BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION
SOLUTIONS AT WORK

Can We Get There From Here?

Teachers are on strike, and the past nine months of bargaining have not brought us any closer to a negotiated settlement. Why is this the case? What exactly has been happening over the last nine months? And, given the gap between the parties that remains after 70 bargaining sessions, is it possible for the parties to come to a negotiated agreement in the foreseeable future?

Can We Get There From Here? summarizes the three main events that have coloured bargaining since it began in March 2011 — disagreements over the provincial–local split of issues, the submission of proposals by each party, and the BC Teachers' Federation (BCTF) decision to engage in a phase 1 strike in an attempt to further their bargaining objectives. It looks at the way the bargaining process has played out in the media and discusses some possible options for how an agreement might be reached.

Key milestones to date:

- Negotiations open and the issue emerges as to what matters should be at the provincial table and what matters should be negotiated at 60 local tables
- The parties discuss bargaining objectives and exchange initial proposals
- The BCTF holds a strike vote and essential service designations are established
- Government–BCTF hold consultation meetings — necessitated by the April 2011 BC Supreme Court decision — to address the constitutional invalidity of elements of Bill 28, the *Public Education Flexibility and Choice Act* passed in 2002. Talks end with *no meeting of the minds* (November 28, 2011).
- BCPSEA reduces its bargaining agenda in an attempt to further negotiations (November 22, 2011)
- BCTF holds a press conference — *New reduced package to kick-start negotiations tabled* — and then presents its new package at the bargaining table (January 17, 2012).

Each of these milestones could, on their own, be the subject of a paper but a more concise treatment of bargaining issues, events, motivations and options is necessary. *Can We Get There From Here?* is that attempt. Resource and supporting materials are referenced and can be found at the appendices attached.

Negotiations stall over the provincial–local split of issues

Teachers and public school employers in BC were working under a five-year collective agreement that expired on June 30, 2011. This agreement represented the second time the provincial bargaining agents concluded an agreement through negotiation, the first being in 1996. While some say this makes the case for an inquiry into a better bargaining model, there have been three such inquiries and local bargaining, the model that preceded the current one, had the same difficult bargaining history.

The BCTF, representing the teachers, and the BCPSEA, representing the employers (the province's 60 public school districts), began formal bargaining meetings in March. The purpose of these meetings was to negotiate a new agreement that would define both the compensation and benefits to be paid to teachers as well as other terms and conditions of employment.

The *Public Education Labour Relations Act* (PELRA) guides what the two bargaining agents can bargain at the provincial level and at the local level. All issues that have a cost component (such as salaries, benefits, and paid leaves) must be negotiated at the provincial level.

The BCTF and BCPSEA negotiated the split of issues in the mid-1990s and that agreement has applied in every subsequent round of bargaining. Generally speaking, those provisions without a cost component can be bargained locally, which means that a school district can meet with the local teachers' association/union to negotiate various issues. In the past, these local issues have included policies defining health and safety issues, teacher involvement in planning new schools, staff meetings, etc.

At the very beginning of the bargaining meetings in March, the BCTF took the position that only compensation — what would later be referred to by the BCTF as the *PELRA Four* (salary, benefits, paid leaves, and hours of work including preperation time) — should be bargained provincially. The BCTF wanted all other issues to be bargained between individual school districts and the local teachers' associations/unions. BCPSEA disagreed with the BCTF's position, arguing that many of these other issues needed to be discussed at the provincial level because they had cost implications.

The BCTF chose to ignore the existing agreement on the provincial–local split of issues, and the BCTF's local teachers' associations/unions unilaterally submitted more than 1100 proposals covering issues that had been designated as provincial for negotiation at the school district level.

Bargaining stalled. Although BCPSEA argued that the two organizations were required to respect the previously agreed upon split of issues, the BCTF continued to ignore the guiding rules and counselled its local teachers' associations/unions to put forward provincial matters for discussion with individual school districts. To resolve the impasse, the two organizations sought an arbitrator.

Arbitrator Marguerite Jackson ruled that neither the BCTF nor the BCPSEA can unilaterally change where particular issues are bargained, and that both must comply with the existing letter of understanding that the two organizations agreed to before the start of bargaining. She stated that the BCTF must follow the split of issues as defined in prior agreements. Arbitrator Jackson issued three descisions on the split of issues (see Appendix 6).

Why would the BCTF circumvent the existing agreement between the parties by attempting to bargain 1100 issues at the school district level rather than the provincial level? And why would they decide to take up valuable bargaining time discussing the split of issues — a topic already resolved through an existing Letter of Understanding — rather than participate in meaningful bargaining discussions?

This move to shift negotiations from the provincial level to the school district level is part of the BCTF's bargaining strategy. Historically, the BCTF has had considerable success advancing its goals in specific school districts, and then pushing to have these achievements (whether new salary levels, expanded benefit programs or relief from supervision duties) adopted in other districts as well.

Between 1987 and 1993, local bargaining was the name of the game. As described in an article on bargaining rights in the BCTF *Teacher Newsmagazine*, the BCTF implemented a system of coordinated local bargaining. Local teachers' associations/unions were trained by the central BCTF organization and provided with "model clause language on every conceivable provision that teachers might wish to negotiate."[1] The BCTF "established a "war room" to coordinate its province-wide bargaining agenda across locals. They also created a collective agreement provision database, trained negotiators for local teachers' associations, and required locals to submit bargaining proposals for central approval."[2]

[1] Ken Novakowski, "Gaining full bargaining rights," *Teacher Newsmagazine* 12.6 (2000). Accessed from: bctf.ca/publications/NewsmagArticle.aspx?id=12818.

[2] Sara Slinn, "Structuring reality so that the law will follow: British Columbia teachers' quest for collective bargaining rights," *Labour/Le Travail* 68, Fall 2011, 55.

A common tactic was to negotiate an issue in one district, obtain a favourable agreement, and then set this as a new benchmark for other districts. This "whipsaw" technique — playing one employer off against another — proved very successful in bringing in sweeping changes to workload provisions, salary increases, expanded professional autonomy clauses, and favourable workloads. As described by former BCTF president Larry Kuehn, "We had what I called a rolling pattern bargaining system. After every single bargaining session where somebody in some local got something, they put it on to the network which then became a bottom line for everybody on those issues."[3]

While local bargaining benefitted union bargainers (although the outcomes could be inconsistent from district to district), the implications for school districts were quite different. Professor Emeritus Thomas Fleming of the University of Victoria describes the results of local bargaining as "both predictable and disastrous. School boards wilted under the pressure of a carefully coordinated system of local bargaining orchestrated centrally by the BCTF."[4]

It was hardly a time of labour peace, either. Over this six-year period, there were more than 50 work stoppages, work to rule campaigns, strikes and lockouts, with local unions using these tactics to achieve their goals district by district, *bargaining provincially one local at a time* so to speak.

In 1993, the NDP government legislated a shift from local to province-wide bargaining. The newly created BCPSEA and the BCTF, designated as the bargaining agents, undertook as one of the initial tasks arising out of PELRA the determination of what matters were to be bargained at the provincial table consistent with the Act's definition. Both parties agreed to a "predominantly provincial split of issues" with only those issues of "limited importance and no monetary impact" negotiated locally.[5]

The BCTF's current attempt to shift as many issues as possible onto local bargaining tables — in contravention of the existing agreement — is part of a long term strategy to meet its goals whatever way it can. Commenting on the union's recent strategy, Osgoode Hall law professor Sara Slinn said that, "Once more BCTF is pursuing

[3] Slinn, 55.

[4] Thomas Fleming, *Worlds Apart: British Columbia Schools, Politics, and Labour Relations Before and After 1972*, (Mill Bay: Bendall Books, Victoria: Mill Bay, 2011, 115.

[5] Slinn, 59.

informal routes, and direct dealings outside of the formal bargaining structure, to further its labour relations agenda."[6]

The BCTF's strategy also takes up valuable resources at the school district level and introduces considerable inefficiencies and duplication of effort. "The desire to bargain the same issues 60 times in 60 districts is a strategy the BCTF promoted in order to achieve what it wants," said BCPSEA Chair Melanie Joy. "That approach is costly, inefficient, and detrimental to the public education system as a whole. Scarce resources need to be directed into classrooms for students, not wasted at the bargaining table by the union trying to whipsaw local school districts."[7]

BCPSEA and the BCTF submit their proposals

As part of the bargaining process, each organization puts forward initial proposals. These include issues relating to pay, as well as other matters such as systems and policies for professional development, teacher evaluation, hiring, etc.

BCTF proposals part one

The initial proposals submitted by the BCTF called for wage increases, increased preparation time, extensive paid leave and retirement bonuses (see Appendix 5).

BCPSEA estimated the costs associated with the BCTF's proposals at $2.9 billion. Although the BCTF has stated that it disagrees with this number, it has never responded by providing its own costing estimate.

The increase in compensation proposed by the BCTF is inconsistent with the public sector compensation mandate. Under what has become known as the net zero mandate, settlements cannot be concluded that provide for net increases in total compensation costs. However, savings found through mutually agreed changes to collective agreements can be used to fund compensation increases. Approximately three-quarters of the other public sector employees in the province have re-negotiated agreements that match these terms.

[6] Slinn, 75.

[7] BC Public School Employers' Association, "Arbitrator agrees with employers' association." Accessed from: www.bcpsea.bc.ca/documents/Media/00-DS-Arbitrator%20agrees%20with%20employers%27%20association.pdf

The government has repeatedly stated that it will not make an exception to the guidelines; as Minister of Education George Abbott has said, "There is nothing in our world that will take us away from a net-zero mandate."[8]

BCTF proposals part two "New reduced package to kick-start…"

On January 17 the BCTF called a press conference to announce a revised set of proposals. In their press release the BCTF said, "In an effort to break the logjam in the ongoing labour dispute, today the BC Teachers' Federation is bringing a new revised package of proposals…." Anticipating a claim that the package may be seen as excessive, the BCTF went on to say "…the overall cost would be about $300 million, a far cry from the enormously inflated figures that have repeatedly been out out by BCPSEA."

Later that day the proposals were tabled at the bargaining table. The proposals are available on the BCPSEA website.

BCPSEA proposals part one

BCPSEA put forward its own proposals defining a new collective agreement that complies with the net zero mandate. The proposals also attempt to modernize employment practices in the K-12 public education sector so that they reflect best practices in terms of professional growth, performance review, and hiring. The revised package that BCPSEA proposed for discussion at the end of November covered posting and filling, employee assignment and transfer, layoff/recall, performance review program, professional growth plans and mentorship, hours of work including preparation time, harmonization of benefits, sick leave, pregnancy/parental leave, grievance procedure, and alternate school calendar.

The BCTF responded quickly and clearly: they rejected the package, rejected the need to comply with the net zero mandate, indicated that they would not drop any of their proposals, emphasized that all their proposals are a priority and asked that the BCPSEA seek a new mandate from government to address their requests.

BCPSEA also wrote three discussion papers (*Perspectives in Practice*) to facilitate principled discussion on matters related to our proposals and currency of the processes

[8] Janet Steffenhagen, "Tough talk on BC teacher bargaining spells trouble." Accessed from: blogs.vancouversun.com/2011/09/01/tough-talk-on-bc-teacher-bargaining/.

and practices in the K-12 public education system (available on the BCPSEA website at http://www.bcpsea.bc.ca/media/backgrounders.aspx):

- *Employment in Transformational Times – or Change as Usual?*
- *Teacher Professional Development: A Question of Development, Growth, and Currency*
- *Employee Assessment in Public Education: Integrating Roles, Responsibilities, and Development*.

While the BCTF took issue with some, issuing a rebuttal document to one, they were reluctant to engage in a principle-based discussion at the bargaining table on the topics or the proposals related to them.

The BCTF also took the view that certain matters should be dealt with a local tables. This conveniently gave them a "free pass" so to speak to avoid engaging in issues important to the employer.

While a clever table tactic, this approach does little to facilitate the necessary discussions to first understand the matters, then to explore options.

The language of bargaining*: Objectives, positions, options* or *concessions, compromise, and disrespect*

There are a couple of ways to approach the task of bargaining. The parties identify their objectives, exchange the initial proposals that represent their objectives, and seek to understand and narrow the issues through discussions…or, as has become the common approach with the BCTF, press to have proposals exchanged and, once tabled, characterize any change, modification, or different idea as something nefarious. The BCTF continue to use the language of "contract stripping, concessions and no trade-offs" to describe their approach to bargaining. In reference to a recent net zero settlement in the health sector, they remarked:

> *We are interested in negotiating but not trading off. We are not interesting in cutting local benefits to improve the benefits for others. We are not interested in HEU cutting areas in their CA so they can give some money to LPNs.*

A concession has come to mean *accept no agreement that would result in the BCTF, any local of the BCTF, or any member of the BCTF losing any provision, term, or benefit that existed under the terms of the previous agreement*.

