

March 28, 2018

The Honourable Rob Fleming, M.L.A.
Minister of Education
PO Box 9045, Stn Prov Govt
Victoria, BC V8W 9E2

Re: The Conseil scolaire francophone de la Colombie-Britannique (“CSFCB”) requests the assistance and support of the Ministry of Education (“Ministry”) in submitting capital project requests to Heritage Canada for federal funding for infrastructure improvements

The CSFCB also requests the assistance and support of the Ministry to negotiate a special agreement with Heritage Canada to respond to some of the infrastructure needs of the French-speaking community

Dear Minister:

Further to the discussions held on February 28, 2017, between Ministry officials and CSFCB officials regarding the role of federal capital funding for minority official language education, I write in order to request the assistance and support of the Ministry in submitting capital project requests to Heritage Canada.

The context for this request is simple: the federal government’s participation in resolving the CSFCB’s infrastructure needs was recommended in September 2016 by the Supreme Court of British Columbia in *Conseil scolaire francophone de la Colombie-Britannique v British Columbia (Education)*.¹ The CSFCB is therefore requesting federal funds in order to modernize some of its school facilities and improve the quality of the educational experience provided in those facilities. Notably, there is a need to modernize the small gymnasium at École élémentaire des Deux-rives in Mission² which limits the CSFCB’s ability to offer the Ministry’s physical education curriculum.

In addition to the Supreme Court of British Columbia decision, the Standing Senate Committee on Official Languages tabled a report on May 31, 2017, entitled *Horizon 2018: Toward Stronger Support of French-language Learning in British Columbia*. In this report, the Standing Senate Committee on Official Languages recommended, among other things, that:

the Minister of Canadian Heritage, in negotiating the new Protocol for Agreements on Education and the next multi-year official languages plan, conclude a special agreement with British Columbia’s Ministry of Education to respond to the pressing infrastructure needs of the francophone community and guarantee the recognition

¹ 2016 BCSC 1764.

² See paragraph 5005 of the decision.

of its rights under section 23 of the Canadian Charter of Rights and Freedoms and Part VII of the Official Languages Act [Emphasis added].³

Accordingly, the CSFCB asks that the Ministry support its efforts to submit a request for the conclusion of a special agreement between Heritage Canada and the Ministry. The request for a special agreement should speak to the need to modernize some of the CSFCB's current infrastructure and should target those facilities that have major functionality shortcomings that negatively affect the quality of education being offered.

The funding from Heritage Canada would cover modernization projects that cannot be funded by the Annual Facility Grant

As you are aware, the Annual Facility Grant ("AFG") is a targeted funding envelope provided to school boards by the Ministry in order to maintain school facilities through projects that do not exceed \$1.5 million, such as roof replacement, health and safety upgrades and mechanical system upgrades. The modernization projects that the CSFCB proposes to include in the request to the federal government are likely not eligible as AFG projects, for example:

- a. building a new gymnasium in Mission, where the gymnasium size is far below the Area Standards, but where the school facility is otherwise in acceptable condition; and
- b. in Nanaimo, one of the options contemplated by the CSFCB is to modernize its existing facility in order to add a secondary wing; if this option is selected, the CSFCB would like to request funding from Heritage Canada in order to upgrade the existing gymnasium, which is far below the Area Standards for an elementary school, let alone those of a facility that would also be offering secondary instruction.

These kinds of requests respect the criteria for capital projects that can be funded by the federal government. Helping the CSFCB to submit such a request is one way for the Ministry, as part of its duty to assist, to support the CSFCB.

There are at least two precedents for the CSFCB's capital projects request to Heritage Canada: the 1997 Special Agreement for the Implementation of Francophone School Governance, and the 2002 Canada-British Columbia Auxiliary Agreement on Capital Projects

In the past, Heritage Canada has provided capital funding to the CSFCB (through the Ministry of Education), not only in the context of community space at newly constructed schools, with which you are surely more familiar, but also to acquire closed English-language schools to house French-language programs.

