

Lessons to Learn and a Course to Chart

Bargaining Structures, Relationships, and Experiences

Contents

Introduction	1
So how did we get here?	3
Bargaining at the local level and the emergence of broad scope bargaining	4
Bargaining at the provincial level	5
Looking for alternatives.....	7
The Wright report: Mediation and final offer selection	7
Vince Ready: Provide support to the parties	9
Others weigh in	10
Lack of dispute resolution model	11
Final offer selection	11
Past BCTF presidents offer their views	12
BC school trustees consider a task force	12
Where do we go from here? Making reasoned decisions	12
Almost a final word	14
And so... ..	16
And finally... ..	17
Attachment A: Strikes and Lockouts in BC —.....	18
Teacher–Public School Employer Collective Bargaining.....	18
Incidents of Ad Hoc Legislated Intervention	25
Attachment B: A Question of Structure	27
<i>Free</i> collective bargaining.....	27
A good collective bargaining system.....	28
Bargaining structure themes and criteria	28
A good collective bargaining system leads to good agreements	29

Lessons to Learn and a Course to Chart: Bargaining Structures, Relationships, and Experiences

Introduction

As the 2011-2012 school year comes to an end, it's an apt time to reflect on the debate, discord, and divisions that have characterized teacher–public school collective bargaining and, most importantly, look to the future. This is the first of a three-part series.

Seven words capture the sentiments of the time: Is this the best we can do?

The attempt to negotiate a new collective agreement between the province's teachers and their employers has been a very public affair. With reports of the stalled negotiations and a prolonged strike making front-page news over the school year, teachers, parents, politicians, members of the public and countless experts have weighed in by writing letters to the editor, voicing opinions on radio talk shows, and writing blog posts and tweets. When bargaining stalls, strikes occur, or observers see the situation as intractable, many individuals — informed or otherwise — offer advice and are keen to jump to a solution. Those observers, commentators, experts, so-called experts, people involved or with an interest in the sector describe the *problem* or *problems* in a number of ways. While neither agreeing nor disagreeing with the observation, and recognizing it is not an all inclusive list, following is a representative sample:

- A negotiated agreement, history tells us, can't be reached without some form of assistance or intervention.
- In practice, “free collective bargaining” is not evident or structurally not permitted in the sector.
- Given the parties, their bargaining experiences, and the public nature of public education negotiations, there is no adequate dispute resolution process/system.
- There has not been an enduring *meeting of the minds* on the form and process of provincial bargaining since the original agreement reached by the BC Public School Employers' Association (BCPSEA) and the BC Teachers' Federation (BCTF) in 1994.
- There is nothing complicated about the *bargaining structure* issue. With the exception of the 1994 agreement and the negotiations that followed that agreement the BCTF has advocated, pursued or otherwise pushed for a form of late 80's local bargaining
- The notion, concept, and structure of provincial bargaining does not enjoy the support of the BCTF.
- The parties have different views as to what is really going on....what is collective bargaining anyway?
- The wrong parties are bargaining.
- The scope of bargaining — what is bargained, where — is wrong.
- Outside influences disrupt and distort bargaining, making a negotiated agreement difficult, unlikely, or impossible.

What is the *structure* we are talking about? In the 2004 *Commission to Review Teacher Collective Bargaining*, Commissioner Don Wright used the following general framework:

- Where will issues be bargained?
- Who should be the bargaining agent for the employer?
- How will impasses at the bargaining table be resolved?
- What is to be bargained — scope of bargaining?
- Transition

While these are the components of a structure, it is important to recognize that in practice there are attitudinal, behavioural, and contextual factors that weigh heavily on any structure. Any structure will work if the parties and those who influence the bargaining process are prepared to make it work. Commissioner Wright's concluding comments in his 2004 report are instructive:

Even if fully implemented, these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioral change of both sides.

This will require dialogue — a genuine attempt to arrive at mutual understandings — between teachers and the employer group (i.e., government, trustees, and school administrators). The sooner we start on that, the better.

It is also important to note that the issue of teacher–public school employer bargaining structure has been the subject of at least five inquiries or policy decisions since the 1980s.

So before jumping on the *need for change bandwagon*, let's start with the concluding comment of this paper to set the stage:

If the capacity, ability or willingness does not exist to make meaningful change, there's the potential that a worse bargaining dynamic will result. The consequences arising out of this dynamic will affect the operation of schools and the delivery of educational programs and, to the degree to which it persists, public education will suffer.

It is easy enough to propose solutions, but we must remember that solutions are always based on our assumptions about the problem we're trying to fix. In the current situation, when offering opinions about how to resolve the bargaining impasse, people often suggest that the primary problem is the bargaining structure. By this, they are referring to the agreed-upon and legislated processes by which teachers and their employers determine such things as how much teachers will be compensated for their work, the conditions of their employment (including professional development days, hiring practices, leave provisions and the organization of the workplace) and all the other things that come to form a collective agreement.

What is less clear is whether they are also referring to strikes, cost of bargaining in terms of resources and/or relationships, authority and roles, or...? While the understanding of "bargaining structure" differs from individual to individual, a common assumption is that the current bargaining structure is the problem, and that if we just had a different structure, a negotiated agreement would quickly follow suit.

The current bargaining structure for teachers and their employers in the K-12 public education sector consists of two bargaining agents: the BC Teachers' Federation (BCTF), representing the province's public school teachers, and the BC Public School Employers' Association (BCPSEA), representing the province's 60 public boards of education as employers. The BCTF and BCPSEA bargain under a two-tier model with some matters bargained at a central provincial table and others bargained by local teacher unions and individual boards of education.

When journalists, political commentators and members of the public state that the current bargaining structure is the reason for the BCTF's and the BCPSEA's inability to negotiate an agreement, the implication is that a different bargaining structure would more likely result in success.

As we noted earlier, our province has had different bargaining structures over the past decades. There have been many attempts to create new models for bargaining, and it's worth examining the strengths and weaknesses of both the attempts and the outcomes. As such, when discussing teacher–public school employer bargaining, you need to start with an understanding of the history that has brought us to this point and the context and environment in which bargaining occurs¹ (see Attachment A for a list of bargaining experiences since 1987).

It is also important to remember that unionized support staff within the public education system bargain within the same Public Sector Employers' Council (PSEC) structure as BC's teachers. There are differences, however. Support staff work under 69 different collective agreements and are represented by 13 unions, with the Canadian Union of Public Employees (CUPE) representing close to 93%. With unionized support staff, negotiated agreements are the norm. The difference is the parties' bargaining history, their approach to bargaining, and a history of bargained results.

So how did we get here?

The current bargaining structure has existed since the early 1990s, emerging from two key events:

- In 1987, teachers achieved broad scope bargaining, meaning that they had the legal right to bargain both their compensation and their working conditions with their school district employers; and
- In 1993, the Korbin Commission released a report making recommendations to centralize the public sector bargaining structure, including the highly decentralized K-12 public education sector, which ultimately led to the creation of BCPSEA and its designation as the representative of public school employers. For teachers, individual union certifications were dissolved and the BCTF became the certified bargaining agent for all teachers.

¹ Two recent publications provide a comprehensive history of bargaining from two perspectives. *Worlds Apart: British Columbia Schools, Politics, and Labour Relations Before and After 1972*, Thomas Fleming, Bendall Books, 2011; *Conflict Without Compromise: The Case of Public Sector Teacher Bargaining in British Columbia in Dynamic Negotiations: Teacher Labour Relations in Canadian Elementary and Secondary Education*, Sara Slinn, McGill-Queens University Press, 2011.

Bargaining at the local level and the emergence of broad scope bargaining

Until 1987, teachers and their employers bargained salaries and bonuses at the local level under a process codified in the *School Act*. If the two parties were unable to reach an agreement by a date specified in the *School Act*, any impasse was referred to arbitration. Working conditions (such as class size or policies over transfers, vacancy filling, supervision, evaluation, and professional development) were not included within the legal bargaining structure, but local teacher associations often pressured boards to negotiate a separate contract for working conditions in return for peacefully settling salary disputes.

