

24 April, 2023

Standing Committee on Social and Economic Development
Manitoba Legislative Assembly
450 Broadway
Winnipeg, MB R3C 0V8

Re: Bill 35, THE EDUCATION ADMINISTRATION AMENDMENT ACT (TEACHER CERTIFICATION AND PROFESSIONAL CONDUCT)

Dear Committee Members:

On behalf of our association, we would like to signal our firm support for the above referenced Bill. As we have stated publicly and for the record,

As the association that represents the largest share of educational employers, we value all teachers who make positive contributions to the lives of our students and schools. It is therefore critical that any alleged or actual misconduct within the teaching profession be investigated and addressed with expediency, fairness and a view to protecting everyone's interest.

We support the proposed establishment of an independent commissioner to fulfil this important role and look forward to contributing the expertise of our association to their decisions, as needed."

—Government of Manitoba News Release, March 14, 2023.

When this statement was issued, our Association certainly understood the legislative intent of Bill 35 but in context, the full content of the Bill had not yet been tabled. During the month that has followed the tabling of the draft legislation, we have therefore carefully studied the Bill's contents and wish to affirm our support, with several important observations.

As attached to this brief, we have therefore provided written comments in relation to those features and proposals under Bill 35 that certainly deserve consideration and response by the Standing Committee when reporting back to the Legislative Assembly. As we have noted, several provisions do conduce the need for potential amendments in order to ensure that the Bill mutually aligns with its stated intent, without impairing administrative and operational aspects of Manitoba's school system.

One of the most important features of the Bill speaks to its enabling authority for a new Commissioner to receive public complaints regarding professional misconduct and competence for instructional employees of schools. While it is tacitly understood that Bill 35 will address employees that are funded by the Manitoba Government (that is to say, public schools and funded independent schools) and which fall under the formal jurisdiction of the Province of Manitoba and *The Education Administration Act*, the Bill does not specifically exclude instructional staff working in non-funded contexts, including First Nations Schools. While this exclusionary relationship is understood through past legal convention and practice, and while we understand that there may be First Nations Education Authorities who may opt in

to a formal relationship with the Commission(er) according to the provisions of Bill 35, we do feel it of absolute necessity that the implicit exclusion be further clarified within the Bill.

In the above matter, it is critical to understand that our association's agreement to serve as the designated employer representatives on a panel of the Commission under section 8.8(2)(b) is premised on hearings related to employees of funded schools only. Designates from public education backgrounds appointed by our association to such a panel can and should not usurp the autonomy and privilege of any First Nations authority to represent their own vital interests in any hearing before the Commission.

To that end, should no amendment be made to this particular section, and/or if no express exclusion is included under the Bill, we shall make every endeavour to ensure that an appropriate representative from a First Nations authority is named as a designate of the association in our stead, as we feel that this honours the path to reconciliation, with due recognition of rightful community voice in matters of education.

We are of the perspective however, that the Bill would be strengthened if First Nations representatives were to have equal entitlement to designates in any circumstance where their instructional staff may be subject to a panel under the legislation.

In respect of the proposed teacher registry that is to be implemented under Part 4 of the Bill, we would also highlight that there are two interpretations of these provisions that must be clarified prior to the passage of the Bill. Under the first interpretation, such a registry would limit information exclusively to those instructional staff against whom a complaint before the Commission(er) has been assessed as having substance and merit and for which a final decision has been rendered by the Commission(er). We would certainly favour this interpretation of Part 4, in order to align the intent of the Bill with its real world operation and to ensure that the work of the Commissioner remains fair and promotes the authentic objects which are sought by this Bill.

The second interpretation is that Part 4 will establish a registry bearing the names of all instructional staff employed in this province, and will further detail staff who are under investigation by the Commission(er) (e.g. in all contexts, including those where a final decision has not yet been rendered by the Commission(er)). If this is the interpretation of Part 4 that will drawn upon by the Government of Manitoba once the Bill is enacted, we feel that necessary caveats speak to professional consequences and impacts upon staff who may be unjustly or unfairly called to respond to specious or unfounded complaints, as well as a question of which staff are included and excluded from such a registry, which employing authorities' staff members will become part of such a registry, what forms of details will be featured as part of the registry, who shall have access to it, and for what purpose.

In this respect, MSBA would highlight the existing practices used by regulators of other professions as exemplars upon which to draw, in order to ensure that such a registry promotes a necessary balance between freedom of information and protection of personal and/or private information. By no means does the Association seek to protect the interests of any instructional staff who have betrayed public trust. Rather, we seek only to promote the best interests of all involved in any case of professional misconduct, for that is how fairness and justice will be achieved and protected for all involved.

Beyond these two major observations, our Association would lastly posit that much of what is provided under the Bill will involve significant drafting of consequential regulation. Given the wide-ranging scope

of such regulation, we do trust that our association as the employer representative for public school boards will be a necessary partner of Government during this regulatory process. From defining the scope and nature both of professional misconduct and teacher competence, to operationalization of the Commission(er)'s mandate alongside of the continuing role of educational employers in discipline and management of staff, there are many provisions that must be addressed with regard to our respective roles and responsibilities and to promote operational and administrative coherence while mitigating or avoiding overlap and/or duplication.

Our system of education, and our staff and the students we serve, will only be well served if the Bill co-operates with established protocols and processes regarding teacher misconduct and discipline in future. We are ready and willing to inform how that co-operation will prove sustainable and effective when the necessary regulatory steps are prioritized following passage of the Bill.

Please do not hesitate to contact the Manitoba School Boards Association should you require any further information from us in the above respect (jwatt@mbschoolboards.ca).

Sincerely,

A handwritten signature in purple ink that reads "Nathanael J. Watt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nathanael J. Watt
B.A. (Hons.), PLC, MPA, M.Ed., FRSA
Executive Director
Directeur-Général