



**GUIDE TO**  
School Legislation  
in British Columbia

**APPENDIX**  
**ACTS AND**  
**RESOURCES**

**BCSTA**

British Columbia  
School Trustees  
Association

# GUIDE TO SCHOOL LEGISLATION IN BRITISH COLUMBIA

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# APPENDIX

# CHILD, FAMILY AND COMMUNITY SERVICE ACT SUMMARY

## Legislation

- 1994, amended 1995, 1997, 1999, 2002, 2004, 2006, 2007, 2009, 2010, 2011, 2013, 2014, 2015 and 2016.
- 2002 amendments changed the circumstances in which a duty to report child abuse arises.
- Administered by the Ministry of Children and Family Development.
- Child, Family and Community Service Regulation (BC Reg. 527/95).

## Major Features

The Act provides for protective intervention by a “director” (s.91) or “delegate of the director” where a person under age 19 is in need of protection. These director’s delegates are specially designated child protection social workers. Types of intervention include: providing services to the family; entering into agreements with youth for independent living; removing children from parental custody (termed “apprehension”) and providing them with care in foster or group homes; and assuming legal guardianship of children. The Act contains a duty to report that applies to any person who has reason to believe that a child is in need of protection.

## Guiding Principles and the Best Interests of the Child

The Act’s guiding principles include the paramountcy of the safety and well-being of children, the primary responsibility of parents, the taking into account of children’s views, the maintenance of kinship ties where possible, and the preservation of the cultural identity of Aboriginal children (s.2). The Act also includes service delivery principles that include integration of services with services provided by the community and other agencies, and involvement of the community in planning and delivery of services

(s.3). A variety of factors are to be taken into account in determining the best interests of a child, including safety, physical and emotional needs, continuity of care, quality of relationships, heritage, the child’s views and timeliness of decision-making (s.4).

## Support Services

Support services to families may be provided by agreement with a parent, including counselling, in-home support and parenting programs (s.5). Parents may give up care of a child on voluntary basis when temporarily unable to look after a child in the home (s.6) or where the child has special needs (s.7).

Support services for youth (age 16-18) include safe houses, outreach services and supported living arrangements (s.12.1). Those who cannot be re-established in their own families may enter into agreements with the director to receive residential, educational or other support services or financial assistance (s.12.2). Services may be continued after the person’s 19th birthday to assist while he is enrolled in an educational or vocational training program or is taking part in a rehabilitation program (s.12.3).

## Child Who Needs Protection (s.13)

The most important concept in the Act is that of a “child in need of protection.” If there are no grounds for believing that a child needs protection within the meaning of the Act, child protection social workers can only offer voluntary support services.

The Act defines 12 circumstances under which a child needs protection. These include physical harm or sexual abuse or exploitation by the child’s parent, or by another person if the child’s parent is unwilling or unable to protect the child. They also include emotional harm by the child’s parent, parental neglect or abandonment and deprivation of necessary health care. Emotional harm is described as severe anxiety, depression, withdrawal, or self-destructive or

aggressive behaviour.

(At one time, failure to provide for a child's education was specifically included as a basis for finding that a child was in need of protection. It is now not a separate ground for finding a need for protection, so that a superintendent investigating whether a child is receiving an educational program as required by the Investigation by Superintendent Order, *School Act* M151/89, must find some other circumstances to provide reasonable ground for belief that the child is in need of protection, such as potential physical harm resulting from neglect, before child protection services can proceed on the basis of the superintendent's report.) (See Guide, 110.5.)

### **Duty to Report (s.14)**

Any person who has reason to believe that a child needs protection (as defined above) has a legal duty to report the matter promptly to a child protection worker designated to receive such reports. This duty to report overrides all claims to confidentiality or privilege, except solicitor-client privilege. Failing to report is an offence, as is knowingly reporting false information. A person who reports cannot be sued for damages unless the person knowingly reported false information.

See also Guide 11.8.

### **Child Protection Investigations and Information-Sharing of Results (s.16)**

When a report is received, the director's delegate assesses it and decides whether it should be investigated. If investigated, the director's delegate has a duty to report the result of the investigation to the custodial parent, the person who made the report, and any other person or community agency if necessary to ensure the child's safety or well-being. The result should be reported to the child also if the child is capable of understanding the information. If sharing the investigation result would cause physical or emotional harm to anyone or would endanger the child's safety, or if a criminal investigation is underway or contemplated, these obligations do not apply.

### **Access to Children for Investigation Purposes (s.17)**

If a director or director's delegate seeks access to a child and it is refused by anyone, the director can obtain a court order on showing that there are reasonable grounds to believe that a child needs protection and access to the child is necessary to determine if the child needs protection. Boards of education usually have policies permitting child protection workers to have access to children at school without parental permission.

### **Confidentiality and Disclosure of Information (s.73-80)**

The provisions of the Act governing confidentiality and disclosure of records made under the Act override the provisions of the *Freedom of Information and Protection of Privacy Act* (s.74), except for investigations or audits of the Information and Privacy Commissioner.

Information that would disclose the identity of a person who made a child abuse report under section 14 can only be disclosed to the child, the child's parent or another person named in the report, if the person who made the report consents (s.76, s.77).

### **Administrative Reviews (s.93.1)**

A director must establish a procedure for reviewing the exercise of a director's powers, duties and functions. Regulations require a director to appoint a review authority.

