



**GUIDE TO**  
School Legislation  
in British Columbia

**PART IX**  
**COLLECTIVE**  
**BARGAINING**

**BCSTA**

British Columbia  
School Trustees  
Association

# GUIDE TO SCHOOL LEGISLATION IN BRITISH COLUMBIA

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# PART IX

# WORKING CONDITIONS AND COLLECTIVE BARGAINING IN BC SCHOOL DISTRICTS

Several BC Acts and Regulations, in addition to relevant sections of the *School Act*, help regulate working conditions and guide collective bargaining for boards of education with their employees. Part IX briefly reviews the history of board bargaining with employees, reviews those working conditions and statutes of general application, then turns to the *Public Sector Employers Act* (1993), and the *Public Education Labour Relations Act* (1994), which have had profound effects on collective bargaining in BC school districts. Part IX concludes with the *Public Sector Pension Plans Act*.

Certain aspects of teachers' terms and conditions of employment are reviewed in Guide Part III, *The Teacher*.

In 2007 school boards were renamed "boards of education" but the following text uses "school

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## 90.0 History of School Board Bargaining with Employees

### 90.1 Teacher Collective Bargaining

The terms and conditions of employment for teachers and the mechanism for determining them have been contentious and highly politicized issues in British Columbia. In following the history, it may be helpful to keep in mind the changes in government:

- 1986 – November 1991: Social Credit
- 1991 – June 2001: New Democratic Party
- 2001 – 2017: BC Liberal Party
- July 2017 – present: New Democratic Party

### 90.11 Full Scope Bargaining and Right to Strike

In 1987, legislation gave school boards and teachers the right to bargain collectively on the terms and conditions of employment, except for a few matters excluded from the scope of collective bargaining. Previously, legislation had only allowed negotiation of salaries and bonuses, though boards and teachers also entered into "learning and working condition" agreements. Impasse on the salary agreements was resolved by arbitration and teachers had no legal right to strike, although "instruction only" campaigns were not uncommon.

Following certification of local teacher associations as bargaining representatives in 1988, collective agreements were negotiated between school boards and local teacher organizations.

## 90.12 Wage Controls

In 1990, school boards lost the right to raise funds through local taxation, and became reliant on the provincial government to provide the funds required to fund the negotiated collective agreements. In 1991 the government introduced the *Compensation Fairness Act*, which required approval of collective agreements by a provincially appointed commissioner. Teacher collective agreements were not approved until after a change in government in late 1991 brought about a change in the guidelines.

## 90.13 Employers' Association and Two-Tier Bargaining

In 1993, by the Public Sector Employers Act, the provincial government created the *Public Sector Employers' Council* (PSEC) to ensure coordination of human resource and labour relations policies and practices among public sector employers. The Council includes representatives of the provincial government and six employers' associations, including one for public school boards, the BC Public School Employers' Association (BCPSEA).

In 1994, by the *Public Education Labour Relations Act* (PELRA), the provincial government changed the structure for teacher collective bargaining to a two-tier structure, with BCPSEA and the BC Teachers' Federation (BCTF) negotiating provincial matters, and local associations and school boards negotiating local matters. PELRA created a few statutory provisions that overrode the existing collective agreement language, but otherwise continued the language of the existing local agreements (most of which were negotiated for 1992-94) until they would be replaced by a provincial agreement between BCPSEA and BCTF.

Under PELRA, BCPSEA is the accredited bargaining agent for the boards of education for collective bargaining with non-teaching employees as well as teaching employees, but BCPSEA has delegated the authority to negotiate with non-teaching employees' bargaining agents to the local boards. BCPSEA ratifies the agreements reached, provided they comply with the overall compensation mandate determined by the Public Sector Employers' Council.

## 90.14 Legislative Intervention

The Legislature has taken an active role in avoiding disruption caused by labour disputes in K-12 education. For example, ad hoc legislation to end a strike or provide for a mechanism to conclude a collective agreement was used in 1993 (*Education Programs Continuation Act*), in 1996 (*Education and Health Collective Bargaining Assistance Act*), in 1998 (*Public Education Collective Agreement Act*), in 2002 (*Education Services Collective Agreement Act*, discussed below) and in 2005 (*Teachers' Collective Agreement Act*).

At various times essential services legislation has been applied to education services. Essential services legislation allows a "controlled strike," i.e., when a strike is pending, the Labour Relations Board (LRB) designates levels of service that cannot be withdrawn; the strike can proceed subject to maintenance of those designated essential services. Legislation in 1978 and 1987 specifically provided for essential services designations to prevent substantial disruption to education. The 1993 *Labour Relations Code* did not specifically refer to education, but the provision protecting welfare of BC residents was applied by the LRB to an education dispute. In 2001 the *Labour Relations Code* was amended to once again specifically allow designation of services essential to prevent the immediate and serious disruption to the provision of educational programs (section 72 *Labour Relations Code*). In 2005 the LRB made essential services orders, but teachers went out on full strike anyway to protest legislation imposing a collective agreement. Additional essential services orders have been made since 2005.