Teachers were virtually alone among other public sector employees in their lack of access to collective bargaining, including the right to strike to press for their demands.

However, as described by Osgoode Hall Law School Professor Sara Slinn, even though “teachers had no clear legal right to strike, and compulsory arbitration was prescribed in cases of bargaining impasse, teachers and their locals used mass resignations, strikes, participated in work-to-rule campaigns, and issued “in-dispute” declarations throughout this period as negotiation pressure tactics.”²

With the coming into force of the *Charter of Rights and Freedoms* in 1982 — and in an attempt to address what the government of the day believed was a constitutional vulnerability — in 1987, the Social Credit provincial government gave teachers a choice. They could choose to organize themselves as trade unions under the labour relations legislation of the day, gaining access to broad scope bargaining but having limited abilities to strike with education designated as an essential service. Or, they could choose to organize as a professional association, with access to binding arbitration to resolve disputes and no option to strike.

Ninety-eight percent of teachers chose the trade union model over the professional association model. With the assistance of the BCTF, union locals were certified as local unions in each district of the province.

As described by the BCTF in its history of the organization:

What emerged was a system of coordinated local bargaining. Locals were the bargaining agent charged with the responsibility of negotiating a collective agreement with their school board. The BCTF worked to coordinate all negotiating activities as well as to develop the Collective Bargaining Handbook, with model clause language on every conceivable position that teachers might wish to negotiate. Local bargaining teams were trained by the BCTF and supported by staff assigned to work with locals. Additional staff were hired to assist and new policies and procedures were put in place to support the new bargaining regime including strike pay and assistance. The first round of collective bargaining for teachers in 1988 continued to captivate the excitement and energy of teachers...On November 28, Kitimat teachers began a 10-day strike before successfully concluding an agreement. Eleven other locals struck in the first round and others mobilized to

² Sara Slinn, “Structuring Reality so that the Law Will Follow: British Columbia Teachers’ Quest for Collective Bargaining Rights,” *Labour/Le Travail* (Fall 2011).

achieve their objectives that became identified in the slogan “Why Not Here?” We did well through coordinated local bargaining.³

Between 1987 and 1993, local bargaining resulted in three broad scope collective agreements that enabled teachers to make significant improvements in their salaries as well as gains in their working conditions. During this five-year period, there were also 48 teacher strikes, including 15 strikes and one lockout in round one, 17 strikes in round two, and 16 strikes and two lockouts in round three.

Recently, the senior civil servant responsible for the education file at the time observed:

On April 1, 1987, the bill was introduced. I’ve looked back and said, that may have been my worst piece of advice to government ever, because the relationship hasn’t worked at all. They’ve had 11 years of New Democrats; they’ve had 11 years now of Liberals. It doesn’t work.⁴

Bargaining at the provincial level

The early 1990s were a time of considerable change in public education and teacher–employer bargaining. In 1990, government changed education funding and some districts found themselves facing considerable funding constraints as they struggled to meet the rising costs that emerged from the agreements. The province also faced economic pressures and lower revenues.

In 1992, the government established a commission led by arbitrator/mediator Judi Korbin to investigate human resource management in the public sector. K-12 public education was one of the areas of focus. One of the motivating factors in creating the commission was to try and balance the economic realities of limited financial resources with the need to provide public services. As Korbin noted:

The Commission received numerous submissions concerning the need to establish a method of balancing the power of the parties for collective bargaining purposes...It is believed by many that there are powerful local teachers’ associations acting in concert with the more powerful teachers’ federation, whipsawing individual school boards into accepting teachers’ bargaining demands because, on a district-by-district basis, they are not able to resist those demands. Consequently, it is perceived that school boards are forced to agree to teachers’ settlements beyond the funding ability of a particular district.⁵

Education stakeholders submitted their opinions to the Korbin Commission about the state of labour relations. The BCTF argued for the importance of local bargaining, whereas the employer community recommended centralized bargaining. For example, the BC Principals’ and Vice-Principals’ Association (BCPVPA) submitted the argument that the local bargaining process was adversarial and did not create an environment for collaborative problem-solving. The BCPVPA also criticized the financial and human resource expense required by the process, stating that mediators and others were benefitting at the expense of students.

³ “History of the BCTF.” Accessed from http://bctf.ca/uploadedFiles/About_Us/HistorySummary.pdf.

⁴ Bob Plecas, “Voice of BC,” Shaw Cable TV, March 2, 2012.

⁵ Judi Korbin, *Final report of the Commission of Inquiry into the public service and the public sector*, 1993 (Volume 2): F-20.

The Korbin Commission recommended that there be greater central coordination of bargaining. The government took up this recommendation and restructured public sector bargaining to create several employers' associations in the BC public sector, including the BC Public School Employers' Association as the accredited bargaining agent for public boards of education in the province.

The accompanying legislation introduced provincial bargaining, mandating a single bargaining unit and, by extension, a single collective agreement covering all major issues and cost items. The legislation also defined a process for designating the provincial–local split of issues, with the BCPSEA and BCTF jointly deciding which issues must be bargained provincially and which could be bargained at the local school district level.

The bargaining model as it emerged was fraught with difficulties. First, there were no transitional provisions to take the province from 75 local collective agreements in the 75 public school districts, to a form of master agreement contemplated by the move to a centralized model. Second, few understood the implications of two-tiered bargaining. In its final submission to the 2004 Wright Commission, BCPSEA made the following observation on two-tiered bargaining:

We believe it is necessary to consider the nature and structure of collective bargaining and collective agreements when assessing options for the split of issues. Most negotiations involve numerous complex issues, many of which are interrelated. During negotiations, parties can change their positions on one issue in reaction to changes in positions that occur on other issues. In practice, this type of flexibility and process of tradeoffs across outcomes makes an agreement possible. The absence of major issues or related issues because one matter is at the provincial table and the other is at local tables confuses the negotiating process, limits meaningful negotiations, and ignores the interrelated nature of provisions in a collective agreement. If there is to be a split of issues, related matters must be bargained in the same forum.

Further, it is an artificial distinction to suggest that you can separate major cost items, such as salary and benefits, from other terms and conditions of employment, all of which have cost implications or consequences to the assignment of resources. Under such a bargaining structure the union has two opportunities to negotiate matters that have cost implications — once at the provincial table and 60 additional times at local tables⁶ for other matters which may have cost implications.

Given the limitations of two-tier bargaining but recognizing the desire to have meaningful negotiations at both the provincial and local level, we propose the following model with respect to where issues should be bargained. We submit that the substantive and common issues (monetary and non-monetary) be bargained at a provincial table. We observe that a provincial table provides for an efficient use of resources and expertise while providing a sufficient “balance of bargaining power” between the two bargaining agents and their members.

⁶ By the time of the Wright Commission, the number of public school districts in BC had been reduced from 75 to 60 through amalgamation of districts as an initiative of the provincial NDP government.

Looking for alternatives

The experience with the provincial bargaining model in terms of process, outcomes, and relationships has been varied for a variety of reasons. The BCTF and BCPSEA negotiated an agreement for the 1994-1996 period where the parties agreed to new terms, but also continued many of the provisions contained in local collective agreements (referred to as the Transitional Collective Agreement or TCA). The TCA set the stage for the continuation of bargaining in 1997.

In the 1997-1998 round of bargaining, most of the terms of the collective agreement were reached between the parties, although some provisions were reached directly between the BCTF and government (referred to as the Agreement in Committee or AiC), to the exclusion of BCPSEA. The AiC was submitted to the parties for ratification. BCTF members accepted the agreement but BCPSEA members — the province's public boards of education — did not. In July 1998, the terms of the AiC were imposed by the provincial government through legislation.

The provincial parties negotiated an agreement under a bargaining model proposed by Industrial Inquiry Commissioner Vince Ready as part of the resolution to the BCTF illegal strike in 2005. Ready also recommended that the parties adopt this model for future rounds of bargaining, a recommendation the BCTF did not accept.

