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March 20, 2023

**VIA EMAIL: richard.findlay@kpdsb.ca**

Richard Findlay  
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**Cody J.W. Fraser**  
Direct Line: 807.625.6602  
E-mail: fraser@cheadles.com

Dear: Mr. Findlay

**RE: Disposition of Property in Waldhof Legal Opinion**  
**Our file No.: 8257-256**

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You have asked our firm to provide you with a legal opinion regarding the disposition of Keewatin – Patricia District School Board ("KPDSB") property to a non-profit organization. Specifically, you have asked us if the Waldhof Hall Property (the "Property") can be sold to Waldhof Ladies Guild (the "Guild") for minimal costs while still complying with the disposition of surplus real property rules set out in the *Education Act* Regulation 444/98.

## **Property Background and Details**

The Property is about eight (8) kilometres east of Vermilion Bay and is located 600 metres from the Trans-Canada Highway 17 down the Waldhof South Road. The Property is approximately 12.5 acres and has a rectangular shape.

The Property was historically owned by the Dryden Board of Education ("DBE") from 1969 until it was transferred through a name change application to KPDSB in 2022 (see schedule 'A'). A community hall and an outdoor horseback riding arena are situated on the Property. The community hall has a long history of hosting events and was used for school activities when DBE owned the Property. The Guild has taken care of the building since 1990, paying for utilities, maintenance, and upgrades. The Guild would like ownership of the Property transferred to them as the Guild plans to proceed with significant capital improvements to the community hall. They have requested KPDSB to transfer the Property at a minimal cost. KPDSB has no use for the land and is willing to transfer the Property to the Guild.

### **Legal Description**

PIN 42072-0075 (see Schedule 'B')

Parcel 9799, Part of Lot 9, Concession 2, Township of Mutrie, District of Kenora

### **Ontario Regulation 444/98**

Any property deemed surplus to a School Board is required to follow the *Education Act*, Regulation 444/98 – Disposition of Surplus Real Property. Part II - Section 3 of the Regulation outlines the process that the Public School Board must follow in order to sell, lease, or otherwise dispose of the property.

A property deemed surplus to a School Board must first be offered, at the same time, to the following school boards:

1. French-language public district school board
2. English-language separate district school board
3. French-language separate district school board

In addition to this list of school boards, KPDSB must offer the surplus property to the following bodies, as outlined in detail in Section 3 of the Regulations:

1. Local English and French language colleges and universities
2. Local Municipality
3. Local Upper-tier municipality
4. Crown of Ontario (Province of Ontario)
5. Crown of Canada (Federal Government)

Offers from the above bodies must be received within 90 days and be of fair market value. There is a hierarchy if more than one offer is received within the 90-day term. The School Boards, as listed above, form the highest priority, followed, in order, by the additional college, universities, municipalities etc. If the period passes with no parties showing formal interest, subject to Minister of Education Approval, KPDSB may advertise the sale of the property and openly solicit bids from the public. Neither the *Education Act* nor Regulation 444/98 provide any exceptions to the prescribed rules for the disposition of surplus school board property.

### **Analysis and Next Steps**

The non-profit status of the Guild does not afford it any special consideration under Regulation 444/98. In order to purchase the Property, the Guild would have to wait 90 days for KPDSB to solicit the Property to the public bodies enumerated above before KPDSB lists the Property for private bidders. The Guild has no option to purchase property from KPDSB without following the processes of Regulation 444/98. Even if the requirements of Regulation 444/98 were fulfilled and no public body was interested in acquiring the Property, the Guild would not be able to purchase the Property at minimal

cost as Regulation 444/98 requires that disposition of surplus property be at fair market value.

Regulation 444/98 deals exclusively with the disposition of property. While disposition is not expressly defined, Regulation 444/98 states that it applies to the sale, lease, or other disposition of real property. Black's Law Dictionary defines disposition in a property context as "the relinquishing of property." Therefore, if KPDSB wants to relinquish their property rights to the Guild, the only option would be for the Guild to risk losing out on the Property through the Regulation 444/98 process. If no public bodies wanted the Property, it would still have to be sold at fair market value, not minimal cost as the Guild requested.

The other option available to KPDSB and the Guild would be to enter into a licensing agreement for the use of the Property. So long as KPDSB is not relinquishing their land ownership, and the Guild is not obtaining an interest in land through a lease, Regulation 444/98 would not apply. If this option is selected, it will be important to ensure any licence agreement executed cannot be interpreted as a lease.

