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CASE SUMMARY: ELEMENTARY SCHOOL WILL OPEN FOLLOWING SUPREME COURT OF NEWFOUNDLAND AND LABRADOR RULING THAT THE PREVIOUSLY APPOINTED BOARD OF TRUSTEES DID NOT HAVE THE AUTHORITY TO CLOSE SCHOOL

Newfoundland Court of Appeal held that parents were entitled to make representations to a properly constituted school board with respect to decision about the closure of an elementary school.

Administrative law; Decisions of administrative tribunals; School boards; Schools; Powers and duties; Parental rights; Judicial review; Appeals

Young v. Newfoundland and Labrador English School District, [2017] N.J. No. 247, 2017 NLCA 39, Newfoundland and Labrador Supreme Court – Court of Appeal, June 23, 2017, B.G. Welsh, C.W. White and L.R. Hoegg JJ.A.

After the reorganization of four school boards, the Board of the Newfoundland and Labrador English School District (the “Board”) decided to close Whitbourne Elementary School (“WES”). Four parents of children attending WES sought judicial review of the Board’s decision. The reviewing Court concluded that the Board was duly constituted and had authority to vote on the school closure; however, the Court concluded the parents were denied the opportunity to make reasonable representations to the Board on the issue. Thereafter, the Board heard representations on the issue from the parents and reissued a decision to close the school. The parents subsequently sought to appeal the first judicial review on the basis that the judge erred in concluding the Board had authority to close the school.

On appeal, the parents submitted that the judge erred on the basis that the appointed trustees could not make the decision to close WES because the legislation required an election of trustees, which had not been held within the timeframe required by the relevant legislation.

The Newfoundland and Labrador Court of Appeal considered the wording of a number of sections of the *Schools Act*, 1997, SNL 1997, c. S-12.2 (the “Act”), as well as the School Board Election Regulations, 1998, NLR 146/97 (the “Regulations”) and confirmed that taken as a whole, the legislative intention is that the Board is to be comprised of trustees elected by zone. While the Act provides for the appointment rather than election of trustees in specified situations, the Regulations required that an election be held by a specified date, unless the minister otherwise directs. The Board argued that a press release made by the minister constituted directions from him. Though it did not decide the issue, the Court of Appeal cautioned that directions from a minister through a press release may not prove sufficient.

The Court of Appeal considered that the Board had no authority to call or set a date for an election, and that the failure to call an election was a failure of government and the minister to comply with the legislation.

Ultimately, the Court of Appeal held that the legislation must be construed so as to ensure that parents have a fair opportunity to challenge the Board's decision to close the school attended by their children. The Court of Appeal further held that this must include not only the opportunity to make representations to a board, but also to make those representations to a board that is constituted so as to ensure that their representations are appropriately considered.

This case was digested by [JoAnne G. Barnum](#) and edited by [William W. Clark](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at jbarnum@harpergrey.com or wclark@harpergrey.com or review their biographies at <http://www.harpergrey.com>.