As we have referenced and discuss further below, given the demonstrated difficulty of reaching negotiated agreements under both the post-1987 local model and the 1994 provincial model, governments have created various inquiries and commissions to propose alternatives to the structure, including:

- in 2003, asking Don Wright to identify options, and
- in 2007, asking mediator/arbitrator Vince Ready for his recommendations.

The Wright report: Mediation and final offer selection

In 2003, Don Wright, a former Deputy Ministry of Education under the NDP government, was appointed as a commissioner to inquire into the bargaining structure and to identify options for improving collective bargaining. At the start of the inquiry he stated that, "My only pre-conceived ideas are ...that we are grappling with an incredibly complex bundle of issues and that there is no simple solution." His process was designed to respect this complexity and involved asking education stakeholders to reply to a series of 60 questions, facilitating a session with stakeholders and then issuing a discussion paper.

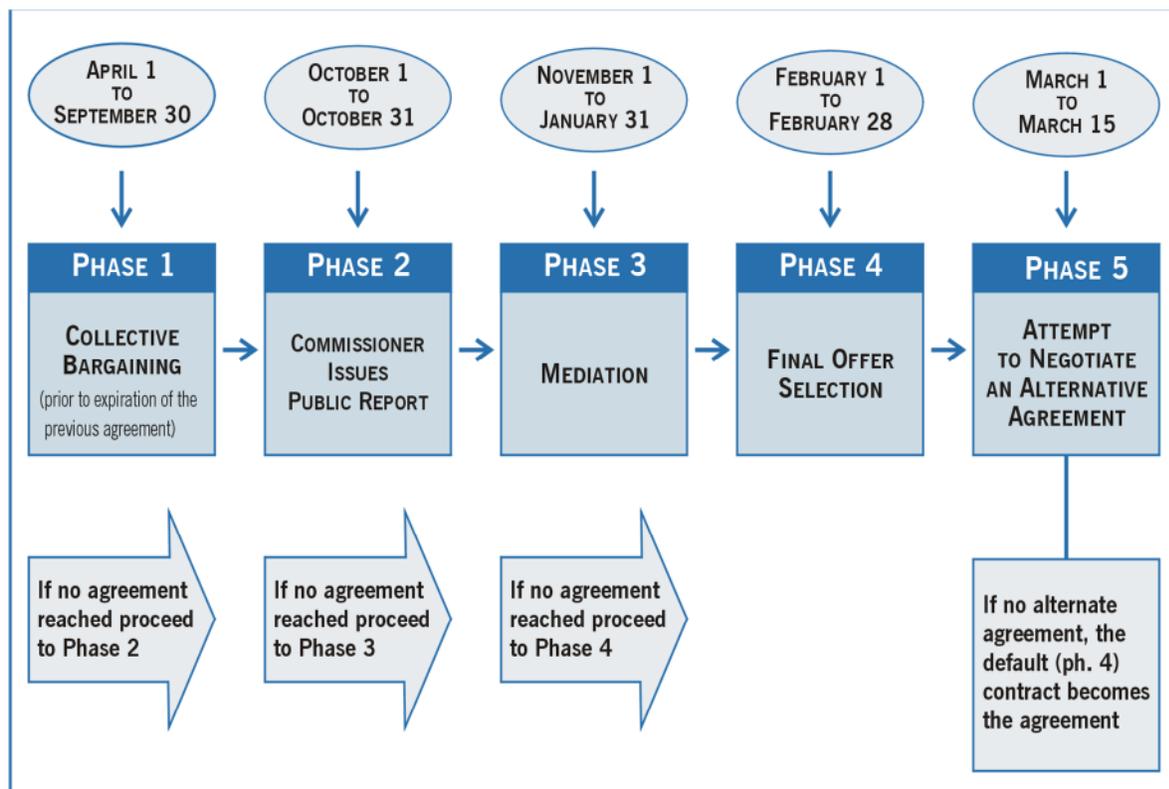
His report, released in December 2004, noted the unique environment within which collective bargaining occurs in the education sector and the intense pressure it places on government to intervene in any longstanding dispute. He argued that collective bargaining in the public sector must be guided by the state of the provincial economy. Finally, he identified five criteria that are required to be in place if the education sector aspires to a mature collective bargaining relationship:

1. Government recognizes that teachers must have an effective voice in determining the terms and conditions under which they teach.
2. Teachers must recognize government's interests in funding the K-12 system.

3. Both parties must bring genuine desire to avoid legislative intervention.
4. Both bargaining agents must be governed effectively so that they can come to the table with the ability to make a deal.
5. The public must be able to hold the appropriate agency accountable for the adequacy of funding, the effectiveness of how that funding is utilized, and the outcome of the collective bargaining process.⁷

Wright recommended maintaining the two-tier bargaining structure, with major cost drivers negotiated provincially and “relational” issues bargained locally. He suggested that the local issues negotiated by local parties not be subject to the approval of either of the provincial bargaining agents (i.e., BCTF and BCPSEA).

He also suggested a mechanism to deal with bargaining impasses, consisting of a multi-phase process that would incorporate various levels of intervention and assistance. For example, the first phase of collective bargaining would be conducted from April 1 through September 30; if an agreement was not reached, a commissioner would investigate the negotiations for the month of October as part of phase two. In phase three, the commissioner would be appointed as a mediator/arbitrator and attempt to mediate an agreement. In phase four, the parties would each propose a final offer, and the mediator would select one as the default contract. A final phase would provide the parties with two weeks to negotiate an alternative agreement.



⁷ Donald Wright, *Voice, accountability and dialogue: Recommendations for an improved collective bargaining system for teacher contracts in BC*. Commission to Review Teacher Collective Bargaining, 2004.

Although Wright's report was generally accepted by the employers, it was rejected by the BCTF, who felt that it enshrined government intervention and that it failed to return to a system where teachers could negotiate all terms and conditions of employment and withdraw service to resolve disputes. The outright rejection of Wright's recommendations left little chance of future dialogue.

Vince Ready: Provide support to the parties

After the Wright report, veteran mediator/arbitrator Vince Ready was called upon to provide his recommendations giving due consideration to Wright's work. Ready would first have to turn his attention to resolving the illegal teachers' strike of 2005. Ready was able to resolve the strike and proposed a model for the 2006 round of bargaining.

This model, in large part, was credited with the negotiated 2006 deal. Ready would reflect in his report published in 2007, "No collective bargaining system will succeed unless both parties are fully committed to achieving a collective agreement. At the very heart of the labour relations system which governs participants in collective bargaining is the need to compromise, to seek new and creative solutions and to take a pragmatic and disciplined approach to differences which develop in the relationship."⁸

Reflecting on the successful negotiations between the BCPSEA and BCTF that led to their negotiated agreement in June 2006, he stated, "it is not the format or process of collective bargaining which will help achieve a collective agreement. Instead, it is necessary to provide support to the parties in their desire to achieve a collective agreement. The presence of a Facilitator/Mediator and the presence of a Government official provided that support."

Ready suggested that eight months prior to the expiry of a collective agreement, various elements should be put in place that would tilt the odds in favour of the two parties being able to negotiate an agreement. These include:

- appointing a facilitator/mediator
- having a government official serve on the BCPSEA bargaining committee to represent government public policy and other interests, and
- getting both parties to develop a common understanding of relevant data on total cost of compensation, benefit costs, teacher demographics, TOCs and labour market issues.

BCPSEA voted to accept Ready's recommendations in their entirety. However, the BCTF said that the report "failed to address any of the concerns raised by teachers over the years."⁹

As with the BCTF's outright rejection of Wright's report, the union's refusal to explore Ready's recommendations means that the bargaining structure has not evolved.

⁸ Vincent L. Ready, *Final Report for Collective Bargaining Options*, February 2, 2007.

⁹ BCTF E-News 6.7, February 14, 2007. Accessed from <https://bctf.ca/publications/BCTFNews.aspx?id=11422&printPage=true>.

