

## Executive Summary

# Final Report of the Commission to Review Teacher Collective Bargaining

### Background

On September 8, 2003, Minister of Skills Development and Labour Graham Bruce announced that he was proceeding with a review of the teacher collective bargaining structure, as per Section 5 of the *Education Services Collective Agreement Act*. As the first step, the Minister appointed Don Wright, a respected senior civil servant, to assist in developing the terms of reference for this review. Specifically, he was asked to:

- Review the history of collective bargaining in BC
- Consult with the key stakeholders and seek their recommendations concerning the development of terms of reference
- Establish draft terms of reference for a commission of inquiry.

On December 19, 2003, the Minister appointed Wright as a one-person commission to review and recommend improvements to the structures, practices and procedures for collective bargaining.

Wright consulted with the key stakeholders in the sector. The organizations consulted covered a broad spectrum of stakeholders including organized labour, trustees, parents, government, and employers.

On December 16, 2004, the *Final Report of the Commission to Review Teacher Collective Bargaining* was released to the parties. Following is a summary of the Commissioner's report and recommendations.

### Economic and Political Context

Wright prefaces his recommendations with a detailed analysis of the political and economic environment within which teacher collective bargaining occurs. In discussing the political context, he notes that labour relations in the public education system are different and distinct from labour relations in the private sector and in other public sectors. These distinctions include the monopoly or near

monopoly arrangement of education services, the importance society attaches to the public education system, and the custodial function of the education system.

*“The reality is that there will be intense political pressure on the provincial government to prevent, or to intervene in, any dispute that carries on for any length of time...Rather than wish away the political context and reality, we would be better advised to ask ourselves some hard-headed questions about their implications for a workable collective bargaining regime.”* (p. 6-7)

With respect to the economic context, the underlying message in Wright’s analysis and review is that collective bargaining in the public sector is, and must, be guided by the state of the provincial economy and financial resources.

*“It is natural for any group of public sector employees to want to see the activities they deliver well funded. Their motivation for this is an understandable mixture of commitment and self-interest...Accordingly, a level of disappointment among teachers about funding levels over the last dozen years or so is understandable...It is necessary, however, to put this disappointment in context. The unhappy fact is that British Columbia has had, in economic terms, a disappointing quarter of a century. We have gone from a “rich” or a “have” province at the start of the 1980’s to a “poor” or “have not” province by the start of the twenty first century.”* (p. 9)

## Necessary Conditions for Mature Collective Bargaining

Throughout his report, Wright refers to “mature collective bargaining.” He defines this as:

*“...a state where parties go to the bargaining table with an expectation that a settlement will be reached, are prepared to make the compromises that will be required to achieve that settlement and generally prefer making the necessary compromises to avoid the consequences of an impasse...”* (p. 13)

He identifies five criteria that he believes are necessary to reach a state of mature collective bargaining between teachers and their employers in British Columbia:

1. Government recognizes that teachers must have an effective voice in determining the terms and conditions under which they teach
2. Teachers must recognize government’s interests in funding the K-12 system
3. Both parties must bring genuine desire to avoid legislative intervention
4. Both bargaining agents must be governed effectively so that they can come to the table with the ability to make a deal
5. The public must be able to hold the appropriate agency accountable for the adequacy of funding, the effectiveness of how that funding is utilized and the outcome of the collective bargaining process.

## Where Will Issues be Bargained?

From the outset, Wright has stressed the importance of alignment of accountability for funding the public education system and the collective bargaining structure. He also recognizes that the direct employer-employee relationship is between teachers and local school boards and acknowledges the importance of this relationship. Wright recommends maintaining the current two-tiered bargaining structure. However, he also recommends amending the provincial-local split of issues. Under his proposal, major cost drivers would continue to be negotiated provincially and those issues which are primarily what he terms “relational” would be negotiated at the local level. In addition to those issues currently negotiated locally<sup>1</sup>, the following matters would be added to the local table:

- Unpaid leaves of absence
- Leaves of absence paid or subsidized by the employer
- Discipline and dismissal for misconduct
- Evaluation
- Posting, filling and assignment
- Layoff and recall
- Supervision and duty-free lunch.