### **Director's Right to Information (s.96)**

A director has the right to any information in the control of a public body, such as a board of education, that is necessary to enable the director to carry out her functions. The only exception is information that is covered by solicitor-client privilege.

See also: Representative for Children and Youth Act.

# APPENDIX

# CRIMINAL RECORDS REVIEW

# ACT SUMMARY

## Legislation

- 1995, amended 1997, 1998, 2002, 2003, 2004, 2005, 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014.
- Administered by the Criminal Records Review Program, Ministry of Public Safety and Solicitor General.

## Purpose

- To prevent the physical and sexual abuse of children and vulnerable adults by requiring screening of employees for relevant criminal records.

## Major Features

The Act requires a criminal record check as a condition of working with children. It applies to employees of organizations operated, licensed or receiving operating funds from the provincial government, including boards of education and independent school authorities; and to members of professional bodies.

## Relevant Offences (Schedule 1)

The relevant offences are those considered relevant to physical or sexual abuse to children (including sexual interference, drug trafficking, assault); not others, such as fraud, that may be relevant to other aspects of a job. The Act specifies the offences that are screened for.

## Responsibility for Checks (s. 8, 13, 17.1)

Boards of education and independent school authorities, as well as other funded organizations such as hospitals, are responsible for obtaining criminal record check authorizations for all employees who work with children, including independent contractors, except for “registered members” of professional licensing bodies (s.8, 13). There is no requirement to check the criminal records of volunteers except for those working in unlicensed childcare facilities (s.24).

“Governing bodies” (specified professional licensing organizations) are responsible for obtaining the criminal records checks of applicants for licensing.

Every education institution must ensure that registered students working with children (e.g., postsecondary institutions offering educational programs requiring a practicum involving work with children) undergo criminal records checks on students enrolled in such educational programs (s.17.1). Thus student teachers will have to have checks before they are permitted to work with children during their practicum periods.

## Conduct of Checks (s. 4-6)

The criminal record check is conducted by a provincial agency, the Criminal Records Review Program; the program checks for a record of a relevant offence, one that is listed in the Act. If an applicant has a criminal record including a relevant offence, then the deputy registrar of the program determines whether the individual presents a risk to children and, if a finding of risk is made, the applicant must not be employed in a position that involves working with children directly, or has, or potentially has, unsupervised access to children in the ordinary course of employment or in the practice of

an occupation. The deputy registrar's decision may be reconsidered, if requested, by the program's registrar.

Checks include not just criminal record convictions, but also juvenile offences, and offences for which discharges have been granted. Outstanding charges are also considered.

## **Frequency of Checks**

Checks are conducted at the time of hiring or application for licensing. The applicant must supply an authorization form (s.14). After that, employees or registered members have an obligation to report to employers (or their licensing bodies, as the case may be) if they are charged or convicted of a relevant offence, and provide another consent (s.17).

Existing registered members require checks to be performed every five years (s.15).

# APPENDIX

# EMPLOYMENT STANDARDS

# ACT SUMMARY

## Legislation

- 1980, with numerous subsequent amendments.
- *Employment Standards Act* Regulation (BC Reg. 396/95), with numerous subsequent amendments.
- Compassionate Care Leave Regulation (BC Reg. 281/06).
- Reservists' Leave Regulation (BC Reg. 254/16).
- Administered by the Employment Standards Branch of the BC Ministry of Jobs, Tourism and Skills Training and Minister Responsible for Labour.

- Annual Vacation (Part 7) – minimum annual vacation periods and when these may be taken; vacation pay requirements.
- Termination of Employment (Part 8) – minimum severance or notice required on termination, special provisions for group terminations (where 50 or more employees at a single location are to be terminated within a two-month period).

Employers and employees cannot contract out of the minimum standards except through a collective agreement (s.3) or a work averaging agreement (s.37) or a variance approved by the director (s.72, 73, ESA Reg. s.30).

## Major Features

It establishes minimum standards for employees in BC re:

- Hiring (Part 2) – employment of children under 15, employment agencies, farm labour contractors, domestic employees.
- Wage Protection (Part 3) – frequency of payment, form of payment, minimum wages, statement of wages, deductions and assignments, employer records, special clothing, payroll records, etc.
- Hours of Work and Overtime (Part 4) – meal breaks, split shifts, minimum daily hours, averaging of hours agreements, overtime pay.
- Statutory Holidays (Part 5) – entitlement, holiday pay, substitution.
- Leaves and Jury Duty (Part 6) – pregnancy and parental leave; family responsibility leave; bereavement leave, leave for jury duty, compassionate care leave.

## Relationship with Collective Agreements (s.3)

When a collective agreement contains provisions on hours of work or overtime, statutory holidays, annual vacation or vacation pay, seniority retention, recall, termination of employment or layoff, or numerous other specified provisions, the corresponding provisions of the ESA do not apply to employees covered by the collective agreement. If the collective agreement has no such provision, then the corresponding ESA provision is incorporated into the collective agreement and is enforceable through the grievance and arbitration process. Other sections of the Act (e.g., conditions governing employment of children under 15) are enforceable solely through the grievance and arbitration process if employees are covered by a collective agreement.

