BRITISH COLUMBIA
PUBLIC SCHOOL
EMPLOYERS' ASSOCIATION

The Class Size Story

In Dispute: Class Size, Composition, and the Organization of Schools in BC

February 2011

On Thursday, February 24, 2011, the newspaper headline read, "Union grievances over class size and composition in BC schools cost $1 million."[1] Susan Lambert, the President of the BC Teachers' Federation, was further quoted in a radio news report stating, "We've got tens of thousands of grievances outstanding…."We've got probably thousands of grievances still gathering from this year. It happens across the province."[2]

The BC Teachers' Federation (BCTF) and the provincial government have been at odds on a variety of education issues since the government came to power in 2002. Simply put, class size, composition, and the organization of schools is one of a number of issues that can be characterized as a *philosophical divide* of sorts between the union and government.

Class size and composition is not just a work issue — it is also a learning issue and a condition of spending issue: complicated public policy that is shaped by the interplay of government priorities, and economic, social and human resource factors.

The matter at issue[3]: Should class size, class composition, and the organization of schools be established in legislation as matters of public policy? Or are these matters better placed within a collective agreement and open to bargaining between teachers and their employers?

There are two broad schools of thought. One argues that the way schools are organized is a matter of importance to a group far larger than teachers and their employers. This perspective reasons that the public has a vested interest in how schools organize classes because these decisions have far-reaching economic and social impacts.

The other perspective takes the position that the size of a class and its composition (that is, how many students in the class have specific needs that must be addressed through individualized education plans) are issues that define the *working conditions* of teachers. As such, they should be negotiated through bargaining, much as teachers negotiate salaries, benefits, and other matters. This perspective often blurs the distinction by saying that the negotiation of working

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[1] Steffenhagen, Janet. "Union grievances over class size and composition in BC schools cost $1 million." *The Vancouver Sun*, February 24, 2011.
[2] White, Dave. **"**BCTF grievances costing $1 million and counting." CKWX Radio News 1130, February 24, 2011, 8:16 am, http://www.news1130.com/news/local/article/188512--bctf-grievances-costing-1-million-and-counting.
[3] The larger and arguably more important issue from a human resource perspective is, how do you best integrate the notions of class size and composition as a working condition, a learning condition, and a condition of spending to develop terms and conditions of employment.

conditions is the negotiation of learning conditions. Teachers, the argument goes, are in the best position to bargain this dynamic.

The clash of these two views has dominated much of the discussion around public education in BC, extending well back into the late 1960s. Indeed, the issue is currently under review by the BC Supreme Court, which is examining the BCTF's assertion that its members' rights under the *Charter of Rights and Freedoms* were violated by 2002 legislation that moved class size and composition from the sphere of collective bargaining to the realm of legislation and public policy.

The Class Size Issue in the Beginning

In the first century of public education in the province, the *Public School Act* included a process for negotiating salaries. It did not include a process for negotiating other issues such as workload, class size, or preparation time. Any guidelines about class size were defined at the district level, either in working and learning agreements or school board policies. These were flexibly administered and did not have the legal status of a collective agreement.

Class size became a prominent focal point in the late 1960s and early 1970s. During this period, the BCTF successfully moved beyond negotiating salaries to include other issues. In 1974, for example, 1,000 Surrey teachers went on a day-long strike to protest large class sizes. In response, the provincial government agreed to reduce the pupil-to-teacher ratio by hiring an additional 920 teachers at a cost of $30 million. Continued pressure had its intended result; the BCTF, in its history of bargaining, states that, "This had a dramatic impact on class sizes as the PTR [pupil teacher ratio] went from 22.68 in 1972/73 to 16.70 in 1981/82 and thousands of new teachers were added to the school system."

From 1987 to 1993, class size and composition were bargained within collective agreements between local teachers' unions and individual school boards. Trained and coordinated by the BCTF, locals bargained directly with their school board employers. The locals used strikes and coordinated local bargaining to negotiate new agreements that included restrictions on class size and composition issues.

However, school boards often felt constrained by the restrictions, which limited their power to organize classes in a way that cost-effectively met the shifting needs of students. As Rick Davis, Superintendent of Achievement with the BC Ministry of Education, wrote in an affidavit to the recent BC Supreme Court case, the class size provisions limited school boards' ability to "flexibly deploy their teaching staffs in a way that met student needs. When class size maximums were exceeded, the remedies that were provided by the school boards, in order to obtain the BCTF's agreement to exceed the maximums, increased the costs to school districts."