In 1997, the government of British Columbia along with Heritage Canada signed the Special Agreement for the Implementation of Francophone School Governance ("1997 Special Agreement", which is attached as **Appendix "A"**). In the 1997 Special Agreement, Heritage Canada agreed to provide "50% of the eligible expenses expended by British Columbia" for the

³ Standing Senate Committee on Official Languages, *Horizon 2018: Toward Stronger Support of French-language Learning in British Columbia*, May 2017, Recommendation 2 at p 53, online: <https://sencanada.ca/content/sen/committee/421/OLLO/reports/Report_OLLO_2017-03-29_E.pdf>.

1996-1997, 1997-1998, and 1998-1999 fiscal years (section 3.1 of **Appendix "A"**).⁴ According to the 1997 Special Agreement, capital costs were considered eligible expenses (section 2.1d):

Capital costs associated with the operation of any Francophone Education Authority, other than minor capital costs, and which include:

- i. Costs related to the acquisition of assets of a permanent or semi-permanent nature;
- ii. Costs related to acquiring and developing sites for school purposes or for use in connection with them;
- iii. Costs related to purchasing, constructing, reconstructing and making major alterations to buildings for school purposes or for use in connection with them, or

[...]

In 1997 the Ministry was dealing with the implementation of the 1996 decision of the Justice Vickers. The CSFCB asks that the Ministry support the CSFCB's efforts to request the conclusion of an agreement between Heritage Canada and the Ministry notably in order to implement a portion of the decision of Justice Russell, similar to the 1997 Special Agreement.

Additionally, in 2002, the Ministry signed the *Canada-British Columbia Auxiliary Agreement on Capital Projects* ("2002 Special Agreement", which is attached as **Appendix "B"**) in which Heritage Canada agreed to contribute up to \$15 million towards capital projects for the CSFCB.

Although most of the 2002 Special Agreement funds were put towards creating community spaces in schools that were being built at the time, such as École Victor-Brodeur in Victoria and École secondaire Jules-Verne in Vancouver, a portion of the Special Agreement funds were used to acquire, renovate and modernize existing school facilities.

For example, \$371,710 of the funds from the 2002 Special Agreement were used for a minor space project in Kelowna (École l'Anse-au-sable), which was supported by the Ministry despite it being (then) a low-priority project. Further, at least \$3 million of the funds from the 2002 Special Agreement were used to acquire English-language schools for the CSFCB in Delta, Powell River and Prince George, and to complete minor renovations to these three newly acquired school facilities.

The instruments framing federal funding lay out the criteria for approval of capital expenditures

Although the 1997 Special Agreement and the 2002 Special Agreement have expired, the *Protocol for Agreements for Minority-Language Education and Second-Language Instruction 2013-2014 to 2017-2018* between the Government of Canada and the Council of Ministers of Education, Canada ("2013-2018 Protocol") still provides that Heritage Canada can approve, at its discretion, complementary contributions to emerging priorities identified by British Columbia, including

⁴ Or, if it is a lesser amount, "the Canada's approved contribution" (section 3.1), which was set at \$10,500,000 (section 4.1).

infrastructure projects (see section 7.3.1.7 of the 2013-2018 Protocol which is attached as **Appendix "C"**).

According to the Administrative Procedures and Condition Capital Projects, attached as Schedule 2 to the *Canada-British Columbia Agreement on Minority-Language Education and Second Official-Language Instruction 2013-2014 to 2017-2018* ("2013-2018 Agreement"), "Canada may contribute financially to capital projects through the action plan (Schedule 3) or as a complementary project" (see section 1.1 of the 2013-2018 Agreement which is attached as **Appendix "D"**).

According to Schedule 2 of the 2013-2018 Agreement, capital projects contemplated by the CSFCB, such as building a new gymnasium or upgrading existing CSFCB schools, are included within the purview of capital projects expenditures that can be funded by Heritage Canada (see section 2.1 of the 2013-2018 Agreement which is attached as **Appendix "D"**).

As part of the request that a new agreement be reached between the Ministry and Heritage Canada, the CSFCB would like to prepare a proposal with the capital projects that could benefit from such an agreement. According to the 2013-2018 Agreement, the proposal must be submitted to Heritage Canada by an "individual duly authorized by British Columbia".⁵ If it can be of assistance, the Ministry could indicate to Heritage Canada that an employee of the CSFCB or myself are individuals duly authorized by British Columbia to submit the proposal.