## **Child Employment (s.9, 127(2)(b.1), ESA Regulation Part 7.1)**

Children under age 12 may only be employed with a permit from the director of employment standards. No children under the age of 15 may be employed with parental consent and unless conditions established by regulation are met. Part 7.1 of the Employment Standards Regulation establishes detailed special regulations for children in the entertainment industry (the main area of employment of children under age 12). It also includes general conditions of employment for other children from 12 to younger than 15 years. Employers must not allow children to work:

- on a school day at a time when the child is scheduled to attend;
- more than four hours on a school day;
- more than seven hours on a day that is not a school day, without prior written consent from the director;
- more than 20 hours in a week that has five school days;
- more than 35 hours a week.

Employers must ensure that children work only under direct and immediate supervision of an adult.

## **Work Averaging (s.37)**

An employer and employee may agree to average the employee's work hours over periods up to four weeks for the purpose of determining overtime and premium pay.

## **Group Termination (s.64)**

If 50 or more employees at a single location are to be terminated within a two-month period, extra notice or termination pay (eight-16 weeks) must be given.

## **Exclusions (s.127(2)(a), ESA Regulation Part 7)**

Regulations may exclude a person or class of persons from all or parts of the Act or the Regulations. There are several exclusions applicable to schools:

- students employed at school or engaged in work studies, work experience or occupational studies are completely excluded from the Act (ESA Reg. s.32(1)(a),(b)).
- teachers, noon-hour supervisors, teachers' aides, supervision aides, managers and school bus drivers are excluded from hours of work and overtime provisions (ESA Reg. s.34(c),(d),(f), (m)).
- managers are excluded from statutory holiday pay requirements (ESA Reg. s.36).
- teachers, teacher aides, supervision aides and noon-hour supervisors are excluded from payday requirements (ESA Reg. s.40).

## **Minimum Wage (s.127(2)(g))**

Part 4 of the ESA Regulation sets out minimum wages.

# APPENDIX

# FINANCIAL DISCLOSURE

# ACT SUMMARY

## Legislation

- 1974, amended 1990, 1993, 1995, 1997, 1998, 2000, 2003, 2007, 2011.
- *Financial Disclosure Act* Form Regulation (BC Regulation 235/96).
- Administered by the Ministry of the Attorney General.

## Major Features

- Requires candidates for election as municipal councillors, regional district board members or school trustees to file written disclosures of their relevant financial interests with their nomination papers prior to the election (s.2(1)).
- Requires elected persons as above to file, with their municipal clerk, regional board secretary or secretary-treasurer, updated disclosures by January 15 each year, and on ceasing to be a municipal councillor, regional district board member or school trustee (section 2(3),(5)).
- Employees of the municipality, regional district or board of education designated by their council or board must also file written disclosures of their relevant financial interests on commencing employment, once each year thereafter by January 15, and on leaving the employment (section 2(4)(5)).

(Provincial MLAs were included under the Act until 1990, when the Legislature approved the Members' *Conflict of Interest Act*. It repealed the application of the Financial Disclosure Act to MLAs.)

## Contents of Disclosure (s.4)

Each school trustee, and board of education employee designated by the board, shall include in every disclosure the following:

- the name of each corporation in which a share(s) is held (more specifics are required if the person filing disclosure holds more than 30 per cent of the voting shares);
- the name of each business or organization situated or carrying on business in the regional district in which the school district is located that financially remunerates the trustee or school board employee;
- the name of each creditor, for each debt of the trustee or employee; and
- the description and location of land in the regional district in which the trustee or employee has an interest.

These disclosures are to be filed with the board of education's secretary-treasurer.

## Public Inspection (s.6)

The secretary-treasurer shall make trustees' written disclosures available for public inspection, on request, during normal business hours. The disclosures filed by designated board employees are distributed by the secretary-treasurer among the school trustees.

## Enforcement (s. 8 -11)

Any failure by a trustee or designated board employee to comply with the Act's requirements does not invalidate a matter, proceeding, vote or contract.

- Failure to file a disclosure as required is an offence, punishable by fine of up to \$10,000.
- Compliance to the best of one's information and belief is a defence to a charge of non-compliance.
- Any financial gain made by a trustee or designated board official through failure to disclose an interest may be awarded by the court to the school board.

## Forms

- *Financial Disclosure Act* Form Regulation (BC Reg. 235/96, amended 2001) specifies format for Statements of Disclosure.
- The school trustee statement of disclosure form is available online at: <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/financial-disclosure/municipal-officials>

# APPENDIX

# FINANCIAL INFORMATION

# ACT SUMMARY

## Legislation

- 1985, amended 1987, 1992, 1993, 1995, 1997, 1998, 1999, 2000, 2003; and amendments to Schedules in 2005, 2006, 2007, 2011, 2013, 2014 and 2015.
- Financial Information Regulation (BC Regulation 371/93), amended 2000 and 2002, specifies how the statements and schedules required by the Act must be prepared, and contains definitions of such terms as “employee” (includes elected officials), “expenses” and “remuneration.”
- Administered by the Ministry of Finance.

## Application

- All “corporations” specified in Schedule 1 to the Act being organizations receiving government grants (boards of education, municipalities, colleges, etc.).
- All “public bodies” specified in Schedule 2 (BC Assessment Authority, Open Learning Agency, Insurance Corporation of BC, etc.).