Others weigh in

So here we are, 25 years on. Over the past year, the BCPSEA and the BCTF met close to 80 times and were unable to reach an agreement, leading the government to introduce Bill 22, the *Education Improvement Act* in March 2012, which proposed a “cooling-off” period and the appointment of a mediator to try and help the two parties negotiate a new collective agreement.

After Bill 22 passed in the legislature, Minister of Education George Abbott asked the BCTF and BCPSEA to offer suggestions for the mediator established under the legislation. The BCTF put forward two suggestions: Mr. Justice Stephen Kelleher of the BC Supreme Court and Mr. Justice Ian Donald of the BC Court of Appeal.

In addition to suggesting some specific individuals, BCPSEA suggested exploration of an alternate approach given the nature of the dispute and the matters at issue. As this dispute involves the intersection between terms and conditions of employment and education public policy, the association suggested several respected mediators (Vince Ready, James Dorsey, Irene Holden, Mark Brown, for example) who could provide a labour relations perspective as well as a body of knowledge and experience in the K-12 public education sector; and senior education policy experts such as former deputy ministers of education who could offer public education policy knowledge, including an understanding of the intersection between policy and terms and conditions of employment.

BCPSEA believed that while any of the proposed individuals represented a reasoned choice, none fell squarely within the framework established by the legislative criteria. Given the identified criteria and the breadth of the task at hand, BCPSEA suggested that an alternative dispute resolution model be considered to help achieve a successful outcome. A three-person panel was envisioned, with the senior education policy person as the chair and the other two nominees fulfilling the education labour relations need. BCPSEA recognized, however, that a model such as this would only work if it enjoyed the support of both the BCTF and BCPSEA.

On March 28, Minister Abbott announced the appointment of Dr. Charles Jago, former president of the University of Northern British Columbia, as mediator under section 6(1) of the *Education Improvement Act*. Shortly thereafter, the BCTF made application to the LRB to have Dr. Jago’s appointment quashed; when the LRB ruled it had no jurisdiction to do so, the BCTF pursued an action through the BC Supreme Court.

The occasion of legislative intervention resulted in further commentary about the *problem*. It focused on the failure of the *system*. With the legislation as a backdrop, Minister of Education George Abbott stated on a radio show, “Clearly there’s great dysfunction occurring within the bargaining structure.”¹⁰

BCTF President Susan Lambert also weighed in, including the following statement in her May 28, 2012 letter to Premier Christy Clark: “Our members also believe we must find, in a new bargaining structure, a solution to the dysfunction of the current bargaining relationship.

The comments on bargaining structure reported in the media tend to coalesce around a few common themes as described below.

¹⁰ Minister of Education George Abbott, CKNW Radio, The Bill Good Show, March 5, 2012.

Lack of dispute resolution model

Many suggest that the absence of any dispute resolution model has hindered the current bargaining structure and process. For example, Professor Sara Slinn states that when bargaining in the public education sector breaks down, “there’s really no constructive way of reaching settlement.”¹¹

Her thoughts are echoed by UBC Professor Emeritus Mark Thompson, who points to the biggest problem as being that “the government constructed a bargaining unit that cannot strike and does not have access to any form of alternative dispute resolution.”¹²

Under this scenario, when the going gets tough it can feel as though there are few available options. Paul Ramsey, a former minister of education and former minister of finance in the NDP administration, summarized the two options available to government. The first is to legislate a collective agreement, and the second is “to bring in some sort of continuation, some sort of mediation-arbitration process — with or without some sort of additional money, with or without some sort of flexibility.”¹³

The first option — legislating a collective agreement — has been the option of choice several times. This approach doesn’t help the two parties advance to a more mature collective bargaining relationship. As Slinn states, “conflict can’t simply be legislated away or quashed.”

Mark Thompson argues in *The Huffington Post* that “arbitration is not an alternative, as in other professions, because pay hikes for 41,000 teachers would amount to millions of dollars from the public purse and would trigger me-too clauses within the contracts already settled by other public-sector unions.”¹⁴

Final offer selection

Many writers favour the final offer selection process proposed by Wright. Writing in *The Vancouver Sun*, Craig McInnes offers his support for a final offer selection process, but anticipates that governments might be less interested in such a model as it gives “control over government finances to an independent arbitrator, something governments are quite reasonably loath to do.”¹⁵

University of Victoria Professor of Law and Employment Relations Ken Thornicroft also sees this as a viable model, and he proposes that government’s concern with loosening control over the purse strings could be addressed: “If the government was concerned about the parameters, they could fix those parameters by legislation so it doesn’t completely go off the rails.”¹⁶

¹¹ Sara Slinn. CBC Radio Early Edition, March 6, 2012.

¹² Mark Thompson, “Stalemate is the norm in the collective bargaining system that has been in place for BC’s teachers since 1994,” *The Vancouver Sun*, February 21, 2012.

¹³ Paul Ramsey, *The Voice of BC* with Vaughn Palmer, March 2, 2012.

¹⁴ Mark Thompson, “BC Teachers Strike: Bargaining Model ‘Fatally Flawed’ Says Expert,” *Huffington Post*, February 29, 2012.

¹⁵ Craig McInnes, “Bill 22 a lesson in how to learn nothing from history,” *The Vancouver Sun*, March 18, 2012.

¹⁶ Ken Thornicroft, CFX Radio 1070, March 6, 2012.

Past BCTF presidents offer their views

Former BCTF presidents David Chudnovsky, Neil Worboys, and Jinny Sims contributed their voices to the debate on how to fix the problem in an article published in the online *Tyee* magazine.¹⁷

Worboys advocates for a return to local bargaining — sitting “across the table from the employer that hires you and lives in your community and knows the needs of the children and students in that community.” Chudnovsky argues for the removal of the government’s net zero compensation mandate because it limits negotiations and the possibility of mediation.

Like the other two, Sims is critical of legislatively imposed solutions, saying “There is no doubt in my mind legislated negotiations do not work. You take away people's rights, their right to negotiate. ...It's never too late, and I believe there is a solution there that those parties could come to, that it will be better if it is a negotiated, rather than mandated (solution).”

BC school trustees consider a task force

Like many stakeholders, BC’s school trustees are frustrated with the current round of bargaining. At the 2012 Annual General Meeting of the BC School Trustees Association (BCSTA), delegates passed the following motion: “That BCSTA establish a task force to examine the collective bargaining structure between the education sector and the BCTF and provide recommendations to the next AGM.”

Where do we go from here? Making reasoned decisions

This too shall pass, and this round of bargaining will conclude. As it does following every round of bargaining (whether with the BCTF or support staff unions), BCPSEA will conduct a post-mortem to determine what worked, what didn’t, and how these lessons inform a going-forward strategy for each of the phases of bargaining: preparation, negotiation, and implementation/administration.

A post-mortem will reveal that the outcome resulted from a mix of circumstances, characters, motivations, and environmental factors. Some people will return to the issue of structure, asking whether the current bargaining structure is able to provide the foundation that can lead to successful collective bargaining. While we believe it is necessary to consider the role of the bargaining structure in the current process, it is equally important to do this analysis within a principle-based assessment/discussion.

Some years ago, BCPSEA worked with its member employers to develop criteria to help establish a working definition of a *good* collective bargaining system. This framework guided the employers’ association’s work with the Wright Commission (see Attachment B for a complete excerpt). Six themes emerged from the investigation:

¹⁷ Katie Hyslop, “How to Fix Teacher Bargaining? Ideas from Past BCTF Heads,” *The Tyee*, March 26, 2012.

- **Balance:** The parties are permitted to pursue their goals through collective bargaining, but understand that this must be balanced against the costs of bargaining, including the consequences of conflict, the costs of resolving that conflict, and the implications for other areas of the public sector.
- **Consequences:** The effects of labour disputes on those not involved in the disputes, particularly students and the public, must be minimized.
- **Incentive:** It is more likely that an agreement will be negotiated when there are incentives and pressures to do so. If the parties think they can predict the outcome in terms of substance or process, they will be less likely to negotiate.
- **Time:** All parties face the pressure to reach an agreement within a reasonable time. If the discussions are protracted, people lose faith in the process and government is more likely to intervene.
- **Resolution:** The process for achieving resolution must be found within the bargaining structure — the system must be self-contained. Ad hoc legislative intervention, for example, undermines the structure and erodes the relationships.
- **Role recognition:** Participants must understand and respect each other's contributions and roles in the bargaining process.

