
CONFLICT WITHOUT COMPROMISE: THE CASE OF PUBLIC SECTOR TEACHER BARGAINING IN BRITISH COLUMBIA

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INTRODUCTION

Commissioner Wright's 2003 report on teacher collective bargaining in British Columbia's public schools painted a dismal picture. Describing the existing labour relations as leaving an unhappy legacy, Wright reported that "no party seems to believe that the existing structure, unchanged, can lead to successful collective bargaining in the future" (Wright 2003, 7). He also noted that one experienced negotiator had told him that "nobody does it as badly as we do" (ibid.).

Bargaining in education in this province has been marked by tremendous conflict, legal and illegal work stoppages, and direct legislative and government intervention. At the same time, British Columbia has seen several substantial, thoughtful efforts to reform the bargaining structure and process to achieve more constructive and effective collective bargaining (Ready 2007; Wright 2003, 2004). For these reasons, British Columbia provides an opportunity to examine and explore a number of themes relating to the experience of collective bargaining in education.¹

It is clear that the current experience in education negotiations is deeply affected by the history of teacher labour relations and politics in this province. Therefore, this chapter begins by reviewing the historical context and taking account of other external factors affecting the collective bargaining process in BC education. This chapter provides a chronological

review of three distinct periods in teacher collective bargaining in British Columbia: (a) the pre-1987 period of narrow scope, relatively informal local negotiations that took place outside the general labour relations statutory scheme; (b) the 1987 to 1993 period of local negotiations that were brought under the general labour legislation; and (c) the period of two-tier negotiations, from 1994 to the present. The first two periods are important as a backdrop explaining how the present bargaining structure came to be constructed. The third period deals with the fundamental reorganization and centralization of negotiations in education into a provincial-level bargaining structure, part of broad reform of public sector collective bargaining undertaken in 1994.

The second part of this chapter analyzes key dimensions of the existing bargaining structure in light of its historical developments and outcomes. These dimensions include the location or level of bargaining, the scope of negotiable issues, bargaining agency, and dispute resolution. The final part of the chapter offers an overall evaluation of, and prospects for, teacher collective bargaining in British Columbia.

HISTORY

There is a long history of collective bargaining by teachers in British Columbia's K–12 public education sector, reflecting several distinct eras of negotiations.² These include a period of informal negotiations occurring prior to 1937; the 1937 to 1987 period of formalized local negotiations with mandatory interest arbitration regulated outside mainstream collective bargaining legislation; local bargaining without interest arbitration from 1987 to 1994 under mainstream labour legislation; full-scope two-tier bargaining between 1994 and 2002; and, a period of limited-scope two-tier negotiations beginning in 2002. Finally, since 2007, the scope and process of teacher negotiations have begun to be reshaped by newly defined standards under the *Charter of Rights and Freedoms* (1982).

Pre-1937 Negotiations

Public school teachers have collectively negotiated certain terms and conditions of employment since the British Columbia Teachers' Federation (BCTF) was formed in 1916 under *An Act to Incorporate Benevolent and Other Societies* (1911). At that time, the *Public Schools Act* (1911) permitted, but did not require, school boards and local teachers' associations to negotiate within statutory limits. In 1919, following a teachers' strike in Victoria over salaries, the legislation was amended to permit school boards and teacher associations to bargain salaries and bonuses, and to resolve disputes by voluntary arbitration (*An Act to Amend the "Public Schools Act" 1919*, s. 6; Johnson 1964, 237-41). During this period of relatively informal

bargaining, “two-tier” salary agreements were common. School boards would bargain minimum salaries with the teachers’ association and negotiate individually with teachers for any salary above this minimum (Thompson and Cairnie 1973, 5).

Formalized Bargaining with Interest Arbitration: 1937–1987

A more formal teacher collective bargaining structure was introduced in 1937. Amendments to the *Public Schools Act* (1936) permitted either party to invoke binding arbitration of salary disputes and replaced two-tier salary negotiations with a single salary schedule negotiated between school boards and teacher associations (*Industrial Conciliation and Arbitration Act* 1937, ss. 1, 4, 5; *Public Schools Act Amendment Act, 1937*, s. 3; Johnson 1964, 242-43). Although these amendments fostered teacher collective bargaining, limited school board resources and an oversupply of teachers meant that collective bargaining and interest arbitration did not become commonplace until after the Second World War (Johnson 1964, 242-43; Thompson and Cairnie 1973, 5).

British Columbia was among the last provinces to introduce compulsory membership in the teachers’ federation, and it was not until 1947 that teachers were required to be BCTF members (*Public Schools Act Amendment Act* 1947, s. 101). Previously, teachers could choose to join a local teachers’ association, which was not always a member of the provincial BCTF.

In 1958 a mandatory annual bargaining schedule was introduced to the teacher bargaining framework, requiring negotiations to commence by September and conclude by December of each year, and imposing compulsory conciliation and binding arbitration where parties failed to agree by the scheduled deadline (*Public Schools Act* 1958, ss. 137-143). This system remained largely unchanged for decades. The various parties involved in public sector K–12 education enjoyed a cordial relationship until the late 1960s, when this relationship rapidly became politicized, strained, and antagonistic, setting a pattern that persists to this day (Fleming 2011).

In the 1960s, BCTF made a concerted effort to expand the scope of bargaining beyond the narrow statutory limits and, in the late 1960s, entered into the first “working and learning condition” contract with the Vancouver School District. This contract addressed workload and other workplace matters beyond the formal scope of bargaining. This strategy had limited success as only six school districts entered into these voluntary contracts.³ Notably, although these working and learning condition contracts were not legally enforceable, no school board challenged the legitimacy of these contracts.⁴ In 1971, the Social Credit government removed mandatory BCTF membership for teachers in retaliation for BCTF’s public opposition to government’s education policies and its efforts to reform teachers’ pensions (British Columbia Hansard 1971,

680, 688).⁵ However, two years later compulsory BCTF membership was reintroduced by the subsequent, NDP, government (*An Act to Amend the Public Schools Act* 1973).

During this period, and until legislative changes in 1987, teachers had no explicit statutory right to strike, and school boards contended that the existence of compulsory interest arbitration meant there was no implicit right to strike (North 1964, 80; Thompson and Cairnie 1973, 6). Nevertheless, from the earliest periods of bargaining, teachers engaged in mass resignations, strikes, work-to-rule campaigns, and “in-dispute” declarations when negotiations broke down (BCTF 2003a, 4). Between 1970 and 1987 eight work stoppages occurred, some of which were political, rather than bargaining, disputes (see Appendix A). In 1978, an amendment to the *Essential Service Disputes Act* (1977), prompted by a teachers’ strike, restricted teachers’ ability to strike by bringing education within essential services regulation for the first time (*West Kootenay Schools Collective Bargaining Assistance Act* 1978, c. 42, s. 11).

Full-Scope Local Bargaining: 1987–1993

In 1987, significant changes to British Columbia’s labour legislation incorporated teachers into mainstream labour relations regulation; allowed BCTF to gain status as a trade union; provided a clear, though limited, right to teacher strikes and lockouts; and broadened the scope of negotiable matters (*Industrial Relations Reform Act* 1987 (Bill 19); *Teaching Profession Act* 1987 (Bill 20)). These changes had been prompted by BCTF’s court challenge to the existing statutory exclusion of teachers from full collective bargaining rights as unjustifiably violating teachers’ *Charter* rights of free association and to liberty and security of the person (*Charter* 1982, ss. 1, 2(d), 7, 15). The International Labour Organization’s Freedom of Association Committee had also concluded that this violated Canada’s commitments to international principles of freedom of association (International Labour Organization 1986). Concerned that the teachers’ *Charter* challenge would succeed, the government under the new Social Credit premier Bill Vander Zalm pre-empted a court decision with this legislation.⁶ Bills 19 and 20 significantly altered the structure and regulation of teacher collective bargaining and, along with replacing the *Labour Code* (1979) with the *Industrial Relations Act* (1987) (*IRA*), introduced other widespread and controversial amendments to labour relations regulation in the province. The labour movement vigorously opposed many of these changes through BCTF study sessions, protest rallies in several cities on 28 April 1987, and a provincewide general strike on 1 June 1987 (BCTF n.d., “History,” 4; Novakowski 2000).