## Required Financial Information Reports

- (1) All “corporations” and “public bodies” to prepare, within three months of their fiscal year-end, financial information, including:
- statement of assets and liabilities;
  - operational statement;
  - schedules of debts, guarantees and indemnities;
- and within six months of their fiscal year-end:
- schedules of employees’ earnings and expenses;
  - schedules of payments to suppliers.

- (2) The schedules of employees’ earnings to consist of:
- (a) list of individual employees earning more than \$75,000, and showing remuneration (includes taxable benefits) and expenses;
  - (b) consolidated list of all remuneration paid to other employees;
  - (c) list of all elected officials (such as school trustees) showing individual remuneration and expenses;
  - (d) statement of number of severance agreements to employees not covered by a collective agreement, and range of equivalent months’ compensation represented by those severance agreements.
- (3) The schedules of payments to suppliers to consist of:
- (a) list of individual suppliers of goods or services paid more than \$25,000;
  - (b) consolidated list of all other payments made to suppliers of goods or services.

The reports must be approved by the governing body (e.g., board of education). A management report approved by the head and chief financial officer must accompany the financial statements, explaining the roles and responsibilities of the board of directors (board of education), audit committee, management and auditors regarding the preparation and approval of the financial information statements (Reg. Schedule 1).

## Public Access

The completed statements with schedules must be kept in the office (school district office), available for inspection by the public, for at least three years (s.2(4), Regulation Schedule 1 s.10). Copies must be supplied at \$5/copy, or less if requested under the *Freedom of Information and Protection of Privacy Act* and the fees prescribed under that Act are less (Regulation s.5, Reg. Schedule 2 s.10).

## Additional Information

“Corporations” and “public bodies” may be required to provide to a designated minister, or a designated cabinet committee, additional information, such as “strategic plans, business plans, capital and operating budgets” (s.3).

## Enforcement

Minister of finance may issue directives on compliance with the *Financial Information Act*, and on the form and manner of providing public access to financial information (s.6).

The responsible minister (e.g., minister of education) or minister of finance may appoint an auditor (s.4).

# APPENDIX

# LABOUR RELATIONS

# CODE SUMMARY

## Legislation

- 1992, replacing the *Industrial Relations Act* on January 18, 1993; amended most recently in 2019.

## Scope

It applies to all employers, except those who are federally regulated, and employees who are managers, superintendents or employed in a confidential capacity in matters relating to labour relations or personnel (s.1(1)), or specifically excluded by another Act. (Section 20(2) of the *School Act* states that principals, vice-principals and directors of instruction are not employees for purposes of the *Labour Relations Code*.)

## Labour Relations Board Duties

Section 2 provides that the Labour Relations Board and other persons exercising powers and performing duties under the Code must do so in a manner that:

- recognizes the rights and obligations of employees, employers and trade unions under this Code;
- fosters the employment of workers in economically viable businesses;
- encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees;
- encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity;
- promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes;
- minimizes the effects of labour disputes on persons who are not involved in those disputes;

- ensures that the public interest is protected during labour disputes; and
- encourages the use of mediation as a dispute resolution mechanism.

## Contents

### Part 2 – Rights, Duties and Unfair Labour

**Practices:** the rights of employees to belong to a trade union and of employers to join an employers’ organization; individual rights within a union (duty of fair representation); limitations on union and employer activities; unfair labour practices and requirement to bargain in good faith; authority for “closed shop” requirements; religious objections; written assignments of wages for union dues.

### Part 3 – Acquisition and Termination of

**Bargaining Rights:** by trade unions and employers’ organizations; appropriate bargaining units; revocation procedures, voting requirements and procedures.

### Part 4 – Collective Bargaining Procedures:

notice to bargain and commencement of bargaining requirements; continuation of a collective agreement’s terms in effect until new agreement reached or a strike or lockout is initiated; minimum agreement term of one year; joint consultation and adjustment to changes plans; first collective agreement procedures.

### Part 5 – Strikes, Lockouts and Picketing:

strike and lockout procedures, including continuation of benefits; prohibition against strikes and lockouts during the term of a collective agreement; permissible location of picketing; prohibition on the use of replacement workers during a strike or lockout.

**Part 6 – Essential Services:** The Labour Relations Board (LRB) chair may, on his own motion or on application of either of the parties to a dispute, conduct an essential service investigation and report

to the minister whether the dispute poses a threat to the health, safety or welfare of the BC residents or to the provision of educational programs to students under the *School Act*. If the minister considers that there is such a threat, she may direct the LRB to designate as essential services those facilities, productions and services that the LRB considers necessary or essential to prevent “immediate and serious danger” to “health, safety or welfare” or “immediate and serious disruption to the provision of educational programs.” The parties are prohibited from commencing a strike or lockout until the essential services designation is made. If the strike or lockout has already begun, it may be continued subject to the essential services designation by the board.

**Part 7 – Mediation and Disputes Resolution:** various dispute resolution procedures, with strong emphasis on mediation services of the Labour Relations Board, but also provisions for:

- special mediators appointed by the minister;
- fact-finders to confer with the parties to a dispute and present them and the Labour Relations Board with a report that may be made public;
- “last offer” votes to be required among employees or among employers; and
- inquiry commissions to be appointed by the minister.