According to the 2013-2018 Agreement, Heritage Canada's participation is conditional on British Columbia demonstrating that the spaces funded by Heritage Canada are over and above existing school standards (see section 2.3 of the 2013-2018 Agreement which is attached as **Appendix "D"**). The CSFCB therefore requires the Ministry's assistance to demonstrate to Heritage Canada that, because the Ministry's capital funding framework does not prioritize projects modernizing existing school facilities up to current Area Standards, projects modernizing the CSFCB's facilities that were built in compliance with former, smaller iterations of the Area Standards would fall within this criterion.

Further, the proposal should indicate that the Ministry of Education considers a gymnasium an important part of an educational program and school facility, but that a project to modernize a small gymnasium at an existing school is a low capital priority that will likely not be funded by the Ministry.

Supporting the CSFCB's plan would be another measure adopted by the Ministry to assist the CSFCB in counterbalancing the infrastructure disadvantages it faces compared to English-language school districts

The CSFCB seeks the Ministry's assistance and support in order to continue counterbalancing some of the disadvantages the CSFCB faces when it comes to infrastructure. For example, Local and Restricted Capital Reserve amounts, as well as School Site Acquisition Charges, are available to most English-language school districts prior to project approval, and can help English-language school districts create business cases to move their projects forward. These amounts can also help school districts move quickly to acquire sites when they become available.

⁵ *2013-2018 Agreement*, section 5.4.2; see also *2013-2018 Agreement*, Schedule 2, section 4.2.

While the long-term capital envelope created for the CSFCB will help counterbalance these factors, it will only address projects that would have qualified for funding from British Columbia's capital funding system prior to the creation of the long-term capital envelope.

As compared to English-language school districts, the CSFCB lacks revenue sources with which to fund modernization projects outside the capital envelope. Many English-language school districts either have a greater capacity to allocate operating funding to local capital due to greater economies of scale, or can generate local capital. These revenues stem from the rental of surplus school facilities to the CSFCB or other groups, or from selling surplus school sites. The CSFCB is only rarely able to generate local capital through these means. Instead, the CSFCB's ability to carry out modernization projects is generally limited by the amount of AFG funding it receives and by the scope of the AFG program. Accordingly, the CSFCB cannot carry out modernization projects that cost more than \$1.5 million, or that are ineligible for AFG funding.

The CSFCB appreciates that the Ministry has helped to partly counterbalance some of these disadvantages in the past, and appreciates that it continues to do so. It is in this spirit that the CSFCB seeks the Ministry's assistance and support in seeking federal funding for school infrastructure upgrades.

The CSFCB looks forward to hearing from you as soon as possible and is available for all queries you may have concerning this letter, or to provide any additional information. Please have Ministry staff communicate with the CSFCB's Secretary-Treasurer, Sylvain Allison, with respect to any part of this letter. He can be reached at 604-214-2606, or by e-mail at sallison@csf.bc.ca.

Sincerely,



Marie-France Lapierre
Chair

- Att. **Appendix "A"**: *Canada-British Columbia Special Agreement for the Implementation of Francophone Schools Governance, March 1997 (Special Agreement 1997)*
- Appendix "B"**: *Canada-British Columbia Agreement for Minority-Language Education and Second-Language Instruction: Canada-British Columbia Auxiliary Agreement on Capital Projects, March 2002 (Special Agreement 2002)*
- Appendix "C"**: *Protocol for Agreements for Minority-Language Education and Second-Language Instruction 2013-2014 to 2017-2018 between the Government of Canada and the Council of Ministers of Education, Canada, August 2013*
- Appendix "D"**: *Canada-British Columbia Agreement on Minority-Language Education and Second Official-Language Instruction 2013-2014 to 2017-2018, March 2014*
- cc. Reg Bawa, Assistant Deputy Minister, Ministry of Education,
 Linda Beddouche, Director, French Education, Ministry of Education
 Sylvain Allison, Secretary-Treasurer, CSF