

Background

September 18, 2003

Teacher Collective Bargaining Structure: A Historical Perspective and Considerations

The labour relations system in the British Columbia K-12 public education sector has been under pressure since it was created in the late 1980s. To varying degrees, one or the other of the central players in the system — bargaining agents, teachers, trustees, government, parents — have been dissatisfied with the process or the outcomes of bargaining, whether local or provincial. Legislative intervention and structural change have become commonplace.

As with most bargaining structures, the manner by which terms and conditions of employment for teachers in BC are determined has evolved over time. Different bargaining structures have emerged, each for reasons specific to the time of development. The regional structures for support staff bargaining in the 1970s and 1980s, and the employers' desire in the early 1990s to have something other than local bargaining for teachers were both products of the bargaining environment at the time.

Teacher Collective Bargaining in BC: Exploring Alternatives, Assessing Options (BCPSEA, January 2003) describes the historical events in considerable detail and identifies the following milestones:

- Pre 1987: The evolution from unilaterally employer-determined terms and conditions of employment and negotiated salary and bonus agreements with binding arbitration in the event of an impasse to learning and working conditions agreements.
- 1987: Organization as a trade union under labour relations legislation
- 1987–1994: Local school board-local teacher association (union) bargaining
- 1994–present: Provincial bargaining between the BCTF and BCPSEA.

Conceptual Framework

For the purposes of discussion the concept of a balance between two objectives has been adopted. Specifically, policy makers must balance two objectives when developing structures and processes that regulate public sector collective bargaining:

- Allow the union and the employer the freedom to pursue their own objectives through collective bargaining while,

- Limiting the impacts borne by the larger society in terms of industrial conflict and limiting the consequences resulting from out of line or precedent setting settlements.

When you review the legislative record between 1987 and today, certain themes emerge that provide an indication how far policy makers have been prepared to go in emphasizing one objective over the other. An inquiry into the structure, practices and procedures must address the question of balance if the chosen structure is to be effective and efficient.

Over the past twenty years, successive provincial governments have, through public policy, changed the structure and nature of K-12 public education human resource practices. A review of the legislative changes reveals two themes that give evidence of how governments have attempted to balance the two often competing objectives we have identified:

- Industrial stability: limiting the impacts — financial and non financial — of industrial conflict, and
- Cost control through structural re-organization: limiting consequences resulting from out of line or precedent setting settlements and costs associated with resolving collective bargaining disputes.

Industrial Stability

As a matter of public policy in BC, unionized employees in the K-12 sector have the right to bargain collectively subject to limitations to bargaining scope in the *School Act*, and are covered by the prevailing labour legislation. Historically, governments have chosen to minimize the effects of job action in the sector either of two ways:

- Adoption of the “controlled strike” model through the designation of certain services as essential.
- Ad hoc legislative intervention at the time of job action or when job action is contemplated, with a process to conclude a collective agreement.

In view of the labour disputes that occurred since teachers were granted full collective bargaining rights in 1987, the public, and as a result the provincial government, has little appetite for disruption to public schools as evidenced by the following legislative initiatives.

Date	Legislation	Focus	Hansard
1993	Bill 31 – <i>Educational Programs Continuation Act, 1993</i>	Disruption	The purpose of this bill is to support collective bargaining where it is working and to fix it where it is broken. This bill puts students and teachers back in the classroom in Vancouver and serves notice to those districts still bargaining that it is time to conclude their negotiations expeditiously. We have reached a critical time in the school year in the Vancouver School District. For those students facing grade 12 provincial examinations and for all students coming to the end of their school year, it's time to get back into the classroom. Collective bargaining in Vancouver has collapsed.

Date	Legislation	Focus	Hansard
1996	Bill 21 – <i>Education and Health Collective Bargaining Assistance Act, 1996</i>	Disruption	This bill deals with any collective bargaining dispute involving boards of school trustees, employer members of the Health Employers' Association of B.C. and employer members of the Post-Secondary Employers' Association of British Columbia, where collective bargaining has proceeded to the point of an industrial inquiry commission or a mediator being appointed under the <i>Labour Relations Code</i> , and that individual has made recommendations.

Date	Legislation	Focus	Hansard
1998	Bill 39 – <i>Public Education Collective Agreement Act, 1998</i>	Disruption	This agreement, which a strong majority of British Columbia teachers have endorsed, brings an investment of \$200 million into our schools in the next three years. It provides lower provincial class sizes for students in kindergarten-to-grade-3, giving them more support and attention in the early years when they need it most. This is a good agreement for our children, and teachers have given up pay increases for two years in exchange for these investments in classrooms....Once passed, the Public Education Collective Agreement Act makes the agreement negotiated by government and the teachers' union legal and binding as of July 1, 1998, when the current agreement expires....I was deeply disappointed by the trustees' rejection of that agreement. It is clear to me that trustees and teachers will not return to bargaining, let alone reach a better agreement for our children.