**Part 8 – Arbitration Procedures:** arbitration clauses required in collective agreements; establishment of the Collective Agreement Arbitration Bureau within the Ministry of Labour to help train and locate qualified arbitrators; authority and powers of arbitration boards and appeals from arbitration awards; expedited arbitrations, consensual mediation-arbitration and special officers.

**Part 9 – Labour Relations Board:** the Labour Relations Board was established as a quasi-judicial body consisting of a chair, vice-chairs and as many other members, equal in the numbers who are representative of employers and employees, respectively, as the Lieutenant Governor in Council considers proper, all of whom are to be appointed by the Lieutenant Governor in Council after a merit-based process. The board has two divisions, each headed by a vice-chair: Mediation Division (monitors

labour negotiations in BC and pursues a mediation, dispute resolution role); and Adjudication Division (determines union and employer organization certification application, what is a legal strike, lockout or picketing, etc.). The chair may establish panels of board members to hear and determine applications to the board. Standard provisions from the *Administrative Tribunals Act* apply to the Labour Relations Board, including appointments, termination, remuneration, maintenance of order, immunity of tribunal, judicial review, and application of the *Freedom of Information and Protection of Privacy Act*.

## Regulations and Orders

### **BC Regulation 7/93, Labour Relations**

**Regulation:** procedures for applications to the Labour Relations Board; criteria on what constitutes evidence of trade union membership; requirements for holding strike and lockout votes, or votes directed by the Labour Relations Board.

### **BC Regulation 395/2003 Labour Relations Board Fees Regulation:** sets filing fees.

### **BC Regulation 49/2012 Prescribed Time**

**Periods For Decisions Regulation:** sets out time periods for rendering a final decision on a complaint or application. Allows the chair the ability to extend a time period for specific cases, before the time period expires, at the request of a party or the chair’s own initiative.

# APPENDIX

# LOCAL GOVERNMENT ACT AND COMMUNITY CHARTER SUMMARY

## Legislation

- Effective January 1, 2016 the *Local Government Act* RSBC 2015 c.1 replaces the *Local Government Act* RSBC 1996 c.323.
- *Local Government Act* RSBC 1996 was formerly the *Municipal Act*. In 2003 it was substantially amended by introduction of the Community Charter, the culmination of a lengthy period of municipal reform.
- Community Charter came into effect January 1, 2004, most recently amended effective September 16, 2019 by Bill 55.
- School Site Acquisition Charge Regulation (BC Reg. 17/2000).
- Local Government Elections Regulation (BC Reg. 380/93).
- Administered by the Ministry of Community Services.

## Major Features

The Community Charter provides municipalities with a framework for local activities and services. It is more enabling than the *Local Government Act* provisions that formerly applied.

The *Local Government Act* is the primary legislation for regional districts. Certain provisions governing municipalities also remain in the Local Government Act, notably elections and land use provisions.

## Local Government Elections

*Local Government Act* Part 3 (s.47 to 168) governs local government elections. These sections are made applicable to board of education elections through sections 45 and 46 of the *School Act*.

The Local Government Elections Regulation deals with election financing disclosure and identification of electors.

## School Facilities

*Local Government Act* section 476 requires a municipality to consult with the local board of education on the official community plan as it relates to school facilities needs.

*Local Government Act* Part 14, Division 20 provides for school site acquisition charges to be paid by property developers to local governments, which turn the funds over to the boards of education to be used to help pay capital costs of school site requirements approved by the minister of education. The amount of the charge is based on the projected number of new development units and the estimated land value for the school site needed; estimates must be agreed with the local government.

## Elected Officials

The Community Charter includes rules for council meetings (including what can and what must be held in closed meeting) (s.89-93) and provisions governing conflict of interest and ethical standards (s.100-109). These do not apply directly to boards of education, but do influence community expectations. The open meeting requirements apply to regional districts and the City of Vancouver, as well as to municipalities.

# APPENDIX

# OMBUDSPERSON ACT SUMMARY

## Legislation

- 1977. Came into force November 1, 1992 for school boards. Title changed in 2009 to *Ombudsperson Act*. Amended in 2014, 2015 and 2016.
- Administered by the Ministry of the Attorney General.

## Overview

The ombudsperson is an officer of the Legislature (as are the auditor-general, the Information and Privacy commissioner and the Conflict of Interest commissioner and others), who acts independently to promote fairness in the administration of the legislated mandates of government ministries and agencies.

## Powers and Duties of the Ombudsperson

The ombudsperson's office may investigate a complaint regarding an administrative "decision or recommendation made; an act done or omitted; or a procedure used by an authority that aggrieves or may aggrieve a person" (s.10(1)). An "authority" includes the Ministry of Education, a board of education and the College of Teachers.

If the ombudsperson decides that the complaint is warranted, a preliminary report may be prepared on which the authority may comment, and then a final report. That report may be publicly released with the complainant's permission.

In addition, the ombudsperson may undertake an investigation on a matter of wide public concern, and issue a public report (s.31(3)), such as the 1990 report on the need for integration of public services to children, youth and their families which helped lead to the new *Child, Family and Community Service Act*, 1994, and the 1995 report Fair Schools.

## Jurisdiction (s.11)

Only after any appeal processes provided for in the authority's governing legislation have been fully pursued may a complaint be investigated by the ombudsperson's office.

