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**A Case of First Instance...
K-12 Public Education as an
Essential Service, 2002**

Resource / Discussion Paper

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A Case of First Instance...
K-12 Public Education as an Essential Service, 2002

Introduction

One of the tasks of labour relations policy is to allow an employer and a union representing the employees to assert their own interests while providing a mechanism to reconcile any conflicting interests. *A Case of First Instance... K-12 Public Education as an Essential Service 2002* is based on the notion that public policy concerning public education collective bargaining must balance two objectives:

- Allow the parties the freedom to pursue their goals while,
- Reducing the costs of industrial conflict and the costs resulting from decisions to resolve this conflict, including the consequences arising from settlements outside established patterns.

Policy choices such as the right to unionize, the right to strike, and the role of dispute resolution mechanisms illustrate how far policy makers are prepared to go in emphasizing one objective over the other.

A substantial change in K-12 labour relations policy occurred on August 16, 2001 when the provincial government introduced Bill 18, *Skills Development and Labour Statutes Amendment Act* that had, among its proposed amendments, an amendment to Section 72 Essential services of the *BC Labour Relations Code* to include K-12 public education as an essential service. The legislation maintained teachers' right to strike and to bargain collectively; however, it gave the Minister of Skills Development and Labour (the "Minister of Labour") the right to direct the Labour Relations Board (LRB) to designate essential services in the event that job action threatens educational programs.

On August 22, the BC Teachers' Federation (BCTF) announced that a province wide strike vote would take place between September 27 and October 10, 2001. This announcement came only days after the passage and enactment of the *Skills Development and Labour Statutes Amendment Act*. The anticipated strike would serve as the first true test of the new essential services provision under the *Labour Relations Code*.

The purpose of this resource/discussion paper is to analyze the sector's first experience with the amendments to the *Labour Relations Code* and provide a basis for discussions that serve to enhance collective bargaining and dispute resolution in the K-12 public education sector.

A Case of First Instance...
K-12 Public Education as an Essential Service, 2002

Executive Summary

Bill 18, *Skills Development and Labour Statutes Amendment Act* amended Section 72 Essential services of the BC *Labour Relations Code* to include K-12 public education as an essential service. The legislation maintained teachers' right to strike and to bargain collectively; however, it gave the Minister of Skills Development and Labour (the "Minister of Labour") the right to direct the Labour Relations Board (LRB) to designate essential services in the event that job action threatened the provision of educational programs.

- 72 (1) If a dispute arises after collective bargaining has commenced, the chair may, on the chair's own motion or on application by either of the parties to the dispute,
- (a) investigate whether or not the dispute poses a threat to
 - (i) the health, safety or welfare of the residents of British Columbia, or
 - (ii) the provision of educational programs to students and eligible children under the *School Act*, and
 - (b) report the results of the investigation to the minister.
- 72 (2.1) If the minister
- (a) after receiving a report of the chair respecting a dispute, or
 - (b) on the minister's own initiative
- considers that a dispute poses a threat to the provision of educational programs to students and eligible children under the *School Act*, the minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs.

For most of the past 25 years, public education has been specifically referenced in essential service provisions of labour relations statutes. Despite the legislative history of education and essential services, the focus of the current legislation differs from past legislation. Section 72 Essential services as amended (see Appendix B), seeks to "prevent the immediate and serious **disruption** to the provision of **educational programs**." In contrast, the *Industrial Relations Act* (1987), sought to "prevent the immediate and serious **danger** to the provision of **educational services**."

Further, the expression "educational program" is defined in the *School Act*, unlike the phrase "educational service," a less precise concept. Educational program is defined as "an organized set of learning activities that...is

designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy.”

Although the intent of the legislation was reiterated in the legislature, the actual interpretation and application of the legislation is within the purview of the LRB. The essential services process in the K-12 education sector was established to operate in a fashion similar to essential services in other sectors, most notably healthcare.

Negotiations for a new provincial collective agreement between 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 school boards, commenced in March 2001. On August 22, shortly after the *Skills Development and Labour Statutes Amendment Act* was passed and enacted, the BCTF announced that a province wide strike vote would take place between September 27 and October 10, 2001. On October 18 the BCTF announced that 91.4% of the 81% of BCTF members who cast ballots were in favour of strike action.

The BCTF adopted a multi-phase strike plan. The plan was structured to have two phases. As the essential service designation process continued it was modified to a three-phase plan. The strike of extracurricular activities, often referred to as *Phase 1.5*, became the phase between phases I and II.

On September 27, 2001 BCPSEA filed an application with the LRB for the designation of services in the K-12 sector as essential. Pursuant to LRB practice, on October 1, the LRB appointed an investigator, in this case Vice Chair Mark Brown, to conduct the investigation to determine whether there was a dispute and, if there was a dispute, whether the dispute constituted a threat to the provision of educational services and/or the health, safety or welfare of the province’s residents.

On October 15, Vice Chair Brown reported to the Chair of the LRB that:

“[n]otwithstanding that the parties disagree as to whether the dispute poses a threat under Section 72(1) of the Labour Relations Code, the Labour Relations Board shall request that the Minister direct the Board to designate essential services with respect to this dispute pursuant to Sections 72(2) and 72(2.1) of the Code.”

On October 16, following receipt of the LRB report, the Minister of Labour directed the LRB to designate “those facilities, productions and services that the [LRB] considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs” and “necessary or essential to prevent immediate and serious danger to the health, safety or welfare of residents” pursuant to s. 72(2) and 72(2.1). The panel of Irene Holden, Associate Chair Mediation; Mark Brown, Vice Chair; and Lisa Hansen, Registrar, (the “panel” or “LRB panel”) was appointed as the panel responsible for essential service designations.

During the investigation, Vice Chair Brown introduced and facilitated an agreement between the parties with respect to the process that would be followed if the Minister ordered the designation of essential services. Specifically, the stages in the process were:

1. The panel would conduct hearings to define the scope of “educational programs.”
2. The panel would examine Phase I of the BCTF’s strike plan and determine whether essential services designations were necessary in Phase I and, if so, issue orders covering Phase I.
3. If the BCTF wished to expand job action to include extracurricular activities, there would be another essential services designation by the panel to deal with those aspects of extracurricular activities that are essential.
4. If the BCTF wished to further expand their job action, there would be a final essential services application in which all essential services for teachers and support staff unions would be designated.

The first, and arguably greatest challenge before the LRB panel of Holden, Brown and Hansen was to give meaning to the phrase “provision of educational programs.” The parties agreed that the correct definition of the term “educational program” is as provided under Section 1 of the *School Act*.

However, the parties were not able to agree on the scope and the meaning that should be attributed to this definition. The BCTF favoured a narrow interpretation of the phrase “provision of educational programs” while BCPSEA argued that the LRB should adopt a broad interpretation. The LRB concluded that the essential service process should be moved to the designation phase and that would assist the panel in determining the scope and definition of the provision of educational programs concept.

On December 6, well after essential services orders dealing with the BCTF's Phase I job action were issued, the LRB panel issued a decision on the definition of "provision of educational programs." The panel ruled that the phrase "provision of educational programs" includes more than just instruction, as was argued by the BCTF, but does not encompass all activities carried out by a school board related to the provision of education, the BCPSEA position. The LRB panel reiterated in its decision that a cautious approach was being taken as this was a case of first instance and indicated that the definition would be refined further during the adjudication of extracurricular activities and Phase II of the BCTF job action plan.

The first LRB hearing to designate essential services was held on October 26, 2001. In the first order of general application November 2, 2001 (the "November 2 Order"), the LRB ruled on what activities teachers did not have to perform, rather than designating the minimum levels of service.

On November 29, 2001, the BCTF requested that the LRB move to adjudicate the next phase of their strike plan – the withdrawal of extracurricular activities (commonly referred to as Phase 1.5). The BCTF approached this designation from the perspective that all activities that occurred outside the traditional hours of instruction when most students were in session were extracurricular – what was loosely characterized as "outside the bells." Activities that were performed outside of normal instructional hours would either be cancelled or performed "between the bells," the BCTF contended.

BCPSEA argued that this approach would have resulted in the withdrawal of extracurricular *and* curricular activities. BCPSEA submitted that these activities may be struck; however, they must only be struck following the Phase II essential services determination.

On December 19, 2001, the LRB panel issued its second order of general application (the "December 19 Order") regarding the withdrawal of extracurricular activities.

Following the withdrawal of extracurricular activities on January 7, 2002, a case management meeting was conducted for the purpose of determining essential services levels for Phase II – a full withdrawal of services, through partial, rotating, or full strike action.

The BCTF argued that a full-scale strike could exist for weeks or even months before a serious disruption to the provision of educational programs occurred. BCPSEA argued that any withdrawal of services would disrupt the provision of educational programs, and the point at which that became a

serious disruption would depend on a number of factors, including the time and duration of the strike, the amount of time left in the semester, quarter or school year, the grade level of students, and the characteristics of the students themselves.

Ultimately, there was never a final agreement between the parties or final adjudication of the matter by the LRB, as the mediation process was interrupted by the late January announcement of the recall of the legislature to deal with the dispute. The panel adjourned and invited submissions from the parties to determine whether the essential service hearing was academic, having no practical consequence.

With the announcement of the recall of the legislature, reports began to circulate that the BCTF was planning a one-day walkout by teachers to protest a legislated settlement. Late in the week, the plans for the so-called “Day of Protest” were publicly confirmed, and on January 24 BCPSEA applied to the LRB for a declaration that the anticipated “Day of Protest” would be an illegal strike.

The LRB appointed Vice Chair Laura Parkinson to consider BCPSEA’s application regarding the “Day of Protest” and a hearing into the matter commenced on Friday, January 25.

Also on January 25, the legislature reconvened and the government introduced Bill 27, *Education Services Collective Agreement Act* and Bill 28, *Public Education Flexibility and Choice Act*. The *Education Services Collective Agreement Act* in part sought to impose a three year collective agreement on the parties and end the labour dispute.

On the afternoon of Sunday, January 27, the essential services panel issued an Interim Order on Phase II job action. The Interim Order was issued on a non-precedential basis and permitted the BCTF to engage in one day of full withdrawal of services during the week of January 28, 2002, subject to the provision of proper notice under the parties’ protocol agreement – Strike Notice and Notice of Strike Escalation Agreement, November 2, 2001 (see Appendix F). The Interim Order indicated that proper notice had not yet been given, which would render January 28 unavailable for a legal withdrawal of services in any event.

Also on January 27, Vice Chair Parkinson issued a declaration concerning the proclamation of the legislation and the “Day of Protest”:

The Labour Relations Board declares that after proclamation of the *Education Services Collective Agreement Act* and the *Public Education Flexibility and Choice Act* the British Columbia Teachers’ Federation and the employee it represents would contravene Section 57(1) of the *Labour Relations Code* if there is a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services.

Excerpt from BCLRB Decision No. B34/2002

Late on the evening of January 27, the *Education Services Collective Agreement Act* and the *Public Education Flexibility and Choice Act* were proclaimed. As a consequence the BCTF was no longer in a legal strike position.

Although the Interim Order on Phase II was ultimately of no effect because the *Education Services Collective Agreement Act* established a binding collective agreement between the parties, the order provides some guidance about the approach that the LRB may take if a decision on essential service levels during a full-scale withdrawal of services becomes necessary in future. With the conclusion of this case of first instance, it is necessary to examine whether the amendments to the *Labour Relations Code* achieved what policy makers intended to achieve. What are the implications for future rounds of bargaining arising out of this first experience with essential services? Should applications be necessary, how do we approach and manage those applications – can we better manage future labour disputes and essential service applications?



Part One: Essential Services in BC K-12 Public Education – A New Reality

The Legislation: An Overview

On August 16, 2001 the newly elected BC government fulfilled one of what it termed its 'New Era' campaign commitments by restoring education as an essential service. Bill 18, *Skills Development and Labour Statutes Amendment Act* amended Section 72 Essential services of the *BC Labour Relations Code* to include K-12 public education as an essential service. The legislation maintained teachers' right to strike and to bargain collectively; however, it gave the Minister of Skills Development and Labour (the "Minister of Labour") the right to direct the Labour Relations Board to designate essential services in the event that job action threatens educational programs. The essential service provisions with respect to health, safety or welfare remained unamended.

- 72 (1) If a dispute arises after collective bargaining has commenced, the chair may, on the chair's own motion or on application by either of the parties to the dispute,
- (a) investigate whether or not the dispute poses a threat to
 - (i) the health, safety or welfare of the residents of British Columbia, or
 - (ii) the provision of educational programs to students and eligible children under the *School Act*, and
 - (b) report the results of the investigation to the minister.

