

BRITISH COLUMBIA  
PUBLIC SCHOOL EMPLOYERS'  
ASSOCIATION

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## Backgrounder: BCTF Application to LRB

At 5:00 pm today, June 5, 2006, we were advised that the BCTF has made application to the Labour Relations Board (LRB) that we have breached the *Labour Relations Code* provision to bargain in good faith. The BCTF asserts that they are entitled to bargain the manner in which school boards' discretions or powers under the *School Act* are exercised, and the consequences that flow from the exercise of that power or discretion. This refers specifically to what has become known as "manner and consequences." This issue dates back to the controversy associated with the removal of class size and composition matters from collective bargaining and into public policy.

We have said to the BCTF that we are prepared to have discussions on this matter. However, it is our view that the proposal they have on the table is illegal and therefore we are not prepared to discuss that specific proposal.

### Background

In January 2002, to facilitate government's stated public education policy goals of improving student achievement, increasing local autonomy, providing enhanced program choices for students and ensuring system accountability, the *Public Education Flexibility and Choice Act* (Bill 28) was enacted, followed by the *School Amendment Act* (Bill 34) in May 2002. The three main elements of these Acts relate to funding, organization of schools and roles and structures within the public education community.

Government determined that matters related to the organization of classes and schools — class size limits, composition and staffing levels — would become a matter of public policy rather than be the subjects of collective bargaining. As a result, the *School Act* and Regulations were amended to specify class size parameters and determination processes.

Matters related to the organization of schools — specifically class size — were replaced with section 76.1 of the *School Act*. This section and the Regulation establish class size parameters consistent with the aim of treating class size as a matter of public policy.

Section 27.1 was the transitional provision in the *School Act*. It provided authority for an arbitrator to determine that a provision in the collective agreement conflicted or was inconsistent with the Bill 28 amendments to the *School Act* and was therefore deleted.

On July 17, 2002, the Minister of Skills Development and Labour appointed Eric Rice, QC, as the arbitrator under section 27.1. Arbitrator Rice released his decision on August 30, 2002. On November 20, 2002 the BCTF filed a petition in BC Supreme Court for a judicial review of the Rice award. Mr. Justice Shaw released his decision on January 22, 2004, quashing the Rice award. Both BCPSEA and the BCTF filed appeals of that decision, albeit citing different grounds.

It is important to recognize that the Court's decision did not return school organization matters to the collective agreement and the scope of bargaining. The *School Act* is clear as to what is able to be bargained and what is outside the scope of bargaining. What remained at issue was the mechanism to reconcile the existing collective agreements with *School Act* section 27(3).

### **Section 27(3)**

- (3) *There must not be included in a teachers' collective agreement any provision*
- (a) *regulating the selection and appointment of teachers under this Act, the courses of study, the program of studies or the professional methods and techniques employed by a teacher,*
  - (b) *restricting or regulating the assignment by a board of teaching duties to principals, vice principals, or directors of instruction*
  - (c) *limiting a board's power to employ persons other than teachers to assist teachers in the carrying out of their responsibilities under this Act and the regulations,*
  - (d) *restricting or regulating a board's power to establish class size and class composition,*
  - (e) *establishing or imposing class size limits, requirements respecting average class sizes, or methods for determining class size limits or average class sizes,*
  - (f) *restricting or regulating a board's power to assign a student to a class, course or program,*
  - (g) *restricting or regulating a board's power to determine staffing levels or ratios or the number of teachers or other staff employed by the board,*
  - (h) *establishing minimum numbers of teachers or other staff,*
  - (i) *restricting or regulating a board's power to determine the number of students assigned to a teacher, or*
  - (j) *establishing maximum or minimum case loads, staffing loads or teaching loads.*

In April 2004, Bill 19, the *Education Services Collective Agreement Act*, was introduced and subsequently enacted. Among the amendments was the amendment to section 28(4). It reads:

*For certainty and despite any decision to a court to the contrary made before or after the coming into force of this subsection, nothing in this section is to be construed as authorizing a board of the Provincial union to enter into a collective agreement that includes a provision that is prohibited under section 27 (3) or void under section 27 (2), (5) or (6).*