By removing the explicit exclusion of teachers from the general labour legislation, Bill 19 brought teachers within the province’s mainstream labour relations legislation for the first time in their history (Bill

19, s. 2(e); *IRA* ss. 1(1)). This allowed teachers to unionize and engage in collective bargaining with their employers, the school boards, like most other employees in the province. However, directors, principals, and vice-principals were excluded from this system and, therefore, were no longer able to negotiate alongside teachers. The scope of teacher bargaining was also broadened to include salary and working conditions, although negotiation of teacher appointments, appointments of education support workers, and assignment of teaching duties to administrators were prohibited (Bill 20, ss. 69, 78; *School Act* 1979, ss. 131.2, 140). Bill 20 removed the mandatory annual bargaining schedule, and introduced conciliation and voluntary interest arbitration (Bill 20, ss. 70-74; *School Act* 1979, ss. 133-137). Teachers now had an unambiguous right to strike, though limited by essential service restrictions applicable to disputes that were 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” (*IRA*, s. 137.8).⁷

Bill 20 also established a College of Teachers as the certifying and professional body for teachers (*School Act* 1979, s. 140) and, in 1990, membership in the College of Teachers became mandatory (*Education Statutes Amendment Act* 1990, s. 2). Most controversial for teachers was that Bill 20 removed mandatory membership in BCTF. This effectively forced local teacher associations to choose either to become a professional association, or to certify as a trade union under the *IRA*. While the government claimed this change was responding to requests by some teachers for recognition as professionals, the BCTF viewed it as “a government attempt to split the loyalty of teachers” and a “direct attack on the Federation” (BCTF n.d., “Steps Leading to Full Bargaining Rights,” 16; Novakowski 2000; Ungerleider 1996). At the time, most labour relations experts believed that the government had miscalculated and that there was no real possibility that a significant proportion of teachers would reject BCTF.⁸ BCTF met this challenge with a vigorous organizing campaign and, within a few months, had successfully certified locals in every school district; about 98 percent of all teachers voluntarily joined the BCTF and its locals (BCPSEA 2006a, 12).⁹ In subsequent bargaining rounds, all but a few teachers’ locals also secured closed-shop provisions in their collective agreements, making BCTF membership compulsory for all teachers in the district (Lawton et al. 1999, 91).

Between 1987 and 1993, most of the province’s 75 school districts held three rounds of negotiations (in 1988, 1991, and 1993). Over this period several changes affected K–12 labour relations. In 1989 the new *School Act* maintained the earlier limits on matters that could be included in a teacher collective agreement, and added a prohibition on any provision limiting a board’s power to employ non-teachers as teaching assistants (*School Act* 1989, ss. 26(2), 27). K–12 funding also changed significantly. In 1990 school districts lost their taxing authority and became subject to

the government's provincial education equalization funding program (*School Amendment Act* 1990). In 1991, in the midst of these changes, the NDP formed the new provincial government with a substantial majority under Premier Mike Harcourt. Finally, shortly before the third round of negotiations, the *IRA* was repealed and replaced by the *Labour Relations Code* (1992), which granted teachers full access to strikes and lockouts by removing educational services from those matters covered by the essential services provision. However, the Labour Relations Board (LRB) soon held that the amended essential services provision could still, though to a more limited degree than before, limit teacher disputes (*School District No. 54* 1993).

BCTF had set up a "war room" to set and coordinate its provincewide bargaining agenda in a system of "rolling pattern bargaining." Larry Kuehn, BCTF president from 1981 to 1984, describes this centralized, coordinated strategy as being similar to traditional pattern bargaining, but occurring simultaneously across all 75 school districts: "After every single bargaining session where somebody in some local got something, they put it on to the network which then became a bottom line for everybody ... on those issues."¹⁰ In contrast, there was little communication among school districts and effectively no coordination.¹¹

Job action in the form of "work to rule" campaigns (involving withdrawal of certain non-instructional services), strikes, and lockouts were common during this period. Over 50 local work stoppages, including three lengthy lockouts, arose in local teacher disputes, resulting in over a quarter million person days lost (Special data request, Human Resources and Skills Development Canada; see Appendix A). Essential service restrictions on strike activity were rarely sought, and appear not to have been pursued to the point of LRB designations. One labour relations expert suggests that many school boards were likely unaware that they could seek essential service restrictions on teacher work stoppages.¹² Nor was voluntary interest arbitration common. BCTF opposed arbitration during this period because it had just emerged from 40 years of a scheme of compulsory interest arbitration on narrow issues, and so to resort to arbitration under the new bargaining scheme struck BCTF as "going backwards."¹³

Also notable is that, unlike in later years, the government directly intervened in teacher bargaining only once during this era. Voluntary settlements were reached in every school district in the first two negotiating rounds, except for the 1993 bargaining round in the Vancouver School District. In the context of a declining economy and weakening support among teachers for striking, the government legislated an end to a 26-day strike after mediation failed and the parties rejected voluntary arbitration (BCTF n.d., "Steps Leading to Full Bargaining Rights, point 18, 19; *Educational Programs Continuation Act* 1993). Introduced and passed on a Sunday, the legislation directed teachers to return to work the following day, imposed binding arbitration to resolve the dispute, and contained a

clear threat to intervene in other disputes. Employers reported that this did, indeed, encourage other districts to settle (BCPSEA 1993, 9).

Although this local, near full-scope bargaining structure was in place only until 1994, it continues to play a central role in today's debates over teacher bargaining. BCTF remains committed to returning to this bargaining framework, while school boards and government remain concerned about whether boards can bargain effectively or are at a structural disadvantage in local bargaining, and about the prevalence and length of work stoppages that occurred under local bargaining.

Centralization and Two-Tier Bargaining: 1994

In 1994 the structure of public sector labour relations in British Columbia was transformed when the NDP government imposed a highly centralized and coordinated two-tier bargaining structure on each segment of the public sector (*Public Education Labour Relations Act* 1994; *Public Sector Employers Act* 1993). These changes were partly motivated by concern over the past experience with local bargaining in K–12 education and the perception that local bargaining resulted in school boards being forced to accept unaffordable collective agreements (Korbin 1993, F20). An objective of this new centralized model was to ensure that the provincial government would be able to exercise greater control over public sector costs (Wright 2004, 9).

The *Public Sector Employers Act* (PSEA) established an umbrella Public Sector Employers' Council (PSEC) and employers' associations in all six components of the public sector, including the BC Public School Employers' Association (BCPSEA) in the K–12 education sector. PSEC was charged with setting and coordinating human resources and labour relations strategies, offering ongoing consultation between public sector employers and employee representatives on policy issues, and providing a "framework of coordination and accountability to the government" (British Columbia Hansard 1993, 9017). As Commissioner Wright later noted, "The BCTF was opposed to this centralization and remains so to this day" (2004, 9).

The *Public Education Labour Relations Act* (PELRA) created a single, provincewide teachers' bargaining unit, and deemed BCTF and BCPSEA the bargaining agents for all K–12 public school teachers and school boards in the province. The statute also established a two-tier bargaining model, with negotiations to occur at both provincial and local tables.¹⁴ All cost provisions were statutorily required to be negotiated at the provincial table (PELRA 1994, ss. 7(3), (4)), although BCTF and BCPSEA could delegate responsibility to school boards and teachers' local unions to negotiate certain, non-cost matters at local tables. BCTF and BCPSEA were entitled to designate which bargaining issues would be provincial or local matters (ibid., s. 7(2)), with the exception of "cost provisions"—defined as all

provisions relating to salaries, benefits, time worked and paid leave that affected the cost of a collective agreement—which must be bargained at the provincial level (*ibid.*, ss. 7(3), (4)). Only for negotiation of the first provincial agreement, if the parties were unable to agree on a designation, the Minister could appoint an arbitrator to resolve the designation dispute (*ibid.*, s. 7(5)). In April 1995 BCTF and BCPSEA reached agreement on the provincial-local split of issues, with the result that only matters of limited importance to working conditions and with no cost implications would be bargained locally (BCPSEA 2006a, 22; BCPSEA 2007, Letter of Understanding 1). One matter, evaluation of teachers' performance, was submitted to arbitration, and Arbitrator Hope decided that this matter should be negotiated at the provincial table (BCPSEA 2010a, 3).

Two-Tier Negotiations under an NDP Government

Two rounds of teacher negotiations were held under this new centralized model while the NDP government remained in power. No strikes or lockouts occurred, but nor did the parties succeed in negotiating a truly provincial agreement, and the provincial government directly intervened in both sets of negotiations. The resulting collective agreements were widely seen to favour BCTF, leaving school boards with insufficient flexibility and unmanageable costs. The consequent employer resentment coloured future bargaining.

Round one: 1994–1996

Most local teacher agreements expired 30 June 1994, coinciding with the date the new bargaining legislation came into force. Negotiations began in May 1995 and from the outset promised to be difficult. First, the new legislation provided no guidance for transforming the 75 local agreements into a single provincial collective agreement nor, unlike in the health sector for instance, did it require that this round of bargaining produce such an agreement.¹⁵ Experts regard this omission as significantly contributing to the ongoing failure of this bargaining model.¹⁶

Second, BCTF and BCPSEA adopted opposing views of the starting point for negotiations. BCTF took a “no concessions” approach, adopting the earlier local collective agreements as the starting point for negotiations (BCPSEA 2006a, 23). Meanwhile, BCPSEA took a “blank slate” approach, reflecting its view that “the parties were essentially creating a first collective agreement” (*ibid.*). Further complicating matters, school boards, feeling they had been victims in local bargaining, regarded this first provincial round as “an opportunity ... to level that playing field.”¹⁷

By spring 1996, little progress had been made, labour disputes were brewing with nurses and college instructors, and a strike of support staff was imminent in Surrey School District. In a move seen as intended to

avoid labour disruption in the lead-up to the May provincial election, in April the NDP government passed emergency legislation (*Education and Health Collective Bargaining Assistance Act 1996 (Bill 21)*). Bill 21 provided that, in the health care and education sectors, recommendations of an LRC-appointed industrial inquiry commissioner or mediator would be deemed to be the collective agreement, except for matters the parties had agreed to or later agreed to vary.