## Refusal to Investigate (s.13)

The ombudsperson can refuse to investigate a complaint on numerous grounds, including that an existing administrative process provides an adequate remedy.

## Notice to Authority (s.14)

Where the ombudsperson decides to investigate a complaint, the authority must be notified and provided with the opportunity to consult with the ombudsperson.

## Power to Obtain Information (s.15)

The ombudsperson has the power to require information and to examine persons under oath.

## Protection (s.16)

A person who complains to the ombudsperson or assists the ombudsperson may not suffer any retaliation.

## Opportunity to Make Representations (s.17)

If the ombudsperson decides to prepare an adverse report or recommendation, the authority concerned must be notified in advance and given the opportunity to make representations.

## **After Investigation (s.23, 24 and 25)**

While the determinations of the ombudsperson are not authoritative, as those of a court of law would be, an ombudsperson's report contains the ombudsperson's opinions, reasons for them and any recommendation believed appropriate. Should an authority fail to act on a report, the ombudsperson may report to the provincial cabinet and the Legislature.

## **Judicial Review (s.28)**

An ombudsperson's investigation may only be challenged on the grounds of lack or excess of jurisdiction.

# APPENDIX

# PUBLIC EDUCATION

# LABOUR RELATIONS ACT

## Legislation

- June 1994, amended 1997,1998, 2002, 2007 and 2012. Most recently amended in 2013 (to include class size restrictions as a cost provision).
- Administered by the Ministry of Finance.

## Purposes

The purposes are to: improve collective bargaining practices and procedures in the public school system; establish a provincial two-tiered system of collective bargaining for boards of education and trade unions representing teachers; establish the employers' association as the accredited bargaining agent to bargain with support staff unions; and promote positive working relationships in the public school system (s.2).

## Major Features

The employers' association established for boards of education under section 6 of the *Public Sector Employers Act* (BC Public School Employers' Association) is deemed to be the accredited bargaining agent for all boards of education in BC (s.4(a)).

The BC Teachers' Federation is deemed to be the certified bargaining agent for all teacher employees of boards of education in BC (s.6(1)(a)).

Provides for a two-tiered system of collective bargaining between boards of education and teachers in BC in accordance with Part 3 of the Act, including the right to lock out or strike at the provincial level only.

## Employer Bargaining Agent

The BC Public School Employers' Association has the exclusive authority to bargain collectively for BC boards of education and to bind them by the collective agreements (s.4(b)). This authority extends to support staff (non-teacher) collective bargaining.

## Teacher Bargaining Agent

The BC Teachers' Federation has the exclusive authority to bargain collectively for the bargaining unit (all teachers as defined in the *School Act*, or as listed in the Act's Schedule 1, or as included or excluded by the Labour Relations Board) and to bind them by a collective agreement (s.5, 6).

## Collective Bargaining

BCPSEA and BCTF must designate what are provincial matters and what are local matters to be determined by collective bargaining. All "cost provisions" that affect the cost of the collective agreement are provincial matters, including all provisions relating to:

- salaries and benefits;
- time worked and paid leave.

BCPSEA and BCTF must establish policies and procedures for the delegation of their bargaining authority to boards of education and to school district teachers' unions, respectively, to enter into local agreements on local matters. If a board of education and a teachers' union are unable to negotiate successfully a local matter delegated to them, either party may refer the dispute to provincial bargaining (s.8(1)-(3)).

BCPSEA's authority to declare or authorize a lockout, and BCTF's to declare or authorize a strike, may not be delegated to the local level (s.8(4)).

# APPENDIX

# PERSONAL INFORMATION PROTECTION ACT SUMMARY

## Legislation

- 2003, amended 2004. Came into force January 1, 2004 and amended in 2007. Most recently amended 2016.
- Commissioner is the same as the Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*.
- Personal Information Protection Act Regulation, effective January 1, 2004.
- Administered by the Ministry of the Attorney General.

## Major Features

The *Personal Information Protection Act* (PIPA) sets out how BC organizations, including corporations, sole proprietorships, partnerships and non-profit organizations, may collect, use and disclose personal information about individuals. It does not apply to any organization to which the *Freedom of Information and Protection of Privacy Act* (FIPPA) applies. Unlike the *Freedom of Information and Protection of Privacy Act* that governs public bodies, including boards of education, there are no provisions for rights of access to information, except for the right of access of an individual to her own personal information.

The Act applies to individuals collecting personal information, but not to individuals acting as employees or acting in a personal or domestic capacity.

Private organizations with which boards of education interact will be governed by PIPA unless (1) they are federally regulated and therefore come under federal privacy legislation, or (2) are governed by FIPPA to the extent that the organization is acting as a service provider to a public body, such as the board of education.

## Privacy Obligations of Private Organizations

### Consent to collect personal information

The organization must get consent for collecting, using and disclosing an individual's personal information, except where PIPA excuses consent (such as employee personal information reasonably needed for the employment relationship; in an emergency; for an investigation where consent would compromise the availability or accuracy of the information). Consent can be modified or withdrawn (s.6-s.9).

### Collection of Personal Information

Personal information must only be collected for reasonable purposes. Unless PIPA permits otherwise, personal information must be collected directly from the individual concerned and the intended use must be disclosed at or before the time of collection (s.10-13).

### Use and disclosure of personal information

Personal information may be used and disclosed only for the purpose for which it was collected unless the individual consents, or if PIPA permits the new use or disclosure without consent (s.14-22).