- 72 (2.1) If the minister
- (a) after receiving a report of the chair respecting a dispute, or
 - (b) on the minister's own initiative
- considers that a dispute poses a threat to the provision of educational programs to students and eligible children under the *School Act*, the minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs.

For most of the past 25 years, public education has been specifically referenced in essential service provisions of labour relations statutes. It was only the period from 1993 – with introduction of a new *Labour Relations Code* that replaced the 1987 *Industrial Relations Act* – until 2001 and the introduction of Bill 18, *Skills*

Development and Labour Statutes Amendment Act, that unionized employees enjoyed the right to strike free from essential service provisions specific to K-12 education. Even so, during that period some aspects of K-12 education, most notably grade 12 examinations, were protected by Section 72 Essential services under the concept of “welfare” (*School District No. 54 (Bulkley Valley)*, BCLRB No. B147/9).

Despite the legislative history of education and essential services, the focus of the current legislation differs from past legislation. Section 72 Essential services as amended, seeks to “prevent the immediate and serious *disruption* to the provision of *educational programs*.” In contrast, the *Industrial Relations Act* (1987) sought to “prevent the immediate and serious *danger* to the provision of *educational services*.” The notable difference between these two provisions is in the level of disruption required to attract an essential service designation. Under the *Industrial Relations Act*, a much higher standard of “danger to educational services” was required, while under the new legislation a lower standard of a “disruption to educational programs” would attract an essential service designation.

Further, the phrase “educational program” is defined in the *School Act*, unlike the phrase “educational service,” a less precise concept. Educational program is defined as “an organized set of learning activities that...is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy.”¹ The language however, is left to interpretation and naturally would be the subject of considerable debate between the parties. What is an educational program? Does an educational program encompass more than what is defined under the *School Act*? What is the test to determine what constitutes an *immediate and serious disruption to the provision of educational programs*?

Where the purpose of legislation is unclear, statements made in the legislature can be used to determine what is termed *the mischief* the legislation was intended to address.² In Hansard, the Minister of Labour’s comments revealed the intent of the legislation but provided little direction as to its operation. The Minister reiterated on numerous occasions that the purpose of the legislation was to ensure:

¹ *School Act* [RSBC 1996] CHAPTER 412

² BCLRB December 6, 2001

“...that the rights of students would come first, that their education must come first, that learning must continue and that the school year must not be impacted by those disputes on any grade achieving those results.”

Honourable Graham Bruce, Minister of Skills Development and Labour – Thursday August 16, 2001, 2nd Session, 37th Parliament

Although the intent of the legislation was reiterated in the legislature, the actual interpretation and application of the legislation is within the purview of the Labour Relations Board. The essential services process in the K-12 education sector was established to operate in a fashion similar to essential services in other sectors, most notably healthcare. Under the health care model, the LRB considers the request for essential services on a case-by-case basis and makes individual rulings. Because of the nature of the services provided in health care, the process of determining what services are essential is somewhat less ambiguous than in the K-12 public education sector. Health care services across Canada are protected in some manner from employee job action: either employees do not have the right to strike or their right to strike is limited by essential services legislation – a ‘controlled’ strike model.

British Columbia represents one of the first jurisdictions in Canada to include education under essential services legislation. The methods used and the resulting levels of ‘essential’ services provided establish a precedent for future essential services applications in BC and possibly in other Canadian jurisdictions.

Essential Services Application Process

The following is a summary of the essential services designation process:

- Either party, the BCTF or BCPSEA, may make application to the LRB. The chair of the LRB on his/her own motion may also initiate the process.
- The LRB investigates and reports to the Minister of Labour if there is a “dispute” and whether that dispute constitutes a “threat” to the health, safety or welfare of the residents of the province or to the provision of educational programs to students and eligible children under the *School Act*.

NB: A dispute is not necessarily a strike. It is defined under the Labour Relations Code as a difference or apprehended difference between the parties affecting or relating to terms and conditions of employment.

- If the Minister of Labour considers that a labour dispute poses a threat to the health, safety or welfare of the residents of the province or to the provision of educational programs to students and eligible children under the *School Act*, the Minister of Labour may direct the LRB to designate essential services.

*NB: If the Minister makes a direction **before** a strike or lockout has commenced a strike or lockout may not happen until the designations are made by the LRB. If the Minister makes a direction **after** a strike or lockout has commenced, the strike or lockout may continue subject to any essential service designations.*

- The essential services designation process contemplates that the bargaining agents involved work together with the assistance of the LRB mediator to determine what services are essential to prevent the serious and immediate danger to the health, safety or welfare to the province's to the province's residents, or to prevent immediate and serious disruption to the provision of educational programs.
- If agreement cannot be reached, the LRB makes the designation.

Essential Services: Testing the Provision

K-12 Public Education: British Columbia Profile	
School Boards	60
Worksites where educational programs are offered	1,828
Employees (approximate):	
Teachers	45,000
Support Staff	24,000
Exempt Staff	3,400

Negotiations for a new provincial collective agreement between 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 school boards, commenced in March 2001. Despite numerous meetings, few issues were agreed to and the parties remained far apart on issues related to compensation and the organization of the workplace – class size and composition, ratios of non enrolling teachers, etc. On August 22, the BCTF announced that a province wide strike vote would take place between September 27 and October 10, 2001. This announcement came only days after the passage and enactment of Bill 18, *Skills Development and Labour Statutes Amendment Act*, which amended section 72 of the *Labour Relations Code* to include education as an essential service. The anticipated strike would serve as the first true test of the new essential services provisions.

On October 18 the BCTF announced that 91.4% of the 81% of BCTF members who cast ballots were in favour of strike action. A detailed chronology of events commencing with the passage of Bill 18 is included in Appendix C.

The BCTF adopted a multi phase strike plan. The plan was structured to have two phases. As the essential service designation process continued it was modified to a three phase plan. The strike of extracurricular activities became the phase between phases I and II. The strike plan was as follows:

BCTF Job Action Plan

Phase I: Time to Teach

Teachers will:

- Continue instruction and related assessment of students
- Respond in an emergency where a student's health or safety is at risk
- Take attendance (teachers will make these records available for pick up)
- Participate in meetings or interviews with parents/guardians and/or district teaching staff during instructional time only (as long as administrative officer provides for coverage)
- Continue to accept and work with student teachers

Teachers will during instructional time only:

- Participate in the preparation or organization of assemblies
- Participate in Meet the Teacher activities
- Attend IEP meetings or write IEPs
- Complete and submit student referral forms

Teachers will not attend:

- Staff meetings
- Staff committee meetings

- Any other school-based meeting called by an AO
- Any meeting called by school district management

Teachers will not participate in:

- Any accreditation activity
- Teacher in charge duties
- School district or ministry in-service
- Professional development that is not teacher directed
- School photo organization
- Standing or ad hoc district committees

Teachers will not provide:

- Before or after school supervision
- Noon-hour supervision
- Recess supervision
- Any other supervision of students beyond what is necessary for instruction
- Coverage for a teacher who is absent (other than a ToC hired specifically for that purpose)
- Any student assessment data to administrative officers or school office
- Administrative officers with any printed, written or electronic communications

Teachers will not:

- Prepare or distribute report cards
- Administer or supervise FSA or any district or ministry test
- Collect money from students or participate in fund raising in any way
- Accept any printed, written or electronic communication from an administrative officer
- Perform department head/position of responsibility duties except during allocated time in the timetable
- Order supplies, textbooks, etc., unless needed immediately to effectively maintain ongoing instruction
- Assist the administrative officer in administrative tasks like building timetables or computer organization
- Do inventory of anything
- Organize textbooks
- Answer school office phones
- Supervise detentions before, during or after instructional time
- Prepare overviews or previews for the administrative officer
- Distribute school district or administrative letters, newsletters, memos or announcements to students

- Pack up classrooms to facilitate painting, renovations or maintenance

Note: None of the above is intended to prevent the union or its representatives from dealing with member concerns or enforcing and administering the collective agreement.

Phase II: Time's Up

- Phase I continues
- An escalating program of partial, rotating and/or full withdrawal of services
- All extracurricular activities cease
- Participation in ministry committees ceases

On September 27, 2001 BCPSEA filed an application with the LRB for the designation of services in the K-12 sector as essential. Pursuant to LRB practice, on October 1, the LRB appointed an investigator, in this case Vice Chair Mark Brown to conduct the investigation (s. 72 (1)) to determine whether there was a dispute and, if there was a dispute, whether the dispute constituted a threat to the provision of educational services and/or the health, safety or welfare of the province's residents.

The BCTF conducted its province-wide strike vote on October 9 and 10.

A hearing into the matter was conducted on October 10, 2001. In its submission, the BCTF argued that neither of the two phases of the BCTF job action plan posed a threat to the provision of educational programs, or to the health, safety or welfare of residents. BCPSEA argued that on its face, the BCTF's job action plan posed a threat to the provision of educational programs and, insofar as it disrupted the supervisory or custodial role of teachers, to the health, safety and welfare of students.

On October 15, Vice Chair Brown reported to the Chair of the LRB that:

“[n]otwithstanding that the parties disagree as to whether the dispute poses a threat under Section 72(1) of the *Labour Relations Code*, the Labour Relations Board shall request that the Minister direct the Board to designate essential services with respect to this dispute pursuant to Sections 72(2) and 72(2.1) of the Code.”

On October 16, following receipt of the LRB report, the Minister of Labour directed the LRB to designate “those facilities, productions and services that the [LRB] considers necessary or essential to prevent immediate and serious

disruption to the provision of educational programs” and “necessary or essential to prevent immediate and serious danger to the health, safety or welfare of residents” pursuant to s. 72(2) and 72(2.1).

On that day, the LRB appointed Irene Holden, Associate Chair Mediation; Mark Brown, Vice Chair; and Lisa Hansen, Registrar, to the panel that would designate essential services for the K-12 public education sector.

On October 18, the BCTF announced the results of its strike vote, indicating that 91.4% of teachers who cast a ballot were in favour of strike action.

Process

During the s. 72(1) investigation, Vice Chair Brown introduced and facilitated an agreement between the parties with respect to the process that would be followed if the Minister ordered the designation of essential services. Specifically, the stages in the process were:

1. The panel would conduct hearings to define the scope of “educational programs.”
2. The panel would examine Phase I of the BCTF’s strike plan and determine whether essential services designations were necessary in Phase I and, if so, issue orders covering Phase I.
3. If the BCTF wished to expand job action to include extracurricular activities, there would be another essential services designation by the panel to deal with those aspects of extracurricular activities that are essential.
4. If the BCTF wished to further expand their job action, there would be a final essential services application in which all essential services for teachers and support staff unions would be designated.

It should be noted that this process is substantially different from the process envisioned under the legislation, which provides that once the Minister has ordered that essential services be designated by the LRB, a strike may not commence until the designation of essential services is complete. A phased designation process was adopted consistent with the structure of the BCTF multi-phase strike plan. The LRB did, however, emphasize mediation before

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adjudication consistent with its policy. This approach was articulated in a 1996 health care decision:

One of the lessons learned from that experience was that the parties are sophisticated, capable and mature enough to settle most issues on their own or with the assistance of mediation, and at the end of the day comparatively little adjudication was required. The result was that mandatory mediation was incorporated as part of the essential service regime in the code as a first step before coming before the LRB for adjudication.

BCLRB Decision No. B73/96, paragraph 6

Although the parties had no experience with essential services or the LRB processes, relatively few matters were the subjects of adjudication.

Upon appointment, the LRB panel confirmed the process agreed between the parties and, on October 23, convened the first hearing for the purposes of the defining the scope of “provision of educational programs.”

Defining “Provision of Educational Programs”

The first, and arguably the greatest challenge before the LRB panel of Holden, Brown and Hansen was to give meaning to the phrase “provision of educational programs” under section 72 of the *Labour Relations Code*. The parties agreed that the correct definition of the term “educational program” is as provided under section 1 of the *School Act*:

"educational program" means an organized set of learning activities that, in the opinion of...the [school] board, in the case of learning activities provided by the board,...is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;

However, the parties were not able to agree on the scope and the meaning that should be attributed to this definition.