With this implicit threat of an imposed collective agreement, the NDP government then engaged in direct discussions with BCTF. These actions compelled BCTF and BCPSEA to agree to a Transitional Collective Agreement (TCA) in May 1996, which rolled over pre-existing local agreements, except for a 2 percent salary increase and certain other agreed-upon provisions. The TCA had an effective date of 17 June 1996, expired on 30 June 1998, and required negotiations to restart in March 1997 (*BCTF v. BC 2011*, para. 94; BCPSEA 2006a, 24). Both BCPSEA and BCTF urged their members to accept the TCA, regarding it as a way to avoid a destructive labour dispute and give the parties a period of stability to negotiate a new provincial agreement (Boei 1996). Although many school boards vehemently and publicly opposed the proposal, concerned about its cost implications, ultimately school boards voted by a slim majority to accept it (*ibid.*).

Round two: 1997–1998

As required by the TCA, negotiations resumed in March 1997. BCPSEA and BCTF continued their “blank slate” and “no concessions” standoff (BCPSEA 2006a, 25). In the meantime, effective 1 December 1996, the number of school districts in the province were reduced from 75 to 60 through reorganization and amalgamation, and addition of a separate Francophone Education Authority (*Miscellaneous Statute Amendment Act 1996*). This consolidation exacerbated the existing problem of the failure to negotiate a truly provincial agreement, as teachers in the amalgamated districts refused to give up their local provisions.¹⁸ Consequently, amalgamated districts effectively still had the two or three local agreements of the pre-existing districts.

The teachers’ contract was the first public sector agreement expiring in this round. A former employer negotiator recalls that the NDP government had wanted to use the teacher negotiations to establish a specific compensation pattern, 0-0-2 percent increase over three years, for the remaining sectors.¹⁹ This, he believes, prompted the government to become directly involved in teacher negotiations.

In February 1998, PSEC volunteered to assist BCPSEA in bargaining. However, rather than providing bargaining assistance, the NDP government negotiated directly with BCTF, and without BCPSEA’s knowledge or participation (BCPSEA 2006a, 25).²⁰ On 17 April 1998 the BCTF and

PSEC reached an Agreement in Committee (AIC), a three-year agreement expiring 30 June 2001 that included all provisions of the TCA except for certain salary increases, improved staffing ratios, and class size reductions (BCTF 1998a, 1998b). The parties also signed a second document, a Memorandum of Agreement in K-3 Primary Class Size, establishing class sizes for kindergarten to grade 3 and funding for reduced class sizes (BCTF 1998a).

BCTF supported the AIC, and 74 percent of BCTF members voted to approve the agreement (BCTF 1998b, 1998c; Bolan 1998). However, BCPSEA and school boards strongly objected to the AIC, concerned about its lack of certainty and regulation of costs, and 86 percent of school boards voted to reject it (BCPSEA 2006a, 26).²¹ BCTF then refused to return to the bargaining table and threatened a strike (BCTF 1998c). Within a few days the government passed Bill 39 imposing the AIC terms as the provincial collective agreement in force from 1 July 1998 to 30 June 2001 (*Public Education Collective Agreement Act* 1998). The Education Minister asserted that it was necessary to impose a contract since the school year began in 76 days and the parties were far from agreement (Bolan 1998). BCPSEA and many school boards regarded the AIC and Bill 39 as tying their hands and ignoring their concerns (*ibid.*).

Two-Tier Bargaining under a Liberal Government

The next era of centralized bargaining began under the new Liberal government of Premier Gordon Campbell, which had won all but two seats in the May 2001 election. This government was determined to undo the favourable union settlements of the predecessor government, contain costs, and rein in labour in the province. Shortly after taking office the new government introduced significant changes to the *Labour Relations Code*, including reintroducing explicit, and expanded, essential service restrictions on teachers' work stoppages (*Skills Development and Labour Statutes Amendment Act* 2001).

Round three: 2001–2002

The third round of two-tier bargaining began in 2001 and negotiations soon ran into difficulties. BCTF characterized BCPSEA's positions as "concessionary" and "contract-stripping" (BCTF n.d., "Steps Leading to Full Bargaining Rights," point 23), and brought an unsuccessful bad faith bargaining complaint that was ultimately dismissed (BCPSEA 2002, B340/2002).

By mid-fall 2001 teachers had commenced a work stoppage, encouraged by an October strike vote with 91.4 percent of BCTF members in favour (BCTF 2001). On November 8, the BCTF withdrew non-essential services in the first of three planned phases of strike action, threatening

to withdraw teachers from classroom instruction in the next phase (BCTF n.d., "Bargaining Rights"). In early December, BCTF announced that the first phase would be expanded in January to include withdrawal of supervision for extracurricular activities (BCTF 2002; BCPSEA 2001, B383/2001, B431/2001). This was the first time the LRB had issued essential service designations in a teachers' dispute.

In late November the government appointed two experienced labour relations experts, Richard Longpre as a fact-finder and, soon after, Stephen Kelleher as a facilitator, to assist the negotiations. However, these efforts failed. With negotiations stalled, on 18 January 2002 Premier Campbell publicly warned the parties that the teachers' dispute would be resolved within one week (Steffenhagen 2002). On January 22, BCTF offered a "Framework for Settlement," which BCPSEA rejected.

Once the government announced it was recalling the legislature to deal with the teachers' dispute, BCTF announced it would hold a one-day walkout. In response, on January 24, BCPSEA sought an LRB declaration that a full withdrawal of services, prior to an essential services ruling, or following a legislated collective agreement and return to work, would constitute an illegal strike.

The next day, January 25, the government introduced a series of bills addressing public sector labour relations and the teachers' dispute specifically (*Education Services Collective Agreement Act 2002*; *Public Education Flexibility and Choice Act 2002*; Bills 27 and 28). With the government's overwhelming majority in the legislature, all were passed by the end of the weekend sitting. The day these bills were passed, the LRB declared it would be an illegal strike for teachers to withdraw services (BCPSEA 2002, B34/2002). Bill 27 imposed a collective agreement for teachers, rolling-over the expired agreement to 30 June 2004, including all terms agreed to during negotiations, and a 7.5 percent salary increase over the three years. It also provided for a review of the teacher bargaining structure, which would give rise to the 2003 Wright Commission.

Bill 28 substantially reduced the scope of teacher bargaining in K-12 education. It explicitly provided that the right of an institution to establish such matters as class size and composition, course assignment, length of the instructional day and year, and workload and staffing ratios prevails over any collective agreement or legislative provisions. Though disputes arising from Bill 28 were to be determined by arbitration, these rights could not be restrained by an injunction, prohibition, or stay of proceedings of an arbitrator or the Board, and Bill 28 would prevail over any inconsistent provision of the *Labour Relations Code* (1996). Furthermore, any collective agreement provision inconsistent with Bill 28 would be void, as would be any provision requiring parties to negotiate any such provision. Finally, Bill 28 set out a transitional process by which an arbitrator would determine, by 11 May 2002, whether provisions in the collective agreement imposed by Bill 27 conflicted or were inconsistent with the

new legislative requirements. The arbitrator was required to delete any offending provision from the collective agreement, and the arbitrator's decision was to be final and binding and not subject to review or appeal. BCTF successfully challenged the arbitration arising out of Bill 28, but the government, rather than embark on an expensive appeal of this decision, simply passed Bill 19 to enact the quashed arbitral award (*BCTF v. BCPSEA* 2004; *Education Services Collective Agreement Amendment Act* 2004). As a result, many working and learning condition issues that had historically been central to teacher negotiations were now excluded from bargaining and subject to unilateral determination by the government and employers as matters of public policy.

The education and health care bills were met with widespread and angry reactions from BCTF and other public sector unions, including a one-day illegal teachers' strike on Monday, 28 January 2002. Several unions launched *Charter* challenges against the government's labour legislation, including BCTF's challenge of Bills 27 and 28, and a series of successful complaints alleging that six BC statutes passed in January 2002 and dealing with public sector labour relations contravened ILO Conventions and freedom of association principles.²² Even after the legislated end to bargaining, teachers in several districts continued to engage in job action, including refusing to attend extracurricular activities and parent-teacher interviews outside of instructional hours (*BCPSEA* 2002, B56/2002, para. 12). This led to BCPSEA's filing an illegal strike declaration with the labour relations board, a multi-day hearing on the issue, and interim orders prohibiting illegal strike activity (*BCPSEA* 2002, B125/2002).