## 90.15 Step by Step Toward a Provincial Agreement

### 1996-1998

In 1996, BCPSEA and BCTF agreed on a limited provincial agreement (called the Transitional Collective Agreement or TCA) for the term 1996-98. A wage increase and a number of agreed-on articles (e.g., harassment/sexual harassment and grievance procedure) were included; some further processes were set up to continue negotiations on such difficult issues as class size. Otherwise, the existing local agreements were once again continued. About half of the school

districts reached agreements with local unions on the local matters, and these local-matters agreements were incorporated into the collective agreement.

## 1998-2002

In 1998, the provincial government and BCTF reached an agreement (called the Agreement in Committee or AIC). School boards did not ratify the agreement, so the provincial government legislated it into force by the *Public Education Collective Agreement Act*. The AIC lowered class size limits for K-3; introduced staffing ratio requirements for some non-enrolling teachers (teacher-librarians, counsellors, special education, learning assistance, English-as-a-second-language); included a small raise in the second year; and made some improvements for teachers on call and adult education teachers. It incorporated parts of the TCA and otherwise once again continued the language of the various 1992-94 agreements, except as amended on local matters or by further agreement between BCPSEA and BCTF. The provincial government undertook some funding commitments in connection with the reduced class size and non-enrolling teacher agreements.

A further complicating factor was the school district amalgamations that took place in 1996. BCPSEA and BCTF negotiated a few agreements to deal with the problem of two (in one case, three) different underlying 1992-94 agreements from the original school districts; a number of the amalgamated districts developed letters of understanding to deal with some issues in a uniform way throughout the district. In 2002, the *Education Services Collective Agreement Act* legislatively consolidated the remaining agreements.

## 2002-2004

In January of 2002, during a labour dispute between BCPSEA and BCTF following an essential services designation process, the provincial government introduced: Bill 27, the *Education Services Collective Agreement Act*, which ended the dispute and imposed a collective agreement on teachers and boards; and Bill 28, the *Public Education Flexibility and Choice Act*, which removed some operational issues (class size and school calendar) from teacher collective agreements and brought them into the *School Act* (sections 27, 27.1, 76.1, 78.1). The imposed agreement included wage

increases, amalgamation of provisions from collective agreements of amalgamated school districts, provisions agreed to during collective bargaining, and the arbitration provisions about class size from Bill 28. The legislated agreement was in force until June 30, 2004.

The *Public Education Flexibility and Choice Act* contained a transitional provision (section 27.1, now spent), that was designed to bring the collective agreement into compliance with sections 27 (3) (d) to (j) of the *School Act*, which remove the provisions for class size and teacher-student ratios from the scope of bargaining. The section allowed the minister of labour to appoint an arbitrator to examine the collective agreement and determine which sections were in conflict with the *School Act* – those sections of the agreement would then be deemed to be removed. The arbitrator appointed under this section, Eric Rice, made his determinations in August 2002. Rice had identified numerous provisions to be removed from the agreement: both those provisions that directly conflicted with the Act and those that were connected to those provisions. The arbitrator's determination was appealed by BCTF to the BC Supreme Court; the Court released its decision in January 2004. The Court disagreed with arbitrator Rice – stating that he should have “recast or amended” the agreement as necessary to be within the spirit of section 27(5) of the *School Act*, which reads, “a provision of a teachers’ collective agreement that conflicts or is inconsistent with subsection (3) is void to the extent of the conflict or inconsistency.”

In response to the Supreme Court decision on Rice, the provincial government enacted Bill 19, the *Education Service Collective Agreement Act*, 2004. This Act in effect legislated the original determination of arbitrator Rice and reinforced it by adding a new subsection 28(3) to the *School Act* which states:

“(3) For certainty and despite any decision of 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 or 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).”

## 2004-2006

The 2004-06 round of bargaining was tumultuous. It was challenging because of the history surrounding the Rice Decision, a provincial election in May 2005, a compensation mandate established by PSEC of a zero compensation increase until June 2006, and the Wright Commission process (see below). The agreement expired in June 2004, the Liberal government was returned in the 2005 election, and there was no change in either the zero mandate or the BCTF refusal to consider a settlement within that mandate. Nor did the Wright Commission recommend the major changes to the bargaining system that BCTF had sought.