An apparent contradiction

It is interesting to note that when the BCTF was in the position of employer in the 2006 negotiations with their unionized staff they took the position:

> "…our mandate is a concession…There will not be an equivalent trade off, that would be contrary to our mandate."[9]

BCTF pre-conditions

The BCTF also set out pre-conditions for concluding a collective agreement during the bargaining session held January 10, 2012:

- Government dropping the net zero mandate so that BCPSEA can negotiate a substantial wage improvement for teachers.
- Additional improvements in both preparation time and other entitlements for teachers.
- A resolution of the Bill 28 dispute that includes the return of all old class size, class composition and non-enrolling staffing ratio language to the collective agreement along with the right to negotiate improvements in this round of bargaining.
- A significant restructuring of the provincial-local split of issues so that all (or perhaps nearly all) non-PELRA items can be negotiated at the local level in this round of bargaining.
- The dropping of all employer proposals at the provincial table that they have labeled as 'contract strips' (including those dealing with changes to teacher evaluation, teacher professional growth, post & fill, and benefit trade-offs).

Teachers go on strike

Teachers like all unionized employees in the province have the right to strike. Strike action is a legitimate tool that a union can use to compel the other bargaining party to acede to their demands. A strike by teachers takes a different form than most unionized employees as they are covered by essential service provisions.

[9] CEP News Archives < http://www.cep464.ca/cep464/newsarchive/newsarchive1.htm

Over the last days of June, the BCTF held a province-wide vote with 90% of ballots cast supporting a strike. The strike was described as the first phase in a "teach only" campaign. Teachers continue to teach in classrooms, but they do not perform any other aspects of their jobs, including:

- participating in meetings or interviews with parents/guardians or district teaching staff outside of instructional time
- preparing or distributing report cards
- providing any student assessment data to school administrators, except grade 12 marks required for graduation, post-secondary applications and scholarship purposes
- attending staff meetings, staff committee meetings, any meeting called by school district management, or any school-based meetings called by a school administrator, unless the meeting is related to an emergency
- providing school administrators with any printed, written or electronic communications,
- participating in any school district or ministry in-service, or any professional development that is not teacher directed
- supervising students on playgrounds outside of instructional hours
- marking the essay portion of locally marked provincial exams, and
- supervising provincial exams, including the Foundation Skills Assessment.

Although teachers are not performing the full scope of their duties, they are continuing to be paid their full salaries and receive full benefits. "What I'm hearing is we should stay here forever," said Jason Karpuk, president of the Kamloops/Thompson Teachers' Union.[10] Given this context, there is very little pressure on teachers to move bargaining forward — they are doing less work than before at the same rate of pay.

The Labour Relations Board (LRB) has observed that, "As it now stands [*referring to current Phase 1 BCTF strike activity]* bargaining unit members are receiving full pay while not performing the full range of duties. This does not result in a balance of pressure in a controlled strike environment because while students and the public are impacted, and

[10] Jason Hewlett, "Teachers prepared to stick with job action indefinitely," *The Kamloops Daily News,* September 27, 2011. Accessed from: www.kamloopsnews.ca/article/20110927/KAMLOOPS0101/110929761/-1/kamloops/teachers-prepared-to-stick-with-job-action-indefinitely.

the Employers are impacted, the bargaining unit members continue to receive full salary."

There has been much highlighting of the efforts teachers are making during the current phase one strike to provide good and current information to parents and students, to focus on teaching and quality classroom assessment, and to get on with the work that is more important than the meetings and administrative requirements that constitute part of a teacher's job. All of this is true for many students and their families. Parents are getting phone calls from teachers. Students pursuing post-secondary options are being quietly assisted by classroom teachers and counselors. Those clients of our system who are proactive and attuned to requirements and deadlines are able to navigate "the new normal."

However, there is a silent and insidious element to this strike that has been present from the beginning of the year. It gets almost no attention. It has no voice. It has substantial consequences and casualties. Simply put, those students and families without voice — the intellectual, social, and political capacity to self-advocate — are losing out every day in countless ways.

Those parents are less visible at School-Based Team meetings where the principal's role was often to either represent their perspective or to be at their side, encouraging them to speak and to listen. They are less likely to be the recipients of "in the moment" feedback from teachers about their children who are in the margins of the classroom and school life. The normal interactions and sharing done by professional staff have been disrupted, and the conversations and problem-solving sessions about students at risk are less likely to happen in a planned and thoughtful way. Being invisible becomes easier.

For some secondary students, there is evidence of impact from the lack of report cards and the related information that helps them to plan, to gain independence and responsibility, and to begin to navigate their futures. There's no doubt that the well-organized, "A type" personalities will do fine. They have sufficient confidence and parent support to get what they need within the required timelines even if it requires some additional arm twisting and the establishment of informal channels and workarounds. However, there is another substantial student cohort in our secondary schools. They are the students who need the structure, the reminders, the feedback, and the encouragement (and monitoring) to help them reach their goals. These students, including a high percentage of aboriginal learners, often achieve success in a learning

journey that is more scaffolded than is necessary for some other students. Staff who are responsible for working proactively, reactively, and in the moment with various populations in our secondary schools rely on accessing and acting on data — none of which is currently available. The student who wants to be the first in her family to go on to post-secondary learning needs a helping hand in achieving that goal. His/her parents "don't know what they don't know" about early entrance, scholarship and bursary eligibility, and other supports that may be in place. Teachers are providing such information, but it is not systematically going to all and certainly not getting to those who need it most.

There are countless impacts of the strike action. Schools and districts are losing momentum. Capacity building and the development of authentic, rich learning communities is slipping. It won't be quickly or easily recovered as we get more and more familiar with a "new (lesser) normal." Issues like capacity-building and learning communities are about the conditions that should be in place for adults to effectively meet student needs. More crucial and urgent is the issue of direct service to students on a day to day basis. In public education, our greatest quest should be to "interrupt predictability" by thoughtfully intervening for kids who need it most. We can't increase equity if the conditions in place allow the rich to get richer, the more enabled to become further enabled, and those with advocacy well in place to receive the disproportionate amount of attention. If those without voice continue to be the unheard casualties of the strike action, they and we will pay a big toll for a long time.

As a result of the current job action, students, parents, and the school system as a whole are under pressure. Extracurricular activities and field trips have been curtailed or cancelled. Unless they are proactive, parents are not receiving regular communication from teachers about their child's progress. In some schools and districts, teachers will not accommodate the requests of working parents to discuss issues outside of instructional hours.

School administrators are taking over supervision duties, administering provincial exams and assessments (including the Foundation Skills Assessment or FSA) and marking the essay-based portions of provincial exams that are marked locally. School- and district-based management staff are feeling the negative effects on their health and wellbeing of taking on the additional responsibilities of work that teachers are not performing.

The job action also creates a very difficult work environment that prevents meaningful and collaborative discussion between teachers and administrators, both within schools and in districts as a whole. It would be disingenuous to suggest that there is no impact on student learning.

Bargaining in the media

The public is very interested in what's happening in schools across the province. Parents with children in the public education system are rightly concerned about the impact of the teachers' strike on the quality of education and on their children's learning. Other members of the public are interested in the school system for its important role in educating our young people and in terms of its cost on the public purse. As Fleming notes, "While it is possible to fantasize that public schooling can go forward on a 'business as usual' basis, or that provincial authorities will continue to direct close to 28 per cent of general revenues — the current level of BC school support — toward educating youngsters who comprise no more than 12 per cent of the province's population, such outcomes seem improbable."[11]

It is not surprising that this current round of bargaining (as with all prior rounds) is taking place very publicly, in newspapers, television news broadcasts, and radio shows, as well as in blog postings, twitter discussions, and YouTube videos.

The BCTF is focused on using the media to try and win the hearts and minds of the public, framing its demands as improving learning conditions rather than seeking higher salaries and benefits. As Slinn comments, "Teachers, for instance, generally cast demands in terms of improved education rather than higher salaries and better working conditions, while government frames its demands and actions in terms of protecting the public interest."[12]

Fleming notes the BCTF's long history of "shifting from the position of 'system critic' to 'system advocate,' as time, circumstances, and issues change — and as it suits the federation" and in taking "upon itself the fiat of moral goodness, and [considering] its views about education superior to all others by virtue of teachers being closer to children and classrooms than all other actors in the system. Accordingly the federation claims that it is entitled to shape public and, therefore, fiscal policy and, because of its

[11] Thomas Fleming, "Boomers a 'time bomb' for BC schools," *TheTyee.ca* (November 30, 2011). Accessed from: http://thetyee.ca/Opinion/2011/11/30/BC-School-Enrolments/.
[12] Slinn, 38.

political influence, to negotiate directly with government at the highest level. It is also entitled, the federation maintains, to bargain full-scope conditions of work (including class size and composition), to withdraw services and to strike, and to bargain locally."[13]

These themes are very much at play in the current environment. For example, the BCTF consistently claims that it is on strike to create better learning environments for students. A blog post from the Haida Gwaii Teachers' Association stated, "Yes, we would like a salary and benefits increase, but our first priority are our students…teachers…are doing this job action to bring attention to underfunded education and what is still needed for students to reach their full potential."[14] Yet the BCTF's demands are entirely about increasing the compensation of its members.

The current strike is also presented as a "teach only campaign," with the BCTF saying that teachers are finally getting the opportunity to do what they love best without being bogged down in irrelevant non-teaching duties. This puts a very positive spin on their withdrawal of services, a tactic used to put pressure on school districts to agree to their demands — and one that certainly impacts students and parents.

The BCTF has adopted an interesting stance towards the government's net zero compensation mandate. Suggestions that teachers must negotiate within this framework are seen as disrespectful. For them, "'net zero' does not respect the work that teachers do every day in their classrooms."[15] Yet net zero has nothing to do with respect: it is simply the bargaining framework that applies to hundreds of thousands of other public sector workers in the province, three-quarters of whom have successfully negotiated within this framework.

Along the same lines, any proposals put forward by BCPSEA to attempt to bring to the table best practices in human resources, professional development, and employee engagement are criticized and negatively labelled (terms such as "contract stripping," "concessions," "disrespectful," "undemocratic," "undermining teachers" are common), positioning BCPSEA as a villain and the BCTF as a victim. Once the label is applied, ensuing bulletins and associated commentary build on this characterization.

[13] Fleming, 119 and 123-124.

[14] Accessed from the Haida Gwaii Teachers' Association website: http://www.hgta.me/?paged=2.

[15] Accessed from the VESTA website: http://vesta.ca/wp-content/uploads/2012/01/BCTF-Update-Jan-9.pdf.

Bargaining is ultimately a very intense conversation, and conversation can only happen when there is communication. Rejecting proposals outright, negatively labelling the other party, and claiming the role of disrespected victim when asked to operate within a bargaining framework are strategies that thwart communication and conversation. The caustic nature of the conversation complicates an already complex situation.

Contrast the very public nature of the dispute between the BCTF and the BCPSEA with the recently concluded framework agreement between support staff unions and BCPSEA, which received scant media attention. The deal covers approximately 30,000 people (including education assistants, clerical staff, custodians, bus drivers, and trades workers in the K-12 public education system) and it complies with the net zero mandate. Discussions were cordial and respectful. Both sides listened to the other and made compromises to their proposals, ultimately resulting in a successful agreement (see Appendix 2)

It is therefore interesting to note some of the media commentary. In response to the BCTF revised package of proposals unveiled on January 17, Vaughn Palmer observed:

> "The teachers inhabit a different universe from the rest of us…. You know, it's a non-starter for all kinds of reasons. I would guess, Philip, it's a non-starter with taxpayers. I mean, how many taxpayers expect 15% over three years?"[16]

On December 21, Vaughn Palmer and Philip Till discussed the framework deal with the support staff unions and its implications for bargaining with the BCTF:[17]

> Till: We'll switch gears now, because look, it can be done. The public schools have a deal with 30,000 unionized school support workers.
>
> Palmer: Yeah, I mean, this is.... We've been hearing all along that the system is broken, that public school system bargaining is broken, needs to be remade. We have been hearing that the government's net-zero mandate is unacceptable in the school sector. We've been hearing this from the BCTF. But look, CUPE's no pushover. They represent the support workers, and they've got a deal: two years, net zero. The union has said it's time to move on.
>
> I think we have to consider the possibility here, Philip, that the problem is not the system. It's not the mandate. It's the fact that the teachers are seeking a deal that is

[16] CKNW Radio, View From Victoria with Philip Till, January 18, 2012, 7:40 am.
[17] CKNW Radio, View From Victoria with Philip Till, December 21, 2011, 7:40 am.

far richer, far, far above the government mandate. That mandate has been acceptable, the net-zero thing has been acceptable, to most other public sector unions in the province. Why not the teachers?