### Access to personal information

On request, the organization must provide an individual with information about the existence, use and disclosure of the individual's personal information and provide access to that information unless PIPA permits disclosure to be refused. On request, the organization must correct information that is inaccurate or incomplete (s.23-24).

## **Accurate and Complete Personal Information**

Personal information must be as accurate and complete as necessary for the purpose that it is used for; it must be kept securely and for only as long as reasonable for business or legal reasons; it must be kept for at least a year if used to make a decision about the individual (s.33-35).

## **Privacy officer**

Someone in the organization must be designated to be responsible to ensure the organization complies with PIPA (s.4(3)).

## **Policies & procedures**

Policies and procedures must be developed as necessary to ensure that the organization meets its obligations under PIPA. A complaint process respecting the application of PIPA must also be developed. All of these must be available to individuals upon request (s.5).

# APPENDIX

# PUBLIC SECTOR

# EMPLOYERS ACT SUMMARY

## Legislation

- July 1993, and amended 1994, 1997, 1999, 2002, 2004, 2005, 2006, 2007, 2008, 2010, 2015, 2016.
- Employment Termination Standard Review (BC Reg. 379/97).
- Senior Employee base Salary Regulation (BC Reg. 319/2002).
- Administered by the Ministry of Finance.

## Purposes

It is intended to ensure coordination of human resource and labour relations policies and practices among public sector employers, and improve communication and coordination between the employers and representatives of their employees (s.2).

## Major Features

- Establishment of the Public Sector Employers' Council in accordance with Part 2 of the Act.
- Establishment of six employers' associations covering all of the public sector except the public service, in accordance with Part 3 of the Act.
- Provision for accreditation of an employers' association as the collective bargaining agent for all its members (Division 2 of Part 3 of the Act).
- Contracts of senior employees are public documents (s.14.8).

## Public Sector Employers' Council

The council, established under section 3 of the Act, consists of:

- the minister who chairs the Treasury Board, currently the minister of finance, who is chair of the council;
- up to seven additional ministers or deputy ministers (see Order in Council #194/94 below);
- one nominee for each of the six employer associations formed under Part 3 of the Act;
- the head of the Public Service Agency; and
- a representative of the Union of BC Municipalities who may attend council meetings as an observer.

The council's functions, as specified in section 4, are:

- to set and coordinate strategic directions in human resource management and labour relations;
- to advise the provincial government on human resource issues applicable to the public sector;
- to provide a forum for public sector employers to plan solutions to human resource issues; and
- to enable public sector employee representatives to consult with public sector employers on policy issues that directly affect employees.

The council may employ a chief executive officer and other officers and employees. This is the "PSEC Secretariat."

## The Employers' Associations

The six public sector employers' associations established under section 6 of the Act cover:

- Crown corporations, boards and commissions with at least 50 per cent of their boards of directors appointed by an Act, a minister, or cabinet, unless exempted by the Regulations;
- boards of education;
  - public universities;
  - public colleges and institutes;
  - hospitals and other health care employers;
  - social services employers.

Their purposes are to coordinate within their respective sectors:

- compensation for employees not covered by collective agreements;
- administration of employee benefits
- human resource practices;
- collective bargaining objectives.

Each employers' association is also required to foster consultation between the association and representatives of the employees in the sector, and to assist the council in carrying out its objectives and strategic directions for the association (s.6(3)).

Every public sector employer must belong to the appropriate employers' association (s.6(4)).

Each employers' association is required to have a "properly constituted" board of directors that makes provision for provincial government representation on the board, and to have "properly constituted" bylaws for the association's management and administration that have been approved by the minister who chairs the Treasury Board (s.7). The minister may require an association to amend or repeal a bylaw or rule.

Employers' associations are required to comply with the council's strategic directions and comply with any further conditions prescribed by order in council. The lieutenant governor in council may replace an association's board of directors with a public administrator if necessary in the public interest.

The employers' association for the K-12 education sector is the British Columbia Public School Employers' Association.

## Accreditation for Collective Bargaining

Each of the employers' associations may bargain collectively on behalf of some or all of its members if authorized under the *Labour Relations Code*, or under "any other enactment" (s.7(3), as amended).

The BC Public School Employers' Association became the accredited bargaining agent for all of BC's school boards under the *Public Education Labour Relations Act*.

## Exempt Employee Compensation

Part 3.1 Division 2 (s.14.1 to 14.3) of the Act establishes some restrictions on the compensation of staff members who are excluded from bargaining unit membership (such as managers). Limitations on vacation carry-forwards and a prohibition on sick leave benefits banked or accumulated after December 31, 2002 are deemed to be included in contracts of employment. The minister may direct employers' associations to prepare compensation plans; if approved by the minister, the plan becomes an employment compensation standard. If money or benefits are received over and above the amounts permitted, they constitute a debt to the government.

BCPSEA Policy 95-06, Compensation and Employment Standards for School District Employees Not Subject to a Collective Agreement, is an approved exempt employee compensation plan.

## Employment Termination Standards Regulation (s.14.4)

Employment Termination Standards published by the Public Sector Employers' Council were adopted, as regulations, November 18, 1997, retroactive to May 1, 1997 (BC Reg. 379/97), and most recently amended in 2002.