The BCTF favoured a narrow interpretation of “educational program.” It submitted that the LRB should focus its interpretation of the language within the context of the *School Act* and Regulations, disregarding the legislative intent of the Minister of Labour, as the statements made in the Legislature and recorded in Hansard, the BCTF asserted, are “unreliable” and “political.” The BCTF argued that not all the tasks performed by a teacher constitute an educational program. Educational programs are only those activities that occur within the classroom between the teacher and his/her students. Furthermore, the BCTF noted that the term “provision of educational programs” is narrower than the “provision of educational services,” which was found in the essential services provisions of the 1987 *Industrial Relations*

Act. The BCTF submitted that the provision of educational programs focuses on the teaching of students and that the intention of essential services legislation was only to protect the organized instruction to students.

In its submission, BCPSEA stated that the phrase “provision of educational programs” was intended to have a wide application. BCPSEA submitted that the panel must have regard for the purpose of the amendments to Section 72 of the *Labour Relations Code*, which is to ensure that the education of the children in public schools is not seriously disrupted by a labour dispute. Moreover, any interpretation must be consistent with the legislative purpose of the legislation: to ensure that learning continues, children’s education does not suffer, and that the interests of students are put before the interests of the parties to a labour dispute. BCPSEA argued that the statements made in the legislature support a broad interpretation of “educational program” and should not be restricted to the content of the programs themselves. BCPSEA submitted that the meaning of the phrase “provision of educational programs” should extend to the delivery of these programs. The following all form part of an “educational program”:

- Assessment, evaluation, reporting and communicating
- Individual education plans (IEPs) for students with special needs
- Supervision
- Career programs, career preparation programs, cooperative education programs, work experience and work study
- Other curricular activities that occur outside of the classroom and outside of normal classroom hours
- Discipline of students
- Written and oral communication with administrators and parents
- Involvement in school accreditation.

Finally, BCPSEA pointed to the comprehensive changes in the nature of public education in BC over the past 15 years. The report of the *Royal Commission on Education* (the “Sullivan Report”)³ triggered major changes

³ Royal Commission on Education: Sullivan, B.M. (1988) *A Legacy for Learners: the Report of the Royal Commission on Education*, Victoria, BC

including the introduction of a new *School Act* and curricula. One of the key changes to the *Act* was the introduction of the concept of “educational programs” which was a “student-centred” approach that addressed not only the core concepts but also the social, emotional, civic and human developmental learning needs of the student. The definition of “educational program” under the *School Act* when read in concert with the preamble to the *Act*, exemplifies this new approach to learning. The essence of this definition is:

- The activities are organized and a part of the learning process
- They are designed to enable the individual student to develop his/her potential
- They lead to the acquisition of knowledge, skills and attitudes.⁴

On October 24, the panel advised that upon consideration of the parties’ submissions, it had concluded that the parties were too far apart on what is meant by the term “provision of educational programs” and that it would move to the next stage – the designation stage – to assist them in defining the scope of the concept.

Ultimately, on December 6, well after essential services orders dealing with the BCTF’s Phase I job action were issued, the LRB panel issued a decision on the definition of “provision of educational programs.” The panel ruled that the phrase “provision of educational programs” includes more than just instruction, as was argued by the BCTF, but does not encompass all activities carried out by a school board and related to the provision of education, the BCPSEA position. The LRB panel reiterated in its decision that a cautious approach was being taken as this was a case of first instance and indicated that the definition would be refined further during the adjudication of extracurricular activities and Phase II of the BCTF job action. The LRB panel ruled that for the purpose of Section 72 of the *Labour Relations Code*, the “provision of educational programs”:

“includes concepts like supervision and assessment, and might include work study and work experience programs. Further, there may be goods and services and educational materials which are necessary to meet the learning outcomes and assessment requirements of an educational program, and are therefore part of the “provision of educational programs” ...

⁴ Employers’ Outline of Argument (Meaning of ‘provision of educational programs’), Harris and Co., October 2001, pp. 5-6

“On the other hand, not all services or activities provided by a school board are necessarily part of the “provision of educational programs.” There must be some limit to an “educational program” and therefore also to what is involve in the “provision of educational programs”. For example, activities or services provided by a school board which are optional or voluntary and outside the curriculum set by the school board may well fall outside the “provision of educational programs.”

BCLRB Decision No. B455/2001

The BCTF Strike Plan: Phase I

...designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia.

Excerpt from Section 72 (2) Essential services,
Labour Relations Code

...designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs.

Excerpt from Section 72 (2) 2.1 Essential services,
Labour Relations Code

The first LRB hearing to designate essential services was held on October 26, 2001. In the first order of general application November 2, 2001 (the “November 2 Order”), the LRB panel ruled on what activities teachers did not have to perform, rather than designating the minimum levels of service under Phase I. In this Order, the LRB panel ruled that teachers need not perform the following activities:⁵

- Staff meetings
- Meeting with parents outside of instructional time
- Prepare or distribute report cards
- Provide student assessment to Administrative Officers
- Complete student referrals
- Attend staff meetings or any district staff meetings
- Provide for or accept from Administrative Officers: routine written, printed or electronic communications
- Assemblies
- Accreditation activities

⁵ NB – This list of activities is not exhaustive. For a complete list of Phase I activities that were withdrawn see Appendix E.

- Professional development that is not teacher directed
- Participate in school photo organization
- Participate in Foundation Skills Assessment (FSA)

Those activities not listed in the November 2 Order were to continue in the normal fashion. Teachers were required to be available in the event of an emergency or disaster situation. With respect to before/after school, noon hour and recess supervision, teachers were to continue to supervise, subject to the employer utilizing management and excluded staff to the “best extent possible.”

On November 5, 2001 the BCTF served 72-hour strike notice to BCPSEA and 72 hours later, on November 8, teachers began Phase I of the province-wide strike.

During Phase I strike action, both the BCTF and the BCPSEA required clarification of several issues pertaining to the November 2 Order. Issues requiring clarification/variances to the Order included: the meaning and extent of “to the best extent possible”, teachers-on-call (TOC), teachers-in-charge (TIC), administration/supervision of grade 12 examinations, supervision of students, field trip teacher on call coverage, and attendance sheets. See Appendix D for the LRB Orders, Decisions and Variances.

Table: Summary of the Variances to the November 2 Order

Supervision

November 2 Order

Teachers must continue to provide before/after school supervision related to bus drop off and pick up, and recess supervision, subject to the district utilizing management and excluded staff to the best extent possible to replace teachers (BCLRB No. B409/2001).

Clarifications/Variances

Variance: Teachers must continue to provide noon hour supervision, subject to the district utilizing management and excluded staff to the best extent possible to replace teachers (BCLRB No. B417/2001).

Clarification: Interim Order – Pending final resolution of the supervision schedule by the local parties, the normal level of supervision for teachers will apply; management and excluded staff will be deployed to the best extent possible (BCLRB No.

B417/2001).

Clarification: "Utilizing management and excluded staff to the best extent possible."

The general principles of the decision were:

- Will result in longer hours of work for management and excluded staff and that they will be taken away from their normal non-essential work duties (that is, not business as usual)
- Management and excluded staff may have less time to devote to bargaining unit work because there is a higher level of normal services being delivered to students and parents
- The objective is to not ensure that the BCTF members are providing no supervision
- The LRB panel cannot apply a one-size-fits-all approach to all school districts.

Teachers in Charge (TiC)

November 2 Order

Where there are no administrative officers at a school, TiCs must continue their normal TiC duties (BCLRB No. B409/2001).

Clarifications/Variations

Clarification: When a teacher has accepted a TiC position, they must perform all of the normal TiC duties, including duties that a teacher need not perform under Phase I job action (BCLRB No. B421/2001).

Clarification: If TiC appointments are voluntary under the collective agreement, a teacher may refuse the appointment (BCLRB No. B421/2001).

Clarification: TiCs who have accepted a TiC appointment must perform TiC duties, in cases where a permanent administrative officer is not assigned to the school and when the permanent administrative officer assigned to the school is absent. Activities that can be rearranged and are not urgent should not take precedence during any job action (BCLRB No. B451/2001).

Report Cards/Marks

November 2 Order

Teachers need not prepare or distribute report cards.

Clarifications/Variations

Clarification: Consent Order – Provision of Marks

Teachers will continue with current practices regarding the posting of marks and advising students on marks in the classroom, except for report cards (BCLRB Consent Order, November 17, 2001).

Teachers on Call (ToC)

November 2 Order

Provide coverage for a teacher who is absent, except for a Teacher on Call hired specifically for that purpose.

Clarifications/Variations

Clarification: Districts have several alternatives including trying to replace the absent teacher with an administrative officer or combining classes, perhaps in a larger area such as a gymnasium (BCLRB No. B421/2001).

Foundation Skills Assessment (FSA) and District/Ministry Tests (Provincial Examinations)

November 2 Order

Administer or supervise FSA or any district or Ministry test.

Clarifications/Variations

Clarification: The administration and supervision of provincial exams will continue to be provided by teachers subject to the employer utilizing management and excluded staff to the best extent possible and subject to the employer combining students taking the provincial examinations in a larger room, such as a gymnasium, to the best extent possible (BCLRB No. B418/2001).

Other Duties

November 2 Order

Except as noted above, all other job duties will be performed as

normal (BCLRB No. B409/2001).

Clarifications/Variations

Clarification: Attendance – The taking of attendance was not included in the list of activities that BCTF members need not perform during Phase I job action. The duty must be performed in the normal fashion (BCLRB No. B436/2001).

Clarification: Field Trips – Covering classes during field trips during instructional time where classes are integrated and some students remain behind does not fall within the list of activities permitted to be withdrawn. The duties must be performed in the normal fashion (BCLRB No. B444/2001).

The BCTF Strike Plan: Phase “1.5” Extracurricular Activities

On November 29, 2001, the BCTF requested that the LRB move to adjudicate the next phase of their strike plan – the withdrawal of extracurricular activities (commonly referred to as Phase 1.5). The BCTF approached this designation from the perspective that all activities that occurred outside the traditional hours of instruction when most students were in session were extracurricular – what was loosely characterized as “outside the bells.” Activities that were performed outside of normal instructional hours would either be cancelled or performed “between the bells” the BCTF contended.

BCPSEA argued that the BCTF approach would have resulted in the withdrawal of extracurricular *and* curricular activities. BCPSEA submitted that these activities may be struck; however, they must only be struck following the Phase II essential services determination. BCPSEA argued that the appropriate approach by the LRB was to first determine whether the activity in question arose out of the provincially prescribed or locally determined curriculum and, if so, to determine that any adjudication concerning the essentiality of such activity or services should to be determined under Phase II and not under Phase 1.5 which relates to the withdrawal of extracurricular activities.

While there was considerable agreement between the parties, there was disagreement on three key issues:

- Teachers’ duties during field trips which occur during an instructional day and which are a part of or arise out of the curriculum and which

extend beyond the regular school hours

- Activities currently being performed by teachers whether within or outside of the regularly scheduled day, which are a part of or arise out of curriculum and for which marks are given
- The date of the commencement of job action.

On December 19, 2001, the LRB panel issued its second order of general application (the "December 19 Order") regarding the withdrawal of extracurricular activities. With respect to the first two areas of dispute, the LRB panel ruled "those activities that are a required component of the curriculum, for which marks are provided or credit is given will continue. Activities or field trips that are optional in nature will only occur during the instructional day, but will include any necessary lunch break supervision of students."

The LRB panel did not make a determination restricting the timing of the teachers' withdrawal of extracurricular activities, stating that the timing of the escalation of the strike action is within the purview of the striking party. The BCTF agreed in mediation that it would not object under Section 68 Replacement workers of the *Labour Relations Code* to parents and other volunteers replacing teachers so that extracurricular activities may continue.

In summary, the LRB panel issued the following decision with regard to extracurricular activities:

Teachers are permitted to withdraw activities that occur outside of the normal instructional hours, except the following, subject to activities permitted to be withdrawn under Phase I:

- Lesson preparation and planning
- Student assessment, evaluation and marking
- Teacher discipline/evaluation/investigation meeting
- Instruction that normally occurs outside of instructional hours (including programs such as adult ed. and alternative programs)
- Activities for which an allowance or compensatory time off is given
 - Normal activities of non-enrolling teachers which occur outside of normal instructional hours
 - Work experience and career preparation programs such as TREK and EARTHQUEST
 - Activities or field trips that are a required component of a curriculum for which marks are provided or credit is given.

On Monday January 7, 2002, teachers commenced the next phase of their job action and withdrew extracurricular activities.

The BCTF Strike Plan: Phase II

Following the withdrawal of extracurricular activities on January 7, 2002, a case management meeting was conducted regarding the determination of essential services levels for Phase II – a full withdrawal of services, through partial, rotating, or full strike action.