BCTF challenged Bills 27, 28, and certain later legislation, claiming that these bills violated the *Charter* freedom of association and equality guarantees; BCTF also charged that the government had acted in concert with BCPSEA during the 2001–02 negotiations, causing BCPSEA to bargain in bad faith. These claims were finally decided by the BC Supreme Court in April 2011 (*BCTF v. BC*). Notably, the Court also found as fact that BCPSEA and the government had been discussing the government's legislative direction such that BCPSEA was aware that the government was likely to pass legislation removing class size, composition, and non-enrolling ratios from collective bargaining, and found as a fact that this influenced BCPSEA's bargaining strategy (*ibid.*, paras. 170, 172, 183). The Court concluded that this likely contributed to the poor progress made in negotiations. BCPSEA's hard bargaining, however, did not amount to bad faith negotiating (*ibid.*, para. 183).

Two reports regarding the bargaining structure in K–12 education were issued following this round of bargaining. In spring 2002, a Select Standing Committee on Education report concluded, on the basis of public hearings and consultations, that collective agreements, regulations, and other bureaucratic structures resulted in an inflexible and unresponsive education system that neglected professionalism and best practices.

Among its recommendations were to amend legislation to ensure that statutory provisions supersede collective agreement provisions, and to ensure flexibility of educational institutions to assign staff, and to organize and schedule learning opportunities (Select Standing Committee on Education 2002). Second, the Commission of Inquiry to Review Teacher Collective Bargaining, known as the Wright Commission, arose out of Bill 27, tasked with reviewing and recommending changes to the structure of collective bargaining for K–12 education in the province. Commissioner Wright consulted with and sought submissions from the BCTF, BCPSEA, and British Columbia School Trustees Association (BCSTA), and met with school boards and local teacher associations before issuing a final report in December 2004 (Wright 2004). This report made a dozen recommendations for achieving “mature” collective bargaining in this sector.

Round four: 2004–2005

The next set of negotiations, commencing in November 2004, demonstrated the limits of inflexible government control over bargaining in education, and culminated in a provincewide illegal teachers’ strike of unprecedented length. Several difficulties complicated this round. First, BCTF’s continued rejection of Bills 27 and 28 was reflected in its bargaining agenda which prioritized restoring working and learning condition provisions “stripped” from the collective agreement by Bill 28, restoring full-scope bargaining, and increasing salaries (BCTF 2005a). Second, PSEC had set a “net zero” compensation mandate across the public sector for the 2003–2006 period even though, unlike earlier in the decade, the provincial economy was healthy, with a substantial anticipated surplus (BCPSEA 2006a).

BCTF made several efforts to engage the government directly about working and learning conditions (BCTF 2005a, 2005b; Sims 2005), and by September 2005 BCTF was seeking parallel discussions with government about working and learning conditions, rather than seeking to return these matters to the bargaining table. Education Minister Shirley Bond would not agree to a “special negotiating track” and would not revisit the question of returning class size to the negotiations (Rud 2005a). Therefore, from the very beginning of this round, BCTF was demanding that BCPSEA negotiate outside of what it understood to be its fiscal mandate and its legal authority. BCTF’s complaint that this constituted bad faith bargaining was unsuccessful (BCTF 2006, B136/2006).

On September 19, the Minister of Labour appointed Associate Deputy Minister of Labour, Rick Connolly, as fact-finder with a mandate to determine and report on the parties’ positions and perspectives and assess the prospect of success of further negotiations. The resulting fact-finding report, delivered on September 30, identified compensation and negotiability of working and learning conditions as the two key sources

of impasse, and concluded that BCTF's compensation demands were irreconcilable with PSEC's mandate. Ultimately, the report concluded that there was no prospect for a voluntary resolution due to the parties' differences on the two key issues (Connolly 2005, 4).

Meanwhile, BCTF's September 20 to 22 strike vote resulted in 88.4 percent support for a strike (BCTF 2005c). The first part of BCTF's three-phase plan for job action commenced September 28, with teachers withdrawing from specific administrative duties, subject to Labour Board essential service orders (BCPSEA 2005, B255/2005, B262/2005). Notably, this is the first time that *Labour Relations Code* essential service restrictions were sought or applied in a teacher dispute.

The Minister of Labour blamed bargaining structure for the negotiations breakdown, contending that the Connolly report "confirmed that we have a broken bargaining system and we will not see negotiated settlements until that system is fixed" (British Columbia. Ministry of Labour and Citizens' Services 2005a). A week after the fact-finding report was issued, the government introduced and passed Bill 12, renewing the expired collective agreement until 30 June 2006 (*Teachers' Collective Agreement Act* 2005). The Minister explained that this was meant to give the parties "breathing space" and time for a new bargaining procedure to be devised before bargaining resumed (British Columbia. Ministry of Labour and Citizens' Services 2005a).

The BCTF immediately responded with an October 5 membership vote, with 90.5 percent of votes cast in favour of taking "a stand in protest against Bill 12" (BCTF 2005d). BCTF then led an illegal teachers' strike beginning October 7 and continuing for ten school days, to October 23. This provincewide illegal strike was the largest work stoppage in BC's history of labour relations in education, and among the largest teachers' work stoppages in the country, resulting in 380,000 lost person days (Special data request, Human Resources and Skills Development Canada; see Appendix A). BCTF and its members defied an LRB order to return to work, and BCPSEA obtained a civil contempt order fining BCTF \$500,000 (*BCPSEA v. BCTF* 2005). There was surprising public support, which grew rather than diminished over the course of the strike, for teachers' illegal action (Ipsos Reid 2005). School boards were also remarkably supportive of teachers. By October 13, 26 school boards had passed motions supporting teachers, calling on the government to negotiate with teachers, some urging the government to rescind Bill 12, and others seeking a return to local bargaining (BCTF 2005e; Menzies 2005).

The day Bill 12 was introduced, the Minister of Labour also announced that an Industrial Inquiry Commissioner would be appointed to develop a new bargaining process to be instituted for the resumption of negotiations. The terms of reference of this appointment directed the Commissioner to consider the findings and recommendations of the Wright Report, and to comply with statutory restrictions on the scope

of bargaining in education (British Columbia. Ministry of Labour and Citizens' Services 2005b). Three days later Vince Ready, a respected arbitrator, was appointed Commissioner (British Columbia. Ministry of Labour and Citizens' Services 2005c). At the same time, the Minister of Education announced creation of a Learning Roundtable (LRT) as a permanent forum for discussion of class size, composition, and related issues. Representatives of the BCTF, BC Confederation of Parent Advisory Councils, BCSTA, BC School Superintendents Association, BC Principals' and Vice-Principals' Association, and other stakeholders were invited to take part. The Minister also announced that the government would hold an annual Teachers' Congress, inviting teachers and others to communicate directly with government (British Columbia. Ministry of Education 2005).

On October 17, Commissioner Ready's mandate was expanded to include facilitating teachers' return to work (Ready 2005, 2). On October 19, after meeting with the parties and the government, Ready concluded that discussions had reached impasse. Ready issued his report the following evening, with recommendations "conditional on prompt votes by the parties and an expeditious return to work by the teachers" (*ibid.*, 2-3). Ready made non-binding recommendations about harmonizing salary grids, benefits, teachers on call, and class size and composition, with a value of approximately \$100 million, plus \$170 million to limit class sizes in grades 4-12 and to improve special education. Ready also recommended that the government consult with BCTF regarding potential *School Act* amendments regarding class sizes; that there be more BCTF representatives on the Learning Roundtable; and that the government and BCTF engage in an ongoing process of discussion about teaching issues. Ready noted that this dispute brought to the fore the tremendous communications gap between government and BCTF, and recommended that a procedure for ongoing communication between the two be established. The provincial government and both bargaining agents accepted Ready's recommendations, and teachers returned to work the following day.

Round five: 2006

Several unusual contextual factors shaped the 2006 round of bargaining that added pressure to the government to ensure a peaceful and quick resolution to negotiations. These included the surprising public support for the teachers' illegal strike; government's desire to ensure there would be no labour disruptions for the 2009 provincial election or 2010 Vancouver Winter Olympics; and the fact that over 150 public sector collective agreements were expiring during 2006, covering approximately 97 percent of public sector workers. This round of negotiations was also relieved of some contentious issues. Ready's October 2005 recommendations, accepted unconditionally by the government, included several costly

terms that went some distance toward addressing some of BCTF's earlier bargaining demands. Also, in May 2006 Bill 33 was passed, establishing class size limits for grades 4 to 12, limits on numbers of special needs students in classrooms, accountability mechanisms, and requirements for consultation with parents and teachers on class size and composition (*Education (Learning Enhancement) Statutes Amendment Act* 2006). BCTF was reported to have said it would not settle a collective agreement in this round unless class size limits were introduced for grades 4 and above (Steffenhagen 2006).

