



November 7th, 2019

Honourable Robert Fleming
Minister of Education
PO Box 9045 Stn Prov Govt
Victoria, BC V8W 9E2

Via email: EDUC.Minister@gov.bc.ca

Dear Minister Fleming,

Re: Thank you for the role you played in trying to secure Queen Elizabeth Annex for the Conseil scolaire francophone de la Colombie-Britannique (“CSF”)

The Vancouver School Board’s decision illustrates the necessity of amending the *School Act* to allow the Province, in exceptional situations, to make surplus or underutilized school facilities available for use by the CSF

I write on behalf of the Board of Regional Trustees of the Conseil scolaire francophone de la Colombie-Britannique (“CSF”) to thank you and your officials very much for the role you played in trying to assist the CSF in securing Queen Elizabeth Annex in Vancouver by way of a long term lease, notably with respect to the support you offered the Vancouver School Board (“VSB”), should its Board of Trustees accept to close Queen Elizabeth Annex. It is regrettable that the VSB Board of Trustees decided not to engage in further consultation regarding the proposed closure and transfer of Queen Elizabeth Annex to the CSF, effectively putting an end to the discussions and efforts undertaken by the Province, the CSF and the VSB staff over at least the last two years.

The situation in Vancouver, as well as the recent situation in Victoria, where the Board of Trustees of the Greater Victoria School District (School District 61) decided to reopen Sundance Elementary, displacing CSF students who currently use the space and who could not be accommodated on another site on such short notice, clearly illustrates the need for you, Minister, to have greater power to ensure that publicly funded school space be put to optimal use to support both English-language and French-first language programming and to allow for the resolution of stalemates between school boards.

Often, acquiring surplus or underutilized English-language school facilities is the most cost-effective and efficient way in which to offer French-first language programming. Concretely, the *School Act*¹ should be amended to allow you to transfer a school facility

¹ RSBC 1996 c 412.

from an English-language school district to the CSF where (1) that school facility is surplus or underutilized by the English-language school district, (2) no viable alternative exists, and (3) it is necessary to do so in order to respect the obligation to provide French-first language instruction. At present, the lack of legislative authority² allowing you to take such action where there is an urgent (and in some cases court ordered) need to provide public school space leaves the future of French-first language programming at the mercy of moral suasion and the political vagaries of English-language school boards.

The Legislature should make a change that will resolve the situation for current and future generations of French-first language students and that, if properly structured, will save time, money and resources, benefitting all students in British Columbia.

A problem two decades in the making

The CSF was created in 1996 to fulfill the province's obligations under section 23 of the *Canadian Charter of Rights and Freedoms* ("Charter") to provide French-first language elementary and secondary education in British Columbia. The CSF's province-wide jurisdiction, with its catchment areas overlapping with the jurisdictions of English-language school districts, is one of the CSF's many distinct features. It also presents some of the greatest challenges for the CSF when it tries to secure instructional space.

When the CSF was created in 1996, the Province decided that old English-language school facilities were to be transferred or purchased from English-language school districts for the CSF by the Ministry of Education.

Unfortunately, the Province's decision to proceed in this manner was not supported by any legislative power or authority to ensure that the needs of French-first language educational programming would be met. As a result, in order to acquire, expand or even establish a French-first language program, the CSF must regularly approach English-language school districts to negotiate access to their surplus or underutilized properties, often at a very high price to taxpayers. The CSF has not been able to acquire school sites in the same manner as their English-language counterparts, for example, by way of Crown grant (at no charge), transfer from a municipality, as part of an official community plan, by expropriation,³ etc.

Over the past two decades, the CSF has continued to grow, both in terms of the absolute number of students and in terms of the number of locations from which it offers French

² *Conseil scolaire francophone de la Colombie-Britannique v British Columbia (Education)*, 2016 BCSC 1764, at para 1154-1155 [*CSF v British Columbia*, 2016].

³ The problem of acquiring school sites for the CSF is exacerbated by the fact that it does not have the same powers as English-language school districts to, for instance, expropriate property where no viable alternatives exist.

first-language programs (whether by opening new programs or by dividing existing catchment areas). The CSF's capital planning relies greatly on surplus and underutilized English-language school facilities to allow it to meet the needs of its students, especially in locations that are yet unserved by the CSF.