Mediation commenced on January 14 and continued on January 21 and 22. During mediation, both parties favoured a time-based, rather than a detailed activities-based, analysis of essential services. However, the parties initially took different time-based approaches.

The BCTF argued that a full scale strike could exist for weeks or even months before a serious disruption to the provision of educational programs occurred. The BCTF cited as examples where children are out of school – Christmas, spring and summer breaks, occasions of absence for extended periods due to illness, vacation or other events, and lengthy strikes and lockouts that had occurred in the past two decades in the province. BCPSEA argued that any withdrawal of services would disrupt the provision of educational programs, and the point at which that became a serious disruption would depend on a number of factors, including:

- The time and duration of the strike, the amount of time left in the semester, quarter or school year
- The grade level of students, and
- The characteristics of the students themselves.

Notwithstanding the BCTF position during mediation the BCTF proposed two days of instruction and three days of service withdrawal for the initial stages of Phase II job action. This stage of Phase II was to include partial withdrawals of services and rotating strikes. The proposal was made on a without prejudice basis to the BCTF later seeking a full withdrawal of services consistent with their earlier position.

BCPSEA favoured a model that provided for normal instruction and services for most of the days during the school week and a full withdrawal of services for the balance. BCPSEA proposed four days of instruction and one day of service withdrawal.

Ultimately, there was never a final agreement between the parties or final adjudication of the matter by the LRB panel, as the mediation process was interrupted by the announcement of the recall of the legislature to deal with the dispute. The panel adjourned and invited submissions from the parties to determine whether the essential service hearing was now moot – academic, having no practical consequence.

With the announcement of the recall of the legislature, reports began to circulate that the BCTF was planning a one-day walkout by teachers to protest a legislated settlement. Late in the week, the plans for the so-called “Day of Protest” were publicly confirmed, and on January 24 BCPSEA applied to the LRB for a declaration that the anticipated “Day of Protest” would be an illegal strike. In BCPSEA’s view, the walkout would be an illegal strike either because:

- The LRB had not yet designated essential services related to a full withdrawal of services, so the BCTF did not have the legal authority to escalate its strike beyond Phases I and 1.5, or
- The enactment of a legislated collective agreement would bar the BCTF from engaging in strike activity during the term of that collective agreement.

The LRB appointed Vice Chair Laura Parkinson to consider the BCPSEA application regarding the “Day of Protest” and a hearing into the matter commenced on Friday, January 25.

Also on January 25, the legislature reconvened and the government introduced Bill 27, *Education Services Collective Agreement Act* and Bill 28, *Public Education Flexibility and Choice Act*. The *Education Services Collective Agreement Act* in part sought to impose a three year collective agreement on all public school teachers in BC and the province’s 60 school boards and bring an end to teacher job action.

Following the introduction of the legislation, the LRB panel on its own motion advised it would consider whether to issue an Interim Order respecting Phase II job action and scheduled a hearing on Sunday, January 27, in the event that the legislation had not been enacted at that time.

On the afternoon of Sunday, January 27, the essential services panel issued an Interim Order (B34/2002) on Phase II job action. The Interim Order was issued on a non-precedential basis and permitted the BCTF to engage in one day of full withdrawal of services during the week of January 28, 2002,

subject to the provision of proper notice under the parties' protocol agreement – Strike Notice and Notice of Strike Escalation Agreement November 2, 2001 (see Appendix F):

BCTF also agrees to give the affected employers and BCPSEA reasonable notice of this escalation. This notice of escalation will be at least 24 hours and BCTF will indicate the nature of the escalation in the notice.

The Interim Order indicated that proper notice had not yet been given, which would render January 28 unavailable for a legal withdrawal of services in any event.

Also on January 27, Vice Chair Parkinson issued a declaration concerning the proclamation of the legislation and the "Day of Protest":

The Labour Relations Board declares that after proclamation of the *Education Services Collective Agreement Act* and the *Public Education Flexibility and Choice Act* the British Columbia Teachers' Federation and the employee it represents would contravene Section 57(1) of the *Labour Relations Code* if there is a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services.

Excerpt from BCLRB Decision No. B34/2002

Late on the evening of January 27, the *Education Services Collective Agreement Act* and the *Public Education Flexibility and Choice Act* were proclaimed. As a consequence the BCTF was no longer in a legal strike position. The *Education Services Collective Agreement Act* set out the terms of the collective agreement between the parties, and amalgamated collective agreements in districts where more than one teacher agreement existed. The Act also provided for the establishment of a commission of inquiry to review the structure, practices and procedures for teacher collective bargaining.

Although the Interim Order on Phase II was ultimately of no effect because the *Education Services Collective Agreement Act* established a binding collective agreement between the parties, the order provides some guidance about the approach that the LRB may take if a decision on essential service levels during a full-scale withdrawal of services becomes necessary in future.

In summary, the decision contained the following features, as agreed between the parties:

- School would be in session for full days for a designated number of days per week, and closed on days when not designated, when teachers would withdraw all services
- On designated days, the normal timetable for each school will be followed on a rotational basis, such that a day that would otherwise fall on a day when services are withdrawn would be the day that was in effect when school was next in session.
- All job duties will be performed by employees as normal and at the same time as usual on the designated days, except as limited by Phase I and 1.5 essential services orders
- Teachers will organize, plan and deliver lesson and curriculum coverage based on the number of designated days to achieve the prescribed learning outcomes of each course/program
- Teachers will assign and evaluate homework and assignments for non-designated days where necessary
- Teachers participate in communication and collaboration with administrative officers which may be necessary for organizing, planning and delivery of lessons and curriculum in fewer days than specified in the Ministry of Education curriculum documents
- All non-instructional days scheduled to occur during Phase II job action would be cancelled and not rescheduled.

These features are consistent with the approach taken to essential services in other sectors, in that once essential service levels are designated, designated bargaining unit employees work a full day. The approach different from the approach in other sectors, in that it is recognized that all teachers will be working some days and all teachers will not be working on other days; in other sectors, a portion of bargaining unit staff are not working on any given day. It is also different in that it permits teachers to continue to withdraw a portion of their normal job duties, even during designated essential services days. In other sectors, once an employee is designated as essential, he/she performs the full scope of job duties while working.

One of the issues that remained unanswered due to events and circumstances was the number of days per week that are “essential” to the provision of educational programs. Although the Interim Order permitted the

withdrawal of one day of services, it is arguable whether this would be the standard set by the LRB if an order had been made in other circumstances. The context for this order was whether a one-day walkout by teachers in the next week would maintain essential services.

The BCTF proposed during Phase II mediation two days of instruction and three days of service withdrawal only for the initial stages of Phase II job action – to include partial withdrawals of services and rotating strikes. The proposal was made on a without prejudice basis to the BCTF later seeking a full withdrawal of services consistent with their earlier position. In mediation, BCPSEA had already indicated that one day of withdrawal of services would maintain essential services in the short term. It can be observed that the LRB simply formalized this position to indicate that the BCTF's plan would not violate essential service levels, if proper notice had been given under the parties November 2 strike notification agreement.

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Part Two: Conclusion

Essential Services in Public Education – Observations and Commentary

Strikes in the K-12 public education sector have an immediate impact on a very large segment of the public. These disputes have been difficult to resolve and have frequently been ended by legislative intervention. In an effort to ameliorate this dynamic and promote settlements at the bargaining table, the provincial government amended the essential services provisions of the *Labour Relations Code* to include the *provision of educational programs*. The first test of the amendments was the strike action initiated by the BCTF in November 2001.

The LRB panel acknowledged in its early order setting out the interpretation of *provision of educational programs* that the LRB was dealing with a case of first instance necessitating a cautious approach. The panel observed:

This is the first time that the board has dealt with the recent amendments to the Code with respect to the designation of essential services in the education sector. While the Board's experience in the health care sector provides valuable expertise in the essential service designation process, the Board should be cautious in its approach so that any policy and procedure developed in the education sector reflects the needs of the sector.

BCLRB Decision No. B455/2001, paragraph 47

The challenge for the LRB was to apply essential service principles and jurisprudence to a system unlike those that formed the case history of the LRB.

The Concept of Essentiality

The LRB experience and case history arises largely from private sector experiences and, where essential service designations are involved, predominantly sectors or workplaces where the health and safety of the general public is at issue. In acute care hospitals especially, service reductions during a strike can have disastrous consequences for members of the public, including permanent adverse health effects and even death. In the case of municipal strikes and strikes involving highway maintenance contractors, the LRB is concerned with potential risk to public health and safety. Services that do not pose such risks are generally closed by the strikes.

In essential services, the LRB has dealt with hospitals and professional nurses. From a labour relations perspective, the working life of hospital employees, including nurses, has a particular structure and is not significantly different than that of many other unionized employees. In general their jobs have a particular routine, their working hours are defined by specific shifts, and their remuneration is by an hourly wage for time worked.

The education system and the working circumstances of teachers are fundamentally different than other unionized sectors in the LRB jurisdiction.

Traditionally, essential services in the public sector are those services that are considered essential because of their importance to the safety and health of the general public. The public school system was grafted onto existing essential service legislation as it was in previous labour relations statutes. Note the untested 1987 *Industrial Relations Act* reference – *provision of educational services in the Province*, and the most recent reference – *provision of educational programs to eligible children under the School Act*.

The LRB has administered essential service legislation in one form or another for over 25 years. It therefore is not surprising that the LRB began by using the framework established by essential service jurisprudence and procedure to administer public education essential services.

Given when and how the dispute was concluded, it is left to speculation how the LRB might have dealt with a full withdrawal of services and the application of *provision of educational programs*. Although the language of the *Labour Relations Code* was amended to broaden concerns in the educational system well beyond public health and safety, limited attention was paid to the concept of essentiality and educational programs due to the phased nature of the strike plan. The decisions related to Phase I dealt predominantly with health and safety matters – supervision, teachers in charge, etc., although other matters including those related to student reporting were addressed. Decisions in Phase 1.5 came the closest to dealing with curricular matters. Those decisions, while illustrative, are not definitive.

“School Culture”

The working life of teachers and the organizational functioning of schools are very different from most unionized work places. Teaching is not a routine job where the work is the same from day to day or hour to hour.

Teachers work relatively independently. For example, the assignment of a classroom teacher is to teach a particular grade or group of courses. Apart from timelines set at the district or school level for such things as report cards, non-instructional day activities, and assemblies, teachers perform their work without direction. They have considerable latitude to exercise professional judgment in determining what to do and how, within the bounds of established curricula.

Schools operate on a professional, collaborative and collegial model. Decisions are rarely made unilaterally by principals and vice principals. Most vice principals and many principals have teaching loads and would not have the time nor the availability to closely supervise teachers and give them directions on such matters as committee participation or attendance at school-based team meetings. These activities are an essential part of the operation of the district and the provision of services to many students. When these activities are seen solely through the lens of traditional essential service designations, it is difficult to conclude that these activities are essential. Arguably, in this dispute the LRB panel came to this conclusion.

Voluntary vs. Discretionary

One of the most vexing issues in the recent dispute is the claim advanced by the BCTF that teachers are paid for instructional time, and that much of what they do outside of instructional time is “voluntary” and unpaid.

Some duties are clearly required by the *School Act* and Regulations, and some of these clearly may be required of teachers outside of instructional time. However, the Act and Regulations are not exhaustive in this regard.

The provincial teacher collective agreement does not provide straightforward answers to questions of what work teachers are paid for, and what work, if any, is unpaid. Unlike other unionized employees, including other unionized professionals such as nurses, teachers are paid an annual salary. They have no fixed hours of work nor does the provincial teacher collective agreement contain provision for overtime pay in any school district.

This pattern has been continued from the long tradition and statutory scheme that preceded teacher unionization in 1987. It was always tacitly understood that the annual salary covered all such teacher duties and activities whether they occurred within or outside of instructional time. However, the lack of express statutory or contractual provisions makes it more difficult for the LRB to deal

with claims by BCTF that certain duties or activities are “voluntary” and are unpaid.

This lay at the heart of many of the concerns experienced by employers during the essential service process particularly during the Phase 1.5 essential service process. It can be observed that the LRB struggled to come to terms with issues concerning teacher duties, remuneration and what constituted services that were essential.