Other elements need to be in play as well. A successful negotiated agreement will be defined by whether it lives up to the ideals of fairness, efficiency, wisdom, and stability.

A bargaining structure works when:

- There is acceptance by all parties with an interest in the bargaining process that collective bargaining is the appropriate method to determine the terms and conditions of employment.
- Each of the parties accepts that the other parties have a legitimate role to play and interests to represent.
- There is a degree of trust between the parties as to each other's honesty, reliability, and competence.
- There is a prevailing attitude held by the parties that they will work together to resolve issues or problems identified as a concern to either party and that they will do so within the bargaining structure.
- The structure facilitates negotiated resolutions and does not encourage resolutions through means external to the bargaining process.

Ultimately, any bargaining structure has the potential to work if it is properly constructed and has the support of those involved. An example of the bargaining parties working within a structure to develop a workable system, interestingly, is resident in the K-12 public education sector.

Since the advent of the PSEC model and the Public Education Labour Relations Act (PELRA), BCPSEA and CUPE have¹⁸ worked to develop a model and, in so doing, have strengthened

¹⁸ CUPE locals represent approximately 93% of the sector's support staff. CUPE and the other support staff unions work together to ensure the operation of the bargaining model.

working relationships. The structure is a hybrid. What was controversial in the mid 1990s and challenging to achieve is a model today that meets the interests of both parties and has ended the debate of choosing one or the other. Each round of bargaining is an opportunity to revisit the model and refine it such that negotiated agreements are possible. The bargaining structure between BCPSEA and the support staff unions results in negotiated agreements, whereas it does not in the case of BCPSEA and the BCTF. Simply put: the current structure does not have the support of the BCTF.

Almost a final word

Protracted bargaining tests relationships. And when considering structural options, the importance of relationships cannot be forgotten.

In some quarters, the discussion of relationships all too often focuses on “do we get along and do individual representatives like each other,” rather than “do we respect the legitimate role of the other party and can we work together to resolve matters that are of concern to me, to you, and those that are of concern to both of us.”

Our sixth theme, role recognition, speaks to this issue. In our discussions, we have advanced the proposition that the challenges facing the negotiating parties today are not just structural but also cultural — how the parties act and react, how they develop their mandates and positions, and how they seek to achieve them. Relationships are not chosen, they emerge. If all those with an interest in public education do not understand the factors that led to the emergence of the current relationships, attempts to create something else will not succeed.

Union–employer relationships are often described as a “mixed motive dynamic,” reflecting the mixture of common and competing interests and the consequent motives that parties bring to the employment relationship. While the mixture of common and competing interests is most salient between the union and management, there are typically multiple stakeholders with distinct concerns within the union (for example, the executive, presidents, professional groups, political action groups) and within management (for example, boards and individual members, senior management, line management). As well, other stakeholders (such as government, advocacy groups, parents, the general public) bring a mixture of common and competing interests to their interactions with the union and management. This mixed motive dynamic is ever present in the K-12 public education sector and is evident in the relationships between the bargaining parties, government, and other stakeholders. Understanding this dynamic is central to meeting the challenge of establishing a functional bargaining system.

We submit that not only will *structural change* require transition, so too will *working relationship change*. We emphasize, however, that we are not saying that the parties' representatives don't get along, don't like one another as individuals, and haven't been able to resolve selected matters of mutual concern or negotiate certain settlements or agreements to issues outside the bargaining cycle. What we are saying is that productive collective bargaining has not been a feature of the parties' interactions.

The foundation of how we bargain is the relationship between the union and the employer, and this relationship develops over time. It takes time, understanding, commitment, and effort to maintain a positive and productive working relationship, but it can be done.

Four factors combine to shape any union–management relationship:

- the acceptance of the legitimacy of the other party and its respective role in the workplace (a central part of theme six, role recognition)
- the degree of trust between the parties
- the degree of friendliness or hostility in the relationship, and
- the degree of competitiveness, individualism, or cooperation between the parties.

All these factors interact with each other to build the foundation of the union–management relationship. The relationship is also a product of various pre-determined factors, including:

- the personalities of the key individuals in the relationship
- the union–management ideologies of the parties
- the economy and the labour supply, and
- union politics.

Events and circumstances experienced by both parties have also affected the nature of the relationship. These include the actions and reactions of the parties to workplace issues; how the parties resolve issues and disputes; and collective bargaining experiences, both what was achieved (the outcomes of bargaining) and how the outcomes were achieved (the process of bargaining). Experiences such as strikes or lockouts, legislatively imposed agreements and the parties' reaction to them, have also contributed to shaping the relationship.

We believe that to have long-term collective bargaining success, we will need to explore ways to establish a sound foundation for moving forward. We need to begin with an understanding of why the relationship is the way it is — the four factors and various predetermined factors identified above — and how we can work together to build a productive collective bargaining relationship.

One form of structured facilitation that may help in this process is Relationships by Objectives (RBO). RBO brings parties together to first understand why the bargaining relationship is the way it is and the factors that contribute to it, and to then identify the parties' shared and competing interests. RBO programs can help organizations move away from the traditional labour relations win–lose power struggle and towards jointly identifying problems and attempting to maximize their joint gains in solving them.

RBO programs seek to resolve three key problems in collective bargaining relationships:

1. the wide communication gaps that arise between union and management when the parties fail to communicate effectively
2. the tensions produced by attitudes on the part of both parties that are not conducive to a stable, mature and constructive relationships, and
3. the adversarial situation created by the traditional labour relations system.

An RBO program takes time and continuous effort. Results will not happen overnight. Indeed, it may require as much as a five-year span before the bargaining relationship will be transformed

to one characterized as collaborative with a problem-solving orientation. However, with commitment on the part of both union and management, such a program can be an effective tool for improving union–management relations.

The proposed structural changes and consequent relationship change do not represent a panacea. If the capacity, ability, or willingness does not exist to make meaningful change, there's the potential that a worse bargaining dynamic will emerge. The consequences arising out of this dynamic will affect the operation of schools and the delivery of educational programs and, to the degree to which the dynamic deteriorates from the current circumstance, public education will suffer.

And so...

An 18th century writer observed that people only accept change in necessity and see only necessity in crisis.

Are we there yet? Is this a moment of necessity? Necessity reveals choices. As we evaluate and make those choices, there will, of course, be implications for investments of all types — organizational, political, financial, or personal. What is chosen will work in one circumstance but not in others. Something moved from idea to action that is not thoroughly thought through, partially implemented, or structurally unsound will leave us where we are now or have already been.

As we reflect on the current state of affairs and turn our attention to the next round of bargaining consider that maybe structure isn't the problem; as noted by journalist Vaughn Palmer, "Consider the possibility the system isn't broken."

The bargaining structure has been the subject of numerous inquiries over the past several years. In his *Final Report for Collective Bargaining Options* issued in February 2007, respected mediator–arbitrator Vince Ready, in his role as Industrial Inquiry Commissioner, stated:

I have, therefore, concluded that, in the circumstances, it is not the format or process of collective bargaining which will help achieve a collective agreement.

Ready went on to make recommendations with respect to the format of bargaining, which led to successful conclusion of a negotiated agreement between the parties in 2006 and which he suggested the parties follow in future rounds.

We have outlined the nature of the problem from our perspective and the circumstances as we see them, hinting at some solutions — but it is only a hint. The purpose is to invite reasoned dialogue. Each decision maker or group of decision makers must conduct its own conversation about what is important to them. There are no easy choices. If we put off having a focused dialogue, generating options based on our reading of history and assessment of the future and making timely decisions when they must be made, the resulting indecision will...

And finally...

Professor John C. Anderson¹⁹ in *The Structure of Collective Bargaining* made instructive observations that we should keep in mind when talking about structures, problems, options and proposed solutions.