Till: I may be flogging this dead horse, but I have been saying all along I think that part of this -- at least part of it -- has to do with the very bad blood that was there between the teachers and Christy Clark.

Palmer: Well, I don't know. The teachers' union has never been able to negotiate with BC governments. They had breakdowns with the NDP and imposed settlements. They had breakdowns when Christy Clark was in her seven years away from office or however long she was out and on the radio. They had breakdowns. You know, that's a factor, but really, I think...Consider the possibility the system isn't broken. The mandate's not unreasonable. Christy isn't the problem. Consider the possibility the BCTF is the problem.

Till: Yeah. No, fair enough. I'm going to leave that horse dead now. I'm not going to go back to it. But I did have a word with this ex-school trustee *[sic]* Geoff Johnson yesterday, and he talked about the demands are so bizarre that if you get out a calculator, theoretically, teachers could be on leave for more than the 190 school days a year.

Palmer: Yeah, that lends credibility to the employer's calculation that the teachers are looking for $2b in additional compensation and additional costs to the system in one kind or another.

So there's CUPE, and as I say, they're a tough union to bargain with. Just ask anybody who has bargained with them. They settled for zero over two years and said it's time to move on. What's the problem with the BCTF?

Keith Baldrey of Global TV had the following comments in a report filed on November 29:

Darling: Now, Keith, you mentioned it's been a tough time to try and get a deal with the BCTF. When do the teachers in the province start looking maybe at their union leadership and say: why can't we get a deal?

Baldrey: That's a good question. The BCTF.... I have gone to their conventions — I actually spoke at one of their summer school sessions — and talked to a lot of teachers. It's a very unique union. It's not like any other union I've ever covered. I've

> covered a lot of labour negotiations. The teachers' negotiations are in a world of their own. There's not really any negotiation that goes on. The leadership is usually fairly militant, always insists on asking for a big advance at the table and doesn't seem willing to go back and sort of go into the give and take that usually occurs in labour negotiations.

So is it a problem of stucture?

The bargaining structure is sometimes cited as the "problem" with BCPSEA–BCTF bargaining. But, as noted above by journalist Vaughn Palmer, "Consider the possibility the system isn't broken."

The bargaining structure has been the subject of numerous inquiries over the past several years. In his *Final Report for Collective Bargaining Options* issued in February 2007, respected mediator–arbitrator Vince Ready, in his role as Industrial Inquiry Commissioner, stated,

> I have, therefore, concluded that, in the circumstances, it is not the format or process of collective bargaining which will help achieve a collective agreement.

Ready went on to make recommendations with respect to the format of bargaining, which led to successful conclusion of a negotiated agreement between the parties in 2006 and which he suggested the parties follow in future rounds. It should be noted that prior to the commencement of this round of bargaining, BCPSEA suggested to the BCTF that the parties follow Mr. Ready's recommendations. The BCTF declined.

Intractable but possible?

This is not the first time the sector has found itself in an intractable negotiation dynamic but there always is a way forward.

The preferred solution is a negotiated one. With this as the starting point there are three distinct ways forward: The parties bargain an agreement; they bargain agreement with assistance accessed by one or both of the parties (mediator); the Minister of Labour uses the tools at her disposal (special mediator; fact-finder; Industrial Inquiry Commission) to better understand the matters at issue and/or facilitate an agreement; or an agreement is imposed through legislation.

In recent years court decisions have necessitated that governments look at legislating agreements through a different lens. The 2007 decision of the Supreme Court of Canada

(SCC) in *Health Services* has arguably reduced the availability of legislative enactments in the context of public sector labour relations. In that case, the SCC redefined the *Charter* protection of freedom of association to include a right to the process of collective bargaining whereby the right is violated by government when a legislative enactment "substantially interferes" with collective bargaining.

The case was followed by the British Columbia Supreme Court concerning Bill 28, the *Public Education Flexibility and Choice Act*. In the context of the 2002 changes to the *School Act*, the Court found that the enactment of the challenged legislation, in the absence of consultation or opportunity for employees to influence the legislative process in association, violated the right to freedom of association protected by the *Charter*. The implications of these decisions remain to be fully determined but they will certainly provide some form of limit on the *how* and *what* of future legislative intervention in public sector collective bargaining.

Consider: What is the most constructive course of action?

Context

If bargaining proceeds at the current pace and tenor, there is no reasonable possibility of a negotiated or facilitated agreement in the foreseeable future:

- While the BCTF has publicly and at the table indicated their desire to achieve a negotiated agreement, their reluctance to have discussions of principle or proposals has led to no true issue exploration and the consequent identification of options/alternatives. This may be due to unwillingness or inability. Although on January 17 the BCTF tabled a revised package of proposals, on their face the proposals remain well outside the zone of agreement under the net zero compensation mandate. Further, the BCTF refuses to engage in meaningful discussion of any of the employers' proposals, continuing to label them as "concessions."

- The resolution of the BC Supreme Court decision on the constitutional invalidity of Bill 28 has a definite end date (April 13, 2012).

- These negotiations are occurring while over 75% of the public sector has successfully concluded agreements under the net zero compensation mandate, including K-12 public education support staff.

There are labour relations options within the control of the parties beyond the give and take of adopting a constructive approach to bargaining, including:

- The *Labour Relations Code* (the Code) provides for mediation at the request of one of the parties. To be successful, mediation would necessitate issue prioritization and a good faith effort to reach a settlement.

- The LRB, in its most recent decision, has observed that the essential services model that the parties have adopted is flawed and is not resulting in the balance of pressure to incent an agreement. This Order could be revisited, but it is likely that the BCTF would resist any change to the Order as it is meeting their needs. Assuming that the balance contemplated by the Code is achieved, that on its own does not lead to an agreement.

There are labour relations options within the purview of the Minister of Labour:

- The Code provides for Special Mediation under terms of reference established by the Minister.

- The Code allows the Minister to appoint a fact-finder or industrial inquiry commissioner to inquire into the negotiations.

Ad-hoc legislative intervention is an option outside the control of the bargaining parties. It is interesting to note that between 1959 and 1990 there were three public sector and five private sector interventions. Between 1990 and today there was one private sector and 13 public sector interventions, six of which were in the K-12 sector. Legislative intervention has its limitations. It tests the relationship between the parties, faces implementation challenges, and leaves many of the matters at issue unresolved or unsatisfactorily resolved (see Appendix 7for a list of the most recent ad-hoc legislative actions).

A final word

At the end of the day, the responsibility of the association as the bargaining agent for 60 employers is to be unconditionally constructive to resolve what are always challenging bargaining dynamics. If agreements could be concluded in 2006 and again with support staff unions in 2011, there should be no reason an agreement cannot be concluded with the BCTF. The history may be challenging, as cited by Slinn and Fleming, but…

Appendix 1: Essential Services — An Overview

Legislative History

The current *Labour Relations Code* requires employers and unions to maintain certain essential services to the public when they take job action, either a strike or a lockout, in a labour dispute. Essential services are those that are necessary or essential to prevent immediate and serious danger to the health, safety or the welfare of the residents of British Columbia and/or necessary or essential to prevent immediate and serious disruption to the provision of primary or secondary educational programs.

For many years, BC was the only jurisdiction that included designation of essential services in its labour legislation. The 1973 *Labour Relations Code of British Columbia* covered specific unions such as firefighters, police and hospital unions. The term "welfare" was not included in essential service legislation until 1977 when the *Essential Service Disputes Act* (ESDA) was enacted. The ESDA included the term "welfare" as part of the phrase "immediate and substantial threat to the economy and welfare of the province and its citizens".

Educational services were dealt with for the first time in the 1978 *West Kootenay Schools Collective Bargaining Assistance Act* which amended the ESDA to include the words: "a substantial disruption in the delivery of educational services in the province". In 1987 Bill 20 incorporated into the *School Act* and gave teachers the legislative authority to join trade unions and engage in collective bargaining with the School Boards. At the same time, the essential service provisions which were contained in the ESDA were repealed and incorporated in the *Industrial Relations Act.* Section 137.8(1) of that Act contained the following words: "…the dispute poses a threat to the economy of the province or to the health, safety or welfare of its residents or to the provision of educational services in the province". In 1993 the Legislature passed Bill 84, the *Labour Relations Code*. Section 72 of the Code deleted the following words from the corresponding provision of the *Industrial Relations Act: "…the provision of education services".* The provision therefore read as follows "…health safety and welfare of the residents of British Columbia".

In *The Board of School Trustees of School District No. 54 (Bulkley Valley)* BCLRB No. B147/93 the LRB determined that education could, under certain circumstances, fit within the concept of "welfare". In 2001 the Legislature passed Bill 18, the *Skills Development and Labour Statutes Amendment Act*. This Act amended Section 72 of the *Labour Relations Code* to include K-12 public education as an essential service by adding the words: "provision of educational programs to students and eligible children under the *School Act*". That amendment resulted in the current essential services provisions.

The Development of Essential Services designations in Education from 2001-present

In September 2001 BCPSEA filed an application with the Labour Relations Board (LRB) for the designation of essential services in anticipation of strike action by the BCTF. The LRB conducted an investigation hearing pursuant to s. 72(1) of the Code for the purpose of ascertaining whether there was a dispute and, if there was a dispute, whether it constituted a threat to the provision of educational programs and/or the health, safety or welfare of the province's residents. Vice-Chair Mark Brown was appointed as an investigator under s. 72(1) of the Code and during the investigation, BCPSEA and the BCTF agreed to a process to be followed if the Minister ordered the designation of essential services (B383/2011). On October 15, 2001 the Minister of Labour directed that the essential services designations occur. A LRB panel of Irene Holden, Mark Brown and Lisa Hansen were named to designate essential services. In October 2001 the LRB held a hearing to determine the scope of educational programs but decided that it would not issue a decision on the definition at that time. It directed the parties to commence mediation on the withdrawal of activities under the BCTF Phase 1 strike plan with the assistance of Mark Brown. On November 2, 2001 the LRB issued B409/2011 to deal with Phase 1 of the BCTF strike activity. In that decision the LRB noted that:

> "Over the years, the Board has developed a standard format for Essential Service Orders, which are framed in the context of a total withdrawal of services.

> Normally Essential Service Orders address work that bargaining unit members will continue to perform in the event of job action.
>
> Given the unique circumstances of this case, which involves a phased-in job action plan, an agreed upon essential service designation process (B383/2001), and an agreement that this decision is without prejudice to the parties' positions in subsequent proceedings, this decision will not follow the Board's standard format. Instead, the Panel has set out below a list of activities that BCTF members need not perform during Phase 1 job action…."

In November 2001 the BCTF requested the LRB mediate/adjudicate the next phases of the BCTF strike plan, i.e. the withdrawal of extracurricular activities and Phase 2 (partial, rotating or full-scale withdrawal of services). On December 6, 2001 the LRB issued B455/2001 on the definition of the "provision of educational programs". The panel concluded with the following:

> "We conclude that for the purpose of Section 72 of the Code, "provision of educational programs" includes concepts like supervision and assessment, and might include work study and work experience programs. Further, there may be goods and services and educational materials which are necessary to meet the learning outcomes and assessment requirements of an educational program, and are therefore part of the "provision of educational programs".
>
> On the other hand, not all services or activities provided by a school board are necessarily part of the "provision of educational programs". There must be some limit to an "educational program" and therefore also to what is involved in the "provision of educational programs." For example, activities or services provided by a school board which are optional or voluntary and outside the curriculum set by the school board may well fall outside of the "provision of educational programs."

On December 19, 2001 the LRB issued B476/2001 regarding the essential services aspects of the withdrawal of extracurricular activities. On January 23, 2002 the LRB conducted

a case management meeting regarding adjudication of Phase 2 strike activity however the legislature was recalled on January 25, 2002 to deal with the teachers' dispute and Bill 27 the *Education Services Collective Agreement Act* and Bill 28 *the Public Education Flexibility and Choice Act* were introduced. On January 27, 2002 the LRB issued B34/2002 on Phase 2 strike activity. This Interim Order was issued on a non-precedential basis and permitted the BCTF to engage in one day of full withdrawal of services during the week of January 28, 2022 but the Interim Order was to have no effect if the legislation established a collective agreement between the parties. Further on that same day the *Education Services Collective Agreement Act* was proclaimed constituting a collective agreement between the parties and an end to the legal strike action by BCTF.

In B180/2001 the LRB ruled that any outstanding issues involving the designation of essential services (i.e. the extent to which teachers may withdraw fully from the classrooms) were academic and would not be determined by the LRB at that time. In that decision the LRB noted that "the parties have reached agreement on most of the components of the Essential Service Orders issued to date. The Board expects that the areas of agreement will be carried forward in future disputes".