Partial Withdrawals of Service

Arguably, the essential services process is not designed to deal effectively with partial job action. Partial job action allows the union to bring disproportionate pressure to bear on the employer, with little or no pressure on the union or its members. Examples include the overtime ban by nurses in the health care sector, and Phases I and 1.5 job action by the BCTF. In both cases, the sectors were disrupted and energies of exempt staff exhausted while employees lost little or no pay and did less work. The controlled strike approach recognizes that there must be pressure on both sides to settle, but that some services must be maintained due to the overriding nature of the public interest in those services. In response to disruptive job action, school boards have the ability to take actions such as locking out striking employees as a way of bringing pressure to bear on the striking party. Actions such as a lockout, however, have not been seen by public school employers as an appropriate or effective response to partial withdrawals of this nature.

If the controlled strike model is to be effective, the union and its members on one hand, and the school board (s), government and the public on the other hand, must experience sufficient hardship to ensure there is an incentive to settle on both sides. However, the pressure on the public must be moderated so that legislative intervention can be avoided.

Different Perspectives

The BCTF strongly opposed Bill 18, *Skills Development and Labour Statutes Amendment Act*, which in their view took away teachers’ right to strike – a right they believed that had been denied them for decades and that was finally won though sustained efforts culminating with the granting of full scope bargaining rights in 1987.

In frequent press statements and in proceedings before the LRB, the BCTF took the position that education can be characterized as vital but not essential in labour relations terms. The BCTF argued that essential services are those services that society cannot do without because of the potential for loss of life or limb – services that must be available at all times, 24 hours per day, 365 days per year. Certain health care services, policing and firefighting would all constitute services that are “essential” in their view. The BCTF contended that the definition of essential services does not and should not be broadened to encompass educational services, which are typically provided Monday through Friday, 194 days of the year.

The BCTF argued that essential service legislation represents an intrusion in the collective bargaining process and serves to tip the balance of negotiating power in favour of the employer. If services are maintained in full or to a large degree, they asserted, there is no pressure on the employer to settle. As a consequence, bargaining is frustrated and any strike is unnecessarily prolonged.

With respect to full scope collective bargaining from 1987 to 2001, the BCTF took the position that it had been positive for students. When teachers negotiate, they seek to improve teachers’ working conditions, the BCTF asserted, which in turn improves learning conditions for students. If the government was attempting to reduce the disruption to education with the *Labour Relations Code* amendments, the BCTF contended that between 1987 and the introduction of provincial bargaining in 1994, students had lost less than 0.8 of a day of classes per year due to a teachers’ strike and from 1994 until the present there had not been a teacher initiated strike.

Finally, the BCTF argued that there was no conclusive evidence to substantiate the claim that teacher strikes cause irreparable harm to students. The outcome of collective bargaining has been positive for students and depriving teachers of the right to strike would only succeed in hurting teachers and in turn the public education system.

It was this opposition to the inclusion of education in essential service provisions of the *Labour Relations Code* that led to different approaches of the BCTF and BCPSEA as to the operation and application of the provisions. It can be observed that in healthcare disputes, healthcare unions accept that certain services are essential. The issue between employers and unions relates to the level of services. In K-12 education there was no such “meeting of the minds” on the inherent essentiality of education. The disagreement was not only about levels but what if any programs, services or activities were considered essential from a labour relations perspective.

For Consideration

The following considerations are designed to promote discussion and develop strategies to meet our labour relations objectives. What are the implications for future rounds of bargaining arising out of this first experience with essential services? Should applications be necessary, how do we approach and manage those applications – can we better manage future labour disputes and essential service applications?

Consider:

- Do you agree that the public policy choices should be considered within the framework of “balancing the two objectives” as we have described them?
- Recent experiences instruct us as to how government, regardless of party affiliation, will respond when faced with a strike in the K-12 sector. It can be argued that there have been structural consequences resulting from ad hoc legislative responses. The bargaining process will follow a predictable path. During bargaining the negotiating parties make strategic decisions concerning the potential of third party intervention. Where it is believed the outcome is potentially better through a third party process, the bargaining is pushed to impasse and a strike results. After a short strike, back to work legislation is passed to end the dispute and processes such as interest arbitration are used to determine the terms of the collective agreement. The more this cycle is repeated the less true bargaining occurs – a combination of the narcotic effect of third party intervention and the chilling effect on the bargaining process. Does this phenomenon exist today and what role does the operation of the essential service provisions play?
- In an August 14, 2001 press release, the Minister of Skills Development and Labour stated:

This legislation restores the essential service designation that was removed by the previous government in 1993. Fundamentally, it’s about ensuring that no child’s right to education takes a back seat to a labour dispute.

No child’s right to education should be denied during school strikes and lockouts. More than four million student days have been lost due to labour disputes in the past 10 years. Our children should not pay the

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price if teachers or school support staff and school boards are not able to resolve their differences.

The legislation maintains the right to engage in free collective bargaining, and teachers and support workers continue to have the right to strike. If a dispute threatens education programs, the minister of skills development and labour can direct the Labour Relations Board to designate school facilities or services as essential. The Board will determine the essential service levels that must be maintained.

Did the restoration of K-12 education under Section 72 of the *Labour Relations Code* accomplish what policy makers intended to accomplish?



**Appendix A: A Basis for Discussion –
Labour Relations Policy and the
K-12 Sector in BC**

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A Basis for Discussion – Labour Relations Policy and the K-12 Sector in BC

The Challenge: Balancing the Objectives

In the winter of 2000 BCPSEA began analyzing the policy implications of collective bargaining impasse resolution alternatives. A resource/discussion paper – *A Question of Alternatives: Avoiding and Resolving Collective Bargaining Impasses* – was prepared as the basis for policy discussions. Given that making essential service provisions of the *Labour Relations Code* applicable specifically to K-12 public education was the subject of political discussion, essential services was reviewed in detail. The resource/discussion paper was based on the notion that public policy concerning public education collective bargaining must balance two objectives:

- Allowing parties the freedom to pursue their goals
- Reducing the costs of industrial conflict, the costs resulting from decisions to resolve this conflict and the consequences arising from settlements outside established patterns.

Policy choices such as the right to unionize, the right to strike, and the role of dispute resolution mechanisms illustrate how far policy makers are prepared to go in emphasizing one objective over the other.

The following is excerpted from *A Question of Alternatives: Avoiding and Resolving Collective Bargaining Impasses*, April 2001.

General Public Policy Options

Where the right to bargain collectively, including the right to strike, is incorporated in the industrial relations framework of the public sector, the government generally has four policy alternatives with respect to balancing the two objectives. We described these alternatives in terms of four generic models:

Model One: No special regulations / processes. Under this model, little or no legislation exists concerning the continuation of public services. In the event of a strike, the parties are responsible for determining how many and which employees (if any) in the bargaining unit will work and what they will do during the strike. K-12 education is not specifically identified as an essential service. There is no special process established to provide for third party intervention.

Model Two: Strike prohibition. There is no right to strike; processes such as interest arbitration are substituted for the right to strike. The primary issue to be resolved is what criteria should be used to determine the settlements.

Model Three: Essential service designation. This model can be referred to as a “controlled strike” model. Strikes are permitted, but in the event of a strike, there is a process that designates “essential services.” Initially the level of service is decided at some point prior to the impasse. The service levels may be adjusted, however, as the strike continues. The parties negotiate according to the applicable labour legislation.

Model Four: Direct legislative intervention. The government uses legislative authority to intervene in a particular dispute. While Model Four is not a structural option in the same sense as Models One to Three, it does represent an option available to government on an *ad hoc* basis.

Models Two and Three are structural responses to the potential for impasse, while Model Four is primarily reactive and depends on a number of environmental and political factors. Note that these generic models have a variety of applications, and the characteristics of one may be combined with the characteristics of others. The following table provides a general overview of the policy options chosen by each of the provincial jurisdictions in their respective K-12 sectors. Table One provides a summary of the legislative structures in each province.

Table One: Summary – Models Adopted by Each Province

Province	Model One	Model Two	Model Three
British Columbia			X
Alberta	X		
Saskatchewan	X		
Manitoba		X	
Ontario	X		
Quebec			X
New Brunswick			X
Nova Scotia	X		
PEI		X	
Newfoundland			X
NWT	X		
Yukon	*X		

**In the Yukon, teachers have the option of either binding arbitration or conciliation, which allows them the right to strike.*

As a matter of public policy in British Columbia, unionized employees in the K-12 sector have the right to bargain collectively subject to the terms of the *School Act*, and are covered by the prevailing labour legislation. Historically, the government has chosen to minimize the effects of job disruption in the sector through either of two ways:

- Adoption of the “controlled strike” model through the designation of certain services as essential according to the labour relations legislation in effect at the time of the dispute.
- Ad hoc legislative intervention at the time of job action or when job action is contemplated, with a process to conclude the terms of a collective agreement.

Ad hoc legislative intervention has been a common feature of public sector labour disputes in recent years.

Public Education as an Essential Service – Experiences Prior to 2001

Essential service designations first came into law in a 1975 amendment to Section 73 of the *Labour Code*, which governed disputes involving firefighters, police officers, and hospital employees.

In 1977, most of Section 73 was repealed, leaving the essential service provisions applicable to any dispute that posed “an immediate and serious danger to life or health.” These provisions were later moved into a separate statute with the passage of Bill 92, the *Essential Service Disputes Act*.

In 1978, as a result of a dispute involving Selkirk College and four school boards in the West Kootenays, the *Essential Service Disputes Act* was amended. This authorized the LRB to designate essential services to prevent a “substantial disruption in the delivery of educational services.”

The *Labour Code* was replaced by the *Industrial Relations Reform Act* in 1987. Section 137.8 of the *Act* addressed essential services and broadened their scope to disputes that posed a “threat to the economy of the Province or to the health, safety or welfare of its residents or to the provision of educational services in the Province.” This provision was in force when teachers were given the right to bargain collectively and the right to strike, also in 1987. It authorized the LRB to designate facilities, productions, and services necessary or essential to prevent immediate and serious danger to, among other things, the provision of educational services. This language appeared to cast a broader net by allowing the LRB to prevent a strike by teachers or support staff from causing *any* disruption of educational services, rather than *substantial* disruption.

The labour relations boards of the day did not make any essential service decisions under either formulation of the language relating to educational services.

In 1993, the *Industrial Relations Reform Act* was replaced by the *Labour Relations Code*. The *Code* continued to address essential services, but the reference to educational services was eliminated. What remained as Section 72 Essential services of the *Code* applied where a dispute posed a “threat to the health, safety or welfare of the residents of British Columbia” and authorized designation of “those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare” of BC residents.

In *School District No. 54 (Bulkley Valley)*, BCLRB No. B147/93, the LRB ruled that despite the deletion of educational services from s. 72, education falls within the concept of “welfare.” That essential service provision of the *Code* could apply to some educational services if they were necessary to prevent an immediate or serious danger to the welfare of BC residents.

The case did not proceed beyond that threshold ruling. Its significance in this context lies in the comments the LRB made in arriving at its decision. In several passages, the LRB acknowledged that the removal of the reference to “educational services” narrowed the applicability of essential service legislation to schools and significantly expanded the teachers’ right to strike:

Therefore, there can be no question that the removal of the phrase “threat” to the “provision of educational services” from the Code narrowed the circumstances in which educational services may be designated... [A]n interruption or disruption in the delivery of educational services is no longer sufficient in and of itself to cause a designation of essential services.

Therefore, the conclusion is clear: the removal of the words the “provision of educational services” by the Legislature in this *Labour Relations Code* has enhanced the Teachers’ right to strike.

The strong implication of these passages confirms a plain reading of the pre-existing language of the *Industrial Relations Reform Act*. If a strike by either teachers or support staff interrupted or disrupted the provision of educational services by a school board, the dispute could be the subject of essential service designations under the *Code*, which would significantly restrict the scope of the strike.

It can be observed that the general public and, as a result, the government, view K-12 education as a service that is essential. This is evidenced historically by the inclusion specifically of education in essential service provisions of labour relations legislation (*Industrial Relations Reform Act, 1987*) or where not specifically identified, the application of the essential service provisions to education (*School District No. 54 (Bulkley Valley), BCLRB No. B147/93*). It is also evidenced by various governments’ reactions to K-12 strikes with the enactment of back to work legislation. Essential services in education have recently been an area of political debate culminating with the introduction and passage of Bill 18, *Skills Development and Labour Statutes Amendment Act* that amended the *Labour Relations Code* to include the provision of educational programs in the essential services section.

The challenge for policy makers is to ensure that any legislative structure promotes the resolution of conflicting interests between the parties, as opposed to one where the negotiating parties are able to concentrate their efforts on making strategic decisions not to bargain, believing that third party intervention offers them a better alternative to negotiating. Arguably, structures that promote a reliance on third party intervention have consequences, albeit unintended, such as what is termed the narcotic effect of

continued reliance on third parties and the resulting chilling effect on an effective collective bargaining process.