Unfortunately, although policy makers have legislated changes in collective bargaining structure, and labour relations practitioners are painfully aware of the implications of different bargaining structures, very little is actually known about the forces that influence the choice of alternative structures or about the consequences for the relative bargaining power of the parties, the level of industrial conflict, or the functioning of the bargaining process.

The purpose of this paper is to lay the groundwork for a discussion. There have already been a series of formal reviews of teacher-public school employer collective bargaining. Did they miss something? How do our collective labour relations/collective bargaining experiences inform us? What is the problem we are trying to solve?

A reasoned informed discussion is the place to start. Let's figure out how to make wise choices.

¹⁹ Chapter 9, page 209, John C Anderson, *Union-Management Relations In Canada*, Addison-Wesley Publishers, 1989

Attachment A: Strikes and Lockouts in BC — Teacher–Public School Employer Collective Bargaining

Collective bargaining between public school teachers and their employers has existed since the late 1980s. Between 1987 and 1993, agreements were negotiated under what was known as local bargaining — bargaining occurred between individual boards of education and locally certified teachers’ unions. The bargaining model was changed in the early 1990s to a form of provincial bargaining, with the BC Teachers’ Federation (BCTF) as the certified bargaining agent for all public school teachers and the BC Public School Employers’ Association (BCPSEA) as the accredited bargaining agent for the province’s 75 school boards (in 1996, arising from school district amalgamation, the number of boards was reduced to 60, including the Conseil scolaire francophone de la Colombie-Britannique).

During the local bargaining period there were:

- 15 strikes, 1 lockout (round 1)
- 17 strikes (round 2)
- 16 strikes, 2 lockouts (round 3).

During the provincial bargaining period there have been three strikes (including the current dispute).

There have been four occasions (including Bill 22, the *Education Improvement Act*) of ad hoc legislative intervention in public education labour disputes.

School Board – Teacher Association/Union Negotiations (Local Bargaining) Round 1							
School District	Start Date	End Date	Length (Days)	Stoppage Type	Issues	Number of Workers Involved	Teacher Days Lost
80 Kitimat	28-Nov-88	12-Dec-88	14	General Strike	Wages	136	1,360
88 Terrace	3-Jan-89	30-Jan-89	27	General Strike	Wages	310	5,890
65 Cowichan	16-Jan-89	25-Jan-89	9	General Strike	Wages	410	2,870
57 Prince George	23-Jan-89	27-Jan-89	4	General Strike	Wages	1,200	4,800
89 Shuswap	6-Feb-89	7-Feb-89	1	General Strike	Collective bargaining procedure	311	180

Lessons to Learn and a Course to Chart: Bargaining Structures, Relationships, and Experiences

15 Penticton	13-Feb-89	14-Feb-89	1	General Strike	Collective bargaining procedure	240	120
35 Langley	27-Feb-89	24-Mar-89	25	Rotating Strike	Working conditions; other issues	850	4,510
34 Abbotsford	6-Mar-89	20-Mar-89	14	General Strike	Rand formula	675	6,080
23 Kelowna	13-Mar-89	24-Mar-89	11	General Strike	Rand formula	900	7,650
76 Agassiz-Harrison	1-Mar-89	13-Mar-89	12	General Strike	Wages	45	360
14 South Okanagan	3-Mar-89	14-Apr-89	42	Lockout	Wages	120	1,160
13 Kettle-Valley	7-Mar-89	13-Mar-89	6	General Strike	Wages	36	160
33 Chilliwack	8-Mar-89	13-Mar-89	5	General Strike	Wages	434	1,300
2 Cranbrook	3-Apr-89	18-Apr-89	15	General Strike	Wages	197	2,170
92 Nisg'a	17-Apr-89	19-May-89	32	General Strike	Wages	32	780
75 Mission	3-Oct-89	18-Oct-89	15	General Strike	Wages	338	3,380
					Totals	6,237	42,770

School Board – Teacher Association/Union Negotiations (<i>Local Bargaining</i>) Round 2							
School District	Start Date	End Date	Length (Days)	Stoppage Type	Issues	Number of Workers Involved	Teacher Days Lost
35 Langley	06-Mar-90	26-Mar-90	20	General Strike	Sympathy	850	11,900
14 Southern Okanagan	04-Sep-90	03-Oct-90	29	General Strike	Subcontracting	130	2,730
42 Maple Ridge	13-Nov-90	21-Nov-90	8	Rotating	Wages	700	1,050
37 Delta	22-Nov-90	29-Nov-90	7	Rotating	Wages	950	1,430
61 Victoria	31-Jan-91	18-Feb-91	18	General Strike	Wages	1,700	16,000
68 Nanaimo	12-Feb-91	18-Mar-91	34	Rotating	Wages	960	11,280
44 North Vancouver	14-Feb-91	16-Feb-91	2	Rotating	Failure to negotiate	1,000	1,000
39 Vancouver	18-Feb-91	28-Feb-91	10	Rotating	Working conditions	3,606	24,050
70 Alberni	19-Feb-91	20-Feb-91	1	General Strike	Not reported	350	180
85 Vancouver Island North	20-Feb-91	22-Feb-91	2	General Strike	Various workload issues	280	280
63 Saanich	04-Mar-91	25-Mar-91	21	General Strike	Various workload issues	471	5,650
1 Fernie	06-Mar-91	25-Mar-91	19	General Strike	Wages	250	2,990
49 Central Coast	06-Mar-91	08-Apr-91	33	General Strike	Various workload issues	32	560

Lessons to Learn and a Course to Chart: Bargaining Structures, Relationships, and Experiences

80 Kitimat	20-Mar-91	30-Apr-91	41	Rotating	Working conditions	155	2,500
60 Fort St. John	08-May-91	28-Jun-91	51	General Strike	Working conditions	300	11,100
88 Terrace	13-May-91	14-May-91	1	General Strike	Interunion matters	350	350
17 Princeton	13-May-91	27-May-91	14	General Strike	Collective bargaining procedure	50	450
					Totals	12,134	93,500

School Board – Teacher Association/Union Negotiations (<i>Local Bargaining</i>) Round 3							
School District	Start Date	End Date	Length (Days)	Stoppage Type	Issues	Number of Workers Involved	Teacher Days Lost
36 Surrey	18-Jan-93	19-Jan-93	1	General Strike	Delay in negotiations	1,900	1,900
36 Surrey	25-Jan-93	08-Mar-93	42	Rotating	Wages, other issues	2,800	5,520
1 Fernie	04-Jan-93	29-Jan-93	25	Lockout	Wages	240	4,560
28 Quesnel	08-Jan-93	04-Mar-93	55	Rotating	Delay in negotiations	310	5,170
40 New Westminster	15-Feb-93	29-Mar-93	42	Rotating	Working conditions	241	1,310
47 Powell River	15-Feb-93	06-May-93	80	Lockout/Rotating	Working conditions	220	5,960
42 Maple Ridge	01-Apr-93	13-Apr-93	12	General Strike	Delay in negotiations	740	4,440
84 Vancouver Island West	08-Mar-93	20-Apr-93	43	Rotating	Delay in negotiations	56	970
85 Vancouver Island North	08-Mar-93	14-May-93	67	Rotating	Delay in negotiations	200	5,900
39 Vancouver	05-May-93	31-May-93	26	Rotating	Wages and other issues	4,500	47,250
36 Surrey	19-May-93	03-Jun-93	15	General Strike	Working conditions	2,800	16,800

Lessons to Learn and a Course to Chart: Bargaining Structures, Relationships, and Experiences

80 Kitimat	17-May-93	25-May-93	8	General Strike	Working conditions	140	770
54 Bulkley Valley	26-Apr-93	31-May-93	35	General Strike	Delay in negotiations	170	2,210
70 Port Alberni	11-May-93	20-May-93	9	General Strike	Wages	500	2,000
71 Comox	12-May-93	13-May-93	1	General Strike	Delay in negotiations	515	260
24 Kamloops	17-May-93	18-May-93	1	General Strike	Delay in negotiations	797	400
44 North Vancouver	17-May-93	21-May-93	4	Rotating	Delay in negotiations	1,250	630
					Totals	17,379	106,050