In 2005 the BCTF and BCPSEA were again involved in a labour dispute and the LRB was required to establish essential service designations. On September 23, 2005 the LRB issued B255/2005 to address Phase (a) of the BCTF strike plan which involved the withdrawal of duties. Following the approach taken in the 2001 dispute, the decision set out a list of activities that BCTF members did not need to perform during Phase (a) strike action. The proceedings to address the issue of whether teachers could withdraw services from the classroom and, if so, for how long were scheduled for hearing. The 2005 strike commenced on September 28. On October 3, 2005 the legislature introduced Bill 12, the *Teachers Collective Agreement Act* and it was proclaimed on October 7, 2005. That legislation had the effect of continuing the collective agreement between the BCTF and BCPSEA until June 30, 2006. The BCTF subsequently engaged in a two week long illegal strike.

2011 Teacher Strike

On July 26, 2011 the LRB issued B132/2011 regarding the designation of essential services in relation to the BCTF Phase 1 of their strike plan which involved the withdrawal of certain duties and extra-curricular activities. A further decision (B143/2011) addressed the issue of collection and transmission of student attendance information. Following the approach taken in previous disputes in 2001 and 2005 the decisions set out a list of activities that BCTF members need not perform during Phase 1 strike activity. The LRB hearings have also occurred with respect to school based team meetings, the continuation of field trips, supervision in SD 8, local marking of provincial exams and the conduct of oral French exams.

On September 2, 2011 the LRB issued B161/2011, its decision on the issue that arose in 2001 on whether teachers may withdraw services from the classroom; i.e. a full withdrawal rather than a withdrawal of certain duties. This decision was further to the hearing before the LRB in the fall of 2005 between BCPSEA and the BCTF. While this decision related to the previous dispute it was anticipated that it would provide guidance to the LRB with respect to the current labour dispute with the BCTF, should the BCTF strike action proceed beyond Phase 1 to a withdrawal of classroom services. In that decision Mark Brown noted that he would amend the structure of the Board orders to be consistent with Essential Service Orders in other sectors and that the Order should set out the days of work for the bargaining unit members and permit the employer to continue to direct the workforce as per current collective agreement terms. In this way the Order would establish what the bargaining unit members are doing, not what they are not doing. Adjudicator Brown also noted the following:

> "In addition, compensation should be based on the percentage of days worked compared to the norm. As it stands now, bargaining unit members are receiving full pay while not performing the full range of duties. This does not result in a balance of pressure in a controlled strike environment because while students and the public are impacted, and the Employers are impacted, the bargaining unit members continue to receive full salary."

In late October, BCPSEA applied to the LRB to amend the Essential Services Order to require teachers to prepare and distribute report cards and to require the BCTF, on notice from BCPSEA, to reimburse each School District monthly in an amount equal to 15% of the total gross salaries and benefits paid to or on behalf of BCTF members by the School District. The 15% represented the amount of work normally performed by teachers that has been withdrawn pursuant to the Essential Services Order. In BCLRB B214/2011 the LRB dismissed BCPSEA's application and declined to amend the Essential Services Order. BCPSEA filed for reconsideration of that decision with respect to the 15% reimbursement option and in a decision issued on December 20, 2011 (B236/2011) the LRB dismissed the reconsideration application.

In dismissing the reconsideration application, the Board concluded that the current Order is "ineffective" and that the "remedy" is that the Board's traditional approach to essential service designations should be followed, i.e. where essential services that must be performed are identified.

Where To From Here?

In the current circumstances BCPSEA applied to vary an Order that was drafted in the context of a partial strike. In dismissing the reconsideration application, the Board accepts that there are fundamental problems with the approach to essential services designations in the current Phase 1 of the job action and that the approach has not been "balanced or effective in putting pressure on both parties". The LRB noted that the "heart of the problem" is captured by the panel in B161/2011 as follows:

> "Furthermore, during the supplemental process, I questioned whether the prescribed learning outcomes for a grade could be assessed against the minimum amount of time required to meet those core learning outcomes. Both parties suggested that such an approach was not possible for various reasons related to how each individual student's progress is monitored.
>
> Given the broad brush approach that the parties have argued, it is not surprising that the parties were not prepared to embark on such a task. However, I am not

> persuaded that such an approach is not more conductive to the application of the statutory requirement under the Code, given that I conclude that the application of "serious and immediate" disruption to the provisions of educational programs" may not be the same for every grade and may not be the same for any time of year. If the parties determined **the minimum number of days of instruction necessary to meet the core learning outcomes**, the balance of instructional days may be the number of days that a teacher may be absent from the classroom given the test under Section 72 of the Code (paras. 57-58, emphasis added)."

The LRB reconsideration panel relied extensively on B161/2011. While that decision dealt with potential designations for a full withdrawal of services, the LRB has not expressly established the form of an "effective" Order in education; when or how such an Order would be implemented during a partial strike and/or what would be included in an Interim Order if required.

As a follow-up to the Order the following letter was sent to the LRB seeking direction:

> "Given the Board's findings, we are writing to inquire as to how the Board would like to proceed to achieve an effective Essential Services Order consistent with the Board's established approach. We assumed that the current, ineffective Order will be set aside and that further mediation and/or adjudication will be necessary and respectfully request the Board's further direction in this matter."

The Chair of the LRB initially responded indicating that the reconsideration panel was functus, but in response to our subsequent clarification letter referred our inquiry to the Registrar and the Vice-Chair, Mediation.

Appendix 2: Support Staff Bargaining

The role of BCPSEA under the delegated authority model[18] is to provide assistance to boards of education in concluding collective agreements. This includes providing research, legal advice, coordination and, where requested, becoming involved directly in negotiations or dispute resolution. BCPSEA is also responsible for ratifying support staff collective agreements consistent with its policies, procedures, and bylaws. The 2010 rounds of support staff bargaining built on the work and agreement concluded in 2006.

CUPE BC K-12 President's Council

The Canadian Union of Public Employees (CUPE) represents 26,000 school support staff across British Columbia. The BC K-12 President's Council Provincial Bargaining Committee (PBC) was established in September 2009 to establish a provincial bargaining council, discuss policy and strategy at a provincial level and show solidarity. The PBC includes 55 CUPE locals representing staff in School Districts throughout British Columbia. Not covered by the President's Council is one CUPE local and the remaining thirteen bargaining units represented by union locals that are not CUPE.

[18] BCPSEA is the accredited bargaining agent for the province's 60 public boards of education and has adopted collective bargaining practices and procedures unique to the K-12 public education sector. With respect to support staff bargaining, when the BCPSEA constitution and bylaws were drafted, they sought, to the extent possible, to replicate the bargaining structure that had existed prior to the creation of the association. At the time it was generally believed that the existing system of collective bargaining for support staff was functional and effective.

The BCPSEA constitution and bylaws establish a "delegated authority" model for support staff bargaining. The bargaining agent, BCPSEA, delegates its bargaining authority through its bylaws to individual boards or groups of boards. The employers bargain directly with their respective union locals. The reference to groups of boards was designed to permit regional groupings of boards for bargaining purposes (such as the Okanagan Labour Relations Council and the Vancouver Island Labour Relations Council).

BCPSEA–CUPE President's Council Bargaining 2011: Getting Started

BCPSEA was formally contacted on March 29, 2011 by the CUPE President's Council Provincial Bargaining Committee (PBC) to discuss the possibility of a provincial approach to bargaining for CUPE support staff in public education. This approach would be complementary and not a replacement to the local bargaining process.

CUPE outlined the purpose of the meeting in its letter:

"We share a commitment to creating a respectful bargaining process. At this time, there is a significant opportunity to discuss:

- The progress of bargaining
- The coordination of data & research support
- Parameters of a provincial table."

The first meeting to start these discussions took place on June 10, 2011. The bargaining committees consisted of BCPSEA and School District representatives and seven regional CUPE representatives supported by CUPE staff. In addition to the above listed items, the first meeting included discussions on other issues including the Public Education Benefits Trust (PEBT), the Support Staff Education and Adjustment Committee (SSEAC) and labour market adjustments.

The first meeting was positive and productive. The parties agreed to principles regarding approach and structure to guide the process as well as the scope of issues to be discussed. The parties also agreed that the intent is to come up with an agreement in principle that could then form part of any Memorandum of Settlement at the District level. The process would be similar to the Framework Letter of Understanding from the 2006 round of negotiations.

At the second meeting the support staff represented by unions other than CUPE joined the process and sent a representative from the International Union of Operating Engineers (IUOE) to join the CUPE team.

The parties exchanged a complete set of items for discussion and agreed to recommend to its members that these items be held in abeyance pending the outcome of the provincial discussions.

Framework Agreement Reached

BCPSEA and representatives from the support staff unions achieved a framework agreement on December 14, 2011. The agreement was reached under the net zero compensation mandate established by the provincial government.

BCPSEA and School District representatives met thirteen times with representatives of the CUPE K-12 Presidents' Council Provincial Bargaining Committee and representatives of the other support staff unions in the K-12 public education sector to engage in provincial discussions complementary to local District discussions under the delegated authority model for support staff bargaining in the K-12 public education sector. The purpose of these discussions was to develop an agreement in principle that could then form part of any memorandum of agreement at the District level.

Highlights of the two-part framework agreement reached on December 14 are as follows:

1. **Letter of Understanding** — Term July 1, 2010 – June 30, 2012

   Continues and expands the scope of the Support Staff Education and Adjustment Committee (SSEAC), created under the 2006 framework agreement, to include:

   a) an examination and discussion of any impediments arising from and the options to facilitate the introduction of shared services
   b) a focus on best practices to integrate skill development for support staff employees with district goals and student needs

c) a study of the potential for regionalization of wages and benefits
d) an investigation of benefit standardization for the purpose of additional efficiencies during the life of the collective agreement
e) recommendations to address issues associated with hours of work and service delivery
f) a review of practices in districts having modified school calendars and the resulting impact on support staff
g) skills enhancement for support staff.

To support these initiatives, the Ministry of Education will provide funds in the total of $550,000.

At least six (6) months prior to the expiry of collective agreements between K-12 employers and support staff unions, representatives of employers and support staff unions shall meet to discuss the process of provincial bargaining for the next round of collective bargaining.

To support this process, the Ministry of Education will provide funds in the total amount of $200,000.

2. **Letter of Agreement** that confirms the commitment that $7.5M/year of the $165M Class Organization Fund (COF) announced by the Minister of Education in October 2011 to deal with complex classroom issues will be focused on education assistants, who are integral to the delivery of educational programs in our province's classrooms.

The Framework Agreement was unanimously endorsed by the CUPE BC K-12 Provincial Bargaining Committee. The CUPE BC K-12 Presidents' Council also endorsed the agreement with 90 per cent of the local presidents, representing 90 per cent of members, voting in favour.

Next Steps

The framework agreement will apply to boards of education and support staff unions that are signatories to the Letter of Understanding. While the framework agreement is not binding on Districts and unions, these documents create a "framework agreement" for the K-12 public education sector.

It is now the responsibility of each School District and their respective local support staff union(s) to conclude local bargaining and ratify their collective agreements. Parties who conclude a memorandum of agreement by February 29, 2012 will be able to include the framework agreement in their local collective agreement and participate in the terms of the framework agreement. It should also be noted that following school District ratification, all School District collective agreements require ratification by the BCPSEA Board of Directors.

Setting the Stage for the Next Round

Support staff collective agreements concluded in 2011 (agreements expired June 30, 2010) expire on June 30, 2012. The parties will meet within the next few months to begin provincial discussions for the next round. BCPSEA will be preparing information to School Districts with respect to the bargaining plans for the 2012 round of support staff bargaining.

Appendix 3: Teacher–Public School Employer Bargaining

Background

Provincial bargaining talks between BCPSEA the BC Teachers' Federation (BCTF) began on March 1, 2011 in anticipation of the end of the current 5 year collective agreement on June 30, 2011. Since that date more than 11 months ago, the two provincial parties have met in face-to-face bargaining 70 times**.**

BCPSEA–BCTF Bargaining: Getting Started

At the start of bargaining in the spring of 2011, each of the provincial parties tabled comprehensive packages of bargaining objectives. Although not fully detailed, these overviews of opening objectives and proposals signaled the direction of both the BCTF and BCPSEA in this round of bargaining. While neither party might expect to attain all of their objectives in this round of talks, the initial submissions do signal both the short and long term goals of each organization.

The initial BCTF bargaining objectives tabled last spring included:

- A substantial wage increase for all teachers bringing pay in line with teacher salaries in both Alberta and Ontario (currently estimated to be 20>25% higher than in BC).
- Teachers On Call to be paid at full-time teacher rates and to receive a minimum wage stipend per month regardless of hours worked.
- Significant improvements to benefits including increased employer premiums for extended health, MSP, dental and life insurance, improvements to entitlements in all areas as well as greater accessibility, application to Teachers On Call and all part-time teachers, and coverage for alternate therapies.
- An increase in preparation time provided to teachers up to 25% of the instructional day as well as time off for report cards, meetings and other student reports.