In attempting to achieve the balance between the two objectives, historically, policy makers in BC have included education in labour legislation essential service provisions or have had *ad hoc* legislative responses to particular disputes. If one accepts the proposition that the K-12 education system should be covered by essential services legislation in order to reduce the consequences of industrial conflict, the challenge is to ensure that it is done in such a way that meaningful collective bargaining can still occur. The creation of a viable collective bargaining system that allows for certain services to be designated as essential requires, at the outset, an understanding of the principles upon which current essential service legislation is based and the problems that are inherent in past legislative schemes. It is from this foundation that a system or model can be considered.

Developing a Working Model: Principles

If you accept the proposition that public education is an essential service within the framework and context of labour relations legislation, the challenge is to develop and implement a model that does not impair meaningful collective bargaining. In developing a working model and assessing policy options it is important to recognize what we have termed as the foundation elements. These elements can be summarized as the recognition that:

- Collective bargaining is the appropriate mechanism to determine the terms and conditions of employment.
- Inherent in the collective bargaining model there must exist an incentive for both sides to settle.
- Where it is deemed necessary as a matter of policy to designate certain public services essential, such designations should result in a “controlled strike,” not in the elimination of the right to strike.
- The public school system performs an education function and what we have referred to as a custodial function – the responsibility for the care and safety of children during school hours. Both are viewed as having essential aspects in today’s society.

The controlled strike approach recognizes that there must be pressure on both sides to settle, but that some services must be maintained due to the overriding nature of the public interest in those services. The union and its members on one hand, and the school board, government and the public on the other hand, must experience sufficient hardship to ensure there is an incentive to settle on both sides. However, the pressure on the public must be moderated so that legislative intervention and arbitration can be avoided. In health care, for example, essential service orders are intended to ensure that life and health are not in danger, but that services are sufficiently curtailed to bring some pressure on the public, government and the employers to settle. The reduction of staffing that accompanies reduction of services maintains pressure on the employees and the union.

It is not a simple matter to apply these principles to the K-12 system. Arguably, the orientation or frame of reference of the LRB arises from private sector experiences or essential service matters predominantly in sectors or workplaces where the health and safety of the public is a concern. In the public education system the LRB is challenged to determine the relative importance of different courses and programs for different students. The impact of an interruption in a course or program may be acceptable for a short period, but damaging beyond that.

Additionally, the importance of the custodial function of the school system has to be considered. If schools in a district close for a day, there simply are not sufficient day care facilities nor trained day care personnel to handle the demand. Working parents would be disproportionately affected.

Developing a Working Model

For policy discussion purposes, three general models or options were presented to assist policy makers during their consideration of amendments to labour legislation to incorporate the concept of K-12 public education as an essential service. The models were based on the following assumptions:

- The legislation applies to all unionized employees in the K-12 public education sector.
- The right to strike is maintained. Provisions are intended to incorporate the concept of a “controlled strike” not the elimination of the right to strike.

- Replacement worker provisions of the *Labour Relations Code* are maintained.

It is important to consider the nature of the K-12 system. The characteristics can be summarized as follows:

- Relatively stable client base during the school year.
- Schools operate on a 10 month cycle (traditionally September through June).
- A variety of school organizations exist within the 10 month school year; select programs operate outside what can be loosely characterized as the normal school year.
- The attainment of educational outcomes is, in part, time based.
- There are 60 school districts with over 1800 worksites. There is one teachers' union, one provincial collective agreement and 69 sub agreements (local collective agreements in place in 1994 with subsequent amendments). There are 15 support staff unions and 77 collective agreements.

Option 1: Include Reference to Educational Programs or Services

Amend Section 72 to refer to the *delivery of educational services (or programs)*.

Considerations for discussion:

1. A legislatively simple solution.
2. Maintains the traditional role of the Minister of Labour and the Labour Relations Board.
3. This option codifies the concept of a controlled strike and limits the right to strike.
4. Through application to the LRB the designation of basic levels of service could increase from time to time as a strike continues.

5. Support staff may be designated as essential under either the educational services (programs) or the health and safety references.
6. No guidance is provided to the Labour Relations Board.
7. From an education perspective, no guidance to employers or employees as to what is considered essential; no guarantee that any particular level of activities directly or indirectly related to education are continued.
8. Guiding principles the LRB could use include:
 - Need to balance the public need to maintain essential services against the need to keep pressure on both parties to settle the dispute.
 - Assumption that not all educational services, programs, etc., are essential.
 - Assumption that services must be sufficiently curtailed in order to bring some pressure on the public, government and employers to settle while having regard for the public interest.
 - Managerial personnel to be utilized before bargaining unit employees.

Option 2: Pre 1993 *Industrial Relations Act* Provisions

Amend Section 72 of the *Labour Relations Code* with the references contained in BC labour legislation prior to the 1993 amendments:

...considers that the dispute poses a threat to the economy of the Province or the health, safety or welfare of its residents or to the provision of educational services in the Province, the Minister may do either or both of the following:

- (a) order a cooling off period not exceeding 40 days;
- (b) direct the Board to designate those facilities, productions and services the Board considers necessary or essential to prevent immediate and serious danger to the economy of the Province or to the health, safety or welfare of its residents or to the provision of educational services in the Province.

Considerations for discussion:

1. Includes a cooling off period.

2. Similar to the essential service designation process traditionally used in BC.
3. This option may require similar changes for all essential services.
4. See Considerations for discussion in Option 1.

Option 3: Specific Provision for K-12 Public Education Essential Services

Central to developing this option is the incorporation of the following elements:

- Specific K-12 provisions within Section 72 Essential services of the *Labour Relations Code*. Given that public school disputes present unique considerations, essential services in K-12 education need distinct provisions that include language to the effect that services that may be declared essential in K-12 education must include custodial care as well as educational services.
- An education panel appointed by the Minister of Labour to determine essential services in substitution for the traditional LRB panel.
- Statutory provisions limiting the discretion or providing parameters for the panel when establishing minimum essential service levels. This will allow for a degree of flexibility in application. For example:

In the conduct of essential services proceedings before it and in a designation for essential services, the Panel shall ensure that the normal progress of students from one educational level to another will not be impaired by a dispute and in so doing shall consider:

- (a) educational requirements essential to the attainment of learning outcomes for any student impacted by the dispute;
- (b) the length of the dispute and the time of the school year when the dispute occurs;
- (c) the impact of the dispute on the preparation for and participation in provincial examinations by students affected by the dispute; and
- (d) any health, safety or welfare requirements for students necessarily incidental to the delivery of educational services.

Considerations for discussion:

1. Changes what has traditionally been the role of the Minister of Labour and the LRB.
2. This option codifies the concept of a controlled strike and limits the right to strike.
3. Education expertise is useful in separating what is considered essential within the context of essential service designations from those activities considered important and/or necessary but non-essential.
4. Specific criteria would provide direction and guidance.
5. Designation of basic levels of service could increase and change depending on the application of the listed criteria (from time to time as a strike continues).
6. Support staff may be designated as essential under either education services or health and safety.
7. Criteria may be subject to criticism as too vague, too specific, too broad, etc.
8. Given that this option represents a considerable departure from established Ministerial and LRB roles and responsibilities, it may be viewed with limited favour.
9. Given the nature of public education and the purpose of essential service provisions, application of any criteria will be challenging.

Other Options

There are other options that can be identified and in some cases have been implemented in other jurisdictions. These options include:

- Prohibit the right to strike. Codified processes to determine terms and conditions of employment.
- Prohibit the right to strike on certain issues; provide a process for determining non-essential matters that may be the subject of job action.

- Collective bargaining procedures such as the *Fire and Police Services Collective Bargaining Act*; if the parties have bargained and have failed to conclude a collective agreement either party may apply to the Minister to have the dispute settled through arbitration.
- Limit the scope of bargaining, therefore reducing the potential areas of dispute.



A Case of First Instance...
K-12 Public Education as an Essential Service, 2002

Appendix B:
Bill 18, *Skills Development and*
Labour Statutes Amendment Act, 2001

A Case of First Instance...
K-12 Public Education as an Essential Service, 2002

2001 Legislative Session: 2nd Session, 37th Parliament
THIRD READING

The following electronic version is for informational purposes only.
The printed version remains the official version.

Certified correct as passed Third Reading on the 16th day of August, 2001
Ian D. Izard, Law Clerk

HONOURABLE GRAHAM BRUCE
MINISTER OF SKILLS DEVELOPMENT AND LABOUR

BILL 18 -- 2001
SKILLS DEVELOPMENT AND LABOUR
STATUTES AMENDMENT ACT, 2001

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Labour Relations Code

1 Section 14 (4) (f) of the Labour Relations Code, R.S.B.C. 1996, c. 244, is amended by deleting "if the employees" and substituting "despite section 25 (3), if the employees".

2 Section 21 (1) and (2) is amended by striking out "sections 18, 19, 20, 23, 24, 25 and 26" and substituting "sections 18, 19, 20, 24 and 25".

3 Sections 23 and 24 are repealed and the following substituted:

Representation vote required

24 (1) If the board receives an application for certification under this Part and the board is satisfied that on the date the board receives the application at least 45% of the employees in the unit are members in good standing of the trade union, the board must order that a representation vote be taken among the employees in that unit.

(2) A representation vote under subsection (1) must be conducted within 10 days from the date the board receives the application for certification or, if the vote is to be conducted by mail, within a longer period the board orders.

(3) The board may direct that another representation vote be conducted if less than 55% of the employees in the unit cast ballots.

4 Section 25 (2) is repealed and the following substituted:

(2) If after a representation vote is taken, the board is satisfied that

- (a) the majority of votes favour representation by the trade union, and
- (b) the unit is appropriate for collective bargaining,

the board must certify the trade union as the bargaining agent for the unit.

(3) If after a representation vote is taken, the board is

(a) satisfied that the majority of votes are not in favour of the trade union representing the unit as its bargaining agent, or

(b) not satisfied that the unit is appropriate for collective bargaining,

the trade union may not be certified as bargaining agent for the unit.

5 Section 26 is repealed.

6 Section 28 (1) is amended by striking out "section 23 or sections 24 and 25," and substituting "sections 24 and 25,".

7 Section 30 is amended by striking out "section 23 or 25," and substituting "section 25,".

8 Section 39 (1) is amended by striking out "must be by ballot cast" and substituting "must be by secret ballot cast".

9 The following section is added:

Bargaining council

41.1 (1) In this section, "CLRA" means the Construction Labour Relations Association of B.C. incorporated under the *Society Act*.

(2) The bargaining council established under section 55.18, as that section read before its repeal by the *Skills Development and Labour Statutes Amendment Act, 2001*, is continued, is deemed to be a council of trade unions established under section 41 and is authorized to bargain on behalf of its constituent unions with the CLRA.

(3) Within 6 months from the date that this section comes into force, the board must review the constitution and bylaws of the bargaining council to ensure that they are consistent with section 41.

10 Part 4.1 is repealed.

11 Section 72 is amended

(a) by repealing subsection (1) and substituting the following:

(1) If a dispute arises after collective bargaining has commenced, the chair may, on the chair's own motion or on application by either of the parties to the dispute,

(a) investigate whether or not the dispute poses a threat to

(i) the health, safety or welfare of the residents of British Columbia, or

(ii) the provision of educational programs to students and eligible children under the *School Act*, and

(b) report the results of the investigation to the minister. ,

(b) by adding the following subsection:

(2.1) If the minister

- (a) after receiving a report of the chair respecting a dispute, or
- (b) on the minister's own initiative

considers that a dispute poses a threat to the provision of educational programs to students and eligible children under the *School Act*, the minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs. , **and**

(c) in subsections (3), (5) (a), (6) and (7) by striking out "under subsection (2)" and substituting "under subsection (2) or (2.1)".

Pension Benefits Standards Act

12 Section 74 (2) (g) of the Pension Benefits Standards Act, R.S.B.C. 1996, c. 352, is repealed and the following substituted:

(g) despite sections 25 to 27, respecting the benefits and membership of a former member of a pension plan who has begun to receive a pension under a plan and returns to work or service in an employment covered by that plan, .

13 The following section is added:

Transitional -- multi-employer plan

74.1 (1) If a multi-employer plan provides for the suspension or reduction of the benefits of a former member who is receiving an early retirement pension under that plan and who returns to work or service in British Columbia in a trade and industry covered by that plan but with an employer who is not a participant in that plan, those provisions of the multi-employer plan are deemed to be repealed on the date this section comes into force to the extent that they are inconsistent with this Act or the regulations.