Date	Legislation	Focus	Hansard
2001	<p>Bill 18 – <i>Skills Development and Labour Statutes Amendment Act</i></p> <p>Amended the <i>Labour Relations Code</i> to include education as an ‘essential service’</p>	Labour Disruption	This bill fulfils our campaign commitment of putting students first....The bill does this by including the provision of educational programs to students and eligible children under the <i>School Act</i> , under section 72. Thus, if a labour dispute threatens the delivery of education programs, the Labour Relations Board will have the authority to designate services that would need to be maintained if their disruption would pose an immediate and serious threat to the delivery of educational programs.

Date	Legislation	Focus	Hansard
2001	<p>Bill 27 – <i>Education Services Collective Agreement Act</i></p>	Disruption	This bill settles the teachers' dispute and provides a collective agreement between the parties. It also provides for the appointment of a commission to review the structures, practices and procedures for collective bargaining in the education sector. We are taking this action because this government puts students first, along with the teachers of this province.

Cost Control Through Structural Re-organization

It must be recognized that governments have an interest in the process and outcomes of public sector collective bargaining. Fiscal pressures often force governments to adopt policies that allow for the ability to maintain, reduce or control expenditures. Over the past twenty years, provincial governments have altered the environment within which collective bargaining occurs. Examples include:

- On June 7, 1994 the government passed Bill 52, *Public Education Labour Relations Act*, altering the structure of teacher collective bargaining. The changes were made in to provide a more balanced bargaining structure allowing for greater industrial stability and improved cost-effectiveness.
- As per section 176 of the *School Act*, the Minister of Education passed an Order in Council — enacted July 25, 1996 and effective December 2, 1996 — to redefine school district boundaries and reduce the number of school boards.

Date	Legislation	Focus	Hansard
1993	<p>Bill 78 – <i>Public Sector Employers Act, 1993</i></p> <p>Arising from the Korbin Commission recommendations</p>	Structure, Monetary	<p>This act represents the lynchpin that the commission recommends as integral to achieving government objectives in human resource management. These objectives are: to control compensation costs in the public sector; to assist in the coordination of collective bargaining within and between sectors of the broad public sector; to introduce a mechanism that will deal with administrative costs, particularly executive compensation; and to ensure that government deals effectively with wage equity in the public sector.</p> <p>The new <i>Public Sector Employers Act</i> provides an important mechanism for the government to be able to influence the expenditure of its resources by and through public bodies. The bill will provide for the coordination of human resources and labour relations issues across the broad public sector, consistent with the cost-effective delivery of services in those sectors.</p>

Date	Legislation	Focus	Hansard
1994	<p>Bill 52 – <i>Public Education Labour Relations Act, 1994</i></p> <p>Amended the teacher collective bargaining structure</p>	Bargaining Structure, Monetary	<p>Bill 52 has three purposes: to improve collective bargaining practices and procedures in the public school system; to establish a two-tiered provincial system of collective bargaining; and, through these measures, to promote positive working relationships in the public school system.</p> <p>The bill will improve cost-effectiveness for B.C. taxpayers and, more importantly, provide greater long-term stability for students. It creates a more balanced bargaining structure, which will help to alleviate the threat of frequent district-by-district disruptions. The bill will allow the bargainers the opportunity to determine which issues will be provincial and which will be local. It allows for responsiveness to local issues while ensuring that the major cost matters are negotiated provincially.</p> <p>The bill makes the Employers' Association for School Boards, which has been created out of the <i>Public Sector Employers Act</i>, the accredited bargaining agent on behalf of school boards, and it recognizes the B.C. Teachers' Federation as the bargaining agent for teachers in all 75 school districts. The bill also recognizes local school boards and local teachers' unions for issues that are agreed to be local bargaining. The right of teachers to strike and of school boards to lockout will continue, but only on a provincial basis. The legislation provides for a transition from the current 75 agreements to one provincial agreement with local issues.</p>

Accountability

Another dominant theme is that of system accountability. With the accountability agenda has come an evolution in the roles and responsibilities of parties in the sector:

- Parents
- School boards
- Bargaining agents
- Government

The provincial government has introduced various legislative initiatives intended to increase accountability in the K-12 public education sector. In addition to those detailed below, the government enacted various amendments to the *School Act* and *Teaching Profession Act*.

