with Dave Gulliver Cabs Limited.

25. The Defendant states, with respect to Paragraphs 23 to 30 specifically, it denies it violated any of its statutory, contractual, common law, or other obligations to the
Plaintiffs. Thomas Carey at all times material was a director and/or shareholder of the Plaintiffs and otherwise the directing mind of the Plaintiffs. Thomas Carey was convicted of criminal offences including gross indecency, indecent assault on female, and buggery/bestiality in 1991. The Defendant determined any involvement of Thomas Carey with the services to be provided under the Contracts would violate Clause 1 (l.1) of the Revised Contract. The Defendant further determined the conduct of Thomas Carey as set out above endangered the safety of students and provided a basis for termination without notice and, in the alternative, on 30 days' notice. The Defendant acted reasonably and in accordance with its statutory duty when it terminated the Contracts.

26. The Defendant accordingly requests that the Statement of Claim of the Plaintiffs be dismissed in its entirety.

27. The Defendant states, in the alternative, the Plaintiffs have failed to take reasonable measures to mitigate their losses, if any, as set out in the Statement of Claim, and put the Plaintiffs to strict proof of same.

28. The Defendant seeks costs on a solicitor and its own client basis.

DATED AT St. John's, Newfoundland and Labrador, this 1 day of July, 2015.

IAN C. WALLACE
STEWART MCKELVEY
whose address for service is:
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL
A1C 6K3
Solicitors for the Defendant
TO

First Plaintiff and Second Plaintiff
c/o Goodland O'Flaherty
16 Forest Road, Suite 200
St. John's NL A1C 2B9
Attention: David P. Goodland
Thanks Anne Marie. I will get a meeting time set to review. non-responsive
Maybe we can combine with a discussion on ""

Sent from my BlackBerry 10 smartphone on the Bell network.

Sending FYI. Perhaps we can discuss the Bd’s request next week? Thanks. Settlement Privilege s.30.1(a)
More info FYI. Thanks.

Anne Marie Rose QC
Manager, Central Agencies and Justice Policy Unit
Civil Division
Department of Justice and Public Safety
4th Floor, East Block
Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6
Phone: 729-3354 Facsimile: 729-2129

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Thanks - I will ask Ian about availability and work with Sue to set something up. Thanks.

Anne Marie Rose QC
Manager, Central Agencies and Justice Policy Unit
Civil Division
Department of Justice and Public Safety
4th Floor, East Block
Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6
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s.30.(1)(a); s.30.(1)(b) Settlement Privilege
Hi,
We need to schedule meeting at EECD this week for Janet, Paul, Ian Wallace and me. Ian is available anytime Thursday or Friday afternoon. I'm free then as well.
(Once we set a time I will see if Peter Fitzgerald or Rolf Pritchard is free).
Can you advise? Thanks.

Anne Marie Rose QC
Manager, Central Agencies and Justice Policy Unit
Civil Division
Department of Justice and Public Safety
4th Floor, East Block
Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6
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FYI

Anne Marie Rose QC  
Manager, Central Agencies and Justice Policy Unit  
Civil Division  
Department of Justice and Public Safety  
4th Floor, East Block  
Confederation Building  
P.O. Box 8700  
St. John's, NL A1B 4J6  
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Paul

Give me a call if you can

7285321

Bob Gardiner  
Deputy Minister  
Department of Education and Early Childhood Development  
Government of Newfoundland and Labrador  
P. O. Box 8700  
St. John’s, NL A1B4J6  
Phone: (709) 729 5086  
Fax: (709) 729 0414

From: Smith, Paul C  
Sent: Wednesday, October 25, 2017 3:02 PM  
To: Gardiner, Bob B <bobgardiner@gov.nl.ca>  
Subject: RE: NLESD- Carey's Bus Service Limited

I’ll be in Halifax but can join in via phone as needed.

From: Gardiner, Bob B  
Sent: Wednesday, October 25, 2017 3:01 PM  
To: Kirby, Dale <DaleKirby@gov.nl.ca>  
Cc: Smith, Paul C <SmithP@gov.nl.ca>; Manuel, Sue <suemanuel@gov.nl.ca>; Cormey, Janet <janetcormey@gov.nl.ca>  
Subject: FW: NLESD- Carey's Bus Service Limited

Hi Minister:

See email below. Paul and I will connect with you by phone Friday afternoon.