Finally, an unexpected multi-billion dollar provincial surplus allowed PSEC to establish a new, flexible, and rich Negotiations Framework that included several financial incentives. It reserved \$1 billion in signing bonuses for agreements reached before expiry of the existing contract (approximately \$3,700 per employee). In the teachers' case this was 30 June 2006. Three hundred million was allocated to contracts with terms four or more years, and it provided an employee dividend fund of up to \$300 million of any surplus beyond the predicted 2009–2010 surplus (British Columbia. Ministry of Finance 2005).

Negotiations were closely managed by Commissioner Ready and mediator/facilitator Irene Holden. Following Ready's earlier recommendation, government appointed a representative, Paul Straszak from the Public Service Agency, to act on its behalf to convey the government position on mandates and policy in negotiations (BCTF 2006; Ready 2006a, 3). Ready also imposed a strict timeline on negotiations and offers (Ready 2006a, 3-4). Late on June 30 and just before the signing bonus expired, the parties settled a five-year agreement (BCPSEA 2006a, 66). However, this "Framework for Settlement" did not produce final settlement on all matters and over the next year or so Holden and Ready were asked to rule on a variety of matters, including the signing bonus, seniority, sick leave, preparation time, optional 12-month pay plan, and harmonization of salary grids.

In his final report, issued in February 2007, Commissioner Ready considered whether any lessons could be drawn from this round. He concluded that the specific recommendations and guidelines made in his interim report, and which the parties agreed to implement, had helped the parties avoid breakdown and make timely progress, and that the involvement of a government representative resulted in the mandate being understood and accepted. Ready specifically concluded that it was not the format or process of negotiations, but instead the parties' commitment and the provision of support—in the form of having a mediator / facilitator and government representative involved—that were key to success in this instance. As a result, Ready stated that he was reluctant to recommend changes to the process or structure, and cautioned against treating teacher bargaining apart from other sectors (Ready 2007, 7, 8).

Aftermath

As the 2006 collective agreement approached its 30 June 2011 expiry date, government and the two negotiating parties faced a significantly changed collective bargaining environment. Key provisions of Bill 28 have been ruled invalid under the newly redefined *Charter* freedom of association; the Learning Roundtable and Bill 33, informal and statutory alternatives to negotiating working and learning conditions, have faltered; and, BCTF is demanding that the split of issues between provincial and local tables be reopened.

In mid-2007, the Supreme Court of Canada issued its *Health Services* decision addressing Bill 29, companion legislation to Bills 27 and 28 passed in 2002 that restricted collective bargaining in BC's health sector. Overturning decades of case law that unequivocally held that the *Charter* freedom of association did not protect collective bargaining, the Court redefined the *Charter* freedom of association to include protection of a right to collective bargaining. This meant that governments' power to legislatively remove matters from collective bargaining was now suddenly subject to limits arising from the newly defined *Charter* protection of a right to freedom from substantial interference with the right to collective bargaining (*Health Services* 2007).

BCTF's claim that Bills 27, 28, and certain later legislation violated the *Charter* freedom of association and equality guarantees, and allegation of bad faith bargaining were adjudicated in April 2011 (*BCTF v. BC* 2011). Relying on the *Health Services* decision, the BC Supreme Court concluded that sections of Bill 28 and Bill 19 limiting the scope of teacher collective bargaining are unjustifiable violations of the *Charter* guarantee of the freedom of association. The Court rejected the government's argument that this legislation was necessary due to exigent circumstances and "labour unrest" causing "virtual paralysis of the school system" (*ibid.*, para. 182). The Court suspended the declaration of invalidity for 12 months to permit the government to address this decision. The Court found, however, that the challenged provision of Bill 27, which provided for merger of local collective agreement schedules following a merger of school districts, did not violate the freedom of association. The Court also dismissed the bad faith bargaining allegation (*BCTF v. BC* 2011).

In response to this decision the government has initiated a consultation process, led by the head of PSEC and similar to the Bill 29 process, to negotiate implementation of the Court decision. Its plan is to reach agreement by the end of November 2011 and implement legislation the following spring. Although the government and BCPSEA take the view that the Bill 28 process must be integrated with collective bargaining, BCTF maintains that these are separate processes (British Columbia. Ministry of Education 2011; BCPSEA 2011a, 2). BCTF shows a wholly different understanding of the Court decision. It asserts that "this judgment restores provisions stripped from our collective agreements," that

these matters “are now restored for the purpose of local and provincial bargaining” (BCTF 2011), and that no discussions other than compensation are in order (BCPSEA 2011a, 2). BCTF’s view of the effect of the judgment is probably overly optimistic, as the decision does not necessarily mean that these issues are to be bargained, nor that the provisions deleted by the impugned provisions of Bill 28 are simply restored to the collective agreement. It remains to be seen what the ultimate effect of this judgment will be, which introduces a tremendous amount of uncertainty into teacher bargaining in this province.

In the meantime, the Learning Roundtable, established during the post-Bill 12 dispute in October 2005 and greeted optimistically by education stakeholders as a forum to address class size, has not succeeded. By mid-2010, 13 LRT meetings have been held, the last in June 2010. However, BCTF no longer participates, having officially withdrawn from the initiative in March 2009 (BCTF 2009). Irene Lanzinger, then BCTF president, condemned the LRT as simply a government “PR exercise” (Steffenhagen 2009).

Bill 33, the 2006 class-size legislation, which stakeholders had also been optimistic about and which was to have been informed by LRT discussions, has also proven an ineffective means of governing this workload issue. It has given rise to an extraordinary amount of litigation as BCTF has challenged first the legislation, and then class sizes, in thousands of classrooms each year. BCTF filed grievances alleging violation of Bill 33 for the 2006/07 and 2007/08 school years, involving 157 schools in 18 school districts and 1,699 classes. The grievances resulted in a series of arbitrations and awards, including one requiring 54 days of hearings. While disputes for the first two school years under Bill 33 are now essentially resolved, there is much more litigation outstanding and to come. BCTF has grieved class size and composition for 14,000 classes for the 2008/09 school year, numerous classes for the 2009/10 year, and has given notice to BCPSEA that it will file local class size and composition grievances for the 2010/11 year (BCPSEA 2010b, 4).

Finally, BCTF is seeking to renegotiate the agreed-upon split of issues and has announced that it is prepared to obtain this change through legal action if BCPSEA will not agree (BCPSEA 2010a, 2). BCTF demands a two-tier negotiating structure under which all matters would be negotiated locally except for wages, benefits, hours of work, and paid leave; that is, class size and composition would be bargained locally. BCPSEA has responded that it prefers to retain the current split of issues. It did propose that a third party review issues to recommend the appropriate level for negotiations, but BCTF rejected that suggestion (BCPSEA 2011b, 2).

EVALUATION AND ASSESSMENT

By any standard, teacher collective bargaining in British Columbia has not been a success. The five bargaining rounds held since the 1994

introduction of two-tier negotiating have produced only one negotiated settlement. This was not a typical round of bargaining, and not likely indicative of a change in the parties' prospects for reaching voluntary settlement in future. Moreover, the parties have not yet actually achieved a truly provincial agreement. The provincial agreement continues to contain a significant number of local provisions as a residual from the local bargaining era. The previous local bargaining structure was no more successful, producing unsatisfactory agreements and a high level of strikes and lockouts. This part of the chapter addresses and assesses four key aspects of the teacher bargaining structure—location and scope of bargaining, bargaining agency, and dispute resolution—considering incorporating recommendations of past reviews of teacher bargaining and offering some concluding thoughts on the prospects for more successful future teacher negotiations.

Location of Bargaining

The issue of where issues are to be negotiated—at the local or provincial level—has been a subject of long-running disagreement among education stakeholders. This section first assesses the local bargaining experience of 1987 to 1993 as a backdrop to evaluating the existing two-tier structure and recent calls for revisiting the distribution of issues between local and provincial bargaining tables.

Views on the success of the former local bargaining structure differ starkly among participants. BCTF favours local bargaining and has consistently and forcefully advocated for all matters to be returned to local bargaining tables along with the right to strike locally. Under local bargaining, teachers won substantial gains in working and learning provisions and very significant salary increases (BCTF n.d., "History," 5). In contrast, employers believe that the local bargaining structure gave teachers an unfair advantage, and regarded the resulting collective agreements as insufficiently flexible and unaffordable, seriously diminishing school boards' managerial role, and producing cost increases that significantly outpaced inflation (BCPSEA 2006a, 15; Korbin 1993, F20; Wright 2003, 3). Each round of negotiations in the local bargaining era also involved many, often lengthy, work stoppages.