Often, acquiring surplus or underutilized English-language school facilities is the most cost-effective and efficient way in which to offer French-first language programming.

First, collectively, English-language school districts across British Columbia are the largest landholders in the province outside of the Crown. They hold a lot of land located in very central places in the communities they serve. As such, they are a major player in the CSF's search for sites from which to offer programming.

Second, the surplus or underutilized school facilities are already suited to provide educational programming (i.e. there exist purpose-built classrooms, a gymnasium, play areas, etc.). When a surplus or underutilized school space is not available for the CSF, often the second most viable option is leasing community or church space. These spaces are less conducive to providing educational programming and are rarely available. The least viable option, but one that the CSF has had to resort to on many occasions, is leasing commercial space. This option is very costly, both in terms of trying to make the space suitable for students, which in many cases is impossible and results in inadequate teaching space and no green space, and in terms of paying high commercial leasing rates and upgrading costs. Leasing commercial space also requires the CSF to obtain temporary rezoning permits, and incur additional expenses, such as paying property taxes or paying for service agreements for the use of nearby play fields or physical activity centers (i.e. at a local community hall).

Third, securing a surplus or underutilized school space from an English-language school district is cost-effective as the CSF and the Province do not need to spend millions of dollars to acquire private property that is large enough to meet the needs of the student population. Acquiring sizeable properties for the construction of schools is particularly difficult in several hot real estate markets in British Columbia, such as in Vancouver, Victoria, Kelowna, Whistler, etc. In many cases, not only is the cost of acquiring sites exorbitant, but locating suitable sites large enough for school construction (between 5-10 acres) is also challenging.

Fourth, securing a surplus or underutilized school space from an English-language school district is often the most efficient and timely way to secure school space to offer French-first language programming. In most cases, the surplus or underutilized school space is nearly "move-in" ready, and cosmetic improvements can be completed quickly and cost effectively. Even if the CSF were to make extensive renovations or rebuild a school facility on an existing surplus or underutilized school site, it is still almost always the most

efficient and timely solution. The CSF also tries to acquire sites for the construction of a school from other public entities, such as municipal, provincial, and federal landowners. Unfortunately, acquiring sites from these public entities is also very complex. Public land is scarce, often subject to competing interests, land claims, complex municipal processes and requirements, and includes multiple stakeholders pursuing the interests of the communities that they serve. Those interests are rarely aligned with the interest of providing French-first language programming.

For the reasons listed above, with the exception of École L'Anse au-sable in Kelowna (which formerly housed an independent school), all of the CSF's schools are located on sites acquired from an English-language school districts. To this day, the CSF relies greatly on the collaboration of English-language school districts to lease or purchase school facilities and sites in areas where it is starting a new program or where it is experiencing growth. Unfortunately, in all cases the "collaboration" that has allowed the CSF to acquire sites and facilities has also mostly been driven by the interests of the English-language school district, curtailing the CSF's control over the acquisition it desires in support of its long-term planning, making it largely dependent on the political will of English-language school boards.

It is understandable that English-language school districts prioritize their needs over those of the CSF. In fact, English-language school districts have several alternative uses for surplus or underutilized properties. For instance, a closed school can be used for other district purposes, as in the case of Bakerview Elementary School, a closed school facility of School District 34 (Abbotsford) used to house itinerant district teachers and staff and an adult education program. As you may know, in 2016, the British Columbia Supreme Court concluded that a lack of French-first language programming in Abbotsford violates the *Charter* and ordered that space be provide for French-first language students.⁴ To date, a space has not been secured in Abbotsford.

As another example, English-language school districts somehow decide to lease their surplus facility to a third party, such as an independent school, instead of the CSF.

A surplus English-language school site may also be used for administrative purposes such as a board office, as was the case in Burnaby (School District 41). An English-language school district may also choose to do absolutely nothing with a facility, leaving it vacant.

Given that English-language school districts rarely, if ever, have come forward to offer to transfer surplus properties to the CSF and that moral suasion has proven ineffective in

⁴ *CSF v British Columbia*, 2016, at para 6834(l).

many cases, a process is required to facilitate the CSF'S access to such surplus English-language school district assets.