Negotiations began in November 2004 but little progress had been made by September 2005. The parties went to the Labour Relations Board to designate what services would be considered essential. BCTF took a strike vote and a fact-finder appointed by the minister of labour concluded that there was no prospect for a voluntary resolution at the bargaining table. BCTF gave notice of a phased withdrawal of services and the LRB made an order designating essential services for the first phase of the strike.

Before the first phase began, the government introduced Bill 12, the *Teachers' Collective Agreement Act*, which extended the terms of the previous collective agreement to June 30, 2006. The teachers responded by giving notice of a full withdrawal of services. BCPSEA then obtained an order from the Labour Relations Board that the strike was illegal and that teachers should work as scheduled, except as authorized by the essential services order.

Bill 12 was enacted; the teachers did not report for work. BCPSEA successfully applied to the Supreme Court for an order holding BCTF in contempt of the Labour Relations Board order. Since the contemptuous conduct continued after the contempt holding, the Court made a number of orders to prevent BCTF from using its assets to further the illegal actions and placed it under independent financial direction from a court-appointed monitor. BCTF was heavily fined (\$500,000, to go to charity) and ordered to pay costs.

The government appointed Vince Ready as a facilitator. He concluded that there was no prospect of a facilitated agreement, so made non-binding

recommendations that were accepted by government, BCPSEA and BCTF. The teachers then returned to work on October 24, 2005, having been out for two weeks. The recommendations were for a government contribution to the harmonization of salary grids, a government payment to BCTF's long-term disability plan (which was eventually issued as refund cheques to teachers), a government contribution towards establishing a uniform base rate for teachers on call, targeted funds to reduce class size, and the introduction of an enforcement mechanism. The recommendations also supported the implementation of a Learning Roundtable as a mechanism for dialogue among education partners about learning conditions, including class size and class composition, which had been removed from the scope of collective bargaining; and recommended an increase in BCTF representation there, which was agreed to by government.

## 90.16 The First Negotiated Collective Agreement, 2006-2011

In June 2006, BCTF and BCPSEA successfully concluded their first negotiated provincial collective agreement since the advent of provincial bargaining in 1994. The agreement was the last one concluded under a provincial framework for public sector bargaining that resulted in 137 collective agreements (all of those due to expire between March 31 and June 30, 2007) being concluded before the previous ones expired, covering 97 per cent of all public sector employees.

The elements of the government's compensation framework were an agreement of at least four years, a one-time signing bonus if the agreement was reached before expiry of the existing agreement, general wage increases to 2009, monies set aside for labour market adjustments, and a "fiscal dividend."

Vince Ready had been appointed in October 2005 as an industrial inquiry commissioner to recommend a collective bargaining structure; his Interim Report in April 2006 recommended that the parties, instead of focusing on changes to the bargaining structure, enter into meaningful negotiations with the assistance of a facilitator/mediator and with the involvement of a senior government representative, in accordance with recommended timelines. The parties accepted the recommendations and commenced negotiations in April 2006. Government introduced new

legislation on class size and composition (Bill 33, *Education (Learning Enhancement) Statutes Amendment Act*, 2006). Although BCTF had been committed to returning these items to the bargaining table, it acknowledged the new legislation as “a step in the right direction.”

The agreement was concluded late in the evening of June 30, the last day on which the signing bonus would have been available, for a term of five years, with salary increases, signing bonus (\$3,700 per FTE), further funds to harmonize top steps of the grid and additional allowances for northern and remote districts, fiscal dividend, payments to the teacher pension plan, provincial mileage reimbursement, up to 10 years of portable seniority, portable sick leave, some other terms, and letters of commitment to work on other issues, including employment equity for Aboriginal teachers.

Implementation of the agreement has been far from straightforward, with the parties making extensive use of mediator/arbitrators Irene Holden and Vince Ready to settle interpretation and implementation issues.

There is legally only one teacher collective agreement for the province. The agreement is a compilation of all of the collective agreements in force in the districts in 1994, overlaid with provincial language from legislation and provincial negotiations since then, and supplemented with local agreements on local issues or locally agreed mid-contract modifications approved by BCPSEA and BCTF.

## 90.17 The Future of Teacher Bargaining

Teacher/board bargaining has been fraught with difficulties: would a change in structure help? Or are relationships the problem? Two independent commissions have examined these questions. Neither recommended major changes in structure; both commented on the need for changes in attitude and behaviour.

### The Wright Commission

In December 2003, Don Wright, a one-time deputy minister of education, was appointed as commissioner in December 2003. After reviewing the situation and receiving submissions from the parties concerned,

Commissioner Wright released his report in December 2004. He made 12 recommendations, including retaining the two-tier structure, with some adjustments to local bargaining scope and timing, and appointing an industrial inquiry commissioner to help the parties achieve a first provincial agreement. He stressed the need to improve dialogue away from the bargaining table on public policy issues that have an impact on teachers and noted that “these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides.”