(2) If the benefits of a former member of a multi-employer plan have been suspended or reduced for the reasons referred to in subsection (1), the administrator must, effective on the date this section comes into force, promptly reinstate those benefits as of that date and in accordance with the regulations.

(3) Despite subsection (2), benefits are not payable for the period of suspension or reduction.

(4) For the purposes of subsection (2), the Lieutenant Governor in Council may make regulations respecting any matter considered necessary or advisable for more effectively bringing into operation this section and for resolving any transitional difficulties encountered in reinstating the benefits of a former member of a multi-employer plan.

Commencement

14 Sections 12 and 13 come into force by regulation of the Lieutenant Governor in Council.

Appendix C:
Chronology of Events –
Essential Services
August 2001 to January 2002

A Case of First Instance...
K-12 Public Education as an Essential Service, 2002

Chronology of Events – Essential Services August 2001 to January 2002

August 16, 2001

Legislature passes Bill 18, *Skills Development and Labour Statutes Amendment Act*. The Act amends Section 72 Essential services of the BC *Labour Relations Code* to include K-12 public education as an essential service:

If the Minister...considers that a dispute poses a threat to the provision of educational programs to students and eligible children under the School Act, the minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs.

August 20, 2001

BCTF announces that a province wide strike vote will take place between September 27 and October 10.

September 27, 2001

In anticipation of job action by the BCTF, BCPSEA files application with the Labour Relations Board (LRB) for designation of essential services in the K-12 public education sector.

September 28, 2001

LRB sets Wednesday, October 3 for an investigation hearing pursuant to s. 72(1) of the *Code* for the purposes of ascertaining whether there is a dispute and, if there is a dispute, whether it constitutes a threat to the provision of educational programs and/or the health, safety or welfare of the province's residents. LRB requests submissions by affected unions (BCTF and the various support staff unions) by Monday, October 1.

BCTF requests an extension of time limits.

CUPE BC objects to faxed service of BCPSEA's application to support staff unions. In response, BCPSEA coordinates hand-delivery of the application by school district staff to their support staff locals.

- September 29, 2001** LRB grants the BCTF's request and extends dates for both the investigation hearing under s. 72(1) of the *Code* and submissions by one day, rescheduling the investigation hearing to October 4.
- October 1, 2001** LRB appoints Vice Chair Mark Brown as an investigator under s. 72(1) of the *Code*.
- October 2, 2001** BCTF files a submission with the LRB, in accordance with the revised deadline. The BCTF position is that:
1. The application is premature because there has not yet been a strike vote or any job action.
 2. Phase I of their job action plan, which contemplates a continuation of instruction, poses no threat to educational programs, and
 3. Phase II of their job action plan, which contemplates partial, rotating and/or full strike action, would not in itself pose a threat to educational programs.
- October 2, 2001** CUPE BC applies for an adjournment of the hearing to allow more time for coordinating submissions between all the CUPE locals.
- CUPE Local 15 files a submission, requesting an extension of time lines.
- BCGEU applies for an adjournment to allow more time to prepare a submission.
- Teamsters union files a submission, adopting the BCTF's position.
- IBEW files a submission, adopting the BCTF's position.
- IUOE Local 963 files a submission objecting to the designation of essential services beyond those specified as required for the health, safety and welfare of residents of BC.

- October 3, 2001** IUOE Local 882 files a submission, reserving the right to make a more substantive submission at any future hearing that affects the rights of members.
It is agreed in an all-party case management meeting to conduct the investigation hearing under s. 72(1) of the *Code* on October 10.
- October 4, 2001** BCPSEA files its response to the unions' submissions.
- October 9, 2001** BCTF begins province-wide strike vote.

CUPE BC files a submission on behalf of selected CUPE locals. CUPE's position is that the current dispute does not pose a threat to the provision of educational programs.
- October 10, 2001** Vice Chair Brown conducts an investigation hearing at the LRB under s. 72(1) of the *Code*.

During the investigation the parties agree to a process to be followed if the Minister orders the designation of essential services

BCTF concludes province-wide strike vote.
- October 15, 2001** Vice Chair Brown issues report to LRB Chair. The LRB advises the parties that it plans to request that the Minister direct the LRB to designate essential services with respect to this dispute pursuant to ss. 72(2) and 72 (1) of the *Code*.

The Minister of Labour receives the investigation report and directs the LRB to designate "those facilities, productions and services that the LRB considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs" and "necessary or essential to prevent immediate and serious danger to health, safety or welfare of residents pursuant to ss. 72(2) and 72(2.1).

LRB panel of Irene Holden, Associate Chair Mediation; Mark Brown, Vice Chair; and Lisa Hansen, Registrar is named to designate essential services.
- October 18, 2001** BCTF announces the results of its strike vote, indicating that 91.4% of those who cast ballots are in favor of a strike.

- October 23, 2001** The first LRB hearing on the designation of essential services. The LRB panel will determine the scope of educational programs.
- October 24, 2001** The LRB panel advises that it will not be issuing a decision on the definition of educational programs at this time, as the parties are too far apart. It directs that the parties commence mediation on the withdrawal of activities under the BCTF's Phase I job action plan, with the assistance of Vice Chair Brown in an effort to resolve matters. The LRB panel believes that mediated discussions will assist the Board to provide a context for the definition of educational programs.
- October 26, 29, 30, 2001** Second LRB hearing (mediation/adjudication) on the designation of essential services. When mediation is unsuccessful, the LRB panel hears arguments on the designation of "those facilities, productions and services that the LRB considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs" and "necessary or essential to prevent immediate and serious danger to health, safety or welfare of residents pursuant to s. 72(2) and 72(2.1) of the *Code*."
- November 2, 2001** The LRB panel issues the Essential Services Order for Phase I job action (November 2 Order - B409/2001).
- BCPSEA and the BCTF agree on a *Strike Notice and Strike Escalation* protocol.
- November 5, 2001** The BCTF serves 72-hour strike notice to BCPSEA at 8:06 am.
- November 7, 2001** BCPSEA seeks clarification of the November 2 Order on the issues of supervision, teachers on call (ToCs), teachers in charge (TiCs), and the administration and supervision of Grade 12 provincial exams. BCPSEA seeks a variance of the November 2 Order on noon hour supervision for those districts where teachers perform noon hour supervision duties.
- Vice-Chair Brown issues a decision (B417/2001) that noon hour supervision done by teachers shall continue on the

same terms as before and after school and recess supervision under the November 2 Order (that is, that teachers must continue noon hour supervision, subject to the district utilizing management and excluded staff to the best extent possible). As well, the LRB orders that in the absence of an agreement between the local parties otherwise, the pre-strike levels of supervision must continue and teachers must continue to provide any supervision that is not able to be performed by management and excluded staff.

Registrar Hansen issues a decision (B418/2001) that invigilation of Grade 12 provincial exams is continued by teachers subject to the employer utilizing administrative officers and management staff to the best extent possible.

November 8, 2001

The BCTF begins province-wide Phase I strike.

November 13, 2001

BCPSEA files an application with the LRB seeking clarification of the meaning of “the best extent possible,” particularly with respect to the obligations of management and excluded staff for “remote schools.”

Vice-Chair Brown and Registrar Hansen conduct a hearing by telephone conference call and issue a decision (B421/2001) on ToCs and TiCs. With respect to ToCs the original decision of the LRB stands. With respect to TiCs, they continue to do all their normal duties in the absence of an administrative officer.

November 14 - 16, 2001

Mediation/adjudication hearings are held at the LRB with respect to disputes over supervision and “the best extent possible.” The eight issues to be determined are the following:

1. Whether secondary administrative officers should be assigned to nearby elementary schools to cover recess supervision.
2. Remote schools – the appropriate distance (in time) between the district office and a remote school for the purpose of having a district office excluded employee cover supervision.

3. Whether districts should employ mechanisms for limiting the number of supervisors required (particularly at recess), either by changing the site (e.g., closing parts of the playground) or by staggering recess and using district staff/administrative officers to cover more supervision periods.
4. The level of supervision that existed before strike action, what the BCTF has dubbed the "The Phantom AO" issue – the case where the formal supervision schedule did not include the administrative officers, but the school says that they always supervised and, therefore, cannot cover teacher spots.
5. Whether teachers must replace an absent administrative officer (through sickness or otherwise) for supervision and, if so, the parameters around replacement. Sickness is probably not a problem, but the teachers are looking for parameters around other absences (such as district meetings).
6. Which excluded staff must supervise – some districts are saying that some excluded staff are "emotionally unprepared" or not trained for supervision or are otherwise not qualified.
7. What amount of time is required from administrative officers and other district staff.
8. Where agreements are already in place, this decision (or agreement or guidelines) should not disturb them.

November 20, 2001

Vice-Chair Brown issues decision (B431/2001) clarifying the obligations of utilizing management and excluded staff "to the best extent possible." The general principles of the decision are:

- the result of utilizing management and excluded staff to the best extent possible will be longer hours of work for management and excluded staff, and that they will be taken away from their normal non-essential work duties (that is, it is not business as usual)

- job action in the form of a partial withdrawal of services may very well mean that management and excluded staff have less time to devote to bargaining unit work because there is a higher level of normal services being delivered to students and parents

- the objective of the essential service designation process is not to ensure that BCTF members are providing no supervision
- the LRB cannot apply a one-size-fits-all or “cookie cutter” approach to the designation of essential services in school districts, due to the many variables that exist between school districts.

November 22, 2001

Vice-Chair Brown issues a decision (B436/2001) on teachers taking attendance – whether teachers are required to record and report attendance in the normal fashion, in this case on “bubble sheets” or instead, as the BCTF argued, could submit handwritten notes listing the names and student numbers of those students who are absent.

He determines that:

“It is clear in BCLRB No. 409/2001 [November 2nd Order] that if the activity is not listed as one that BCTF members need not perform then the activity “must be continued during Phase I job action, in the normal fashion” (paragraph 6); and at paragraph 10, “all other job duties will be performed by BCTF members as normal during Phase I job action.”

I conclude that the taking of attendance was not included in the list of activities that BCTF members need not perform during Phase I job action. The duty must be performed in the normal fashion.”

November 28, 2001

Vice-Chair Brown conducts a hearing on the issue of whether teachers who attend a field trip with children are “absent” from the school for the purposes of the BCTF Phase I job action. If so, teachers remaining behind in school would be permitted to refuse to provide coverage for the teachers who were away.

November 29, 2001

Vice-Chair Brown issues decision (B444/2001) in the “field trips” case, finding that the teacher is not “absent” for the purposes of Phase I job action. The LRB accepts the BCPSEA

argument that the teacher is not “absent” because while the teacher may not be in his/her classroom, the teacher is with a class of students during instructional time.

Accordingly, Vice Chair Brown determines that coverage during field trips does not fall within the scope of activities that are permitted to be withdrawn during Phase I job action, and teachers must continue to perform the duties (i.e. coverage) in the normal fashion.

November 29, 2001

The BCTF serves notice to the LRB, requesting that the LRB mediate/adjudicate the next phases of the BCTF strike plan in regard to the essential services legislation, that is, “the withdrawal of extra-curricular activities and Phase II of the union’s job action plan”.

November 30, 2001

Registrar Hansen conducts a hearing to clarify the LRB orders respecting Teachers in Charge. The BCTF has been instructing members that the orders only applied to TiCs where no administrative officer is assigned to the school.

December 3, 2001

Registrar Hansen issues a decision (B451/2001) clarifying that the essential services orders require TiCs who have accepted a TiC appointment to perform their normal duties when the administrative officer is absent from the school, provided that administrative officer activities that can be rearranged and are not urgent should not take precedence during any job action.

December 5, 2001

The LRB panel sets out the process that will be followed by the essential services panel to designate essential services for the withdrawal of extracurricular activities and for Phase II (partial, rotating or full-scale withdrawal of services).

In summary, the process is the following:

- (1) The panel will issue a decision on the definition of the provision of educational programs. This issue remained outstanding from the Phase I essential services process.
- (2) Mediation on the withdrawal of extracurricular activities will commence on Friday, December 7 at 9:30 a.m.

- (3) If mediation is unsuccessful, the panel will adjudicate the designation of essential services related to the withdrawal of extracurricular activities on Friday, December 14.
- (4) Mediation/adjudication on the BCTF Phase II plan will be scheduled for early in 2002.

December 6, 2001

The LRB panel issues a decision (B455/2001) on the definition of the “provision of educational programs.”