Legislative change is required to enable optimal use of public assets that supports both English-language and French-first language programming and resolves stalemates between school boards

Because of the central role surplus English-language school facilities play in the CSF's capital planning, it is essential that legislation include a ministerial power to transfer, in exceptional circumstances, surplus or underutilized school facilities to the CSF, where necessary.

At present, the framework respecting school properties set out by the *School Act* is such that school boards hold their properties with the powers and capacities of a natural person. There is no ministerial power allowing for the transfer of surplus or underutilized land to the CSF, even in the most exceptional of circumstances.⁵

Over the years, many situations have arisen where underutilized or vacant English-language school facilities existed but were not available for use by the CSF. In some cases, previous governments accepted that surplus English-language school facilities be disposed of, without even considering the CSF as a potential buyer. Since the CSF's creation, the Province's policies regarding the disposal of surplus or underutilized government-owned properties, and specifically those owned by English-language school district, have consistently failed to utilize this valuable land base to meet its constitutional obligations to provide French-first language programming.

To be clear, the CSF is not proposing that legislative change providing for a ministerial power to transfer surplus or underutilized school facilities to the CSF be unfettered or that the responsibility for asset management be taken away from school districts. You may recall a concern you raised while in opposition to then Minister of Education Peter Fassbender's proposed amendment to section 74(1) of the *School Act*, making a School Board's powers to manage its property subject to ministerial orders. You questioned Minister Fassbender about the government's intention to frivolously dispose of public assets and reorient responsibility for asset management to the Minister.⁶ That is not the intention of this proposal. However, a change is necessary to ensure that valuable surplus or underutilized school facilities are optimally used to support both English-language and French-first language educational programming and that an impasse between school boards can be overcome.

⁵ *Conseil scolaire francophone de la Colombie-Britannique v British Columbia (Education)*, 2013 BCSC 1242, at paras 36-37; *CSF v British Columbia*, 2016, at para 1155.

⁶ Legislative Assembly, *Debates of the Legislative Assembly (Hansard)*, 40th Parl., 4th Sess., Vol. 26 No. 5 (13 May 2015) at pp 8453-8455.

If properly structured, legislative change can enable the acquisition of surplus English-language school sites where opportunities for the CSF coincide with changing circumstances in local English-language school districts. Furthermore, as noted above, such legislative power would be used scarcely, only in exceptional circumstances, where despite good public policy reasons to make the space available to the CSF and the need to do so to meet constitutional obligations, a Board of Trustees is unwilling to acquiesce. In such circumstances, it is necessary for you, Minister, to have the final say as the overseer of the body responsible for providing both English-language and French-first language public education in the Province.

Similar requests have been made before. In 2009, the CSF proposed that the Ministry of Education amend the *School Act* and enact regulations to require English language school districts to transfer surplus school properties to the CSF at no cost. The CSF has also suggested that the Ministry of Education provide the CSF with a right of first refusal for surplus English-language school properties, prior to their disposal.

In 2016, the British Columbia Supreme Court concluded that the Province must craft a policy or enact legislation to remedy the difficulties faced by the CSF in accessing suitable sites for French-first language programming:

[6831] Requiring the Ministry to take some sort of positive step by implementing a law or policy is appropriate and just in the circumstances. When the Province first created the [CSF], it considered that it might be necessary to create some sort of law or policy to persuade majority school boards to assist the CSF. While the Ministry advocated for the CSF and helped it to identify sites and negotiate with the majority on request in the CSF's early years, it has recently failed to take the positive steps to protect the CSF when the CSF asked for help.

[...]

[6836] To ensure that the various declarations I made are effective I also make the following orders: [...]

b) The Province and/or the Ministry must craft a policy or enact legislation to either resolve or ensure the Ministry's active participation in the resolution of issues concerning the CSF's need for space and the types of disputes that arise between the CSF and majority school boards: site identification; implementation and operation of the transfer of assets; the co-management of shared assets; lease negotiations of any facilities that are not transferred; and any other dispute that may arise between the CSF and a majority school boards.⁷
(emphasis added)

⁷ *CSF v British Columbia*, 2016, at paras 6831-6832.