### The Industrial Inquiry Commission (Ready)

Vince Ready was appointed as an industrial inquiry commissioner in October 2005, with a similar mandate. Commissioner Ready’s interim report in April 2006 was instrumental in leading to conclusion of an agreement in June 2006. His final report in February 2007 did not recommend any major changes in structure, but recommended changes in process that mirrored those used successfully in 2006:

- Both parties establish their bargaining objectives no later than eight months prior to the expiry of the current collective agreement;
- Eight months prior to the expiry of the collective agreement, a facilitator/mediator is to be appointed;
- A senior government official be appointed to the BCPSEA bargaining team; and
- The parties develop a common understanding of the data related to all collective bargaining matters, e.g. the total cost of compensation and benefits; teacher demographics, including teachers on call (TOCs); and labour market issues.

## 90.2 Support Staff Collective Bargaining

Non-teaching employees of school districts (e.g., bus drivers, janitors, special education teachers’ assistants, clerical staff, maintenance employees) are unionized. They are represented by a variety of trade unions, the Canadian Union of Public Employees (CUPE) being the main one. Bargaining is conducted under the *Labour Relations Code* (Guide 91.4) and Appendix, with some restrictions on scope introduced into the *School*

*Act* in 2002.

The *Public Education Labour Relations Act* (PELRA) made BCPSEA the accredited bargaining agent for collective bargaining with non-teaching employees as well as with teachers. BCPSEA has delegated the authority to negotiate with non-teaching employees' bargaining agents to local school boards, subject to BCPSEA ratification. BCPSEA requires agreements reached to comply with overall compensation mandates determined by the Public Sector Employers' Council.

Compared to teacher bargaining, collective bargaining with non-teaching employees proceeded with relatively little government intervention until 2000. Over the years school boards have negotiated both as individual employers and in regional groups. In the 1970s, regional Labour Relations Councils were formed within BC School Trustees Association (BCSTA) and were accredited as employer bargaining agents by the Labour Relations Board. These were gradually disbanded except for the Okanagan Labour Relations Council (OLRC), which continued as an accredited bargaining agent representing a number of school boards until BCPSEA became the accredited representative of all boards. OLRC now holds delegated authority from BCPSEA (BCPSEA delegates to boards, which then delegate to OLRC) and provides labour relations and local negotiation services to its member boards of education.

The *Compensation Fairness Act* of 1991 (see Guide 90.1) applied to negotiations with non-teaching employees. Agreements were almost all approved by the Compensation Fairness Commissioner.

In 1998 CUPE sought a provincial bargaining table, beginning a uniquely complex round of negotiations. Provincial bargaining was rejected by BCPSEA members in 1999 and 2000, but CUPE pursued a set of common demands at most bargaining tables. At the same time, the provincial government launched the Public Sector Accord process, to provide a mechanism separate from collective bargaining to address public policy issues that could be used to persuade public sector unions to accept the PSEC compensation mandate. The accord process in K-12 began in January 2000 and an Interim Accord on K-12 issues was signed to provide a framework for further work on a number of issues. However, this did not result in collective agreements, so when

support staff in a large number of school districts went on strike at the same time, the government passed the *Public Education Support Staff Collective Bargaining Assistance Act* in April 2000. The Act provided for an end to the strike and prohibited strikes in 44 named school districts (the 32 on strike plus another 12 with expired agreements). An Industrial Inquiry Commission was empowered to determine support staff collective agreements in those districts. Another Industrial Inquiry Commission was established to examine and make recommendations on the structure and operation of support staff bargaining, but did not complete its report. The Accord was never completed because of the change in government. The collective agreements expired June 30, 2003.

Several legislated changes to scope of bargaining introduced in 2001 and 2002 affect collective agreements governing non-teaching employees:

- Limits on volunteer services in collective agreements are void unless they are consistent with section 26.1 of the *School Act*, that is, the board must not use a volunteer to provide services that would result in the displacement of an employee (*School (Protection of Parent Volunteers) Amendments Act*, 2001).
- Regulations respecting continuity of assignment of special needs teachers' assistants will override any conflicting provision of a support staff collective agreement (section 18.1 *School Act*, enacted by the *Public Education Flexibility and Choice Act* (2002)). As of July 2019 this section is not in force and no regulations have been made.
- Limitations contained in support staff collective agreements, including union consultation requirements, on the contracting out of approved, government-funded school meals programs are void. This section has also not been brought into force as of July 2019 (section 26.2 *School Act*, enacted by *Public Education Flexibility and Choice Act* (2002)).