- An early retirement incentive plan providing a retirement bonus as well as long-term benefits coverage for the teacher and their spouse.
- Nine improved or new paid leave entitlements including additional discretionary days, individual professional development days, union leaves, long-term third party illness and broad-based bereavement.
- Limitations on the ability of boards to enact local school calendars as well as reductions in the teacher work year and hours of work.
- The movement of all other collective agreement items to local bargaining tables

It is important to remember that all issues around class size, class composition, non-enrolling teacher staffing ratios as well as any liability payouts arising out of the Bill 28 BC Supreme Court decision are being dealt with in direct talks between the provincial government and the BCTF. Although the teachers' union has expressed significant expectations around these issues, they are not a topic at the bargaining table.

The current total estimated cost of the BCTF objectives is $2.0 billion, although an exact figure has been difficult to determine due to a lack of specificity in the union's proposals. To date, the BCTF has also refused to undertake joint costings analysis of proposals as suggested by BCPSEA; nor have they been willing to share their costing data or analysis as has been done by BCPSEA.

The initial bargaining proposals tabled by BCPSEA included:

- New language on the recruitment, selection and retention of a qualified and contemporary workforce emphasizing knowledge, skills, and abilities while recognizing suitability, qualifications and service as well as seniority in selection processes.
- An emphasis on student/school needs when considering teacher placements under post & fill, transfer, layoff & recall provisions.
- An integrated approach to growth, development and currency. The facilitation of continuous growth, development and engagement of teachers emphasizing both individual teacher needs as well as the needs of the public education system as a whole. This objective would see changes to collective agreement articles covering

professional development, non-instructional days, mentorship, professional autonomy and new teacher induction.
- Facilitation of more flexible service delivery models and hours/days of work.
- A standardized and more efficient dispute resolution process grievances.
- Harmonization of leave provisions as well as benefits between School Districts.
- Potential improvements to benefits or other employee entitlements through trade-offs under the government's net zero mandate for all public section agreements ending in either 2010 or 2011.

It has been clear since the outset that there is a considerable gap between the positions of the parties. In an attempt to bridge that gap, on November 22, 2011 BCPSEA tabled a comprehensive settlement offer (a combined package of proposals) which included the dropping of eight previous employer proposals. This overture was rejected by the BCTF, who has to date maintained all of their original proposals with modifications to five leave proposals and their retirement bonus proposal. They continue to refuse to put forward a settlement package of their own.

What We Know: Bargaining Approach Options and Labour Relations Options — Looking Forward

In one of the recent bargaining sessions the spokes person for the BCTF stated:

"The BCTF is not like other public service unions and will not accept a sub-zero agreement. Respect for teachers = more money!"

If the BCTF maintains this bargaining stance consider the following:

- If present conditions remain there is no reasonable possibility of a negotiated or facilitated agreement in the foreseeable future.
- While the BCTF has publically and at the table indicated their desire to achieve a negotiated agreement their reluctance to have discussions of principle or proposals has led to no true issue exploration and the consequent identification of options/alternatives. This may be due to unwillingness or inability.

- The resolution of the BC Supreme Court decision on the constitutional invalidity of Bill 28 has a definite end date.
- These negotiations occur while over 75% of the public sector have successfully concluded agreements under the net zero compensation mandate, including K-12 public education support staff.

There are labour relations options within the control of the parties beyond the give and take of adopting a constructive approach to bargaining, including:

- The *Labour Relations Code* (the Code) provides for mediation at the request of one of the parties. To be successful, mediation would necessitate issue prioritization and a good faith effort to reach a settlement.
- The Labour Relations Board in its most recent decision has observed that the essential service model that the parties have adopted is flawed and not resulting in the balance of pressure to incent an agreement. This Order could be revisited, but it is likely that the BCTF would resist any change to the Order as it is meeting their needs. Assuming that the balance contemplated by the Code is achieved, that on its own does not lead to an agreement.

There are labour relations options within the purview of the Minister of Labour. These include:

- The Code provides for Special Mediation under terms of reference established by the Minister.
- The Code allows the Minister to appoint a fact-finder or industrial inquiry commissioner to inquire into the negotiations.

Ad-hoc legislative intervention is an option outside the control of the bargaining parties. It is interesting to note that between 1959 and 1990 there were three public sector and five private sector interventions. Between 1990 and today there was one private sector and 13 public sector interventions, six of which were in the K-12 sector. Legislative intervention has its limitations. It tests the relationship between the parties, faces implementation challenges and leaves many of the matters at issue unresolved or unsatisfactorily resolved.

Appendix 4: BCTF–BCPSEA Bargaining 2011 — Getting Started

In March 2011 collective bargaining between the BCTF and BCPSEA began both at the provincial table and 60 local tables. It was recognized in the sector that this round of bargaining would be difficult. This paper provides an update for the K-12 public education employer community on bargaining to date and provides a foundation for the articulation of next steps.

BCPSEA is a multi-employer association and accredited bargaining agent for the province's 60 public boards of education. With respect to collective bargaining and developing a bargaining mandate, BCPSEA has to balance two sets of interests — the interests of the 60 boards of education as employers with the interests of government as the funder and maker of public policy to the extent that public policy directions/initiatives have employment implications.

The bargaining approach of BCPSEA was guided by the work of the January 28, 2011 Representative Council — *Teacher–Public School Employer Collective Bargaining Conference 2011: K-12 Public Education and Employment, a Future Focused Dialogue* — held to discuss bargaining issues, set direction, and provide the basis for the development of broad and specific bargaining objectives. The broad and specific bargaining objectives became the foundation for the bargaining objectives that were exchanged at the table in March 2011. The dialogue at the January 2011 Representative Council provided the basis for a review of the General Negotiation Framework (GNF), the organizer introduced in previous rounds. The GNF is central to the employers' approach to bargaining. The GNF articulates the *general agreement on what needs to be done* in a particular round of bargaining and provides a filter to assess the union's proposals.

It was recognized that given the last agreement concluded in 2006 and the current realities and challenges within our system, teacher collective bargaining in 2011 would be quite different from previous rounds. Further, it was important to understand what had changed since the last round. The Representative Council unanimously passed the

following motion after the day's work on the matters at issue (see Appendix A for a list of the bargaining objectives):

> "To accept the direction of the Representative Council as established through the working sessions and input initiatives and move to the establishment of broad/specific bargaining objectives for Teacher Bargaining 2011"
>
> *Carried*

Preliminary Planning

BCPSEA met with the BCTF on June 14, 2010 to discuss the upcoming round of bargaining. In preparation for this meeting, we canvassed the employer community with a preliminary survey and conducted focus groups on the desired format for bargaining.

The feedback received was overwhelmingly in favour of provincial bargaining (over any return to local teacher bargaining). In addition, new items were identified as requiring provincial coordination to be addressed — for example, post and fill and evaluation — in order to ensure broad issues such as teacher quality can be addressed across the province.

Determining the Bargaining Process

In December 2009, the BCTF informed BCPSEA that it intended to negotiate significant changes to bargaining structure and process. That led to a series of letters and discussions between BCPSEA and the BCTF prior to the 2011 round of negotiations. By November 2010, BCPSEA had clearly articulated its position that the decades old system of local board of education–local teachers' union bargaining and the resulting degree of duplication of effort did not provide the most efficient means possible in a time when Districts sought to streamline processes to ensure the greatest possible resources were available at the school level.

On January 26, 2011 BCPSEA and the BCTF representatives met to discuss the process for this round of bargaining and on January 28, Susan Lambert, President of the BCTF, addressed the BCPSEA Representative Council. Ms. Lambert outlined for delegates the union's bargaining plan, including an overview of key objectives and an explanation of why the BCTF is seeking expanded local bargaining.

Arising from Ms. Lambert's remarks and the January 26 meeting between representatives of the BCTF and BCPSEA, BCPSEA sent a letter to the BCTF on February 4, which proposed an approach to the 2011 round of collective bargaining.

On February 4, pursuant to section 46 of the *Labour Relations Code*, the BCTF sent a letter to BCPSEA Chair Melanie Joy providing formal notice of intent to commence collective bargaining on March 1, 2011.

Formal bargaining began on March 1, 2011. On March 31, the BCTF presented their proposal on the re-designation of the split of issues, moving everything except for what they see as the "PELRA 4" issues (salary, benefits, hours of work, paid leaves) to local bargaining tables. BCPSEA presented a counter proposal to the BCTF on the split of issues. With the rejection of the proposals, it was decided to move from this protocol matter to bargaining, with the parties exchanging themes and objectives packages on May 24.

Appendix 5: Presentation of Proposals and Preliminary Costing

On May 24, 2011 the BCTF and BCPSEA bargaining teams introduced their respective themes and objectives.

The BCTF and its local teachers' associations then engaged in a media campaign that set the stage for the initiation of a province-wide strike action plan. The backdrop against which this plan was set included:

- the demand that only **salary and benefits, time worked, and paid leave** be bargained at the provincial table and all other matters locally
- alarm expressed at the employer's bargaining objectives, characterizing the underlying motivation as undemocratic
- "… the need to send a message to government" concerning the progress of negotiations to address the recent BC Supreme Court decision regarding Bills 27/28.

During the month of June several bargaining sessions were held and proposals were made:

- June 1 – BCPSEA presented proposals on Leave for Provincial Contract Negotiations, President/Officer Leave, and Leave for Local, BCTF, CTF, and BC College of Teachers, Sick Leave, and Pregnancy/Parental Leave. The BCTF presented proposals on Compassionate Care Leave (refined), Discretionary Leave, Pregnancy, Parental, and SEB Plans, Leave for Professional Activities, Leave for Third Party Care; and Leave for Union Business
- June 2 – The BCTF presented its Benefits proposal
- June 7 – The BCTF presented proposals on Alternate School Calendar; Regular Work Year for Employees; Release Time for Meetings' and Preparation Time
- June 8 – BCPSEA presented proposals on Alternate School Calendar; Preparation Time; and baseline data for proposal costing. BCTF presents proposal on Duration of the Instructional Day

- June 21 – BCPSEA presented proposals on Professional Growth and Posting and Filling. The BCTF tables its proposal for the improvement of wages.

A complete list of both the BCTF's and BCPSEA's proposals is available on our public website.

Many of the proposals put forward by the BCTF have cost implications. Accordingly, on June 23, BCPSEA completed a preliminary costing of many of them (E.25 Preliminary Costing). These preliminary costings were done to support BCPSEA in our understanding of the BCTF proposals and their implications. We provided the BCTF with our baseline costing information as well as the costing of each proposal and invited dialogue. The BCTF indicated that it does not agree with our costing but has yet to provide any response or alternate costing.

In our costing estimates, the BCTF's proposals costs are as follows:

Total preliminary cost estimate: $2,184,000,000

Total payroll 2009/2010 (salary + benefits): $2,913,000,000

Total preliminary cost as a % of payroll: 75%

The BCTF proposals include:

- Salary
    - A fair and reasonable wage increase for all members.
    - An increase to the allowances and bonuses in the collective agreement that is reflective of the salary increase.
    - Equity in salary for all teachers.
    - Shorten all grids.
    - TTOC wages on scale for every day worked.

- Benefits
    - Continued or increased benefits including extended health and dental plans.
- Leaves
    - Discretionary Leave - A maximum of 8 days of paid discretionary leave per year with a maximum of four unused days carried forward into the subsequent school year.
    - Compassionate Care Leave - Up to 26 weeks paid leave to provide care to a family member.
    - Sick Leave - Two sick days for each month of employment with no maximum to the number of paid sick leave credits that may be accumulated.
- Other
    - Retirement Bonuses - A teacher who is at least 55 years old and who has 10 or more years of service with the District should receive a retirement bonus of five per cent per year of the salary received at retirement for each year of service, up to a maximum of one year's salary.
    - Preparation Time - Increased paid time for class preparation (25% of instructional time per week).

Appendix 6: The Provincial–Local Split and the Jackson Decisions

Jackson 1: August 28 Decision

Arbitrator Jackson issued her first decision on August 28, 2011 with respect to the five questions that had been referred to her by the parties. She determined in that decision that neither party can unilaterally delegate bargaining authority to local bargaining agents over matters currently listed in LOU No. 1 as matters for provincial bargaining. She decided that renegotiating LOU No. 1 was something that could be the subject of bargaining, and a matter that could be taken to impasse. She found that the meaning of "cost items" in PELRA encompasses all provisions relating to salary and benefits, time worked and paid leave, that affect the cost of the collective agreement.