Some summary statistics offer a sense of the scale of work stoppage activity that occurred during this era. The three rounds of bargaining held between 1987 and 1993 produced 50 work stoppages, including three lockouts. Stoppages lasted from one to 80 days, with an average length of 20.2 days. A total of 1,010 days of work stoppage occurred, involving 242,320 teacher days (see Appendix A).

BCTF contends that this was not overly disruptive because, although frequent, strikes were generally short and did not occur in the majority

of districts in any round (Wright 2003, 4). Although school boards disagreed about whether these disputes had negative effects, many agreed that teachers' widespread, non-strike, work-to-rule initiatives had been very disruptive (BCPSEA 1993, 9).

Some school boards regarded the widespread strikes as further evidence of the "unequal bargaining position between the local school board and the BCTF" (Wright 2003, 4). Others suggested that the local bargaining structure may have encouraged strikes since once a matter had been settled in one district, teachers' locals in other districts could credibly strike to achieve the same terms. They also contended that this led to more favourable outcomes for teachers, as mediators' and arbitrators' decisions were influenced by other districts' settlements (BCPSEA 2006a, 15).

Contrary to employer perceptions, it was not the bargaining structure itself that gave teachers an advantage in negotiations. Instead, it arose from the relative level of coordination and preparedness of the bargaining agents. BCTF and its locals were highly coordinated, disciplined, and prepared for negotiations, while school boards were not. In effect, local negotiations pitted a well-resourced, sophisticated, and organized central teachers' union, the provincial BCTF, against individual school boards, which had fewer resources and support, and little coordination or centralization. This mismatch between the parties at the bargaining tables gave teachers an undeniable advantage and undermined effective negotiations.²³

The BC School Boards' Association had tried to coordinate school board negotiations, but few boards chose to participate in this voluntary organization, preferring to bargain independently (Lawton et al. 1999, 91). Many boards rejected centralized bargaining because they viewed themselves as accountable only to the community that had elected them and, therefore, were not primarily concerned with the broader effects their local agreements might have on other boards (BCPSEA 2006a, 15; Wright 2003, 3-4). Commissioner Wright questioned whether school boards could ever have been as organized and disciplined in negotiations as the BCTF because of boards' orientation toward local accountability (Wright 2003, 3-4). Another complicating factor reducing the effectiveness of local bargaining was that school boards were often politicized bodies with many members endorsed by the BCTF during their election campaigns. Moreover, many principals and vice-principals, previously included in teachers' associations and agreements, had difficulty adapting to their new role which, for some, included being on the employer's negotiating team (Geisert and Chandler 1991, 7).

Assessing Two-Tier Bargaining

Although the mismatch between parties' approaches to local bargaining, not necessarily the bargaining structure, produced outcomes that

employers and government were unhappy with, the perception that local bargaining put employers at a structural disadvantage became an important driver for the NDP government's 1994 centralization of collective bargaining in education. A second key motivation for restructuring public sector negotiations was the tension between dual governmental responsibilities as employer and service provider accountable to citizens. Overall the restructuring was intended to increase central control over public sector costs, increase coordination and accountability to government, and equalize bargaining power (*BCTF v. BC* 2011, 132; British Columbia Hansard 1993, 9017; Wright 2004, 9).

Introduction of a centralized, two-tier public sector bargaining structure was controversial and BCTF, especially, remains dissatisfied with the system. However, Commissioner Wright commended the restructuring as a non-partisan decision of a government that had strong ties with teachers but that was responding to "elements which transcend partisan politics, left-right labels, and pro-labour versus pro-management sympathies. There is something about the reality of providing public education, and what the public expects of its government, that exerts a powerful influence on how any government behaves" (2003, 5-6).

The resulting legislation established a two-tier bargaining structure consisting of "provincial" and "local" matters (*PELRA* 1994, ss. 1, 7, 8). BCTF and BCPSEA agreed on the provincial-local split of issues in April 1995, and this split has remained unchanged to date. All substantive matters, including monetary provisions, are negotiated provincially. The result is that virtually all matters are bargained at the provincial table, such that the parties commonly refer to it as a "provincial" bargaining model.²⁴ Notably, and unlike in the similarly restructured health-care sector, there was no legislative requirement that the parties achieve a single, integrated provincial agreement.²⁵

BCPSEA and BCTF were required to establish policies and procedures for delegating authority to boards of education and BCTF locals to negotiate local matters (*PELRA* 1994, ss. 8(1), (2), (4)). Local matters that cannot be resolved at that table may be referred by either party to the provincial table (*ibid.*, s. 8(3)). The provincial agents exercise significant oversight of local negotiations. Not only must local agreements be ratified by BCPSEA, but it requires school boards to inform BCPSEA of their and BCTF's bargaining proposals and developments in negotiations, and to follow direction from the BCPSEA Board of Directors in bargaining (BCPSEA 2007, vii-viii). BCTF exercises similar control over local teacher association negotiations. Local matters can be based on locally set objectives, following review of the provincial BCTF Bargaining Conference's advice. Provincial BCTF Field Service officers are to be fully informed of proposed agreements so they can meet with and advise the local of the "wisdom of the proposal and its impact, if any, on other locals," and locals are prohibited from entering agreements without the advice of

Field Service officers (BCTF 2010, Art. 3.F). Although not requiring central ratification of local matters, the provincial BCTF does require central ratification of local agreements on local options (*ibid.*).

The parties have also established a mid-contract modification process, which is broadly defined to include matters involving procedure or interpretation, rather than just changes to collective agreement language. Modification is the responsibility of the provincial parties, even if reopening the matter was initiated at the local level. Both parties exercise considerable central oversight over modifications. For local matters, BCPSEA requires school boards to obtain its advice prior to negotiating modifications to local matters, and to obtain its approval of the agreement (BCPSEA 2007, 2010b). Although BCTF locals must seek Field Service advice in advance, locals may apply their own procedures to authorize modifications (BCTF 2010, Part 3, Section H).

The primary criticism of teacher bargaining under the two-tier structure is that the parties have failed to engage in what Commissioner Ready called “meaningful” negotiations (Ready 2006b, 6). This is evidenced by the parties’ dismal record at settling agreements and the frequency of government interference in negotiations and legislated solutions. As discussed later in this chapter, and with the notable exception of the lengthy illegal strike in 2005, work stoppages were not a significant feature of this bargaining regime.

BCTF contends that the two-tier structure, with the split of issues agreed on by the provincial parties in 1995, does not satisfactorily address issues specific to individual school districts, that the mid-contract modification process is “broken,” and that BCPSEA engages in “incessant interference” in local matters (Polukoshko and Ehrcke 2010). To get around this, BCTF says it has “gone underground,” reaching informal arrangements with certain school boards.²⁶ This suggests that local school boards and trustees are still tractable in their dealings with BCTF. Meanwhile, the BC School Trustees Association has suggested that the “vastness of the provincial table,” under the current split of issues, is an impediment to agreement (BCSTA 2003) and sees benefit in addressing local needs at local tables (BCSTA 2004, 2-3).

Revisiting the location of bargaining

Although BCTF has been determined from early on to return to full local bargaining, this option was not supported by BCPSEA, BCSTA, or by Commissioner Wright. Both BCSTA and Wright point to the existing “cogovernance” model for K–12 education in the province as necessitating a provincial bargaining table (BCSTA 2003; Wright 2004, 19). Under this model, in place since the early 1990s, the provincial government sets the major policy direction and provides almost all the funding for this sector,

while delivery sensitive to local needs is the responsibility of local school boards (Wright 2004, 19). Because almost all K–12 funding comes from the province, Wright concluded that major cost items must be negotiated at the provincial level, and that it is important to maintain what he terms “alignment” between the source of funding and the level of negotiations (2004, 19). BCSTA has expressly stated that it does not favour reintroduction of local bargaining, noting that doing so would not be practical in the absence of local taxation authority, and BCSTA does not seek to return to that funding model (BCSTA 2003). After a decade of experience with the system and after considering the views of education stakeholders, Commissioner Wright in his 2004 report on teacher bargaining ultimately recommended retaining a two-tier structure.

Revisiting the split of issues

The split of issues between local and provincial tables has remained unchanged since the parties’ 1995 agreement on the matter. Recently, as noted earlier in this chapter, BCTF has demanded that BCPSEA agree to a new split of issues (BCPSEA 2010a, 1). BCSTA, BCPSEA, and BCTF hold different views about the appropriate mix of local and provincial matters. BCTF wants all matters negotiated locally except for wages, benefits, hours of work, and paid leave (BCPSEA 2011b, 1). BCPSEA prefers to retain the current split of issues, though it proposed that a third party make recommendations about the appropriate level for negotiating specific issues (BCPSEA 2011b, 2). In the past, BCSTA (2003) has supported limiting major cost items at the provincial table to salary and benefits, and bargaining other items locally, on the condition that “an adequately funded bargaining support infrastructure must be available to local school boards in order to make a level playing field possible” (BCSTA 2004, 2). BCSTA addressed the concern over inefficiency, cost, and duplication of effort with 60 local tables with substantial bargaining responsibilities by acknowledging that the initial round will require more resources, but contending that subsequent rounds will be more efficient (*ibid.*, 2-3).