Making reference to the legislative scheme set out for K-12 public education, the panel concludes the following:

“We conclude that for the purpose of Section 72 of the [Labour Relations] Code, “provision of educational programs” includes concepts like supervision and assessment, and might include work study and work experience programs. Further, there may be goods and services and educational materials which are necessary to meet the learning outcomes and assessment requirements of an educational program, and are therefore part of the “provision of educational programs.”

On the other hand, not all services or activities provide by a school board are necessarily part of the “provision of educational programs.” There must be some limit to an “educational program” and therefore also to what is involved in the “provision of educational programs.” For example, activities or services provided by a school board which are optional or voluntary and outside of the curriculum set by the school board may well fall outside of the “provision of educational programs.”

The panel concludes by indicating that “[a]ny further narrowing of the decision will take place within the context of the next stages in the adjudication process.”

December 7, 2001

Mediation on the essential services aspects of the withdrawal of extracurricular activities commences at the LRB.

December 12, 14, 17, 2001 Mediation on the withdrawal of extracurricular activities continues at the LRB. There is agreement on a number of matters, but disagreement on three key issues. BCPSEA position on these issues was:

1. Teacher duties during field trips which occur during an instructional day and which are part of or arise out of curriculum and which extend before or after the regular school day and include lunch break supervision of students will continue.
2. Activities currently performed by teachers whether within or outside of the regularly scheduled day, which are part of or arise out of curriculum and for which marks are provided or credit is given will continue.
3. Notice of commencement of job action for the "extracurricular phase" will not be served until after Christmas break is concluded.

December 19, 2001

The LRB panel issues its second order of general application (December 19 Order-B476/2001) regarding the essential services aspects of the withdrawal of extracurricular activities.

In summary, the Order permits teachers to withdraw activities that occur outside of normal instructional hours, except the following:

- lesson preparation
- planning
- assessment, evaluation and marking
- teacher discipline/evaluation/investigation meeting
- instruction that normally occurs outside of instructional hours (including programs such as adult education and alternative programs)
- normal activities of non-enrolling teachers which occur outside of normal instructional hours
- activities for which an allowance or compensatory time is provided
- work experience and Career Preparation Programs
- TREK, EARTHQUEST and similar programs

- activities or field trips that are a required component of a curriculum for which marks are provided or credit is given.

The Order does not make a determination restricting the timing of the teachers' withdrawal of extracurricular activities.

The BCTF has indicated that it will raise no objections under s. 68 Replacement Workers of the *Code* to a district continuing the activities withdrawn by teachers with volunteers or others.

December 20, 2001	The BCTF gives notice to BCPSEA that the withdrawal of extracurricular activities will commence on Monday, January 7, 2002.
January 7, 2002	BCTF members withdraw extracurricular activities.
January 9, 2002	The LRB panel sets case management meeting for Friday, January 11 to determine process and timing for determination of essential services pertaining to full withdrawal of services, through partial, rotating or full strike ("Phase II" job action).
January 14, 2002	BCPSEA, BCTF, CUPE BC and the Teamsters attend mediation regarding Phase II job action at LRB, with Vice-Chair Brown acting as mediator.
January 19, 2002	Premier announces that the legislature will be recalled on January 25, 2002 to legislate and end to the dispute.
January 21 - 22, 2002	BCPSEA, BCTF, CUPE BC and the Teamsters continue mediation regarding Phase II job action at LRB, with Vice Chair Brown acting as mediator.
January 23, 2002	The LRB panel conducts a case management meeting regarding adjudication of Phase II job action. In light of provincial government's announcement of recall of legislature, the panel adjourns the hearing that was scheduled for January 25 and 28 and invites submissions from the parties as to whether the essential service hearing is moot.

January 24, 2002

BCPSEA applies to the LRB for a declaration that an expected “Day of Protest”, involving a full withdrawal of services by teachers, would constitute an illegal strike.

January 25, 2002

Provincial government recalls the Legislature and introduces Bill 27, the *Education Services Collective Agreement Act* and Bill 28, the *Public Education Flexibility and Choice Act*.

LRB Vice Chair Laura Parkinson commences a hearing on BCPSEA application for declaration that BCTF “Day of Protest” is an illegal strike.

LRB essential services panel schedules a hearing regarding Phase II job action for Sunday, January 27, subject to the government proclaiming legislation.

January 27, 2002

LRB hearing on “Day of Protest” continues.

As Bills 27 and 28 have not been enacted, the LRB panel convenes the hearing for an interim order on Phase II job action.

The LRB panel issues Interim Order (B34/2002) on Phase II job action. The Interim Order is issued on a non-precedential basis and permits the BCTF to engage in one day of full withdrawal of services during the week of January 28, 2002, subject to the provision of proper notice to BCPSEA under the parties’ protocol agreement. The LRB finds that proper notice has not yet been given. The Interim Order is to have no effect if the legislation establishes a collective agreement between the parties.

Further on the same day, Vice Chair Parkinson issues a declaration on the matter heard by her on January 25:

The Labour Relations Board declares that after proclamation...the British Columbia Teachers’ Federation and the employees it represents would contravene Section 57(1) of the Labour Relations Code if there is a cessation of work, refusal to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services...

The *Education Services Collective Agreement Act* is proclaimed, constituting a collective agreement between the parties and an end to legal job action by the BCTF.



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Appendix D:
Labour Relations Board
Orders, Clarifications and Variances

Appendix E: Comparison – BCTF Strike Plan and LRB Orders, Clarifications and Variances

The BCTF Strike Plan

BCTF Phase I Strike Plan	Essential Service Order – <i>Teachers need not:</i>	Decision
Participate in the preparation or organization of assemblies (outside of instructional time)	Participate in the preparation or organization of assemblies outside of instructional time, or during instruction time unless coverage is provided	B409/2001
Participate in Meet the Teacher Activities (outside of instructional time)	Meet with parents outside of instructional time or during instructional time unless coverage is provided	B409/2001
Attend IEP meetings or write IEPs	Attend IEP meetings or write IEPs outside of instructional time (with the except of non-enrolling teachers), or during instructional time unless coverage is provided	B409/2001
Complete and submit student referral forms (outside of instructional time)	Complete and submit student referral forms outside of instructional time	B409/2001
Attend staff meetings	Attend staff meetings	B409/2001
Attend staff committee meetings	Attend staff committee meetings	B409/2001
Attend any other school-based meeting called by an administrative officer	Attend staff meetings	B409/2001
	Attend any meeting called by school district management	B409/2001
Participate in any accreditation activity	Participate in any accreditation activity	B409/2001

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BCTF Phase I Strike Plan	Essential Service Order – <i>Teachers need not:</i>	Decision
Perform Teacher in Charge duties	Continue to provide normal TiC duties where there is an administrative officer present Where TiC appointments are voluntary under the collective agreement, a teacher may refuse the appointment	B409/2001 B421/2001
Participate in school district or Ministry in-service	Participate in any school district or Ministry in-service	B409/2001
Perform professional development duties (unless teacher directed)	Participate in any professional development that is not teacher directed	B409/2001
Participate in school photo organization	Participate in any school photo organization	B409/2001
Attend any standing or <i>ad hoc</i> district committees	Participate in any standing or <i>ad hoc</i> District committees	B409/2001
Supervision (before, after, recess and noon hour)	Teachers must continue before/after school supervision related to bus drop off/pickup and recess supervision, subject to the district utilizing management and excluded staff to the best extent possible to replace teachers	B409/2001
Any other supervision beyond what is necessary for instruction		
Provide “coverage” for a teacher who is absent (other than a TOC hired specifically for that purpose)	Provide coverage for a teacher who is absent, except for a teacher on call hired specifically for that purpose	B409/2001

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BCTF Phase I Strike Plan	Essential Service Order – <i>Teachers need not:</i>	Decision
Provide to administrative officers any printed, written or electronic communications	Provide any administrative officer with any routine printed, written or electronic communications	B409/2001
Prepare overviews or previews for the administrative officer	Prepare overviews or previews for the administrative officer, except when associated with a teacher evaluation process	B409/2001
Prepare or distribute report cards	Prepare or distribute report cards	B409/2001
Administer or supervise FSA or any district or Ministry test	Administer or supervise FSA or any district or Ministry test Administration and supervision of provincial examinations will continue to be provided by teachers	B409/2001 B418/2001
Collect money from students or participate in fund raising in any way	Collect money from students or participate in fund raising	B409/2001
Accept any printed, written or electronic communications from administrative officers	Accept any printed, written or electronic communication from an administrative officer, unless it relates to an emergency	B409/2001
Perform department head/position of special responsibility duties except during allocated time during the timetable	Perform department head/position of special responsibility duties except during allocated time during the timetable	B409/2001
Order supplies, textbooks, etc., unless needed immediately to effectively maintain ongoing instruction	Order supplies, textbooks, etc., unless needed immediately to effectively maintain ongoing instruction	B409/2001

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BCTF Phase I Strike Plan	Essential Service Order – <i>Teachers need not:</i>	Decision
Assist the administrative officer in administrative tasks like building timetables or computer organization	Assist the administrative officer in administrative tasks like building timetables or computer organization	B409/2001
Do inventory of anything	Do inventory	B409/2001
Organize textbooks	Organize textbooks	B409/2001
Answer school office phones	Answer school office phones	B409/2001
Supervise detentions before, during or after instructional time	Supervise detentions before, during or after instructional time.	B409/2001
Distribute school district or administrative letters, newsletters, memos or announcements to students	Distribute school district or administrative letters, newsletters, memos, etc. to students, unless it is health and safety related.	B409/2001
Pack up classrooms to facilitate painting, renovations or maintenance	Pack up classrooms to facilitate painting, renovations or maintenance	B409/2001
Phase II Strike Plan	Essential Service Order:	
Phase I continues		
An escalating program of partial, rotating and/or full withdrawal of services	Teachers may reduce instruction by one day, subject to proper notice and must continue to provide instruction on the remaining four days.	B34/2002
Participation in Ministry Committees ceases		

Note: Extracurricular activities were withdrawn on January 8, 2002, prior to the commencement of adjudication of Phase II. This intermediary phase – the withdrawal of extracurricular activities – was commonly referred to as “Phase 1.5.”



Appendix F: Strike Notice and Notice of Strike Escalation Agreement

November 2, 2001

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Strike Notice and Notice of Strike Escalation Agreement November 2, 2001

1. The British Columbia Public School Employers' Association (BCPSEA) will accept service of the British Columbia Teachers' Federation (BCTF) strike notice on behalf of its member boards.
2. BCTF will either deliver the strike notice by hand or by fax to the BCPSEA offices. If BCTF does the latter, then BCPSEA will accept fax as proper service, provided that BCTF phones BCPSEA when the fax is being sent. BCTF will serve the strike notice some time between 8:00 a.m. and 4:30 p.m. Monday through Friday (i.e. during BCPSEA's working hours) and BCTF will make a reasonable attempt to deliver the notice to or phone, (if faxing the notice), Hugh Finlayson.
3. BCTF will file the strike notice with the Labour Relations Board as required by section 60 of the *Code*.
4. BCTF's strike notice will state words to the effect that BCTF will be starting Phase I of its job action 72 hours from the time of service of the notice. The parties agree that the time of service will be either the time that BCTF hand delivers the notice or the time indicated on the last page of BCTF's notice. The latter is contingent on:
 - (a) the clock in the BCPSEA fax machine being reasonably correct; and
 - (b) BCPSEA confirming to BCTF, as soon as possible after receipt of the notice, the time indicated on the last page of the faxed strike notice.
5. BCPSEA will accept that BCTF's strike has begun 72 hours after BCPSEA received BCTF's notice.
6. BCPSEA agrees that BCTF will not serve strike notice before the Labour Relations Board authorizes job action with respect to some aspects or all of Phase I of BCTF's job action plan.
7. Should BCTF decide to escalate its job action beyond Phase I, then BCTF will comply with the Labour Relations Board decision, BCLRB No. B383/2001. BCTF also agrees to give the affected employers and BCPSEA reasonable notice of this escalation. This notice of escalation will be at least 24 hours and BCTF will indicate the nature of the escalation in the notice. BCTF will either deliver or fax this notice to BCPSEA and the affected employers, sometime between 8:00 a.m. and 4:30 p.m. Monday through Friday and BCTF will make a reasonable attempt to deliver BCPSEA's notice to or phone, if faxing the notice, Hugh Finlayson.
8. The parties agree that this agreement will remain effective for the duration of the current round of collective bargaining.

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