## 91.0 The Relevant Statutes

### 91.1 Statutes of General Application in BC

The statutes of general application in BC that help determine working conditions for school district employees are:

- *Employment Standards Act and Regulation*
- *Human Rights Code*
- *Labour Relations Code*
- *Workers' Compensation Act*
- *Criminal Records Review Act*.

Following are short statements on their relevance and application to BC school districts. More detailed reviews are found in the Appendix to this Guide.

### 91.2 Employment Standards Act and Regulation (see also Guide Appendix)

The *Employment Standards Act* sets minimum requirements throughout BC for the frequency and method of wage payments, for hours of work and what constitutes paid overtime, for meal breaks, vacations, maternity and parental leave, and for group terminations. These minimum standards apply to all employees in BC, except where:

- the Regulation excludes employees in certain professions and occupations or certain types of employment from either the whole Act or portions of it;
- the employee is governed by a collective agreement that contains terms relating to the matter; or
- a variance is requested by the employer and employee and approved by the director of employment standards;
- employer and employee enter into a work-averaging agreement as permitted.

The Regulation excludes teachers, teacher aides and supervision aides from provisions on hours of work, overtime and when wages must be paid; and school bus drivers from provisions on hours of work and overtime.

### 91.3 Human Rights Code (see also Appendix)

The purposes of BC's *Human Rights Code* are broad and extend beyond prevention of deliberate discrimination. The Code is intended:

- To foster a society in British Columbia in which there are no impediments to full and free participation in economic, social, political and cultural life.
- To promote a climate of understanding and respect where all are equal in dignity and rights.
- To prevent discrimination prohibited by the Code.
- To identify and eliminate persistent patterns of inequality associated with discrimination.
- To provide redress for victims of discrimination.

The Act underwent substantial changes in 2002-03. Under the *Human Rights Code Amendment Act*, the Human Rights Commission, the body responsible for education, investigation and advocacy, was eliminated.

The Code has a specific exemption for employment equity programs. It is not discrimination or a contravention of the Code for an employer to have an employment equity program that aims to ameliorate conditions of individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability or sex, if the program is reasonably likely to achieve that objective. If the program is approved by the Human Rights Tribunal, it is deemed not to contravene the Code.

Some boards of education have received approvals for hiring preferences for First Nations staff for some positions, based on benefits to Aboriginal students. In 2006, BCTF and BCPSEA signed a letter of commitment on employment equity for Aboriginal teachers to encourage local school boards and teacher unions to apply for approvals of special programs that would address recruitment and retention of Aboriginal teachers, and would assist boards and teacher unions with the process of applying to the Human Rights Tribunal for approval.

With regard to employment, the *Human Rights Code* specifically prohibits:

- employment advertising that expresses a limitation, specification or preference, unless based on a bona fide occupational requirement;
- discrimination in rates of pay between men and women for work deemed similar on the bases of skill, effort and responsibility – while allowing for seniority, merit and productivity; and
- discrimination in hiring, and any term or condition of employment, including discrimination on the basis of a conviction for a summary or criminal charge that is unrelated to the employment. Certain exceptions are provided for bona fide occupational requirements and schemes based on seniority, and for retirement pension or employee insurance plan purposes.

In 2007, amendments to the *Human Rights Code* changed the definition of “age” and thereby limited the ability of employers to enforce mandatory retirement policies. The changes came into effect on January 1, 2008. Mandatory retirement policies constitute age discrimination, so will need to be justified as bona fide occupational requirements if they are to be legal.

## 91.4 Labour Relations Code (see also Guide Appendix)

The *Labour Relations Code* of BC governs collective bargaining procedures and activities for school district teaching and non-teaching staff who are trade union members. The only exceptions to the *Labour Relations Code’s* procedures and activities are those specified in the *School Act* and in the *Public Education Labour Relations Act*, which are reviewed later in this part.

In accordance with the definition of “employee” in section 1(1) of the *Labour Relations Code*, the Code does not apply to school superintendents, school district managers and staff employed in a confidential capacity on matters relating to labour relations or personnel. Principals, vice-principals and directors of instruction are excluded from application of the *Labour Relations Code* by *School Act* section 20(2).