Provincial Bargaining: BCTF – BCPSEA							
	Start Date	End Date	Length (Days)	Stoppage Type	Issues	Number of Workers Involved	Teacher Days Lost
Round 1 (1994-96)	-	-	-	-	-	-	-
Round 2 (1997-98)	-	-	-	-	-	-	-
Round 3 (2001-02)	08-Nov-01	28-Jan-02	1	Province-wide phased strike; full withdrawal Jan. 28/02	Wages and working conditions	35,000	35,000
Round 4 (2004-05)	07-Oct-05	24-Oct-05	17	Province-wide illegal strike	Wages and working conditions	38,000	380,000
Round 5 (2006)	-	-	-	-	-	-	-
Round 6 (2011-2012)	06-Sept-11	17-Mar-12	3-day full withdrawal; phase 1 strike commenced Sept. 6/11	Province-wide phased strike; three-day full withdrawal	Wages and working conditions	39,000	117,000

Incidents of Ad Hoc Legislated Intervention

Between 1959 and 1990 there were three public sector and five private sector interventions. Between 1990 and today there have been one private sector and 13 public sector interventions, six of which were in the K-12 sector.

Title	Assent Date	Purpose	Reference
Educational Programs Continuation Act (Designations under Part 2 of the Act: B.C. Reg. 181/93, 187/93 and 315/93)	May 30, 1993	Purpose: To end teacher strike and prohibit further job action in School District No. 39 (Vancouver). Impasse resolution method: Mediation; failing agreement, interest arbitration.	S.B.C. 1993, c.5
Education and Health Collective Bargaining Assistance Act	April 28, 1996	Purpose: To establish a process to ensure that education and health services would not be disrupted during the period covered by the legislation — during expected provincial election. Impasse resolution method: Industrial inquiry commissioner or mediator would make binding recommendations in the event of a collective bargaining impasse.	S.B.C. 1996, c.1
Public Education Collective Agreement Act	July 30, 1998	Purpose: To legislate the terms of the provincial collective agreement negotiated between the BC Teachers' Federation and representatives of the BC government that were rejected by BCPSEA member school boards (AiC).	S.B.C. 1998, c.41
Public Education Support Staff Collective Bargaining Assistance Act	April 2, 2000	Purpose: To end support staff strikes in 44 school boards and provide a mechanism for concluding collective agreements in the districts named in the Act. Impasse resolution method: If after 60 days from the enactment of the PESSCBAA an agreement is not reached, the Industrial	S.B.C. 2000, c.2

		Inquiry Commission must make a written decision for settlement.	
Education Services Collective Agreement Act	January 27, 2002	Purpose: To constitute a collective agreement between the BCTF and BCPSEA and end the legal strike action by BCTF.	S.B.C. 2002, c.1
Teachers' Collective Agreement Act	October 7, 2005	Purpose: To continue the collective agreement between the BCTF and BCPSEA until June 30, 2006 and legislate teachers back to work. The BCTF subsequently engaged in a two week long illegal strike.	S.B.C. 2005, c.27
Education Improvement Act	March 15, 2012	Purpose: To suspend the teachers' strike action and set a "cooling off" period, appoint a mediator to facilitate bargaining, and implement a new \$165 million Learning Improvement Fund and other education enhancements.	S.B.C. 2012, c. 3

The BCTF and BCPSEA negotiated an agreement in 1994-96. The parties agreed to new terms, but also continued many of the provisions contained in local agreements (referred to as the Transitional Collective Agreement or TCA). The TCA set the stage for the continuation of bargaining in 1997. In the 1997-98 round of bargaining, most of the terms of the collective agreement were reached between the parties, although some provisions were reached directly between BCTF and government (referred to as the Agreement in Committee or AiC), to the exclusion of BCPSEA. The AiC was submitted to the parties for ratification. BCTF members accepted the agreement but BCPSEA member school boards did not. In July 2008 the terms of the AiC were imposed legislatively.

The provincial parties negotiated an agreement under a bargaining model proposed by Industrial Inquiry Commissioner Vince Ready as part of the resolution to the 2005 illegal strike. Ready would recommend this model for future rounds of bargaining, a recommendation that would not be accepted by the BCTF.

Attachment B: A Question of Structure

The K-12 public education sector is a composite of employees, provincial unions, local unions, boards of education, trustees, advocacy associations, parents, students and others with an interest in public education. The interactions among those that comprise this composite are complex, multi-dimensional and influenced by a variety of motives.

While the mixture of common and competing interests can be most evident in the relationship between the union and employer, there are multiple stakeholders within the union (for example, groups representing specific skills or types of work, internal political structures) and within the employer (for example, line vs. staff functions, board members). Others with an interest in the workplace or sector (for example, associations, government, the public) also bring a mixture of common and competing interests to their interactions with the union and the employer. As we examine relationships and collective bargaining structures, it is important to keep in mind the fluid nature of the mixed motive dynamic and the influence it has on how the relationship emerges. This includes the functional consequences experienced by the workplace — operational implications, nature of disputes and their disposition — that flow from the relationship.

While sorting out this complexity one invariably gets drawn back to the foundation issue of bargaining structure. In order to design or evaluate a collective bargaining structure, we must first understand the process of collective bargaining itself in terms of what it is and what components lead to effective outcomes.

Collective bargaining is defined as...

“A process whereby a union and an employer seek to negotiate a collective agreement, or the renewal or revision of an existing collective agreement; labour relations legislation generally requires the parties to bargain in good faith with a view to concluding a collective agreement.”²⁰

Beyond this basic definition, collective bargaining is also a process of “applied politics, a means to reach a result, namely, the resolution or suspension of competing interests for the length of time covered by the collective agreement. It is an opportunity for an employer and a union to discuss mutual problems, issues, concerns and priorities, and to fashion appropriate compromises and solutions.”²¹

Free collective bargaining

We often hear the comment that free collective bargaining is the element that is missing in the K-12 public education sector. What is free collective bargaining and does it exist in the British Columbia public sector? While some have characterized the period between 1987 and 1993 as a time of free collective bargaining in the K-12 public education sector — consistent with the private sector bargaining construct — public sector employees, in particular teachers, have had a bargaining regime that has restrictions. In this context, “free” is a relative term in that the varying degrees of restriction have included limitations on the:

²⁰ Sack, J. and Poskanzer, E. *Labour Law Terms: A Dictionary of Canadian Labour Law*. Toronto: Lancaster House, 1984.

²¹ Sanderson, John P. *The Art of Collective Bargaining*. 2nd ed. Aurora: Canada Law Book, 1989, p. 1.

- right to strike or lockout
- scope of bargaining
- parameters that regulate compensation increases.

When we consider a bargaining structure, it is important to remember the structural limitations and how those limitations inform structural choices or assessments.

A good collective bargaining system

Something is considered *good* when it is “suitable to a purpose; effective; efficient.”²² If the purpose of collective bargaining is to negotiate the terms and conditions of employment, then what is a good system that will lead to successful collective bargaining? How would we recognize a good system if we had one?

Working with member employers, BCPSEA developed criteria to assist in establishing a working definition of a good collective bargaining system. The following six themes emerged from the discussions. The themes serve as an evaluative criterion for assessing collective bargaining structure options.

Bargaining structure themes and criteria

Theme/Criteria	Proposition
<p>Balance</p> <p>The parties are permitted to pursue their goals through collective bargaining, but this pursuit must be balanced against the costs of bargaining:</p> <ul style="list-style-type: none"> ▪ Consequences of industrial conflict ▪ Costs associated with resolving the conflict (dollars, relationship, public confidence) ▪ Out-of-line settlements and the implications for other public sector employers of these settlements. 	<p>Bargaining in the public sector context requires that certain interests, often seen as external to the negotiating parties, must be balanced. This recognition leads to certain structural choices related to authority, responsibility and accountability.</p>

²² Websters New World Dictionary, page 602.