Arbitrator Jackson directed the BCTF to table any proposals on provincial matters that are key issues in the BCTF's overall bargaining agenda at the provincial bargaining table by September 2. The BCTF was directed to review their proposal to revise LOU No. 1 to ensure consistency with her decision on the scope of the meaning of "cost provisions." As sought by BCPSEA, Arbitrator Jackson provided specific timelines within which the parties were to implement the decision and during which she would be available to assist the parties with implementation.

Jackson 2: September 2 Decision

The parties sought further assistance from Arbitrator Jackson regarding implementation of her decision and she issued a second decision on September 2. In this decision, Arbitrator Jackson directed BCTF to remove all proposals on provincial matters from District bargaining tables by September 5 and to table those which the BCTF wished to pursue at the provincial table by September 16. She further directed the BCTF to review its proposal to change LOU No. 1 to ensure compliance with her decision on the meaning of "cost provisions" by September 7. She said that if the parties had a dispute about whether provisions proposed by the BCTF to be bargained locally were "cost

provisions" within the meaning of PELRA, those disputed items were to be brought to her by September 9 for a determination.

The BCTF did revise its LOU No. 1 proposal but it remained inconsistent with PELRA. The BCTF took the position in its proposal that for matters related to a "cost provision" as defined by Arbitrator Jackson, provisions relating to that matter "affecting the cost of the collective agreement" should be bargained at the provincial bargaining table but provisions relating to that matter "not affecting the cost of the collective agreement" should be bargained at the local bargaining table. The BCTF proposed approximately 40 collective agreement articles could be bargained both at the provincial bargaining table and the local district tables. BCPSEA strenuously objected to this approach, saying that these matters in their entirety met the definition of "cost provision," are therefore deemed provincial matters under PELRA, and that splitting the bargaining of one contract provision between multiple bargaining tables is both unworkable and inconsistent with PELRA. The parties had different positions and made submissions to Arbitrator Jackson on numerous specific provisions on what did and did not meet the definition of a "cost provision" pursuant to the arbitrator's decisions and PELRA.

Jackson 3: September 17 Decision

Arbitrator Jackson issued her third decision September 17. Most significantly, Arbitrator Jackson agreed with BCPSEA's position that the amended BCTF proposal on LOU No. 1 to split matters between the provincial bargaining table and the local bargaining tables was not consistent with PELRA. She decided that all "cost items" identified by the BCTF as matters to be split between provincial and local bargaining tables are "cost provisions" deemed to be provincial matters under PELRA as argued by BCPSEA. She found many of the specific provisions the BCTF asserted were not "cost provisions" met the definition of "cost provision" including seniority, layoff, recall, retraining and pro-d funding. She found some of the provisions BCPSEA argued to be "cost provisions" did not meet the test, and can be bargained at the local level. However, it is important to note that Arbitrator Jackson's decision in this regard is not that such items must be negotiated locally, but rather, that they need not be bargained at the provincial bargaining table. The BCTF must still negotiate its desired changes to LOU No. 1.

Jackson: And Finally…

Since Arbitrator Jackson issued her three decisions, the BCTF has acknowledged at the bargaining table that despite its public comments that the Jackson decisions are a "victory" for the BCTF, its view on the split of issues is a bargaining position. The current split of issues remains in force and cannot be changed without the agreement of both provincial parties. To date, there has been no such agreement. However, it is clear that bargaining will continue to stall due to the BCTF's desire to achieve greater local bargaining as an outcome from this bargaining round. Arbitrator Jackson's decisions require that the BCTF engage in bargaining based on the current split contained in LOU No. 1 and the requirements of PELRA. If necessary, BCPSEA will consider the option of filing the Jackson decisions with the courts in order to ensure compliance.

Appendix 7: Strikes in BC K-12 Education

Teacher–Public School Employer Collective Bargaining

Dispute Milestones

1987-1994	Local teacher association/union – local school board bargaining	50 strikes (one province-wide) and 3 lockouts
July 1993	Final Report of the Commission of Inquiry into the Public Service and Public Sector (Korbin Commission) was released	Move to provincial bargaining
May 1996	First round of provincial bargaining	Transitional Collective Agreement (TCA) was reached and ratified by both parties.
June 25, 1998	Provincial negotiations continued – parties were unable to reach negotiated agreement. (July 1, 1998 – June 30, 2001)	Bill 39, the *Public Education Collective Agreement Act*, legislated the terms of the first provincial collective agreement
January 28, 2002	Legislated Collective Agreement (July 1, 2001- June 30, 2004)	Bill 27, *Education Services Collective Agreement Act* (essentially back to work legislation)
January 28, 2002	BCTF – one day political protest (strike)	Teachers walk out in a one-day political protest strike.
October 7, 2005	Legislated Collective Agreement (July 1, 2004 - June 30, 2006)	Bill 12, *Teachers' Collective Agreement Act* (rolled over the collective agreement and legislated teachers back to work)
October 7, 2005	BCTF illegal two-week strike	
June 30, 2006	Negotiation of 2006-2011 Collective Agreement	On June 30, 2006, at 10:45 pm, for the first time since the introduction of provincial collective bargaining, the BCTF and BCPSEA conclude and sign a freely negotiated provincial collective agreement.

March 1, 2011	BCPSEA and the BCTF meet for the first negotiation session of the 2011 round of bargaining	Negotiations ongoing
June 29, 2011	BCTF release results of strike vote. Of the 70% of teachers who voted, 90% voted in favour of a strike.	
August 31, 2011	BCTF issues 72-hour strike notice for all school districts	Negotiations ongoing

Appendix 8: Examples of Resolutions of Public Sector Disputes

BCTF-BCPSEA

- On June 7, 1994 the *Public Education Labour Relations Act* was passed establishing BCPSEA as the accredited bargaining agent for all public school boards and the BCTF as the certified bargaining agent for all public school teachers in the province. Most of the collective agreements then in place expired on June 30, 1994. In April 1995 BCTF and BCPSEA completed negotiations on which matters would be dealt with at local bargaining tables and which matters would be negotiated provincially. BCTF and BCPSEA began negotiations in May 1995. Between May 1995 and April 1996 little progress was made and, with an election expected, the government called the parties to Victoria in an attempt to facilitate a transitional agreement. On April 28, 1996 the *Education and Health Collective Bargaining Assistance Act* was passed, establishing a process to ensure that education and health services would not be disrupted in the event of a labour dispute during an anticipated provincial election. The passage of this legislation set the stage for an imposed agreement should the government deem it necessary. However, a *Transitional Collective Agreement ("TCA")* was concluded. The *TCA* expired on June 30. 1998 and required the parties to resume negotiation in March 1997.

- Bargaining reconvened in earnest in September 1997. With no progress evident by February 1998 an offer of assistance from the government to facilitate negotiations was accepted. An Agreement in Committee ("AiC") that was subsequently negotiated by the government was rejected by School Districts. In July 1998 the government passed the *Public Education Collective Agreement Act* which established the AiC as the collective agreement for the term July 1, 1998 to June 30, 2001.

- The 1998 collective agreement expired on June 30, 2001 with collective bargaining beginning in March. A strike by BCTF commenced in mid November 2001. In Mid December facilitation was provided by Stephen Kelleher. When it appeared that the parties could not reach a timely settlement the government intervened. The strike was ended and a collective agreement imposed with the

proclamation of the *Education Services Collective Agreement Act* on January 27, 2002. (On January 28, 2002 the government also passed Bill 28, the *Public Education Flexibility and Choice Act.)*

- Collective bargaining to renew the 2001collective agreement which was to expire in June 2003 overlapped with an inquiry into the structures, practices and procedures for teacher collective bargaining that was initiated by the Minister of Skills Development and Labour in fall 2003 under Commissioner Don Wright with a final report delivered in December 2004 (*Voice, Accountability and Dialogue – Recommendations for an Improved collective Bargaining System for Teachers in BC).* On September 19, 2005 Rick Connolly, Assistant Deputy Minister of Labour and Citizen's Services, was appointed as a Fact Finder to inquire into and report by September 30, 2005 on the collective bargaining dispute. BCTF commenced strike activity on September 28, 2005. On October 3, 2005 the *Teachers Collective Agreement Act* was introduced by government and proclaimed on October 7, 2005. That legislation ended the BCTF legal strike and extended the terms of the existing collective agreement to June 30, 2006. BCTF subsequently engaged in an illegal strike for approximately two weeks. On October 6, 2005 Vince Ready was appointed as an Industrial Inquiry Commissioner and issued recommendations on October 20, 2005 which were accepted by the parties and the teachers returned to work. As part of his terms of reference IIC Ready was to examine the state of labour relations and collective bargaining between the parties. With the imminent expiry of the parties' collective agreement on June 30, 2006 IIC Ready issued an Interim Report for Transitional Negotiations on April 6, 2006. In that report IIC Ready recommended that the parties enter into "meaningful negotiations with the assistance of a mediator with a view of concluding a collective agreement prior to June 30". He also recommended the appointment of Ms. Irene Holden as a facilitator/mediator to assist the parties with the negotiations.

- In 2006 BCPSEA and BCTF begin bargaining on April 11, 2006 with assistance from Irene Holden as a facilitator/mediator. On June 1, 2006 facilitator/mediator Holden issued a report on the status of negotiations stating that both sides were committed to reaching a settlement and were working towards such a result. Shortly after 10 pm on June 30, 2006 a renegotiated collective agreement was achieved.

EHSC-Ambulance Paramedics

- On December 2008 the Union gave notice to commence bargaining. A mediator assisted with the negotiations. On April 1, 2009 the Union commenced a strike subject to an Essential Services Order issued by the LRB.

- On November 2, 2009 the Minister of Health announced that the government would introduce legislation to end the strike and introduced Bill 21 (effective on November 7, 2009), which ended the strike and imposed a one-year collective agreement on the parties retroactive to April 1, 2009. The Minister of Health also announced that he would call on the Minister of Labour to appoint an IIC.

- On November 19, 2009 the Minister of Labour appointed Chris Trumpy as an Industrial Inquiry Commissioner. On January 15, 2010 IIC Trumpy issued his report.

- On March 11, 2010 an Order in Council placed the Commission and the Union in the Health sector pursuant to the *Health Authorities Act*. That decision was based in part on an option identified in the report of the IIC. On March 31, 2010 the Minister integrated the members of the Union into an existing health sector bargaining unit.

HEABC and Healthcare Unions

- In 1996 following unsuccessful attempts to bargain new collective agreements and the expiration of the Health Sector Accord, the Minister of Labour constituted Vince Ready as an Industrial Inquiry Commissioner. On April 26, 1996 the government introduced the *Education and Health Collective Bargaining Assistance Act* which allowed the government to order the acceptance of the IIC's recommendations by order –in –council. In May IIC Ready provided his report and recommendations. The report set out a number of recommendations including an "Employment Security and Labour Force Adjustment Agreement". The term of the agreement, the general wage increases and the new employment security agreement were all specifically determined by the recommendations. Additionally there were areas of dispute that were not definitively dealt with but recommendations were made for further processes. These included a melding process to create a single collective agreement for each bargaining association

and a process to address leveling issues to reconcile the various cost-related provisions under the numerous previous collective agreements. Melding and leveling issues were deferred to a form of interest arbitration. The recommendations were ratified by the unions in May and June 1996 but were rejected by HEABC members. On June 8, 1996 the government legislatively imposed the report.

- In 1998 bargaining for a renewed Nurses' collective agreement began in the spring of 1998 and on November 27, 1998 picket lines went up at some hospitals. The government appointed Brian Foley as a mediator. By November 30, 1998, although a number of items had been agreed to, many items were still outstanding. Bargaining resumed on December 2, 1998 but talks were not progressing. Mediator Foley offered to write a report with recommendations if nurse stopped their strike activity. On December 8, 1998 Mediator Foley issued his report which BCNU's Council recommended that the membership reject because of a number of "concessions" and a "problematic process for allocation of new nursing positions". Concerned about a legislated settlement the Nurses Bargaining Association met with HEABC on January 9 and 10, 1999 and a renewed collective agreement was achieved.

- Bargaining at the Nurses and Paramedical Professionals tables in the 2001 dispute was extremely contentious. On April 9, 2001 the Nurses Bargaining Association began strike activity by implementing an overtime ban followed by restrictions on "non-nursing duties". On April 16, 2001 the Minister of Labour appointed Vince Ready as an IIC with respect to the Nurses' dispute and on April 20, 2011 Stephen Kelleher was appointed as a Special Mediator in the Paramedical Professional dispute. On May 21, 2001 the Paramedical Professionals' strike activity began initially as an overtime bam, then a rotating withdrawal of services and, in early June, a province wide withdrawal of service. The Nurses' and Paramedical Professionals' strike activity continued for nine weeks. In June 2001 the government enacted the *Health Care Continuation Act* and the Minister of Labour imposed a 50 day cooling off period and ordered negotiations to recommence. On July 27, 2001 IIC Ready and Mediator Kelleher reported to the government that the parties were still hundreds of millions of dollars apart. On August 7, 2001 the Minister of Labour imposed a further 10 day cooling off period and on August 9, 2001 the government enacted the *Health Care*

Services Collective Agreement Act which imposed collective agreements on both the Nurses and the Paramedical Professionals based on the employers' last offer.

