

Halifax, NS

Thursday,  
April 18, 1918.

At a Special Meeting of the Board of School Commissioners for the City of Halifax, held at their Offices, 81 Sackville St. this date.

Present

Commissioners J. P. Dunn, Chairman  
R. N. Woodbury  
C. P. Wood,  
W. R. Wakely  
W. S. Colwell  
J. S. Parker  
A. J. Finlay,  
R. D. Guildford

S. J. Wilson, Secretary.

Object of Meeting

The Chairman reported from the Special Committee consisting of Comma Colwell, Finlay, the City Solicitor and himself appointed by this Board to interview the Relief Commission relative to the adjusting of losses on the Alex. McKay and Richmond School buildings, and the speedy completion of the first named; that the Committee had met the Relief Commission and contractor on Feb. 15 and discussed the various points very fully.

He submitted an extract of Minutes as taken by the Chairman of Commission (see fly)

He further submitted the opinion of the City Solicitor re the Board's liability on both schools. (see fly)

He submitted a verbal proposition from the Chairman of the Relief Commission; advising that the Relief Commission, the School Board and the contractor for Alex. McKay School each appoint one appraiser to value the loss on the building; upon their agreeing, the claim to be adjusted as follows-

The Relief Commission to pay half the loss.

The contractor to pay one quarter the loss.

The School Board to pay one quarter the loss.

He stated that the School Board has already paid the Building Contractors \$77,000.

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On motion of Commrs. Woodbury and Wood,  
it was Resolved:-

"That in accordance with the suggestion of Mr. J. S. Rogers, Chairman of Relief Commission, the Board concurs in his suggestion in order to facilitate matters in connection with the housing of school children in the North End District, and Resolves, subject to the approval of the Board of Control and Governor in Council, that the Relief Commission, the contractors of Alexander McKay School, and the Board of School Commissioners appoint one appraiser each to value the loss caused by the explosion to the Alexander McKay School. If all appraisers are agreeable, the claim will be paid on the following basis:-  
Relief Commission to bear one half the loss.  
Building Contractors to bear one quarter the loss  
School Board to bear one quarter the loss.

### Manual Training School

Reference was made to a panic caused in Manual Training School, now used as classrooms by pupils of Young Street St. Joseph's Schools, and in order to prevent injury to pupils, it was resolved that an outside stairway be built to the second storey.

adjourned 10.20 a.m.

*A. Swinson*

SECRETARY

Extract from Minutes of Meeting, February 15th, 1918.

1 P. M. Conference with Committee from School Board, Messrs. Quinn, Finlay, H. S. Colwell and F. H. Bell, K. C.

RE ALEXANDER MACKAY SCHOOL. Mr. A. D. Falconer was present on behalf of Falconer & McDonald and Mr. Busch, Architect, on behalf of the School Board. An understanding was arrived at as between the School Board and Messrs. Falconer & McDonald to the effect that the Board would extend the time for the completion of Falconer & McDonald's Contract, without prejudice to their rights under the contract, until August 15th, and that the Reconstruction Department of the Commission would give up possession of the School Building on April 15 to the Contractors and the temporary structure adjoining to the School Board for school purposes on the same date.

As between the Relief Commission and Falconer & McDonald it was understood that the Commission would indemnify the contractors for any damage Falconer & McDonald may have suffered by reason of the Reconstruction Department having taken possession of the school building after the explosion, the amount of this damage to be settled by one arbitrator to be appointed by Falconer & McDonald and one to be appointed by the Commission, these two to appoint a third unless some agreement is otherwise arrived at by which the damage can be settled.

RE FURTHER SCHOOL ACCOMMODATION. The School Committee urged the building of a temporary structure on the Bloomfield property. This would cost a least Ten Thousand Dollars. After a thorough discussion it was decided that the best course would be to repair Bloomfield High School Building. Mr. H. W. Johnstone, City Engineer, was called in and was of the opinion that the building could be repaired for occupancy April 1 - 15. The Relief Commission undertook that if Mr. Johnstone reported favor-

as to the condition in which the building was left.

Board of School  
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at 10 o'clock a.m.

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H. BELL, K. O.  
CITY SOLICITOR.



Office of City Solicitor,

Halifax, N.S., Apr. 13, 1918. 191

Halifax School Board.

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In response to the request of the Board for my  
ably they would undertake this work by the Reconstruction  
Department forthwith and charge the expenditure at present to  
the School Board as in the case of former advances; the work  
to be inspected on behalf of the School Board by Mr. Parker.