<p>Consequences</p> <p>The effects of labour disputes on persons not directly involved in those disputes are minimized.</p>	<p>Collective bargaining in the public sector has implications for the general public. Processes and structures to manage workplace disruption arising out of a labour dispute must be structured to minimize the impact on the public and, as a result, the impetus for government involvement.²³</p>
<p>Incentive</p> <p>There are incentives and pressures that encourage negotiated settlements.</p> <p>There is sufficient uncertainty about the outcome of bargaining such that the parties are encouraged to negotiate.</p>	<p>The parties will not negotiate if they can predict the outcome both in terms of substance (the deal itself) and process (how the deal will be concluded). Institutionalized uncertainty has the potential of encouraging negotiated agreements.</p>
<p>Time</p> <p>All parties face significant pressure if an agreement is not reached in a reasonable time.</p>	<p>Participants and observers of the negotiation process will lose faith in it if they perceive it to be protracted and unproductive. These perceptions can lead to intervention by government.</p>
<p>Resolution</p> <p>The process for achieving resolution is found within the bargaining structure.</p> <p>No alternative processes external to the structure exist or can be accessed.</p>	<p>A closed or self-contained bargaining system builds faith in both the parties and the process — the parties believe they can resolve their differences. Alternative processes external to the structure (ad hoc legislative intervention, for example) undermine the structure and erode the bargaining relationship.</p>
<p>Role Recognition</p> <p>Participants understand, and respect as legitimate, the roles of the parties to the bargaining process.</p>	<p>Collective bargaining requires that the parties meet, recognize one another as legitimate representatives of their principals, and engage in informed discussions with the intention of concluding a collective agreement.</p>

A good collective bargaining system leads to good agreements

A good collective bargaining system is central to the achievement of good agreements. In their book, *Breaking the Impasse*,²⁴ dispute resolution experts Lawrence Susskind and Jeffrey

²³ Ad-hoc legislative intervention is an option outside the control of the bargaining parties. It is interesting to note that between 1959 and 1990 there were three public sector and five private sector interventions. Between 1990 and today there was one private sector and 13 public sector interventions, six of which were in the K-12 sector. Legislative intervention has its limitations. It tests the relationship between the parties, faces implementation challenges, and leaves many of the matters at issue unresolved or unsatisfactorily resolved.

²⁴Susskind, L. and J. Cruikshank. *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York: Basic Books, 1987.

Cruikshank identified four characteristics of what can be termed a good negotiated settlement or agreement:

- Fairness
- Efficiency
- Wisdom
- Stability.

Fairness: Fairness is a general concept that implies treating both sides alike, without reference to one's own feelings or interests. In applying the notion of fairness, Susskind and Cruikshank say that the perceptions of the participants are most important in evaluating the fairness of a negotiated outcome. The key question is, "Were the people who managed the process responsive to the concerns of those affected by the final decision or outcome?" Unfortunately, the issue of fairness is situational and subjective. What one side perceives as a fair settlement may be abhorrent to the other.

Susskind and Cruikshank observe:

"In our view, it is more important that an agreement be perceived as fair by the parties involved than by an independent analyst who applies an abstract decision rule. If the involved parties think a given process has been fair, they are more likely to abide by its outcome; if they do not, they will seek to undermine it."

Efficiency: An agreement should also be evaluated by testing its efficiency and whether it directly produces the desired result with a minimum of effort, expense or waste. Efficiency is established by asking two questions:

- Could one or all of the parties to the agreement be made better off without making the others worse off? If the answer is yes, then the agreement is inefficient.
- Did it take an inordinately long time and a great deal of effort to reach the agreement? If so, do the benefits of the agreement outweigh the costs associated with achieving the agreement? If the answer is no, the agreement cannot be considered a good one.

Wisdom: Something is considered wise if it is informed, sound and prompted by a considered judgment of the relevant aspects and circumstances concerning the matter or matters at issue. In a sense, wisdom is only obvious in hindsight. Negotiations involve forecasts or predictions concerning areas of settlement and potential consequences of particular courses of action.

It is virtually impossible to have complete confidence in a forecast and have that forecast come to bear, or stand up to the test of time. Agreements are concluded at a particular time under particular circumstances, and govern the relations between the parties over a considerable period of time. During this time, substantial changes may take place — changes not contemplated when the agreement was reached. It may also take an indeterminate amount of time for the forecast to be tested. We only realize that what we have done was an incorrect approach when it is too late.

A key to a wise agreement must be based on what Susskind and Cruikshank term "prospective hindsight"— an assessment and forecast based on past experiences and knowledge. Unfortunately, in some areas, even our past experiences tell us very little, because the end

result of previous actions has not yet been realized. It is also very difficult to remain constantly objective when assessing a problem. A wise agreement contains all the relevant information to minimize the risk of being wrong.

The search for a wise solution requires collaborative inquiry into the problem. This inquiry breaks down a complex problem into a series of mutually agreed pieces that can be examined individually. By looking at the smaller pieces, a wise solution can be reached that satisfies all of the underlying interests, without having to rely solely on our predictions of future consequences. Remember, we are free to choose a course of action, the interests we seek to satisfy and the strategies to employ, but we are not free to choose the results or consequences, intended or otherwise, of our choices. The concepts of wisdom and the consequences of our choices are closely linked to the fourth characteristic — stability.

Stability: Stability is the final element of a good agreement. Something is stable if it's not easily moved or thrown off balance, or is not likely to break down, fall apart or give way. A settlement that is perceived by all parties as fair, that was reached efficiently and that seems technically wise, is unsatisfactory if it does not endure. A good agreement will stand the test of time and remain unchallenged by the parties and/or their respective constituents. That is, none of the parties to the agreement will have any motivation to break the agreement before it expires naturally.

Instability can be caused in several ways:

- **Is the overall agreement feasible?** A negotiator may reach an agreement in a labour dispute, but if the negotiator is unable to sell it to his/her constituency, the efficiency, wisdom and fairness of the agreement are irrelevant, and the agreement is not stable.
- **Can the agreement be implemented by both parties?** If the agreement contains provisions that are not realistic, the agreement will not be stable. It is not helpful to extract unrealistic commitments that cannot be relied upon, even if such promises seem like victories at the time they are secured.
- **Is the agreement based on mistaken assumptions?** In framing the agreement, negotiators should make a commitment that if the agreement has been based on a mistaken assumption, then the parties will reconvene and correct that mistake. It is also important to remember that one side may grant a large concession, not realizing the potential impact. Once that impact is felt, however, it may be used in an attempt to destroy the entire agreement, or used as a weapon in future negotiations. As a result the agreement, as well as the relationship, is now unstable. By drawing only on realistic commitments, stability can be maintained through the long term.
- **Is the agreement legal?** It is of little use to enter into an agreement that is not enforceable. Knowledge of the limitations on all parties is necessary. Further, you must know what you are legally able to commit to, and verify the legal position of the other side.

In contrast, the characteristics of a bad negotiation are:

- No settlement is reached because of destructive interpersonal dynamics or failure by the parties to discover technical solutions that address each side's needs.

- Settlement is reached but the solutions are not optimal, full compliance by both sides is problematic, or the relationship is damaged in the process.
- Settlement is reached but the parties have different interpretations of what they agreed to, or the matters at issue (either in terms of substance or relationship) have not been adequately canvassed or addressed, setting the stage for ongoing conflict during the term of the agreement.
- Given the modified form of collective bargaining in the public sector, the themes we have identified and the nature of what constitutes a good agreement, we believe the general requirements of successful collective bargaining include:
 - Acceptance by all parties with an interest in the bargaining process that collective bargaining is the appropriate method to determine the terms and conditions of employment.
 - Acceptance that each of the parties to the negotiation has a legitimate role to play and interests to represent.
 - A degree of trust between the parties as to each other's honesty, reliability and competence.
 - A prevailing attitude held by the parties that they will work together to resolve issues or problems identified as a concern to either party and that they will do so within the bargaining structure.
 - A structure that serves to facilitate negotiated resolutions and does not encourage resolutions through means external to the bargaining process.