



MEMORANDUM

DATE: 9 February 2017

SUBJECT: Testimony of the Hon. Judy Foote, Minister of Public Services and Procurement, before the Standing Senate Committee on Official Languages concerning two portions of two federal sites (the Fairmount and Jericho lands)

Duty of the Canada Lands Company Limited (CLC), under Part VII of the *Official Languages Act* (OLA), to block any renovation project that does not provide for the sale to the province of British Columbia of a small section of each site for the construction of two schools to be operated by the Conseil scolaire francophone de la Colombie-Britannique (CSF)

Problem and solution in brief

The CSF needs to acquire sites for schools in Vancouver West to remedy the infringement of section 23 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) identified by the Supreme Court of British Columbia in its 26 September 2016 judgement in *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*.¹ The province of British Columbia did not appeal this ruling by the Supreme Court of British Columbia. The two hereinafter described federal sites, the Fairmount and Jericho lands, were wholly owned by the federal government. In September 2014, ownership of these lands was transferred to CLC and three First Nations in a 50-50 partnership. A small portion of each site would make it possible for the province of British Columbia and the CSF to implement the judgement of 26 September 2016 and put an end to the infringements of section 23 of the *Charter* in Vancouver West (see in particular two letters from the British Columbia Ministry of Education which are attached hereto in Appendices A and B).

In order to fulfil its duties under Part VII of the OLA,² the federal government, in particular Minister Footer who is responsible for overseeing the activities of CLC, must take positive measures to ensure that CLC does not permit the redevelopment of part of the Fairmount and Jericho lands without guaranteeing that a small portion of those lands is set aside for acquisition

¹ *Conseil scolaire francophone de la Colombie-Britannique, Fédération des parents francophones de Colombie-Britannique v. British Columbia (Education)*, 2016 BCSC 1764.

² *Official Languages Act*, RSC 1985, c. 31 (4th Supp.).

by the province of British Columbia and the CSF. As a 50% owner of each site, CSC can and must block any redevelopment project that does not provide for the sale to the province of British Columbia of a small part of each site for the construction of two CSF schools.

The problem

As far back as 2007 at least, the CSF had expressed an interest in acquiring a small part of the Fairmont site (which measures 21 acres (8.5 hectares) – see the map in Appendix C) and a small part of the Jericho site (which measures 52 acres (21.2 hectares) – see the map in Appendix C). Before they were transferred to CLC and three First Nations, the Fairmont site was owned by Public Works and Government Services Canada (PWGSC), now known as the federal Department of Public Services and Procurement (of which the Hon. Judy Foote is Minister) and the Jericho site was owned by the Department of National Defence (DND).

In 2010 or thereabouts, the federal government began a process of strategic disposal of the Fairmont and Jericho sites, these lands being considered surplus to federal government needs. CLC, as the federal government’s disposal corporation, is charged with the disposal of surplus strategic real estate. Minister Foote is responsible for CLC through its parent company, the Canada Lands Company Limited, which reports to the Parliament of Canada.³

During the course of the federal strategic disposal process, in 2010 or thereabouts, the province of British Columbia expressed an interest in acquiring a small portion of each of the two sites in question for the construction of schools for the CSF. In October 2011, the province of British Columbia approved the funding necessary for the acquisition of a school site and the construction of a new school for the CSF on the first site to become available in Vancouver west of Main Street that was acceptable to the CSF.

The province of British Columbia and the CSF advised PWGSC of the severity of the real estate market situation in Vancouver West and the fact that it was nearly impossible to acquire a school site other than small portions of the Fairmont and Jericho sites. These two sites are among the very few sites currently under redevelopment in Vancouver West, and they are among the largest and most appropriate for the location of a school.

The CSF was not consulted by PWGSC and DND when the lands in question were transferred to CLC

During the strategic disposal process for surplus real property, the federal government must adhere to the requirements of the Treasury Board Secretariat’s *Directive on the Sale or Transfer of Surplus Real Property* (the “Directive”), section 6.8 of which states that the government institutions to which it applies (including PWGSC) shall:

³ See: Public Services and Procurement Canada, [Overview of the Department](#), “ANNEX B – Minister’s Portfolio Responsibilities.”; Government of Canada, [Corporate Profiles – Crown Corporations](#), “[Canada Lands Company Limited](#).”; and Canada Lands Company, “[Home Page](#).”