RE RICHMOND SCHOOL The Relief Commission agreed  
to indemnify the School Board against any claims of Rhodes,  
Curry & Company by reason of removal of the debris now pro-  
ceeding under the contract of Cavicchi & Pegano, it being con-  
ceded by all concerned that it was important that this debris be  
removed and the property cleaned up.

RE MORRIS STREET SCHOOL FURNITURE. The School  
Committee asked that a room be reserved in this building to  
store some furniture. The Relief Commissioners thought that  
this was impossible as the whole building was required for  
hospital purposes, but they agreed to remove at the Relief  
Commission's expense, the furniture as soon as the School  
Commissioners obtained the necessary storage space.

RE COLLEGE STREET SCHOOL. Mr. Quinn expressed  
appreciation of the Relief Committee's prompt giving up  
possession of this School as promised and expressed general  
satisfaction as to the condition in which the building was  
left.

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The Secy of the Halifax School Board.

RE RICHMOND AND ALEXANDER MACKAY SCHOOLS.

Dear Madam:

In response to the request of the Board for my opinion as to the legal position of the Board and the contractors ~~for the extension~~ <sup>for</sup> to the above schools I beg to submit the following:-

RICHMOND SCHOOL.

Messrs. Rhodes Gurry & Company Ltd. contracted to construct the extension to the school. The terms of the contract are embodied in the specification upon which the tenders were taken, which are expressly declared to form part of the contract. By the 6th of December a considerable part of the building contracted for had been completed, how much is in my opinion immaterial, because it is not in question that it had not been fully completed, and that the building had not been taken over by the Board. Payments under the terms of the specification had been made by the Board to the extent of \$10,000.00, leaving a balance of

reads as follows:-

From the commencement to the completion of the Works, and until the same shall have been formally delivered over to the Board of School Commission, the care and risk of the same shall be entirely with the Contractors, who shall defray all damages, costs, charges, and expenses occasioned by or consequent on injury by

remained unpaid. The building was not destroyed but materially damaged, to what extent is in my opinion immaterial, because this contract also contained a clause placing the

*J. H. Bell*  
Apr 11, 1918

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approximately \$7,000.00, and it may be assumed for the purposes of this opinion that the work had so far progressed as to have entitled the contractors to some further payment on obtaining the requisite certificate. On the 6th December the uncompleted building was completely destroyed by the explosion.

The questions to be answered are:-

- 1st Have the contractors any claim upon the Board, and
- 2nd Have the Board any claim against the contractors?

As to the first question it appears obvious that no such claim can exist, not only for the reasons to be given in respect to the second question, but also because no work had been accepted by the architect and for which he had given the required certificate.

As to the second question even if the contract contained no provision dealing specifically with the contingency which has arisen I think there would be no doubt of the legal position of the parties. If a man has contracted to do a certain thing he is not excused from performance by anything which merely increases the cost or difficulty to him. But the contract did most expressly make such provision. One clause of the specification reads as follows:-

From the commencement to the completion of the Works, and until the same shall have been formally delivered over to the Board of School Commission, the care and risk of the same shall be entirely with the Contractors, who shall defray all damages, costs, charges, and expenses occasioned by or consequent on injury by

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fire, storm, or tempest, or by or on the acts or omissions of themselves, their agents, servants, or workmen, or arising by reason of the execution of the Works contemplated by the Specifications whether the same shall happen to the property of the Board of School Commissioners or that of any other person or persons, and shall hold the Board of School Commissioners harmless in respect thereto.

This would appear clear enough of itself, but it was apparently not deemed to be sufficiently comprehensive for the added clauses at the end of the specification contain this further provision:-

The contractor is to take the entire risk of all accidents which may occur to the buildings or works during the progress of the works from whatever cause arising, and to repair and make good the same with as little delay as possible, and at his own costs and charges.

In the face of these provisions, quite irrespective of the general principle of law referred to, I am of opinion that the Board has the legal right to call upon the contractors to proceed with their contract, and to treat the money paid to them as payments on account, or in other words to construct the building for the amount remaining due upon the contract.

ALEXANDER MCKAY SCHOOL.

This building also was uncompleted at the time of the explosion, and a balance of the contract price remained unpaid. The building was not destroyed but materially damaged, to what extent is in my opinion immaterial, because this contract also contained a clause placing the

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- Wakely
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