In his 2004 final report, Commissioner Wright recommended retaining the two-tier structure for negotiations, revising the split of issues between the provincial and local tables, and employing a staged approach to the modifications. Wright concluded that because the provincial government is responsible for almost all funding and for major policy direction in K–12 education, a two-tier negotiating structure was required. However, he recommended that the split of issues be reconsidered, and more issues be moved to local bargaining. To preserve alignment between negotiations and accountability, major cost items should be settled at the provincial level while non-cost and employment relationship issues such as post and fill, evaluation, leaves, and discipline should be negotiated at local

tables. Wright also recommended that local tables be given real autonomy to settle matters without requiring approval of the provincial BCTF or BCPSEA, as is currently the case (Wright 2004, 19-22).

To transition to expanded local bargaining and create a sustainable bargaining model, Wright made two further recommendations. First, that provincial and local matters be bargained in different years and that the resulting agreements have staggered expiration dates. In his view, temporal separation of local and provincial bargaining would reduce the likelihood of local matters being drawn onto and mixed up with those at the provincial table. Further, local tables should use the negotiating expertise that has been developed by BCTF and BCPSEA, and this will be more available if those parties are not engaged in bargaining at the same time (Wright 2004, 53). As Wright noted, individual school boards must develop infrastructure and capacity for negotiating, which has been lost in the many years since boards negotiated, and he suggested that BCPSEA could be an important source for bargaining support. In terms of efficiency, Wright also suggested that boards cooperate regionally in negotiations, as some boards do in school staff negotiations with CUPE (*ibid.*, 53-54).

There is merit to considering revisiting the split of issues and expanding local bargaining. However, as Commissioner Wright's suggestions recognize, it is important to ensure that local boards have sufficient support and capacity to negotiate so that the local tables do not revisit some of the problems suffered during the local era of negotiations. As Commissioners Ready and Wright both emphasized, no bargaining system will succeed unless the parties are willing to make it work. This deficit is a long-standing problem in teacher bargaining in this province, with neither the parties nor the provincial government standing blameless (Ready 2006b, 6; Wright 2004, 58).

Scope of Bargaining

There is fundamental and long-standing disagreement among education stakeholders over whether certain matters are appropriate subjects of collective bargaining that may be enshrined in enforceable collective agreements, or whether they are properly matters of public policy remaining within the government's discretion to determine or to delegate to public employers. Primary among these contentious matters are what are generally referred to as teachers' working and learning conditions. Presently the *School Act* (1996, ss. 27, 28) sets out the scope of bargaining and the content of collective agreements for teachers in the province.²⁷ As discussed earlier in this chapter, the most contentious of these limitations on the scope of bargaining are those introduced by Bill 28 and the subject of the April 2011 *BCTF v. BC BC* Supreme Court decision. As a result of this decision, the future limits to the scope of bargaining in this sector are in question.

A key theme throughout the history of teacher bargaining in this province has been teachers' struggle to achieve and retain full-scope collective bargaining, and especially the ability to negotiate what are generally termed "working and learning conditions," which most notably involve matters of class size and composition. BCTF maintains that it is its "right to bargain workload" and that negotiations should encompass all terms and conditions of teacher employment (Polukoshko and Ehrcke 2010). In contrast, BCPSEA and other K-12 education employer groups favour continuing to exclude class size and composition issues from bargaining. While recognizing that these are, indeed, teachers' working conditions, these stakeholders are concerned that the bargaining table is not the appropriate forum to decide such issues as they affect more than simply teachers and are fundamentally matters of education policy that the government should be accountable to the public for and that government and school boards have the electoral mandate to determine (BCSTA 2004, 7-8; Wright 2004, 40-41). Consequently, these matters are better dealt with in a non-bargaining forum or through legislation (BCPSEA 2006b; Wright 2004, 40-41).

Although Commissioner Wright identified resolving the class size, composition, and teacher ratio issues as a precondition to mature collective bargaining in this sector, he also decided against recommending that these matters be returned to the bargaining table; he worried that if he did so, then "both sides would approach negotiations from hardened positions which would significantly reduce the probability of mature collective bargaining emerging" (2004, 44-45). Instead, Wright advised the government to create a policy forum to operate outside of, but parallel to, the bargaining table. Led by the Minister of Education, the forum would involve a facilitator and representatives of school districts and teachers, none of whom should be involved in bargaining (2004, 45). The objective of this forum would be to "seek agreement on cost effective approaches to improving working and learning conditions" (*ibid.*).

The Learning Roundtable and Bill 33, class-size legislation to be developed through broad consultation with stakeholders through the LRT, were the two non-bargaining alternatives developed by the government to deal with the most contentious working and learning issues. In spite of initial optimism, both the LRT and Bill 33 have proven to be dismal failures, and BCTF remains determined to negotiate these matters. Even before BCTF's formal withdrawal from the LRT, it had simply become another stage for BCTF, government, and other parties to quarrel rather than a constructive forum for discussion and consultation. Meanwhile, Bill 33 has led to BCTF's bringing an enormous amount of litigation in numerous forums, costing government and school boards a tremendous amount of time and money to address. As Commissioners Wright and Ready have pointed out numerous times in their reports, no structure

or initiative will succeed unless the participants want it to (Ready 2007; Wright 2004). The continuing poor relationship between BCTF and the government may be the ultimate cause of the failure of these once-promising initiatives.

The recent BC Supreme Court decision on Bills 28 and 19, concluding that portions of this legislation were unjustifiable violations of the *Charter* freedom of association, makes the question of the scope of bargaining in K–12 education in this province even more complicated and uncertain than before (*BCTF v. BC* 2011). This decision does not necessarily mean that the working and learning conditions matters removed from the bargaining table in 2002 must now be the subject of negotiation and returned to the bargaining table. Nor does it mean that the government will be unable, in future, to remove issues from bargaining. It is clear, however, that governments' ability to unilaterally and without consultation reduce the scope of bargaining is now significantly constrained.

Although in this case the Court rejected the government's argument that Bills 27 and 28 were passed in exigent circumstances, specifically "labour unrest" causing "virtual paralysis of the school system," it did accept that the government's objectives of achieving greater flexibility and better use of facilities and human resources were pressing and substantial (*BCTF v. BC* 2011, para. 182). It is important to recognize that the courts, when assessing whether government action affecting collective bargaining rights violates the *Charter*, will consider a number of factors. These include the objectives of the action, the process the government followed in taking the action, and the circumstances surrounding the action (*ibid.*; *Health Services* 2007). The courts have offered some guidance on what objectives and circumstances may be sufficient to permit government interference with bargaining rights, noting that reducing costs or expanding management rights are not likely to be found to be sufficiently important objectives (*BCTF v. BC* 2011, para. 333). The ultimate impact of this case and governments' consultation process to implement the decision on the scope of bargaining will likely be significant, but the full effects will take some time to determine. In the meantime, these developments add considerable uncertainty to the bargaining process.

Bargaining Agency

In British Columbia, provincial bargaining agents for public school teachers (BCTF) and school boards (BCPSEA) are statutorily designated (*PELRA* 1994, s. 6). BCPSEA is also statutorily charged with coordinating collective bargaining objectives with other public sector employer associations and is accountable to a board composed of representatives of both local school boards and the provincial government (*ibid.*, ss. 1, 4, 6(2), 7). Employer bargaining agency in BC's K–12 education sector is a contentious issue,

with disagreement arising both from the choice to create a provincial employer bargaining agent with accountability to government beyond school boards, and the tendency of the provincial government and BCTF to ignore this agent's role.

BCTF has strongly objected to BCPSEA as the designated bargaining agent for employers and is critical of its role and performance (Wright 2003, 8). Consonant with its desire for a return to full local bargaining, BCTF regards school districts and local teacher associations as the appropriate bargaining agents because teachers and trustees are the parties best positioned to decide and implement decisions sensitive to local needs. It contends that BCPSEA as bargaining agent has introduced uncertainty over authority and accountability (BCTF 2003b). Notably, although Commissioner Wright acknowledged the criticisms of BCTF and some trustees which centre on the lack of successful bargaining, fundamental disagreement with provincial-level bargaining, and lack of understanding of how BCPSEA's mandate is set and its accountability, he supported BCPSEA. He concluded that BCPSEA was not singularly responsible for failed negotiations: "Quite simply, the conditions necessary for successful bargaining have not been present, and this has more to do with the willingness, capability and determination of the teachers and provincial government to make provincial bargaining work than it has to do with the efficacy of BCPSEA as a bargaining agent" (Wright 2004, 24). Wright recommended retaining both provincial bargaining agents: BCTF, and BCPSEA as the employers' bargaining agent. He also recommended confirming and clarifying that the concerns of local school boards shape BCPSEA's mandate through trustee representatives on its Board, which is accountable to both school boards and the provincial government (2004, 25). Further, he recommended that local negotiations operate with more autonomy from the provincial agents through fuller delegation of authority (2004, 26).