“[...] develop a balanced disposal strategy for strategic surplus properties that is supported by a comprehensive assessment of federal and other stakeholder interests (including those of official language minority communities), the legal risk analysis, and policy and financial considerations.” [emphasis added]

This directive does not apply to CLC (although CLC does have similar obligations under Part VII of the OLA), but it did apply to PWGSC and DND when they undertook to transfer the Fairmont and Jericho sites to CLC. However, the CSF, in its capacity as a representative of the education interests of the French-speaking community in British Columbia, was never consulted by the federal government, and the Directive does not require francophone school boards to be notified directly of the possibility of acquiring surplus properties.

Federal government inaction is an obstacle to the implementation of section 23 of the *Charter* in Vancouver west of Main Street

In 2010, two legal actions were launched concerning École élémentaire Rose-des-vents. The first of these, a suit filed by parents, dealt exclusively with the quality of education provided by École élémentaire Rose-des-vents. The second action, brought by the CSF, the Fédération des parents francophones de Colombie-Britannique and a number of parents, concerned systemic problems with education financing across the province, including problems with the lack of equivalent facilities at École élémentaire Rose-des-vents.

In April 2015, the Supreme Court of Canada recognized that students attending École élémentaire Rose-des-vents did not have school facilities truly equivalent to those of the anglophone school board, and that this situation constituted a prima facie violation of section 23 of the *Charter*.

On 26 September 2016, Justice Russell of the Supreme Court of British Columbia determined the existence of an infringement of section 23 of the *Charter* in Vancouver West. She also found that the federal government had not made a small part of the Fairmont site or of the Jericho site available to the province of British Columbia and to the CSF as the site for a school, despite the fact that the province of British Columbia had kept the federal government aware of the needs of the francophone population in this regard for years. Justice Russell found as follows:

“[3683] After taking into account all the evidence, a lack of funding has never been the real issue for the CSF in Vancouver (West). The issue is a lack of a site suitable for the construction of a homogeneous minority language school.

[...]

[3709] The CSF has also been unsuccessful acquiring a permanent site at the Federal Fairmont Site or and the Federal Jericho Lands. That is because the sites are not available. The redevelopment process has faced long delays, and is being controlled by the Federal Government. Between 2010 and 2014, the Ministry consistently kept the

Federal Government informed of the CSF's interest in the properties. Between the end of 2014 and the end of trial, the Ministry staff did not follow up, but [...] was assured that the Federal Government would take the CSF's needs into account and notify him of future developments.”⁴

The fact that the province of British Columbia had, since 2011, set aside funding for at least one of the two schools that were needed is an important consideration, since the failures of PWGSC and DND to meet their obligations under Part VII of the OLA with regard to the disposal of the Fairmont and Jericho sites continue to have very real and detrimental effects on the ability of the province and the CSF to meet their obligations under section 23 of the *Charter*.

The solution, which requires CSC to block any redevelopment project that does not provide for the sale to the province of British Columbia of a small part of each site for the construction of two schools

The real estate conundrum facing the CSF, namely the virtual impossibility of acquiring one or two school sites in Vancouver West, could and should have been diffused by the federal government as early as 2007. Pursuant to its duties under the OLA, the federal government could and should have intervened to ensure that the province of British Columbia and the CSF had the opportunity to acquire small parts of the Fairmont and Jericho sites well before these lands were transferred to CLC and the three First Nations.

CLC, the three First Nations and the City of Vancouver are currently conducting a consultation process with the community (the vast majority of which is anglophone) to come up with a redevelopment plan for the Fairmont site. A similar process will soon begin for the Jericho site. CLC is the only one of these three parties with obligations under the OLA.

Once the consultations are completed, CLC and the three first Nations will submit a redevelopment proposal to the City of Vancouver to be rubber stamped. However, CLC, which has a 50 percent ownership stake in the sites and is the only party involved with duties under Part VII of the OLA, must necessarily oppose the submission of the redevelopment plan to the city for approval unless the said plan provides for the inclusion of a CSF school.

Hence, the consultations currently in progress constitute an important opportunity for CLC to meet its obligations under Part VII of the OLA. The absence of concrete positive measures by CLC on this issue would be highly prejudicial to the CSF and to the francophone community. Action is therefore urgently required.