Thanks.
Bob
Agree.....immediately after meeting with Denise.

Sent from my BlackBerry 10 smartphone on the Bell network.

Hi Paul:

We will need to confirm what we need to do tomorrow.

Bob
Thanks Ian:

I will contact Tony this afternoon.

Bob

Bob Gardiner
Deputy Minister
Department of Education and Early Childhood Development
Government of Newfoundland and Labrador
P. O. Box 8700
St. John's, NL  A1B4J6

Phone: (709) 729 5086
Fax: (709) 729 0414
Discovery - Education and Early Childhood Development

From: Gardiner, Bob B
Sent: Thursday, November 30, 2017 5:31 PM
To: Smith, Paul C
Subject: Fw: NLESD- Claim by Carey's Bus Service Limited and ATC Enterprises Limited

FYI

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Tucker, Ian J. <lantucker@gov.nl.ca>
Sent: Thursday, November 30, 2017 5:23 PM
To: Pritchard, Rolf; Stanley, Todd; Gardiner, Bob B
Subject: Fw: NLESD- Claim by Carey's Bus Service Limited and ATC Enterprises Limited

FYI.

Sent from my BlackBerry 10 smartphone on the Bell network.
Sent from my BlackBerry 10 smartphone on the Bell network.

From: Tucker, Ian J. <iantucker@gov.nl.ca>
Sent: Wednesday, December 20, 2017 11:48 AM
To: Pritchard, Rolf; Gardiner, Bob B
Cc: Stanley, Todd
Subject: FW: NLES-D- Claim by Carey’s Bus Service Limited and ATC Enterprises Limited

Good morning all – please see Ian’s email below.
Discovery - Education and Early Childhood Development

From: Gardiner, Bob B
Sent: Tuesday, January 09, 2018 5:13 PM
To: Smith, Paul C
Subject: Fw: NLESD- Claim by Carey's Bus Service Limited and ATC Enterprises Limited

FYI

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Tucker, Ian J. <iuntucker@gov.nl.ca>
Sent: Tuesday, January 9, 2018 2:07 PM
To: Stanley, Todd; Gardiner, Bob B
Cc: Pritchard, Rolf
Subject: FW: NLESD- Claim by Carey's Bus Service Limited and ATC Enterprises Limited

FYI.

Ian Tucker
Solicitor – Civil Division
Department of Justice and Public Safety
Government of Newfoundland and Labrador
4th Floor, East Block
Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6
Phone: 729-4411

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Settlement Privilege s.30.(1)(a)
Bob, do you have the Ian W email referenced below?

Hi Ian:

I’ll ask Sue to set up a time to discuss. Sue, Paul and I for the first meeting and Elizabeth should join us for the second.

Thanks.
Bob

Bob Gardiner
Deputy Minister
Department of Education and Early Childhood Development
Government of Newfoundland and Labrador
P. O. Box 8700
St. John’s, NL A1B4J6

Phone: (709) 729 5086
Fax: (709) 729 0414
Terry Hall, Assistant Director of Education
(Finance and Business Administration/Student Transportation)
NL English School District
(709) 758-2382
terryhall@nlesd.ca

Settlement Privilege
2015 01G 2788
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

CAREY’S BUS SERVICE LIMITED
FIRST PLAINTIFF

AND:

ATC ENTERPRISES LTD.
SECOND PLAINTIFF

AND:

NEWFOUNDLAND AND LABRADOR
ENGLISH SCHOOL DISTRICT
DEFENDANT

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the First Plaintiff and Second Plaintiff hereby discontinues the
within matter against the Defendant with no order as to costs.

DATED at St. John’s, Newfoundland and Labrador, the 19th day of April, 2018.

David P. Goodland, Q.C.
Goodland Buckingham
Solicitors for the First & Second Plaintiff
16 Forest Road, Suite 200
St. John's, NL A1C 2B9
I, Ian C. Wallace, Solicitors for the Defendant herein, hereby consent to the filing of the within Notice of Discontinuance, with no order as to costs.

Ian C. Wallace  
Stewart McKelvey  
Cabot Place  
1100 – 100 New Gower Street  
P.O. Box 5038  
St. John's, NL A1C 5V3

To:  
Registry  
Supreme Court of Newfoundland and Labrador  
Trial Division  
Duckworth Street  
St. John's, NL