The Regulation sets out standards to be met by public sector employers in dealing with termination of employees not subject to collective agreements, including:

- the length or term of employment contracts – maximum five years with a renewal conditional on renegotiation;
- no notice period or severance payment when an employee is terminated for cause, or on expiry of

fixed term, or on voluntary resignation or retirement;

- no retiring allowance if an employee receives a notice period or severance;
- employees may be reassigned duties during the notice period;
- the amount of severance that can be paid to employees is limited. Even senior positions such as deputy minister or superintendent of schools are subject to a cap of 18 months' value of salary and benefits.

Terminated employees must report any re-employment in the public sector, including contracts for services, during the notice period and to repay any severance paid in respect of that period.

## Compensation Information

Sections 14.5-14.8 deal with “senior employees”: those who make over a prescribed amount of base salary (currently \$125,000). Public sector employers must report all the terms and conditions of employment relating to senior employees’ compensation to the PSEC Secretariat, and provide details of any changes. Senior employee employment contracts are public documents.

# APPENDIX

# TOBACCO & VAPOUR PRODUCTS CONTROL ACT SUMMARY

## Legislation

- 2015 Bill 14 changed name from *Tobacco Control Act*.
- 2015 Bill 14 added the definitions of “activated e-cigarette,” “e-cigarette,” “e-substance” and “vapour product.”
- 2007 Bill 10 changed name from *Tobacco Sales Act*.
- 2007 amendments introduced school and workplace smoking bans.
- Administered by the Ministry of Health.
- Tobacco Control Regulation (BC Reg. 232/2007).

## Major Features

- Ban on smoking cigarettes, e-cigarettes, or holding activated e-cigarettes on school property (property used for delivering educational programs).
- Ban on smoking or holding lighted tobacco, or e-cigarettes or holding activated e-cigarettes in any fully or substantially enclosed place that is a workplace or a place to which the public is ordinarily invited or permitted access.
- Restrictions on sale of tobacco, including prohibitions on sale to persons under age 19, sale from opened packages, or in and in certain places (hospitals, universities, government buildings, public body athletic or recreation facilities).
- Prohibitions on display or promotion of tobacco products in ways prohibited by the regulations.

## School Smoking Ban (s.2.2)

- Ban covers smoking, holding lit tobacco or using e-cigarettes, or holding an activated e-cigarette.
- Exception for ceremonial use of tobacco performed in relation to traditional Aboriginal cultural activity and approved by the board of education.
- Ban applies not just to students and staff but to all user groups and visitors to school property (including independent schools).
- Offence to violate ban: smoker, board, superintendent, principal may be charged. A charge can be defended by showing reasonable care and diligence to prevent the contravention. Penalties under the *Offence Act* range up to fines of \$2,000 or six months’ imprisonment.
- School property includes property leased by a board or operated under authority of a board and used for delivering educational programs or other learning programs. Includes buildings, grounds, and vehicles.

## Workplace and Public Place Smoking Ban (s.2.3)

- Ban covers smoking and holding lit tobacco or use of an e-cigarette, or holding an activated e-cigarette.
- Smoking is banned in fully or substantially enclosed places (including vehicles) that are workplaces. This includes work vehicles.
- Outside, smoking is prohibited within a distance (to be set by regulation) from a doorway, window or air intake of a workplace.
- Exception for ceremonial use of tobacco in relation to a traditional Aboriginal cultural activity.

- Offence to violate ban applies to not only to smokers but also to managers, owners, lessees and employers. A charge can be defended by showing reasonable care and diligence to prevent the contravention. Penalties under the *Offence Act* range up to fines of \$2,000 or six months' imprisonment.
- Same provisions apply to fully or substantially enclosed spaces to which the public is ordinarily invited or permitted to have access, whether or not a fee is charged for entry.

# APPENDIX

# RESEARCH RESOURCES

Below please find some research resources you can use to obtain further information about school law.

## Manual of School Law

The *Manual of School Law* includes the *School Act*, *Teachers Act*, *Independent School Act*, *First Nations Education Act* and related regulations, orders in council and ministerial orders.

<https://www2.gov.bc.ca/gov/content/education-training/k-12/administration/legislation-policy/manual-of-school-law>

## BC Laws

This government of British Columbia website has statutes, regulations, ministerial orders, orders in council and other resources related to BC laws.

<http://www.bclaws.ca/>

## Legislative Assembly of British Columbia

This website contains information including the status of bills, the parliamentary calendar, Hansard (debates of the Legislative Assembly).

<https://www.leg.bc.ca/>

## Ministry of Education Policy

The Ministry of Education's policies related to public schools and independent schools.

<https://www2.gov.bc.ca/gov/content/education-training/k-12/administration/legislation-policy/public-schools/k-12-funding-general>

<https://www2.gov.bc.ca/gov/content/education-training/k-12/administration/legislation-policy/independent-schools>

## School Trustee Election Procedures in British Columbia

This Guide is prepared by the Ministry of Education to provide information about the legislation applicable to school trustee elections.

<https://www2.gov.bc.ca/gov/content/education-training/k-12/administration/legislation-policy/school-trustee-election-procedures>

## Canlii

Legal cases from courts and some tribunals are available on CanLII. In addition, federal and provincial legislation and regulations are available on CanLII.

<https://www.canlii.org/en/>