- In 2004 the government brought an FBA strike to an end and imposed a new collective agreement for the Facilities subsector through legislation. The Community, Paramedical Professionals and Nurses collective agreements were settled on a voluntary basis with no third party assistance.

- In 2006, there was no third party assistance with bargaining. However, there was a substantial increase in ongoing "policy" discussions to be conducted between 2006-2010 primarily with the Nurses' Bargaining Association although also with the Facilities' Bargaining Association. There was no third party assistance with collective bargaining in 2008 or 2010 collective bargaining in the health sector.

Appendix 9: Trends in Arbitration – Public Policy Grievances and Limits to the Jurisdiction of the Labour Arbitrator

Collective agreements require a process to assist the parties when disputes arise during the term of the collective agreement. The disputes may concern the interpretation of the agreement, the application of provisions to certain work situations, or the general administration of the terms and conditions contained in the agreement. The process — "the grievance process" — is set out in each collective agreement. It is typically an internal two- or three-step procedure in which successively higher levels of both union and employer representatives review and attempt to resolve the grievance. In the event the parties are unable to resolve the matter at issue, the grievance is submitted to arbitration – determination by a neutral third party, an arbitrator typically agreed to between the parties- for final and binding resolution subject to any rights of appeal.

Most collective agreements contain provisions that limit the definition of a "grievance" to an alleged violation of explicit provisions of the agreement whereas some agreements more broadly define a grievance as "any disagreement" between the union and employer. In the K-12 sector, an increasing trend is that statutes, legislative enactments and the implementation of public policy result in union grievances that are increasingly the subject-matter of lengthy arbitration and litigation processes.

The legal context for this trend is a building body of jurisprudence from the Supreme Court of Canada, which has been interpreted and applied by courts and labour arbitrators, granting increasing jurisdiction to arbitrators to consider disputes that extend beyond breaches of explicit provisions of a collective agreement (which has been the traditional jurisdiction of a labour arbitrator). In *McLeod v Egan,* [1975] 1 S.C.R. 517, the Supreme Court of Canada began to resolve the issues about the boundary between the jurisdiction of an arbitrator and the courts in matters affecting employment governed by a collective agreement. In *Weber v. Ontario Hydro,* [1995] 2 S.C.R. 929, the Supreme Court of Canada held that arbitral jurisdiction extends to subject matters

inferentially arising out of the collective agreement and that a labour arbitrator is a "court of competent jurisdiction" under section 24(1) of the *Charter* and can grant *Charter* remedies. *McLeod v Egan* was followed in *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 S.C.R. 157 where it was held that a grievance arbitrator has the authority to enforce the substantive rights and obligations of human rights and other employment-related statutes as if they were part of the collective agreement, and the broad right of any employer to manage the enterprise and direct the workforce under a collective agreement is subject to both the express provisions of the collective agreement and the statutory provisions of human rights and other employment-related statutes.

Today, courts and arbitrators accept that disputes flowing from legislative enactments may be arbitrated if there is a real contextual connection between the statute and the collective agreement such that a violation of the statute gives rise, in the context, to a violation of the provisions of the collective agreement.

The BCTF has relied on this jurisprudence as the basis to file increasing numbers of grievances in relation to all manner of public policy initiatives and disputes. Indeed, in recent years, most of the significant BCTF grievances BCPSEA have had to respond to have pertained to public policy matters, in contrast to straightforward grievances about alleged breaches of explicit provisions of a collective agreement. Some of the most recent examples of public policy disputes that have been the subject-matter of grievance arbitration and related court appeals are:

- the removal of the class size and composition provisions from collective agreements;
- the impact of human rights legislation and jurisprudence on collective agreement provisions;
- the implementation of Foundation Skills Assessment (FSA) and other policy initiatives teachers oppose; and
- the implementation of student codes of conduct requirements.

Class Size and Composition

Class size, composition and the organization of schools are widely accepted as complicated public policy matters. In 2001 the provincial government made the decision that school organizational issues are matters of general public importance to many others in the educational and provincial community apart from teachers – including parents, principals, boards of education and the public at large – and that, therefore, they should be addressed as public policy matters and not "bargaining chips" in collective agreements. In 2002, Bill 27, the *Education Services Collective Agreement* Act and Bill 28, the *Public Education Flexibility and Choice Act* were enacted, which removed class size and composition provisions from collective agreements and prohibited bargaining on matters related to class size, class composition, non-enrolling staffing ratios and hours of work ("working conditions provisions").

In May 2002 the BCTF filed a petition in the BC Supreme Court alleging that the passage of Bill 27 and Bill 28 violated teachers' constitutional rights. The case was held over pending an action by health unions against Bill 29 (the *Health and Social Services Delivery Implementation Act*). What became known as the *Health Services* case proceeded through the BC Supreme Court, the BC Court of Appeal and finally, in 2007, to the Supreme Court of Canada. The BCTF case was not heard in the BC Supreme Court until November 2010.

In its court challenge, the BCTF took the position before Madam Justice S. Griffin that the 2002 changes to the *School Act* were unconstitutional because they prohibited collective bargaining on matters related to class size, class composition, non-enrolling staffing ratios, and hours of work. The BC Supreme Court's decision was released in April 2011 and adopted the precedent set by the Supreme Court of Canada in the *Health Services* case by ruling that the freedom of association protected by section 2(d) of the *Charter of Rights and Freedoms* includes the right to the "process" of collective bargaining, and that this was substantially interfered by the government's 2002 legislation in that the government did not consult about the changes or otherwise allow employees the opportunity to influence the legislative process outcome in association. The Court declared the working conditions provisions to be invalid, but ruled that the

declaration of invalidity was suspended for a year to afford the provincial government time to address the decision's implications, which it has attempted to do so through a Bill 28 consultation process aimed at addressing the repercussions of the BC Supreme Court decision.

Alongside the Court challenge to Bill 27 and 28, the BCTF also filed grievances in respect to the class size and composition legislation in the *School Act* that replaced the collective agreement language. In January 2004 Arbitrator Don Munroe ruled that matters concerning class size and composition in the legislation were not arbitrable. The BCTF appealed this decision and in February 2005, the BC Court of Appeal set aside the Munroe award and determined that arbitrators have jurisdiction to determine whether there has been a violation of the *School Act* or Class Size Regulation. In the BC Court of Appeal decision providing for arbitrability of these disputes, the BC Court of Appeal found that it was:

> "[S]ignificant that the subject of class sizes was negotiated in collective bargaining between teachers and the school boards before the 2002 legislation and was clearly, in the past, regarded by the parties as a term or condition. The fact that the subject of class sizes can no longer be negotiated nor have any place in the collective agreement of the parties does not make that subject any less a term or condition that affects the employment relationship. The legislation simply transfers those terms or conditions from negotiated determination to statutory determination."

Subsequently in 2006 Bill 33, the *Education (Learning Enhancement) Statutes Amendment Act* was passed, which established further legislated class size parameters, processes and guidelines, adding to the 2002 legislation. Thousands of grievances were filed by the Union in relation to the implementation, interpretation and application of the 2006 class size and composition legislation.

In 2008, with thousands of classes having been grieved by the BCTF, the parties agreed to appoint Arbitrator James Dorsey, QC to take jurisdiction of all class size grievances

stemming from the 2006-2010 school years. The parties agreed to identify and arbitrate representative classes and common interpretive issues in order to provide the parties with guiding principles and procedural interpretations that could be applied throughout the process. After approximately one hundred days of hearings and fourteen awards by Arbitrator Dorsey the parties did achieve direction on most aspects of the class size legislation including interpretation/application of the processes, procedures, timelines, consultation requirements and redress issues.

As of January 2012 the parties concluded resolution of the final eight grieved classes in respect to the 2006-07 and 2007-08 school years. For those two school years alone, there were initially 1,668 classes grieved. The parties are now just getting underway in respect to the 9,000 class size grievances that were filed in respect to the 2008-09 and 2009-10 school years, which are expected to be resolved this year. The BCTF also filed an appeal of one of the arbitral rulings of Arbitrator Dorsey in relation to process which will be heard by the BC Court of Appeal on February 16 and 17, 2012.

The BCTF decided that it no longer wishes to resolve the thousands of classes under grievance for the 2010-11 school year by applying the principles of Arbitrator Dorsey's awards and instead referred numerous grievances to different arbitrators under section 104 of the *Labour Relations Code*. BCPSEA's concern about this approach is that the multiple arbitrations with different arbitrators will likely result in confusion, duplication of resources, unnecessary arbitration costs and the issuance of inconsistent awards by a variety of arbitrators. These grievance arbitrations have been temporarily adjourned and held in abeyance pending the outcome of the BCTF appeal of the Dorsey being heard by the BC Court of Appeal in February 2012.

Alongside these proceedings and the extensive litigation around Bill 33 requirements, the BCTF has also filed a provincial policy grievance which alleges that as a result of the April 13, 2011 ruling from Madam Justice Griffin in respect to Bills 27 and 28 (that the government's removal of class size and composition provisions from collective agreements constituted a violation of section 2(d) of the *Charter of Rights and Freedoms* not saved under section 1 of the *Charter*), the class size, composition and non enrolling ratios which were removed from the collective agreement through Bill 28 now again

have application and apply for the 2011-12 school year. In effect the BCTF has grieved current application of the language that was removed by Bills 27 and 28. Many local teacher unions have filed similar grievances at the local level.

All of these grievances and the ensuing arbitration and court processes have stemmed from the government's 2002 public policy decision that class size and composition is not a matter for collective bargaining and exemplify how public policy disputes are challenged by the BCTF using the grievance arbitration and related litigation processes.

Human Rights/Collective Agreement Provisions

There have been an increasing number of BCTF grievances where the Union relies on provincial human rights legislation to argue that a collective agreement provision (usually jointly negotiated by the parties) contained in a collective agreement constitutes discrimination, requiring remedial redress.

An example of this is the recent case of *British Columbia Teachers' Federation and Victoria Teachers' Association – and- British Columbia Public School Employers' Association and the Board of Education of School District No. 61* (Kinzie, November 15, 2001). In this case, the Union grieved the fact that although birth mothers were entitled to receive 17 weeks of pregnancy leave top-up benefits, the collective agreement excluded birth mothers from also applying for an additional 10 weeks of parental leave top-up benefits; under the collective agreement, receipt of parental leave top-up benefits was restricted to adoptive parents and birth fathers. The Union grieved this, alleging that the exclusion of birth mothers from entitlement to parental leave benefits constituted discrimination by the School District against birth mothers. Arbitrator John Kinzie ruled in favour of the Union on this point on the basis that, although birth mothers were eligible for pregnancy leave top-up, the purpose of parental leave was for a different purpose than the pregnancy leave (caring for a child versus that of recuperating from the physical birth of a child), and thus it was discriminatory to bar the birth mothers from the parental leave top-up benefit.

The issue of redress in this case has not been completed. In his initial award, Arbitrator Kinzie delayed implementation of his award until the new collective agreement comes into force so as to provide the parties with opportunity to address the ramifications of his award in bargaining in the context of significant financial implications. In November of 2011, in a supplemental decision, Arbitrator Kinzie in effect "reconsidered" his previous decision and ordered the provision allowing birth mothers to be eligible for an additional 10 weeks to take effect with the effective date of a new collective agreement. BCPSEA has appealed this supplemental decision to the B.C. Labour Relations Board.

In recent years, the BCTF has filed an increasing number of grievances that allege discrimination by School Districts on the basis that provisions of the relevant collective agreement or related agreements between the parties constitute discrimination on the basis of a prohibited ground contained in the BC *Human Rights Code.* One such case is the April 30, 2011 decision of Arbitrator James Dorsey in *British Columbia Teachers' Federation and Vancouver Teachers' Federation –and- British Columbia Public School Employers' Association on behalf of the School District No. 39 (Vancouver)*, which the BCTF has appealed to the BC Court of Appeal. In this case the BCTF grieved layoff notices given to teachers on pregnancy or parental leave pursuant to an agreement between the parties as being contrary to both the BC *Human Rights Code* and the BC *Employment Standards Act* (Arbitrator Dorsey found no discrimination or breach of employment standards). The BCTF has referred other similar grievances to arbitration, alleging in effect that other negotiated provisions such as seniority and conversion provisions in collective agreements constitute discrimination on the basis of sex under the *Human Rights Code* because they do not provide for unique treatment of employees who take pregnancy or parental leave. This issue will be heard and determined in a number of different arbitration, court and tribunal processes in 2012.