Prominent, relevant features of the *Labour Relations Code* include:

- Labour Relations Board – headed by a chair, vice-chairs, and as many members as cabinet considers appropriate, representing employees and employers equally, all appointed by cabinet through a merit-based process. Contains an Adjudication Division, which determines certification, picketing of “common sites,” etc., and a Mediation Division, which monitors labour negotiations and pursues a mediation, dispute-resolution role.
- Bargaining Procedures – these cover notice to bargain collectively and the requirement to bargain in good faith; specify minimum term of one year for agreement; and require inclusion of mid-contract dispute resolution mechanisms with provision for joint consultation on workplace adjustment matters.
- Strikes, Lockouts and Picketing – voting, notice and picketing procedures are specified in the Act and the Labour Relations Regulation (BC Regulation 7/93). Strikes and lockouts are prohibited during the life of a collective agreement. Essential services may be designated if a dispute is considered by the labour minister to threaten provision of educational programs to students.
- Arbitration Procedures – to interpret a current agreement and resolve differences over its application.

## 91.5 Workers Compensation Act and Occupational Health and Safety Regulation (see also Appendix)

The *Workers Compensation Act* is based on an historic trade-off by which workers lose the right to sue employers and other workers for workplace negligence, in exchange for a no-fault benefit system financed by employers.

The Act addresses the nature of injuries and disease for which workers are entitled to compensation, the scale of compensation, the limitation of employer’s liability for workplace injury or disease, and the accident fund to which employers pay contributions and from which compensation is paid.

It establishes the Workers’ Compensation Board (WCB) and its governing and appeal bodies, and

gives the WCB authority to deal with claims, levy assessments against employers, administer the accident fund, establish and enforce occupational health and safety standards, inspect workplaces, investigate accidents, provide services, information, advice, and education programs to promote occupational health and safety, support research, assist injured workers and more.

It also addresses: occupational health and safety responsibilities of employers, suppliers, workers, owners, etc.; requirements for joint worker/employer health and safety committees; accident reporting and investigation; inspections; and enforcement of orders, reviews and appeals. In 1998, the *Workers Compensation (Occupational Health and Safety) Amendment Act* changed safety committee requirements from a district to a school level. Safety committees in the province suddenly needed to increase from 60 to about 1,000. This was a substantial challenge for school boards.

The Occupational Health and Safety Regulation contains legal requirements that must be met by all workplaces under the inspection jurisdiction of the WCB. The purpose of the OHS Regulation is to promote occupational health and safety and to protect workers and other persons present at workplaces from work-related risks to their health, safety and well-being. It contains regulations of general application, such as those governing inspections, right to refuse unsafe work, emergency preparedness, storage of materials, and protection against violence in the workplace; regulations about general hazards, such as workplace hazardous materials and falls protection; and regulations specific to the hazards of certain industries or activities.

In 2005, the Workers' Compensation Board adopted the name WorkSafeBC, although the Workers' Compensation Board remains the legal name.

## 91.6 Criminal Records Review Act (see also Appendix)

The purpose of this Act is to protect children by requiring screening of employees who work with children for relevant criminal records. The relevant offences are those considered relevant to physical or sexual abuse to children; not others, such as fraud, that may be relevant to other aspects of a job. (This limited scope means that employing boards of education also may require a criminal record check, which is conducted through local police forces. The College of Teachers may also in some circumstances require a more general criminal record check to assist it in determining whether an applicant for a teacher certificate is of good character.)

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. Boards of education are responsible for obtaining criminal record check authorizations for all employees except licensed professionals. Licensing bodies such as the College of Teachers are responsible for obtaining the criminal records checks of applicants for licensing.

The criminal record check is conducted by a provincial agency; the agency 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 a determination is made 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.

In 2007 amendments were made that will require checks to be performed every five years.

## 92.0 Statutes of Specific Application to Boards of Education

There are currently four statutes of specific application to school districts and their employees that help determine the scope and method of collective bargaining and the availability and cost of retirement pension benefits:

- *School Act*
- *Public Sector Employers Act*, 1993
- *Public Education Labour Relations Act*, 1994
- *Public Sector Pension Plans Act*.

Following are reviews of their major features of interest and relevance to school districts in BC. The *Public Sector Employers Act* and the *Public Education Labour Relations Act* are also outlined more comprehensively in the Appendix to this Guide.

### 92.1 School Act – Part 3, School Personnel; School Calendar and Class Size Provisions

Part 3 of the *School Act* contains a mix of subject items, including the appointment and duties of teachers, administrative officers, superintendents and secretary treasurers, all reviewed elsewhere in this Guide. School calendar and class size provisions may also affect terms and conditions of employment. The sections of relevance to Part IX are:

- section 15(1)(2) – employees
- section 18 – teachers’ assistants
- section 18.1 – continuity in assignment of special needs teachers’ assistants (not in force)
- section 26.1 – volunteer services
- section 26.2 – school meals programs (not in force)
- section 27 – terms and conditions of teachers’ employment
- section 28 – scope of bargaining
- section 29 – application of the *Labour Relations Code*
- sections 76.1 and 76.8 – class size and composition; organization of classes.