The province has yet to craft a policy or enact legislation with respect to site identification and implementation and operation of the transfer of assets. The CSF looks to your leadership to remedy the failures of past governments.

The Province should consider the experience of other jurisdictions regarding exceptional powers to direct the transfer of surplus or underutilized school property

Several other jurisdictions have the power to direct school districts to transfer school facilities when it is in the greater public interest to do so.

For example, in July of this year, Quebec Education Minister Jean-François Roberge forced the English-language minority school board to transfer two of its school facilities to the French-language majority school board pursuant to section 477.1.1 of the *Education Act*,⁸ as he determined it was necessary to do so in order to alleviate overcrowding in the majority language schools. Sections 477.1.1- 477.1.3 provide the following authority:

477.1.1. On the recommendation of the Minister, the Government may, if it considers it advisable in the public interest and so as to foster effective and efficient management of the immovables belonging to school boards, order that the ownership of an immovable belonging to a school board be transferred to another school board so that the latter school board may establish an educational institution.

Such a transfer shall take effect on the date determined by the Government.

477.1.2. The Government shall determine, by order in council, whether an indemnity is to be paid as consideration for the transfer and, where applicable, the amount of the indemnity and the other conditions of the transfer.

477.1.1. Sur la recommandation du ministre, le gouvernement peut, s'il estime que l'intérêt public le justifie et afin de favoriser une gestion efficace et efficiente des immeubles des commissions scolaires, ordonner que la propriété d'un immeuble appartenant à une commission scolaire soit transférée à une autre commission scolaire afin qu'elle y établisse un établissement d'enseignement.

Ce transfert prend effet à la date que le gouvernement détermine.

477.1.2. Le gouvernement détermine, par décret, si une indemnité est versée en contrepartie de ce transfert d'immeuble et, s'il y a lieu, le montant de celle-ci et les autres conditions de ce transfert.

⁸ CQLR c I-13.3

477.1.3. Before making a recommendation to the Government, the Minister must give the school boards concerned an opportunity to present observations in writing and grant them at least 30 days to do so.

477.1.3. Avant de faire une recommandation au gouvernement, le ministre doit donner aux commissions scolaires concernées l'occasion de présenter des observations écrites et leur accorder pour ce faire un délai d'au moins 30 jours.

The purpose of the provision is to allow the government to make a final decision with respect to school property in order to allow for the optimal use of educational facilities and resolve a stalemate between school boards.

In Alberta, the *Education Act*,⁹ a similar but less forceful provision allows the Minister of Education to direct the disposition of School District property should the district no longer have a use for the school building. Sections 192(2) and (3) of the *Education Act* provide that:

192(2) Where a board has determined that it no longer has a use for a school building, it must notify the Minister in writing.

(3) Where a board provides notice to the Minister under subsection (2), the Minister may, in writing, direct the board to dispose of that property subject to the terms and conditions that the Minister prescribes.

The use of such a power allows the Minister of Education in Alberta to create immediate efficiencies and make positive use of costly and scarce public infrastructure.

It should be noted that where such a power exists, governments have used it with great caution and as a last resort. In fact, often, just the existence of such a power, and the possibility of using it, is enough to achieve the objectives of the Minister of Education.

The CSF has not done an exhaustive analysis of school district property disposal provisions elsewhere in the country. However, as is clear from the examples above, other provinces have frameworks that may be reproduced and made suitable for the educational context in British Columbia.

Conclusion

Once again, the CSF would like to thank you and your officials for the recent interventions to try to ensure that French-first language programming can continue to thrive.

It is also for this reason that the CSF is hopeful that you carefully consider its request to amend the *School Act* to allow the Province to make surplus or underutilized school

⁹ 2012 Ch. E-0.3



facilities available for use by the CSF where it is required to meet constitutional obligations.

The CSF, like English-language school districts, wants its students to have access to facilities that are conducive to learning, working and playing, so that all children in British Columbia get the education that they deserve.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marie-Pierre Lavoie', is written in a cursive style.

Marie-Pierre Lavoie
Chair, CSF

Copy: Scott MacDonald, Deputy Minister (EDUC)
Joel Palmer, Executive Director Capital Management (EDUC)
Michel St-Amant, Superintendent (CSF)
Sylvain Allison, Secretary Treasurer (CSF)