



May 18, 2017

[*CB-CDA 2017-048*]

File: Access Copyright (Elementary and Secondary Schools) 2010-2015 - Reconsideration

NOTICE OF THE BOARD

In Notice 2017-013 of February 6, 2017, the Board wrote to the Parties with a proposed process for the reconsideration of the issue identified by the Federal Court of Appeal in its January 27, 2017 judgment.

Based on the Parties' responses thereto, it was apparent to the Board that there was a dispute with regards to the issue of admissibility. In Notice 2017-026 of April 13, 2017, the Board encouraged the Parties to jointly submit a request for clarification to the Judicial Administrator of the Federal Court of Appeal on the issue of whether its order for reconsideration permits the Board to consider the admissibility of a portion of Exhibit AC-114.

On April 27, 2017, the Parties jointly responded that they do not wish to make such a request, given that "the *Federal Courts Rules* do not contemplate the making of such a request by them following the issuance of a decision on a judicial review application."

The Parties further stated that

to the extent that the Board maintains [the concern that the validity of the reconsideration in this matter could depend on the Board's interpretation of the Court's Order and potentially require judicial review for this reason alone], the parties believe that the Board may itself wish to submit a request to the Federal Court for guidance under s. 18.3(1) of the *Federal Courts Act* or otherwise as it sees fit.

While the parties express the view that the *Federal Court Rules* do not contemplate the request for clarification contemplated by the Board, they do not address the informal mechanism that was identified by the Board, and—in any case—the Parties have chosen not to avail themselves of it.

Furthermore, the Board is of the view that the procedure contemplated under subsection 18.3(1) is overly cumbersome to likely provide the economies of time and effort that were contemplated in Notice 2017-016.

As such, parties shall make submissions on the issue of admissibility of Exhibit AC-114, or parts thereof. In their submissions, the Parties should address:

1. Whether the Board has previously admitted all portions of Exhibit AC-114;

2. Whether the Order of the Federal Court of Appeal requires the Board to treat the entirety of Exhibit AC-114 as admitted (including whether any evidence that the Board has “through oversight [...] overlooked” should be required to be treated as admitted); and
3. If the impugned portions have not yet been admitted, whether the Board should do so now, and any procedural fairness issues arising from admitting or declining to admit all or part of the impugned evidence, and how these may be remedied.

Any submissions shall be made by **Thursday, June 1, 2017**. Any replies thereto shall be made by **Thursday, June 8, 2017**. The next steps in this process will be determined by the Board in due course.



Gilles McDougall
Secretary General