Teacher–employer collective bargaining dates back to 1987 when teacher locals were certified as unions under the labour code of the day and bargaining took place at the local level. The BCTF coordinated their constituent locals while school boards' coordination was more sporadic. In 1994, against the backdrop of an increasing number of strikes and concerns over the cost of public sector human resources, the government passed the *Public Sector Employers Act* and its companion for K-12 public education, the *Public Education Labour Relations Act*, mandating provincial rather than local bargaining. Under the terms of provincial bargaining, the BCTF

represented teachers and the BC Public School Employers' Association (BCPSEA) was created to represent school boards. All issues with a cost associated with them were to be negotiated provincially, and non-cost matters were still negotiated locally.

The first rounds of provincial bargaining were troubled, and complicated by the legislation that created the model in the first place. The legislative change contained no transitional provisions to move the parties from a series of local agreements to a form of provincial agreement. Further, the parties had very different views and expectations regarding bargaining outcomes.

In 1998 the BCTF and the government, to the exclusion of the employers' group, settled the collective bargaining dispute by entering into two agreements. The first document was the Agreement in Committee (AIC) and the second was entitled Memorandum of Agreement K-3 Primary Class Size (MOA). The AIC provided amendments to the existing collective agreement in many areas, none of which dealt with class size or class composition. The AIC did not have an end date. It simply became part of the collective agreement. The MOA dealt only with class size numbers for K-3 classes. In addition, it provided for funding for the reduced class sizes over the term of its agreement.

The BCTF and the provincial government, when they negotiated the MOA, negotiated an end date — the end date was June 30, 2001. Prior to the expiry of the MOA, the provincial parties (BCPSEA and BCTF), agreed to a renewal of the MOA and, by doing so, essentially eliminated any end date for the K-3 primary class size agreement.

It must be remembered that at the time of the AIC and the MOA, most of the locally negotiated collective agreements contained limits on class size and composition for grades K-12. Most of the grievances and disputes were with respect to "financial constraints" language that many districts had negotiated into their collective agreements. The districts were of the view that "financial constraints" language would permit districts to have higher class size numbers than in the collective agreement if the districts were able to show financial difficulties. Arbitrators generally disagreed with the districts and held that the contractual provisions must be met by the districts and that "financial constraints" language would not offer relief from compliance with class size and class composition numbers. The MOA provided for fixed numbers for K-3. There was little room for any dispute in the application of the MOA as it simply required that each of the classes at K-3 be a particular number. There were no flexibility factors and the MOA did not deal with class composition.

2002: Class Size Moves to Public Policy

The election of a new provincial government resulted in profound changes to public education structures. In January 2002, Bills 27[4] and 28 were passed. Bill 28, the *Public Education Flexibility and Choice Act,* removed school organization issues such as class size and composition from the realm of the collective agreement into the realm of legislation. Class size was no longer something that could be bargained between the BCTF and the BCPSEA; it was now defined by law and public policy. Minister of Skills Development and Labour Graham Bruce

[4] Bill 27, the *Education Services Collective Agreement Act*, was essentially back to work legislation.

declared in the legislature that, "Under this bill, class sizes are off the bargaining table, and they are entrenched in legislation in the *School Act.*"

Section 27.3 of the *School Act* (the Act) was amended to limit what could be bargained in the collective agreement, stating that "there must not be included in a teachers' collective agreement any provision (d) restricting or regulating a board's power to establish class size and class composition, (e) establishing or imposing class size limits, requirements respecting average class sizes, or methods for determining class size limits or average class sizes".

Section 76.1 of the Act outlined average class size requirements and set limits on the number of students in classes depending on grade level; these were also included in the accompanying *Class Size Regulation*.

The consequence of the legislation was to remove all references to class size and class composition from collective agreements. This included the class size numbers that had been contained in the MOA K-3 Primary Class Size. Bill 28 included statutory provisions for class size and averages for classes at the various levels. It contained no reference to class composition. The BCTF greeted Bill 28 and the related changes to the *School Act* with outrage and responded by holding a one-day walkout in protest.

The Aftermath of Bill 28

The consequences of Bill 28 were complex and complicated, marked by legal challenges, appeals, and more legislation. In synopsis:

- In July 2002, Arbitrator Eric Rice was appointed to interpret section 27.1 of the *School Act* and remove class size references from the collective agreement. He completed his review on August 30.
- In November 2002, the BCTF filed a petition in the BC Supreme Court asking for a judicial review of Rice's award, stating that Rice violated the principles of natural justice, erred in law, and exceeded his jurisdiction.
- In January 2004, Justice Duncan Shaw of the BC Supreme Court released his decision, effectively quashing the Rice award. Although not permitted by the *School Act*, the result was that issues surrounding class size, class composition and staffing provisions remained in the collective agreement.
- In February 2004, both the BCPSEA and the BCTF appealed Shaw's judgment.
- In April 2004, the government passed Bill 19, the *Education Services Collective Agreement Amendment Act,* which essentially overturned Shaw's decision and implemented the changes proposed by Rice to section 27.1 of the *School Act*.

