

Arbitration Award: Professional Autonomy

In @issue No. 2009-31 dated September 23, 2009, BCPSEA advised of Arbitrator Dorsey's award concerning the professional autonomy grievance of a grade three teacher disciplined for refusal to administer DART (District Assessment of Reading Team) in School District No. 62 (Sooke).

The arbitration award clarifies the limitations of teacher professional autonomy within the regulatory structure of public education.

Arbitrator Dorsey stated that teachers are limited in their exercise of professional autonomy::

"The highly regulated structure of public education limits the extent to which teachers can negotiate and be contractually guaranteed freedom for control and direction from their employers and others...

Legislation, regulation and Ministry and Board of Education policies circumscribe teachers' professional autonomy. Teachers must teach the curriculum defined in educational programs and assess students on prescribed learning outcomes. They have the autonomy to decide the instructional and assessment strategies to do that. Article F3 recognizes their autonomy must be exercised "within the bounds of the prescribed curriculum and consistent with recognized effective educational practice.

...Beyond these boundaries or limitations, teachers do not have unfettered discretion to comply with or refuse to comply with employer policies or directions on all matters that relate to teachers' duties and responsibilities." (Dorsey award 40, 41)

The arbitrator also commented on the importance of teacher professional autonomy in the classroom:

"An essential element of individual professional autonomy is teachers have the assurance they are free to exercise professional judgment in teaching students assigned to them. This professional judgment is a critical element in the quality of public education." (40)

Arbitrator Dorsey observed that the Ministry, Boards of Education and administrators also have responsibilities for the structure of the public education system.

"...the Board of Education has a statutory mandate that requires it to set goals, targets and report." (44)

...The direction to administer a DART assessment, in the context of the statutory scheme regulating public education and the Board of Education's responsibilities and obligations

under the accountability framework, is an assignment of duties the employer has the exclusive authority to make. It is not an infringement of the individual professional autonomy guaranteed in Article F3 of the Collective Agreement.” (44, 45)

Historical Perspective

Ninety-five percent of BC teacher collective agreements contain a professional autonomy clause. The language has variations but is largely similar to the language dealt with in this case.

These clauses remain unchanged since the era that preceded the provincial collective bargaining structure. Prior to this award by Arbitrator Dorsey, there have only been two similar arbitrations. These arbitrations established that professional autonomy is not a defence where the evidence establishes that the misconduct alleged against the teacher offends against a standard of professionalism that all teachers can be expected to know.

Arbitrator Hope (*Board of School Trustees of School District #5 (Southeast Kootenay)* [1999] B.C.C.A.A.A. No. 193 (*Hope*)(QL) wrote:

The submission relating to the professional development [autonomy] provision fails on the same rationale. That provision cannot be read as vesting in teachers a license to make any statement or address any subject they wish. Further, teachers remain subject to express direction with respect to how they will approach the task of teaching. The authorities invite the view that there are few subjects in public education that are as politically charged as classroom content. Content is a matter of fundamental interest to parents. It is also the subject of public policy initiatives in legislatures and provincial administrations. Finally, it is a significant topic with boards of school trustees. In this environment, teachers are subject to controls with respect to what they may teach and how they may teach it. (para. 136)

Most of the professional autonomy clauses are specific to being consistent with effective educational practice and provide that they can be exercised “in determining the methods of instruction and the planning, presentation and evaluation of the course materials in the classes of pupils to whom they are assigned.”

The BCTF description of “professional autonomy” has expanded over the years since 1984 when it proposed the *School Act* should contain recognition that teachers would have individual autonomy in determining the methods of instruction, and the planning and presentation of course materials in the classes of pupils to which they are assigned (SA 17.1). Initial bargaining proposals in 1988 included a reference to “evaluation of course materials.” The proposals provided for “individual professional autonomy in determining the methods of instruction and the planning, presentation and evaluation of course materials in their general assignments, as long as such materials are not in conflict with the course of studies.”

Recent descriptions of professional autonomy from the BCTF are more general and refer to “the ability of members to make decisions about the work they do; the exercise of their judgment.”

The BCTF description also outlines what it describes as limits and threats to teacher professional autonomy; for example, the “*School Act* and Regulations, Ministry Orders and Ministry policies.”¹

¹ BCTF website, www.bctf.ca; Issues in Education, Professional autonomy.