Section 15(1) empowers each board of education to employ persons “necessary for the conduct of its operation,” and makes the board responsible for their management – which includes establishing the employees’ working conditions and compensation, though some of that responsibility has been taken over through the *Public Education Labour Relations Act* (see below).

Section 15(2) requires boards of education to formulate policies for evaluating their non-unionized employees.

Section 18 allows boards to employ teachers’ assistants, who must work under the general supervision of teachers or administrative officers.

Section 18.1 (enacted 2002 but not in force) would allow cabinet to make regulations that would provide for school year continuity in the assignment of special needs teachers’ assistants to prescribed classes of students with special needs. Regulations if made would override any collective agreement bumping or displacement options that would result in a change of assignment during the school year.

Section 26.1 makes void any provision of a collective agreement that limits the use of volunteers, except for restrictions against using volunteers in a way that would result in displacement of an employee.

Section 26.2 (enacted 2002 but not in force) would make void any provision of a support staff collective agreement that limits the right of a board of education to contract with any person to provide meals to students under a government-approved and -funded school meals program, including provisions requiring consultation with the union prior to contracting out.

Section 27(1) provides that the terms and conditions of a teacher’s contract with a board of education shall consist of:

- relevant provisions in the *School Act* and Regulations;
- terms of the collective agreement provided that they are not inconsistent with provisions of the *School Act* and Regulations; and
- any terms and conditions agreed on by the board and the individual teacher that are not inconsistent with the *School Act* and Regulations or the collective agreement.

Any provision in a collective agreement with teachers that purports to exclude a provision of the *School Act* or Regulations is void. The agreement may not regulate the selection and appointment of teachers, the courses or programs of studies, or teachers' professional methods and techniques. Also excluded are restrictions on the board's assignment of teaching duties to principals, vice-principals and directors of instruction, and the employment of teachers' assistants. Nevertheless, the collective agreement may include hiring preferences for teachers previously employed by the board.

Section 28, *School Act*, states, however, that the collective agreement may include provisions respecting the manner in which the board of education will exercise its powers under the *School Act* and Regulations, and their consequences – but also saying that express provisions in the Act and Regulations prevail over the agreement, should they be in conflict.

Section 29, *School Act*, stipulates that in the event of any conflict between provisions in the *School Act* and in the *Labour Relations Code*, the *School Act* prevails. Nevertheless, nothing in the *School Act* may limit the right of the teachers' provincial union (BC Teachers' Federation) to declare or authorize a strike, or of the provincial employers' association (BC Public School Employers' Association) to declare or authorize a lockout, provided that the strike or lockout is in accordance with the requirements of the *Labour Relations Code*.

Statutory limits to class size and average class size are set out in the *School Act* section 76.1; calculation methods are defined in the Class Size Regulation (BC Reg. 245/02 as amended). The process for organizing classes and monitoring compliance with the limits is set out in sections 76.1 and 76.8. Collective agreements may contain class size maximums that are lower than those set out in the *School Act*.

## 92.2 Public Sector Employers Act, 1993 (see also Appendix)

The *Public Sector Employers Act* was enacted to increase the provincial government role in the public sector's human resource policies and fiscal management, especially in those areas it did not directly control, the "broader public sector."

The Act's purposes are:

- to ensure the coordination of human resource and labour relations policies and practices among public sector employers; and
- to improve communication and coordination between public sector employers and representatives of public sector employees.

This coordination and communication are effected through a Public Sector Employers' Council (PSEC), established at the provincial level, chaired by the minister responsible for the *Public Sector Employers Act* (currently the minister of finance) and comprising eight ministers or deputy ministers, the head of the Public Service Agency, and representatives from the six sector employers' associations:

- 1) BC Public School Employers' Association (BCPSEA);
- 2) Post-Secondary Employers' Association;
- 3) University Public Sector Employers' Association;
- 4) Health Employers Association of BC;
- 5) Community Social Services Employers' Association;
- 6) Crown Corporations' Employers Association.

Membership in the appropriate sectoral employers' association is compulsory for each public sector employer, including public boards of education.

In 1997, the Employment Termination Standards Regulation was enacted under authority of the Public Sector Employers Act, 1994. The Standards apply to public sector employees not covered by a collective agreement, and regulate provisions with respect to termination of such employees, including notice and severance in lieu of notice, and re-employment in the public sector.

The *Public Sector Employers Act* was amended in 2002 to include, among other matters, provisions on vacation

and sick leave for excluded employees, as well as sectoral compensation plans. The Employment Termination Standards Regulation was also amended. In 2003 the minister of finance approved the BCPSEA sectoral exempt staff compensation management plan for the K-12 public education sector (BCPSEA Policy 95-06, Compensation and Employment Standards for School District Employees Not Subject to a Collective Agreement), as an approved compensation plan under the Act, bringing into force the statutory system of exempt staff compensation administration in the sector.