In a letter to Minister Foote on 14 December 2016, the CSF asked the federal government to take positive measures to set aside small portions of both lands (Fairmont and Jericho) for the construction of two new French-language schools and requested that representatives of the

⁴ *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, 2016 BCSC 1764.

Department of Public Services and Procurement meet with CSF representatives for this purpose. To date, the CSF has only received an acknowledgement of receipt of this letter.

Action required

In order to fulfil its duties under Part VII of the OLA, CLC must set aside a small part of both lands (Fairmont and Jericho) for the construction of two new French-language schools. More specifically, Minister Foote, who is responsible for CLC, must take positive measures to force CLC to take into account the obligations imposed by Part VII of the OLA by setting aside small portions of these two lands for the province and the CSF. Minister Foote must indicate to CLC that the Fairmont and Jericho site redevelopment plans cannot proceed without the inclusion of a CSF school in each plan.

Appendix A



January 26, 2017

Ref: 192572

Deana Grinnell, Senior Director
Canada Lands Company
4949 Heather Street, Suite 200
Vancouver, BC V5Z 3L7
Email: dgrinnell@clc.ca

Ms. Grinnell:

Thank you for taking the time to meet with my staff and I on January 17, 2017. I appreciate the opportunity to better understand the role of Canada Lands Company (CLC) in relation to the disposal of previously held federal lands, as well as the current ownership structure between the CLC and First Nation partners. I also appreciate your willingness to aide us in the search for an elementary school site and share our interests with your partners.

As you are aware, for many years the Ministry of Education (Ministry), along with the Conseil scolaire francophone de la Colombie-Britannique (CSF), have been actively seeking a suitable site west of Main Street in Vancouver, and have been considering the Heather Street Lands as a potential site for the students at Rose-des-Vents Elementary. Given the CLC's current efforts to move these lands to market, timing is perfect for these discussions.

I understand you are in the early stages of the disposal, with the intent to develop a policy statement to guide the rezoning of these lands by the end of 2017. Additionally, you are targeting completion of the re-zoning process by the end of 2019, and initiation of phased parcel development over the subsequent four years.

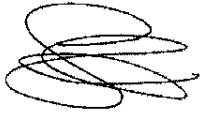
I also understand that defining the specific space needs for an elementary school will be critical to inform the consideration of the CLC and its partners. As such, we will work with the CSF to define the size and scope required for a future site with the intent to submit a project definition report acceptable to both the CSF and the Ministry to the CLC by September 2017.

Should you have any questions, please do not hesitate to contact me by phone at (250) 356-6750 or by email at Shanna.Mason@gov.bc.ca.

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Once again, thank you for your time and I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Shanna Mason
Assistant Deputy Minister

Pc: Sylvain Allison, Secretary-Treasurer, School District No. 93 (CSF)

Appendix B



February 19, 2016

Ref: 186110

Marie-France Lapierre, President
School District No. 93 (Conseil Scolaire Francophone)
100 - 13511 Commerce Parkway
Richmond, BC V6V 2J8
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Dear Ms. Lapierre:

Thank you for your letter sent February 11, 2016, addressed to the Honourable Mike Bernier, Minister of Education, regarding securing a school space for Rose-des-Vents Elementary school and the leasing opportunity for the former RCMP buildings located on West 37th Avenue in Vancouver.

As you know, the Ministry has been working closely with the Conseil Scolaire Francophone (CSF) and recently discussed this opportunity. It is our understanding the representative from the Canada Lands Company confirmed the objective of the current leasing opportunity for that property is to secure tenants for a short period only (now until 2019). Additionally, it is intended that tenants utilize the building "as-is", within the parameters of the current zoning which is "general office". If the lessee were interested in allowing the CSF to adapt the building to their needs, the cost of doing so is approximately \$2-3 million and it would take two years to complete the renovations. By then, the lease would be almost over; and the building will be demolished.

While the Ministry does not support investing in the short term lease of this building, we are committed to supporting the CSF in your efforts to secure this site in the future for École Rose-des-Vents.

If you have any questions or require further information, please do not hesitate to contact me directly at Nicole.PharandFraser@gov.bc.ca or 250 889-1737.

Sincerely,



Nicole Pharand-Fraser, Director
Construction and Routine Capital

**Ministry of
Education**

Capital Delivery
Planning and Major Projects
Division

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Appendix C

Map of the École Élémentaire Rose-des-Vents Catchment Area