Public Policy/Freedom of Expression

The Foundation Skills Assessment (FSA) is an annual province-wide assessment of British Columbia students' academic skills, and provides a snapshot of how well BC students are learning foundation skills in reading comprehension, writing and numeracy. It is a public policy matter that the BCTF has for years objected to and campaigned against. Numerous grievances have been filed by the BCTF in the context of the FSA, union opposition to it (teacher petitions, speaking against it at PAC meetings and in parent-teacher interviews, FSA pamphlets, etc.), and employer actions in response. An example of this is the grievance that was under consideration in *British Columbia School Employers Association/School District No. 73 (Kamloops) –and- British Columbia Teachers Association/Kamloops Thompson Teachers Association* (February 17, 2011, Burke).

The grievance in this case arose in response to the School District's direction to teachers to remove black armbands they had begun wearing at a school in protest of the FSA. The Union grieved and claimed that this directive violated the teachers' right to freedom of expression under section 2(b) of the *Charter of Rights and Freedoms*. The arbitrator accepted the union position that the directive constituted an infringement of the affected teachers' right to freedom of expression but dismissed the grievance and upheld the right of the School District to direct the teachers to remove the black armbands and to refrain from speaking to students about the armbands and their protest against the FSA, finding that the School District's direction was a justified infringement upon the freedom of expression of the teachers and a reasonable limit under Section 1 of the *Charter.* Arbitrator Emily Burke accepted that the employer's direction to remove the black armbands signifying protest against the FSA was a reasonable limit under the section 1 analysis summarized the BC Court of Appeal in *BCPSEA v. BCTF (Pamphlet Grievance),* 2005 BCCA 393, in which it was stated:

> "Under the test laid down in *R. v. Oakes*, [1986] 1 S.C.R. 103, BCPSEA must establish the School Boards' objective is of sufficient importance to warrant overriding or limiting the teachers' expression rights and that its chosen means balance the interests of

> society and teachers in the sense they are rationally connected to the objective, impair the rights as little a possible, and the deleterious effects of its means do not outweigh its benefits."

Arbitrator Burke accepted that the School District's direction was rationally connected to three pressing and substantial objectives, including the need to insulate students while in attendance at a school from political messages that impact directly on their mandated educational program and that the other parts of the section 1 test were met, and the BCTF grievance was dismissed.

More recently, in *British Columbia Public School Employers' Association/the Board of Education School District 5 (Southeast Kootenay)* –and- *British Columbia Teachers' Federation/Cranbrook District Teachers' Association* (October 30, 2011, Thompson), the grievance arose in the context of a union campaign against provincial policy entitled "*When Will They Learn*". The three main messages in the campaign were: "*When will they learn – special needs neglected*," "*When will they learn – 177 schools closed*," "*When will they learn – 10,000 overcrowded classes*." The campaign was launched - first in conjunction with the municipal elections, and later with the Provincial election of May 12, 2009. In this case, just prior to the provincial election, three elementary teachers and one secondary teacher were directed to remove the "*When Will They Learn*" materials which were on display in their classroom or taped to the wall outside of their classroom. In addition, one elementary teacher was directed to refrain from wearing a "*When Will They Learn*" button while visiting a middle school. The teachers were advised that these materials could instead be posted on the Union bulletin board provided in each staff room.

As in the earlier case, the Union grieved the employer action, relying on section 2(b) of the *Charter of Rights and Freedoms*, and the basis for the arbitrator's decision was that the *Charter* infringement was justified under section 1 of the *Charter*. The Union's argument was that "students did not need to be sheltered from political controversy". Arbitrator Mark Thompson disagreed. He stated the following on pages 27, 39, 44 and 47 of his award:

"The third pressing and substantial objective of the Employer was its desire to insulate students from partisan political messages while in school. Students could see the materials in this case. Since teachers are in positions of authority and students are a captive audience, school boards want to avoid distractions that political messages from teachers could cause. Arbitrator Kinzie [in *British Columbia Public School Employers' Association/Board of Education of School District No. 5(Southeast Kootenay) –and British Columbia Teachers' Federation/ Cranbrook/Fernie District Teachers' Association* (May 2, 2008, Kinzie) recognized this concern in his decision on the provincial testing program. He required that materials be distributed to parents in sealed envelopes so that students would be sheltered from any political message. In her award dealing with teachers wearing armbands, arbitrator Burke accepted the employer's argument about the vulnerability of students to political messages from teachers.

The materials at issue in this case were clearly directed at parents, whose views could influence policy choices. However, the means of presenting these messages to parents involved children. Teachers wore buttons while dealing with children. Materials were posted beside classrooms and on classroom doors.

Considering the contextual factors set out in the Court of Appeal decision and the authorities cited, I conclude that insulating students from political messages in the classroom is a "*pressing and substantial objective*" as required by the *Oakes* test. To summarize, I have concluded that the materials used in this case were political, but not partisan. Teachers may not introduce such materials, either in the form of printed matter or buttons worn on their garments into the classroom or the walls or doors immediately adjacent to classrooms. For these reasons the grievance is denied."

The BCTF has appealed the decision of Arbitrator Thompson to the BC Court of Appeal so the issue of teachers' freedom of information to communicate political messages and teacher views on public policy in the school setting will continue as a dispute between

the parties. The BC Court of Appeal will likely not hear this appeal until the Fall of 2012.

Limits to Jurisdiction of a Labour Arbitrator

While the BCTF continues to file an increasing number of grievances that pertain to public policy matters and legislative enactments, there have been a number of significant recent decisions where arbitrators and courts have decided in favour of BCPSEA where it has been raised on a preliminary basis that the labour arbitrator lacks jurisdiction to hear the union grievance.

In *British Columbia Public School Employers' Association/Board of Education of School District No. 39 (Vancouver) –and- British Columbia Teachers' Federation/Vancouver Teachers' Federation,* Arbitrator Joan Gordon declined to hear and determine a union grievance that pertained to a board of education's vote in respect to the superintendent's report to the board regarding class size and composition. In its grievance, the Union specifically objected to the board of education's interpretation of its own internal voting bylaw in voting on the acceptance of that report. Arbitrator Gordon held that:

> "The substance of the Union's claim is that in the course of accepting the Report, the Chair rendered an incorrect interpretation of the language in the provisions of the Board's meeting procedures. Hence, the allegation of non-compliance related to the exercise of power under the provision of the Board's procedural by-law, not section 76.3(7) of the *School Act* … Applying the courts' reasoning to the dispute before me, I find that when viewed in its factual context, there is no real connection between the statute, the collective agreement and the dispute between the parties."

Arbitrator Gordon statements on why she was unable to consider the proceeding before her are instructive on the limits to the jurisdiction of a labour arbitrator:

> "It has not been shown that the matter of the Board's meeting procedures has ever been the subject of collective bargaining, included in the parties' collective agreement provisions, or viewed as a term or condition of employment or an aspect of management's rights under the collective agreement. The only connection to the *School Act* is that fact that the Board was exercising its meeting procedure powers, which had been established in compliance with section 67(5) of the *School Act*... It appears happenstance that the alleged misinterpretation of the by-laws occurred in the context of a vote on the Report relating to the organization of classes, and I find this association with the subject of class size cannot be relied on to essentially bootstrap arbitral jurisdiction."

In *British Columbia Public School Employers' Association/ The Board of Education of School District No. 68 (Nanaimo-Ladysmith) –and- British Columbia Teachers' Federation/Nanaimo Teachers' Association* (January 7, 2010, Diebolt), the Union filed a grievance alleging that the superintendent's class size report to the board of education was not in accordance with section 76.3 of the *School Act*. BCPSEA raised a preliminary objection that the matter was inarbitrable and that accordingly the arbitrator did not have jurisdiction to proceed. BCPSEA took the position that the process sections of the legislation did not contain substantive terms and conditions of employment for teachers and therefore are not grievable.

Arbitrator Diebolt concluded that sections 76.1, 76.2 and 76.4 of the *School Act* create substantive rights and obligations; in contrast, he viewed section 76.3 of the *School Act* as a process and public accountability provision. He also found there was no prior history of collective bargaining regarding matters addressed in the latter provision, although he did not consider the absence of collective bargaining history to be determinative of the jurisdictional question.

Arbitrator Diebolt ultimately ruled in favour of BCPSEA's preliminary objection and concluded he lacked jurisdiction to hear the merits of the grievance. On page 27 of the award, he concluded:

> "In summary, I am unable to conclude that the statutory provisions in issue create substantive rights and obligations or that they are a significant part of the employment relationship. Nor am I able to conclude that there is a real and contextual connection between the statutory provision in issue and the collective agreement such that a violation of them gives rise, in the context, to a violation of the provisions of the collective agreement. I find myself in agreement with the Employer's position that the superintendent's report and the Board's acceptance of it are internal processes designed to further accountability respecting class size and composition. As stated earlier herein, in my view, the substantive rights and obligations are enshrined in s. 76.1, 76.2 and 76.4. Those provisions, as noted, are being arbitrated on a province wide basis in respect to the 2009-10 school year. Because I have concluded that the provisions in issue in s. 76 are inarbitrable, I must conclude and declare that I lack jurisdiction to hear and determine the merit of the grievance. Accordingly, the grievance is dismissed."

Notwithstanding Arbitrator's Diebolt's decision that the superintendent's report on class size and composition to a board of education was inarbitrable, the BCTF referred the same matter to arbitration in *British Columbia Teachers' Federation/Nanaimo District Teachers' Association –and- British Columbia Public School Employers' Association/Board of Education of School District No. 68 (Nanaimo-Ladysmith)* (September 25, 2011, Dorsey). In this case, Arbitrator James Dorsey reconfirmed that this matter is inarbitrable and not within the jurisdiction of grievance arbitration. He ruled that:

> "In this context, whether using the roles and responsibilities and governance approach of the employer or the judicial substantial connection or essential nature test, I find that the superintendent

> class organization report required under sections 76.3(2) and (3) of the *School Act,* is not a condition of employment for teachers and is not a condition of employment that has an implicit or express connection to the collective agreement. Therefore, I agree with the conclusion by Arbitrator Diebolt and find the subject matter of Superintendent Munro's 2010 class organization report compliance with section 76.3(3) is not in the jurisdiction of grievance arbitration."

The BCTF has filed an appeal of this decision by Arbitrator Dorsey to the BC Court of Appeal.

Recently, on December 29, 2011 the BC Court of Appeal dismissed an appeal of the BCTF in respect to a decision by Arbitrator John Hall on a preliminary issue of whether the Union's grievance pertaining to student code of conduct requirements under Ministerial Order 276/07 is arbitrable. The BCTF grievance was in respect to whether codes of conduct for students developed and implemented across BC were in compliance with Ministerial Order 276/07. The subject-matter of this union grievance was an alleged failure of School Districts to comply with section 6(a) of the Ministerial Order which provides, in part, that boards of education must ensure their codes of conduct include "one or more statements that address the prohibited grounds of discrimination set out in the BC *Human Rights Code*". BCPSEA raised a preliminary issue as to whether this grievance was arbitrable or not. BCPSEA's position was that the code of conduct legislation was public policy legislation pertaining to codes of conduct for students and that the matter is not grievable or arbitrable as the grievance does not arise out of the interpretation, application, operation, or alleged violation of the collective agreement, nor create a substantive right and obligation for teachers or form part of their employment relationship. The BCTF took the position that the matter was grievable.

Arbitrator Hall decided in favour of BCPSEA's position that the BCTF grievance was not arbitrable. He concluded:

> "The Employer's preliminary objection is sustained. I do not have jurisdiction to arbitrate the merits of the Union's grievance alleging a failure by school boards to comply with the Ministerial order."

The BCTF appealed Arbitrator John Hall's decision to the BC Court of Appeal. The Court of Appeal dismissed the BCTF appeal and held that:

> "[T]he fact hat the Ministerial Order benefits teachers by fostering a safe, caring and orderly school environment and providing for the prohibition of certain types of discrimination does not make the Ministerial Order employment-related legislation so as to vest enforcement authority in a grievance arbitrator appointed pursuant to a collective agreement."

These are important decisions which support the general case law that has been established in the K-12 sector establishing the inarbitrability of legislative provisions, internal processes and issues involving students or other parties which are found not to be substantive matters for teachers or to involve conditions of employment for teachers.

Notwithstanding the success BCPSEA has had before labour arbitrators and the courts in responding to the public policy grievances filed by the BCTF, and in particular in favour of its preliminary objections about arbitrability of these grievances, we can expect to see this continuing trend of attempts by BCTF to challenge public policy decisions through the parties' grievance arbitration processes.