The amended *School Act* also included a new section, 28.3, which stated that while parties could bargain the *manner and consequences* in which a school board could exercise certain powers or discretion, they could not bargain about the *subject matter* contained within section 27.3 (which states that class size limits cannot be included within the collective agreement).

The BCTF argued that the scope of bargaining was much broader than that allowed under Bill 19. The union filed a petition to this effect in the BC Supreme Court, which is currently reviewing the case and expected to release its decision in the spring of 2011.

At the time of the 2004-2005 round of bargaining between the provincial parties (BCTF and BCPSEA), the issue at the bargaining table related strictly to proposals from the BCTF on *manner and consequences*. There was no authority for the BCTF to negotiate class size and class composition based on Bills 27 and 28. What the BCTF sought in the 2004-2005 round of provincial bargaining was the insertion into the provincial collective agreement of clauses that dealt with manner and consequences of class size and class composition issues.

The outcome of the 2004-2005 round of bargaining, and the job action taken by the teachers in relation to the imposed contract in October 2005, resulted in the 2006 class size and class composition legislation. In May 2006, the government passed Bill 33, the *Education (Learning Enhancement) Statues Amendment Act.* This legislation was a direct response to the BCTF request for legislation on class size and composition. The new legislation modified elements of the *School Act* to create statutorily mandated class size and composition triggers and thresholds. If a school had a class that exceeded these class size and composition limits, school or district administrators were required to engage in a specific consultation process to ensure that learning conditions were appropriate for students.

The BCTF responded by instructing its members to limit their discussions with school or district administrators about class size and composition limits, therefore undermining the consultation process. The union stated that although class size limits are defined by legislation, the legislation is virtually meaningless because the limits are frequently exceeded.

The scheme of the 2006 legislation was to provide for overall averages at each of the levels of instruction. The legislation provided for fixed numbers for kindergarten and for grades 1 to 3. Those numbers were required to be in place without exception. As the numbers were fixed with no flexibility, there was no dispute with respect to compliance with the legislation.

With respect to grades 4 to 7, classes were not to exceed 30 students unless both the superintendent of schools and the principal of the school determined that the class was appropriate for student learning and the principal of the school obtained the consent of the teacher of that class. This provision gave rise to minimal, if any, disputes in that the numbers were fixed unless the teacher consented. In practice, classes at the grades 4 to 7 level that are in excess of 30 students tend to be limited to band and choir classes.

The 2006 legislation also provided that at the grades 8 to 12 level, classes could exceed 30 students if the superintendent of schools and the principal of the school were of the opinion that the class was appropriate for student learning and the principal of the school had consulted with the teacher of the class. Similarly if any class, that is K-12, had more than three special needs students enrolled in it, the superintendent of schools and the principal of that school must be of the opinion that the class is appropriate for student learning and the teacher of the class must be consulted by the principal. It is these two areas where considerable disputes have arisen. The disputes concern sufficiency of the consultation process and challenges to the opinions of the superintendent/principal on appropriate for student learning.

It is important to note that since the 2006 legislation, a large number of classes have been put into dispute by the BCTF. Generally, arbitrators have determined that school boards are complying with the legislation. Arbitrators have deferred to the opinions of the superintendents and the opinions of the principals of the schools in the vast majority of cases. Similarly, arbitrators have reviewed the consultation processes at the school level and have determined that the principals of each school have put in place fair and appropriate consultation processes. However, the BCTF continues to file grievances in each school year.

Class Size and Composition Grievances

In November 2002, the BCTF initiated a grievance stating that school boards had violated the class size provisions defined in the section 76.1 of the *School Act*. BCPSEA's position was that an arbitrator did not have jurisdiction to consider the grievance because class size limits were defined in legislation and not in the collective agreement.

The issue was reviewed in December 2003 by Arbitrator Munroe who agreed with BCPSEA that the grievance could not be addressed through arbitration. The BCTF appealed the decision, and in January 2005 the BC Court of Appeal stated that Arbitrator Munroe's decision was incorrect.

Because certain time limits had passed, grievances from the 2003-04 and 2004-05 school years were dismissed. Grievances from the 2002-03 and 2005-06 school years were settled in December 2007. The settlement included 140 teacher on call days provided to six separate school districts.

As of February 2011, there were 400 unresolved grievances over class size and composition violations from the 2006-2008 school year, 4,600 from 2008-2009 and 5,000 from 2009-2010.