Date	Legislation	Focus	Hansard
2001	Bill 8 – <i>School (Protection of Parent Volunteers) Amendment Act, 2001</i>	Parents	This act amends the <i>School Act</i> to enshrine in legislation the right of parents to volunteer in their children's schools. No one will deny that every parent is an essential part of their children's education. This legislation protects the right of parents to be involved in his or her child's school and assures that this right cannot be bargained away in any collective agreement. At the same time, the <i>School Amendment Act</i> makes it clear that the services performed by volunteers will not result in the displacement of an employee. Finally, this act also provides protection for volunteers from legal action in the same way as is normally done for employees of the board.

Date	Legislation	Focus	Hansard
2001	Bill 28 – <i>Public Education Flexibility and Choice Act, 2001</i>	Choice	<p>This bill is intended to put students first by giving the local school boards and the college boards the flexibility they need to effectively manage British Columbia's K-to-12 education system and our province's public colleges and institutes. It's about getting collective bargaining in education away from setting education policy and back to focusing on wages and benefits. But most of all, this bill is about putting students first and about making the tough changes that need to be made to continue putting students first in the face of a difficult fiscal environment.</p> <p>This bill, most importantly, enshrines the kindergarten-to-grade-12 class size through legislation in the <i>School Act</i>. We'll be one of the few jurisdictions in Canada that does that.</p>

			<p>It's also about giving school boards and college boards more flexibility to manage class sizes and the composition of those classes. It takes the question of how many non-classroom educators — people such as counsellors and librarians — there should be in each school and removes rigid ratios that were imposed by the previous government on school boards. This now allows school boards and individual schools to make their own decisions on how best to meet students' needs. It takes decisions on how the school day and the school year will be structured, removing those from the bargaining table and returning those decisions to local school boards, as well as to college and institute boards so that decisions can be made that are in the best interests of all of our students.</p>
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2003	Bill 50 – <i>School Amendment Act, 2003</i>	Choice	The <i>School Amendment Act, 2003</i> , is about giving students a voice on school planning councils, providing more choice for students and their parents and providing all principals with the ability to accrue seniority. It's also about further eliminating red tape for school districts.

Date	Legislation	Focus	Hansard
2003	Bill 51 – <i>Teaching Profession Amendment Act, 2003</i>	Accountability	<p>The <i>Teaching Profession Amendment Act, 2003</i>, is about increasing public accountability, clarifying the role of the College of Teachers and enhancing its efficiency.</p> <p>The bill will ensure that parents have the right to register complaints about teacher conduct and help increase public confidence in the teaching profession. It will change representation on the College of Teachers governing council to encourage the participation of parents and other educational partners and the public. It will require college members to report professional misconduct of another member to promote professionalism within the teaching profession. It will require the College of Teachers to prepare an annual report to increase financial accountability and to include a report on teacher competence. It will give the college the authority to set standards for teacher certification but not approve how teacher education programs are taught or administered. This bill will permit the college to delegate the power of decision-making to a discipline committee to ensure procedural fairness for all parties.</p>

Terms of Reference Considerations

1. A Comprehensive Review of the Five Structural Components

Any change to the manner in which teachers' terms and conditions of employment are determined must recognize that there are five structural components that comprise the structure. These components are interrelated and must be functionally integrated if an effective system is to emerge.

Review information on teacher collective bargaining structures including the right to organize and bargain collectively, the scope of bargaining, the appropriate bargaining agents and bargaining associations, the appropriateness of the bargaining unit, and the dispute resolution mechanisms.

2. Identify Best Practices in Other Jurisdictions

Collect and analyze information from other jurisdictions both nationally and internationally on teacher collective bargaining structures; identify current or former legislation, best practices and new and emerging processes concerning teacher collective bargaining structures including the right to organize and bargain collectively, the scope of bargaining, the appropriate bargaining agents and bargaining associations, the appropriateness of the bargaining unit, and the dispute resolution mechanisms.

3. Consistent with Section 5 (Bill 27) Identify Structural Options

The five structural components can be arranged in a variety of ways. Section 5 provides for the identification of options consistent with established criteria.

Identify options for collective bargaining structure for teachers based on industrial stability, minimization of disruption of educational programs for students and fostering effective and productive union management relations.

4. Options and Transitional Provisions

The creation of provincial teacher bargaining in 1994 contained no mechanism to transition from 75 local agreements to a provincial agreement save and except for the normal bargaining process. Individual district/teacher local agreements existed as a result of local bargaining between 1987 and 1994. While employers sought to redress what they perceived as the consequences of a power imbalance, the BCTF sought to protect what it had achieved in three rounds of local bargaining. This circumstance served to contribute to negotiation paralysis

Recommend options to the Minister for collective bargaining structures for future teacher collective bargaining with transitional processes as may be required.