Teaching the curriculum as defined by the educational program guides (Integrated Resource Packages [IRPs] or other curriculum guides and the assessing of student performance are the two specific limitations listed by the BCTF.

BCTF publications do conclude that, notwithstanding the two limitations, teachers have professional autonomy about how to do the student assessment and what instructional and assessment strategies to use. Many of the clauses in the collective agreements contain no mention of assessment. Evaluation that is referenced is usually linked directly to courses or in the classroom.

The BCTF also describe school board decisions, policies and motions that curtail teachers' professional autonomy. Examples cited of such school board decisions include:

- policies and motions that are mandated
- local report cards that exceed provincial requirements
- school-wide "writes" using BC performance standards in order to collect data for the school planning council or the district's accountability contract in the absence of any provincial requirement.

The suggestion by the BCTF is that school board decisions, policies and motions that limit professional autonomy may be able to be challenged. In the September 2009 issue of the BCTF newsmagazine, *Teacher*,² one article states:

"Management and government (both trustees and provincial governments) have often intruded into the issue attempting to impose their own ideological vision or exert some sort of management right to control teachers' discretion in practising our craft."

The same article references autonomy related to professional development. There were two arbitrations in 2007 (*BCTF/ADTU –and– BCPSEA/SD 70*, Hall, September 26, 2007) and (*BCTF/KTTA –and– BCPSEA/SD 73*, Munroe, January 16, 2007) related to professional development. In both arbitrations the union grievance was denied and the employer retained decision-making authority over professional development activities.

Currently, many of the locals that are challenging on the basis of professional autonomy are challenging in areas related to board achievement contracts (*School Act* section 79.2) or district literacy plans (*School Act* section 81.1) and accountability measures that are covered by the *School Act*.

Implications for School Districts

The recent Dorsey decision in the Sooke School District is the first arbitrated grievance between a school district and the BCTF on the matter of the district's rights versus the individual teacher's professional autonomy rights based on district decisions that promote the district's mandate to improve student achievement and the methods they choose to assess the effectiveness of their goals.

This decision upholds the rights of a board and its administrators to determine the overarching framework of assessments, materials, and processes to be used by teachers in meeting the

² Popp, George. "Professional Autonomy." *Teacher*, Newsmagazine of the BC Teachers' Federation, September 2009, Volume 22, No. 1, page 5.

specified mandate. Teachers may be required to perform such duties as administering district- and school-based student assessments, including all aspects of the testing process. Such directives do not infringe on teachers' individual professional autonomy in article F3 of the collective agreement. The disciplinary response to a teacher refusing to follow the directive of the board was upheld.

In the Sooke School District, the administration of the DART was done as part of a district assessment plan in support of the achievement contract. The board had adopted the test as part of an overall assessment plan to gather the data necessary to fulfill its responsibility in completing and evaluating the successes of the achievement contract. The district undertook a process of extensive internal consultation and implementation before mandating the DART as part of their overall assessment plan.

The district did not require the teacher to use the assessment activity and its results in their planning, instructing, assessing and evaluating cycle, which was left as a choice to the teacher. It was, however, an administrative responsibility of the teacher to administer the evaluation.

This is not unlike issues related to the provincially mandated Foundation Skills Assessment (FSA). The July 2009 Labour Relations Board decision (see @issue No. 2009-07, <http://www.bcpsea.bc.ca/access/publications/aissue/2009/ai2009-07.pdf>) ruled that administering the FSA is the work of teachers. Arbitrator Dorsey ruled that the teacher did not have the right to refuse the lawful direction to perform an administrative task (DART) as an exercise of professional autonomy and therefore the discipline was upheld. This is evidence that it is not prudent for the union to suggest that a teacher would not be investigated or disciplined in the event they refuse to follow a lawful direction of the employer.

When formalizing changes to how the district works through the development of an initiative such as the achievement contract, there are many best practice examples of boards, administration and local unions working together to develop plans that are in the best interest of students but still meet the differing needs of all parties. Districts can work with their locals and teachers to develop a broad-based assessment plan that chooses the components that best help improve student achievement and fulfill the mandate of all levels of the system.

Questions

If you have any questions on this matter, please contact your BCPSEA labour relations liaison.