PSEC also established broad provincial compensation and bargaining mandates for collective bargaining with unionized employees in the public sector. The PSEC compensation mandates also applied to excluded employees. PSEC has enacted other policies that are up to the sectoral organizations to apply in their sector.

The BC Public School Employers' Association created pursuant to this Act is governed by a board of directors, consisting of:

- Seven trustees representing seven regional groupings elected by boards of education;
- Four provincial government appointees.

One of the current directors may be selected by the board to serve as chair, or an individual can be appointed to serve as an additional director and chair. The vice chair is elected by the board from among the directors.

The functions of the sectoral employers' associations, including BCPSEA, are to assist the Public Sector Employers Council to achieve its provincial objectives and strategic directions by effecting coordination of each sector's:

- collective bargaining objectives;
- employee benefits administration;
- human resource practices; and
- compensation levels for non-union employees.

A public sector employers' association may be appointed as the accredited bargaining agent for all its members. The BC Public School Employers' Association became the accredited bargaining agent for all boards in BC under the terms of the *Public Education Labour Relations Act*.

## 92.3 Public Education Labour Relations Act, 1994 (see also Appendix)

The principal purpose of the *Public Education Labour Relations Act* is to provide for a two-tiered system of collective bargaining with public school teachers in BC. The Act appoints the BC Teachers' Federation as the certified bargaining agent for all teachers employed by BC boards of education, and the BC Public School Employers' Association as the accredited bargaining agent for every board of education in the province. It then provides for:

- province-wide bargaining between BCTF and BCPSEA for all cost provisions relating to teacher salaries, benefits, workloads (class sizes), time worked and paid leaves; and
- other matters deemed provincial by BCTF and BCPSEA are also provincial (See Letter of Understanding No. 1 Appendix 1);
- local bargaining at the school district level between the board of education and the district teachers' union for all other matters.

The collective agreement as it applies in each school district then includes the matters negotiated and agreed on provincially, plus the matters negotiated and agreed on locally. The right to strike or lock out exists at the provincial level only – should an individual board of education and its district teachers' union be unable to agree on a local matter, either party may refer the dispute to the provincial bargaining level for resolution. Two or more boards of education and their districts' teachers' unions may jointly negotiate the local matters that will form parts of their districts' collective agreements.

This two-tiered system of collective bargaining with public school teachers in BC became effective on July 1, 1994, when the majority of school districts' existing agreements expired. For those agreements that continued past July 1, 1994, the *Public Education Labour Relations Act* includes provisions for early expiry with the concurrence of both parties; otherwise, the agreement continued in effect until its original expiry date.

The *Public Education Labour Relations Act* also gives BCPSEA the legal authority to bind boards of education to collective agreements with support

staff unions, and the legal responsibility to represent them in negotiations and contract administration. Such non-teaching employees may include building maintenance staff, custodians, school bus drivers and office workers, who are represented by unions such as the Canadian Union of Public Employees (CUPE), or the International Woodworkers of America (IWA), usually at the school district level.

BCPSEA has delegated its authority to negotiate with school district support staff to the individual boards of education, with BCPSEA playing a coordinating role through the use of compensation guidelines established by the Public Sector Employers Council and a requirement that BCPSEA's Board of Directors ratify all support staff agreements. (See also Guide 90.2.)

## 92.4 Pension Plans

Pensions for certified teachers (including principals, superintendents, associated professionals, etc.) employed by public boards of education come from the Teachers' Pension Plan; pensions for other board of education employees (including support staff, secretary-treasurers) come from the Municipal Pension Plan. *The Public Sector Pension Plans Act* repealed the *Pension (Teachers) Act* and the *Pension (Municipal) Act* as well as other public sector pension plan legislation, consolidating all the plans under one Act.

The British Columbia Pension Corporation provides pension plan administration services for the public sector pension plans.

The British Columbia Investment Management Corporation provides investment management services to the boards of the public sector pension plans.

The pension advisory boards for the teacher and municipal plans have taken on a joint trusteeship of the respective pension plans. Under joint trusteeship of the Municipal Plan, for example, the Municipal Employees' Pension Committee and the plan employers would be joint trustees of the plan and share responsibility for managing of pension assets and setting contribution levels. They would share responsibility for unfunded liabilities and share ownership of any surplus.

The pension plan rules are no longer contained in statute but in regulation.

## More Information

**BC Public School Employers' Association**  
<http://bcpsea.bc.ca/>

**Public Sector Employers Council**  
<https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/public-sector-employers-council-secretariat/about-the-public-sector-employers-council>