Generally, a lease exists where the owner agrees to turn over exclusive possession of a property to another for a specific time period. On the other hand, a licence is an agreement that gives the licensee permission to use the land only at the owner's discretion. That being said, determining whether a document is a lease or a licence agreement is more complex than simply ensuring it does not grant exclusive possession of a property to the licensee. Despite labelling an agreement a licence agreement, a court may determine that the agreement is a lease if the licensee's rights expand to performing extensive renovations on the property, the right to a cure period in the event of default, or if the agreement includes hold over provisions that extend the stated term.

Considering the Guild's intention was to acquire the property to perform an extensive renovation and have exclusive control of the property, a licence agreement may not be desirable. If a licence agreement is decided to work for both parties, we strongly advise obtaining legal advice when drafting the agreement. In order to maintain compliance with Regulation 444/98, any licence agreement must not be interpreted as a lease. Our firm would be pleased to assist in crafting a licence agreement to suit the needs of KPDSB and maintain compliance with Regulation 444/98.

## **Conclusion**

There are two options available to KPDSB and the Guild under the current circumstances;

1. KPDSB proceeds through the disposition of surplus property procedure through Regulation 444/98, and hopefully, the Guild can purchase the property at fair market value through open bids.
2. Enter into a non-exclusive licence agreement with the Guide for the use of specific parts of the property.

This represents our opinion on the disposition of real property to a non-profit organization while maintaining compliance with relevant regulations under the *Education Act*. Please do not hesitate to contact us if you have any questions or concerns regarding the above.

Yours very truly,

**CHEADLES LLP**

Per:

**CODY J.W. FRASER, J.D.**  
CF/

A large, stylized handwritten signature in blue ink, appearing to be 'CJW Fraser', is written over the printed name and extends upwards into the 'Yours very truly,' line.

# SCHEDULE A

LRO # 23 Application To Change Name-Owners

Received as KN111766 on 2022 10 31 at 14:34

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

## Properties

PIN 42072 - 0075 LT  
Description PCL 9799 SEC DKF; PT LT 9 CON 2 MUTRIE AS IN PA7379; DISTRICT OF KENORA  
Address DRYDEN

## Party From(s)

Name THE DRYDEN BOARD OF EDUCATION  
Address for Service

## Applicant(s)

Capacity

Share

Name KEEWATIN-PATRICIA DISTRICT SCHOOL BOARD Registered Owner  
Address for Service 240 Veterans Dr  
Kenora, ON P9N 3Y5

A person or persons with authority to bind the corporation has/have consented to the registration of this document.  
This document is not authorized under Power of Attorney by this party.

## Statements

The name has changed as a result of a change of name under the Change of Name Act and this statement is made for no improper purpose.

## Signed By

Tyler Evyn Johnson 509 Second Avenue South acting for Signed 2022 10 26  
Kenora Applicant(s)  
P9N 1X2

Tel 807-407-1013

Fax

I have the authority to sign and register the document on behalf of the Applicant(s).

## Submitted By

TYLER EVYN JOHNSON PROFESSIONAL CORPORATION 509 Second Avenue South 2022 10 31  
Kenora  
P9N 1X2

Tel 807-407-1013

Fax

## Fees/Taxes/Payment

Statutory Registration Fee \$66.30  
Total Paid \$66.30



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #23

42072-0075 (LT)

SCHEDULE B

PAGE 1 OF 1  
PREPARED FOR J016001  
ON 2022/10/17 AT 13:30:13

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION:

PCL 9799 SEC DRF; PT LT 9 CON 2 MUTRIE AS IN PA7379; DISTRICT OF KENORA

PROPERTY REMARKS: CROWN GRANT SEE PA7379.

ESTATE/QUALIFIER:  
FEE SIMPLE  
ABSOLUTE

RECENTLY:  
FIRST CONVERSION FROM BOOK

OWNERS' NAMES  
THE DRYDEN BOARD OF EDUCATION

CAPACITY SHARE  
BENO

PIN CREATION DATE:  
2005/04/25

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2005/04/22 **						
PA7379	1927/11/23	CROWN PATENT			THE PUBLIC SCHOOL BOARD OF SCHOOL SECTION NUMBER ONE	C
REMARKS: AMENDED UNDER LT90415						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.