

**EXECUTIVE COMMITTEE MEETING**

**SKYPE**

**Wednesday, August 9, 2017 –12:00 PM**

**1. OPENING**

An Executive Committee meeting of the Newfoundland & Labrador English School Board was held on Wednesday, August 9, 2017. The Chair welcomed everyone to the meeting and thanked them for joining.

The meeting was called to order on skype at 12:00 PM.

Members present: Goronwy Price, Chair  
Tom Kendell  
Lester Simmons  
Wince Carter

Regrets: Bruce Cluney  
John Smith

Also in Attendance: Anthony Stack, CEO/Director of Education  
Lloyd Collins, Assistant Director of Education  
Terry Hall, Assistant Director of Education  
Jackie Crane, Executive Assistant

**2. ADOPTION OF AGENDA**

**Motion:** The Executive Committee agreed unanimously to adopt the agenda as presented. (Lester Simmons/Winston Carter) Carried

**3. CONSIDERATION OF MINUTES**

3.1 MINUTES June 12, 2017 (Winston Carter/Lester Simmons) Carried

3.2 MINUTES June 23, 2017 (Winston Carter/Lester Simmons) Carried

**4. BUSINESS ARISING**

4.1 No business arising

## 5. NEW BUSINESS

### 5.1 School Review

The Executive Committee had an in-depth discussion on the possibility of adding the Crescent Collegiate School System to the list of school reviews to be completed in the 2017-2018 school year. All committee members felt that the Board already has a fairly heavy workload for the Fall and felt it would be better suited to not add any other schools to the current list. The committee felt that waiting for the next school year 2018-2019 would be a better option when all schools suggested for review can be put to the full Board and the decision made at that time.

### 5.2 Legal Briefing- this is a briefing for information purposes only

#### **Appeal of Government to the Court of Appeal from the decision of Justice Butler on the disclosure of names, position, and salary under the Access Request filed by *The Telegram* in March 2016.**

The District received a request for information under the *Access to Information and Protection of Privacy Act* in March 2016 from *The Telegram*. The Access Request was for the “name, job title, and corresponding taxable income for the 2015 tax year for all English School District employees earning more than \$100,000”. Similar requests were received by Government of Newfoundland and Labrador, Memorial University, College of the North Atlantic, and Regional Health Care Authorities. The District provided this information for its senior staff. The District provided the position and income for teachers, administrators, and other staff with a 2015 income over \$100,000, but not names. The District provided Notice of an intention to disclose names to the affected employees.

The Newfoundland and Labrador Teachers’ Association, on behalf of its members, and Canadian Union of Public Employees, on behalf of one member, appealed to the Supreme Court to prohibit disclosure on the basis names with position and salary was an unreasonable invasion of privacy. Other unions also filed appeals. Government and other public bodies including MUN and CONA determined disclosure was not unreasonable and released names with positions and salaries. The Office of the Information and Privacy Commissioner in the interim issued a decision indicating a disclosure was permitted under the Act.

The Court ruled disclosure of names with position and taxable income was an unreasonable invasion of privacy under the Act. The judge considered Affidavits of apprehended personal harm filed by the NLTA. She ruled disclosure was not permitted under s. 40(4) which sets out categories of personal information which is presumed to be protected from disclosure. She ruled the District was required to consider the subjective impact on employees under s. 40(5) as documented by the Affidavits, and the District had the onus of proving disclosure reasonable.

Government appealed the decision to the Court of Appeal. The Appeal submits the Act promotes transparency and accountability. This is undermined by a narrow interpretation. The Appeal also challenges the approach taken by the Court. The judge determined, even if disclosure of the information requested is deemed to be reasonable under s. 40(2), the District is still required to consider if the information should be withheld under the subjective criteria in s. 40(4) and (5).

The District does not have an interest in protecting the information. The District however seeks clear guidance on interpretation of the Act and procedures to be followed in response to an Access Request. The Court’s decision appears to impose unnecessary obligations on public bodies.

The District agrees with Government, if disclosure is deemed reasonable under s. 40(2), no further consideration is required under s. 40(4) and (5). This is not clear from the Court's decision.

If consideration of s. 40(4) and (5) is required, the District should be permitted to consult the persons affected by the request. The District would not otherwise have the necessary knowledge to make an assessment. It is unreasonable for the District to decide without consultation.

Finally, the onus of proof under the Act should be minimal and discharged by raising a presumption only. It is unfair for the District to have the burden of proof on an appeal where it does not have the knowledge of the adverse impact of disclosure on affected third parties. The person objecting to disclosure, and not the District, should have the burden of proving disclosure is not permitted under the Act.

The District's submissions in the Appeal would be restricted to supporting the streamlined approach to interpretation argued by Government and the procedural issues above. The Act as interpreted by the Court is onerous for the District to administer. Clarity is required. The District would not take a position on the ultimate issue whether names should be disclosed.

## **6. ADJOURNMENT TO CLOSED**

There being no further business the meeting adjourned at 12:20 PM, by a motion from Tom Kendell.