To ensure that the split of issues is real; i.e., that “...*the local tables...have the autonomy to negotiate whatever agreement makes sense to the local board and the local teachers’ association...*” (p. 20), Wright recommends that local issues negotiated by the local parties not be subject to the approval of either of the provincial bargaining agents.

## Who Should be the Bargaining Agent?

Wright has recommended the maintenance of both the BC Teachers’ Federation and the BC Public School Employers’ Association as the bargaining agents for employees and employers, respectively. The changes to the provincial-local split of issues and the greater delegation of authority to the local level can be addressed, if necessary, through amendments to the *Public Education Labour Relations Act* (PELRA).

## How Will Impasses at the Bargaining Table be Resolved?

The recommended impasse resolution mechanism is a multi-phase process which incorporates several different forms of intervention and assistance. The proposed collective bargaining process would start with collective bargaining for a finite period of time (Phase 1: April 1 to September 30). If the parties are unable to reach

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<sup>1</sup> Provincial Teachers’ Collective Agreement. Letter of Understanding 1 (Designation of Provincial and Local Matters) Appendix 2.

an agreement during that time, they would progress through a series of time-bound interventions (p. 34-35):

- Phase 2 (October 1 to October 31): A Commissioner would be appointed to investigate the status of negotiations. The Commissioner would issue a public report outlining issues at the table, the positions of the parties and the implications of those positions.
- Phase 3 (November 1 to January 31): If the parties remain at impasse, the Commissioner would be appointed as Mediator/Arbitrator and would attempt to mediate an agreement between the parties.
- Phase 4 (February 1 to February 28): If the parties are still unable to reach an agreement, each party would propose a final offer and present it to the Mediator/Arbitrator. The Mediator/Arbitrator will select one of the final offers to be the “Default Contract.”
- Phase 5 (March 1 to March 15): The parties have two additional weeks to continue negotiations to negotiate an alternative agreement. If the parties are able to reach an agreement in that period, the alternative agreement becomes the contract. If not, the “default contract” becomes the contract.

Wright notes that the terms of reference for the Commissioner under this process must carefully balance the interests of teachers, employers and the provincial government as the funder of the public education system.

## **What is to be Bargained? The Scope of Bargaining**

Although initially Wright did not intend to address the issue of scope and thought it would be better dealt with at a later time, he made the determination that some changes were required to improve labour relations in the sector and “*to find the fair middle ground sooner, rather than later*” (p. 42). He recommends that the government establish a process for policy discussions, parallel to the collective bargaining table. These collaborative and interest-based policy discussions would serve to seek agreement on cost effective approaches to improving working and learning conditions. The sessions would be facilitated by an individual acceptable to both sides. The facilitator would be required to report out on the efficacy of the discussions for dealing with these issues, participation of the parties, and recommend an approach for dealing with these issues in the future.

## **Transition**

Wright highlights the need for one master provincial agreement. The current structure — one master agreement with sixty local agreements — makes progress at the bargaining table difficult. Negotiations are about tradeoffs; however, the internal politics of making these tradeoffs becomes more difficult for the bargaining agents to manage, especially in terms of the internal politics.

Wright is of the view that transitioning the parties to one provincial agreement will put the parties in a position where mature collective bargaining is more probable. Wright recommends that an Industrial Inquiry Commissioner be appointed to supervise the creation of a first “provincial agreement.” The Commissioner would first attempt to mediate a provincial agreement between the parties. If mediation is not successful, then the Commissioner would arbitrate the agreement. To make the process as fair as possible, Wright recommends that the process have a notional net cost of \$30 million and noted that no teacher should suffer a reduction in salary as a result of this process.

With respect to the transition of local collective bargaining, Wright proposes that local and provincial agreements expire in different years. This would allow local school boards and local teachers’ associations to have greater access to the provincial collective bargaining expertise available via their respective bargaining agents. He notes that, “...*support from BCPSEA should be a core part of the bargaining infrastructure needed*” (p. 53). Wright also recommends that local school boards consider cooperating regionally for the negotiation of local matters.

### **Concluding Comments: The Need for Dialogue**

Wright reiterates that the parties are a long way from being able to engage in mature collective bargaining. He believes he is proposing a process that will motivate and encourage the parties to develop this capacity and to make the necessary changes/compromises to be able to negotiate good collective agreements. However, Wright cautions that, “...*these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides*” (p. 55).