A recurring theme in Wright's reports and recommendations is the crucial importance of alignment between bargaining structure and accountability for costs and funding in K-12 education, which is almost wholly provided by the provincial government. The need for a provincial employer bargaining agent stems from this need for alignment. As Commissioner Wright explains:

[The provincial government] must have the ability to approve the employers' bargaining mandate. There will naturally be tension between the interests of the provincial government with its broader responsibilities and the more focused interests of school boards. This is inevitable given the decision to blend provincial accountability for funding with local administration of the school system. The ongoing challenge for BCPSEA is to balance the fiscal and policy objectives of the provincial government with the interests of school boards as public school employers. (2004, 25)

In addition to the challenge of reconciling the interest and concerns of school boards with the provincial government's fiscal mandate and policy directions, BCPSEA has repeatedly faced the difficulty of being bypassed by the provincial government and BCTF in negotiations. As described earlier in this chapter, in 1996 the NDP government and BCTF directly negotiated the Transitional Collective Agreement; in 1998 the NDP government reached a collective agreement without BCPSEA's knowledge or participation; and, in 2001, the Liberal government threatened BCPSEA with withdrawal of millions in school district funding unless it agreed to incorporate the class-size MOA entered into by the government and BCTF a few years earlier. The BC Supreme Court described the government's own account of this latter episode as the government "forc[ing] BCPSEA to sign an agreement against its will" (*BCTF v. BC* 2011, paras. 6, 111, 113-14). More recently, in the 2004-05 round, BCTF sought parallel discussions with the provincial government over working and learning conditions (BCTF 2005a).

What we see in British Columbia is an employer bargaining agent that is frequently given inflexible bargaining mandates by government that it must abide by due to its statutory obligation to align its bargaining with other public sectors, and this hampers settlement. Moreover, this bargaining agent has repeatedly had its bargaining authority undermined by the willingness of the provincial government—both Liberal and NDP—to bypass BCPSEA to negotiate directly with the BCTF. As a result, BCPSEA has lost the confidence of both some school board trustees and BCTF as an effective bargaining agent. This is unfortunate and short-sighted, as a central employer bargaining agent such as BCPSEA could be very effective if it was granted sufficient authority and autonomy.

Dispute Resolution

Views differ widely on what is an appropriate, desirable, or even feasible dispute resolution mechanism for K-12 teacher bargaining in British Columbia. In his 2004 final report, Commissioner Wright canvassed a variety of dispute resolution mechanism options: full strike/lockout, controlled strike/lockout as it currently exists (e.g., essential services limits), more defined essential service limitations, and interest arbitration. The *LRC* strike, lockout, and dispute resolution provisions govern teacher disputes (*School Act*, s. 29), including use of mediation, fact-finding, and commissions of inquiry, and the *LRC* essential service requirements (*LRC* 1996, s. 72).²⁸ Currently the primary mechanism for dispute resolution is the "controlled" work stoppage: a strike or lockout subject to the *LRC* essential service limitations.

The fundamental problem with the existing dispute resolution mechanism for teacher bargaining in this province is that access to strikes and lockouts is a "pretense" (Wright 2004, 32). Since the introduction of

two-tier bargaining, the provincial government has repeatedly demonstrated that it will not permit a full strike by teachers, or even a substantial withdrawal of services within the LRB's essential service orders. Instead of allowing this mechanism to operate, the government has legislated the end to disputes. In the 2001/02 round, the first time essential service limitations were invoked in a teacher strike, government legislated an end to the dispute after less than two months of classes under phase one withdrawal of work—which affected tasks such as running assemblies, preparing report cards, and attending staff meetings—and within two weeks of job action escalating to the next phase, which was withdrawal of extracurricular supervision (BCPSEA 2002, 13-14, 17-18). Not a single day of full teaching withdrawal occurred before the government intervened.

In the next round of bargaining, in 2004/05, the government reacted even more rapidly, legislating an end to the dispute on the fourth school day of phase one job action. In that dispute, it also became apparent that BCPSEA and the government held very different understandings of essential service limits. While BCPSEA accepted withdrawal of classroom instruction as satisfying essential service requirements, the Minister of Education publicly stated the government did not share this view and would not accept students' not being in classrooms (Rud 2005b). Wright condemned this as a "pretense" that has contributed to the failure of bargaining:

One of the reasons why collective bargaining has been so ineffective over the past ten years is that we have operated on the pretense that the strike/lockout tool was available to the parties, when in fact it was not really available. Consequently, with each round of bargaining, positions and behavior got directed more and more at positioning parties for the eventual legislated settlement because there was no alternative between strike/lockout and imposition of an agreement by the legislature. (2004, 32-33)

In Wright's view, unfettered strikes and lockouts would be the best dispute resolution tool because these tactics would foster more mature bargaining, creating a strong incentive for the parties to settle. However, he declined to recommend that option, concluding that a lengthy, full-scale strike or lockout without government intervention was not politically feasible in British Columbia at that time (2004, 31-32). He also declined to recommend a controlled work stoppage mechanism unless government was willing to accept partial withdrawal of services, as he was skeptical that government was willing to do so (*ibid.*, 33, 37). The more recent experiences in teacher bargaining in this province suggest that it is still not a realistic option.

Two additional concerns have been raised about employing controlled work stoppages as a primary dispute resolution tool in BC's teacher bargaining. First, Wright was concerned that the LRB's essential services

designation process, involving preliminary meetings, mediation, and hearings, would produce uncertainty about what will be deemed essential. This uncertainty could “distort parties’ perceptions of the costs or benefits of job action” (Wright 2004, 27-28). Wright contends that this type of distortion occurred in the 2001/02 round (*ibid.*, 8).

BCPSEA also criticizes the essential service designation approach as ill-suited to the particular features of the K–12 education sector and teachers’ work (BCPSEA 2002, 3, 27-28). Essential service limitations are generally defined in the context of a complete withdrawal of services, identifying the work that will still be performed by members of the striking or locked-out bargaining unit (BCPSEA 2005, B262/2005). For example, in health care, typically positions rather than specific tasks are designated essential. As a result, non-essential workers are not working and are not paid; only essential workers remain at work and receiving pay. In contrast, the LRB’s essential service designations in teachers’ disputes identify particular tasks that teachers need *not* perform. Therefore, all teachers engage in a partial withdrawal of service, no one is off work, and all continue to receive full pay. Strikes and lockouts are designed as economic weapons, for workers and the employer to test the other’s economic power and resolve. To operate effectively, there must be economic consequences to both sides. As BCPSEA points out, since no teacher is forgoing pay during a controlled strike, this 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” (BCPSEA 2002, 28).

Concluding that the work stoppage mechanism—controlled or unfettered—was not a feasible option in the current BC climate, Wright proposed a different approach to fostering dispute resolution. Within a strict negotiations timeline, an independent commissioner would be appointed at the outset of bargaining, who would later adopt the role of mediator/arbitrator in final offer selection if necessary. Arbitration would be guided by two criteria: ensuring terms that would promote retention and recruitment of good teachers, and the economic situation of the province and government. This transparent process provides incentives to settlement in the form of parties’ reluctance to have unreasonable positions made public by the commissioner, risk of an arbitrated settlement, and a final opportunity of a limited time period to propose an alternative, negotiated agreement after final offer selection had occurred (Wright 2004, 33-37). The transparency of the process, managed by an objective source, would increase accountability to the public, which Wright believed would encourage settlement (*ibid.*, 7).

Commissioner Ready incorporated a timeline with a set of strict deadlines for the progress of negotiations in his management of the 2006 negotiations. Although this timeline helped the parties make timely progress, Ready concluded that it was not the format or process

of bargaining that led to a voluntary collective agreement in that round. Rather, Ready attributed the settlement to the parties' commitment, support from the mediator/facilitator, and involvement of a government representative to ensure the mandate was understood and accepted (2007, 7-8). Nonetheless, Ready's limited recommendations for future negotiations focused on a timeline for the process, and support for negotiations. He advised that parties establish bargaining objectives eight months before the contract expiry; a facilitator/mediator be appointed to act throughout the process; a government representative with sufficient authority serve on the BCPSEA bargaining committee; and that the parties develop a common understanding of financial, economic, and sector data necessary for bargaining (*ibid.*, 8-9).

A final consideration regarding dispute resolution mechanisms is that the legal landscape has changed since the government's last legislative intervention in bargaining in 2005. The 2007 *Health Services* decision, discussed earlier, imposes significant restrictions on government violation of workers' *Charter*-protected right to collective bargaining. Direct government intervention, including statutorily imposed collective agreements, is no longer as readily available to governments as it was during past rounds of negotiations. Although these limits may be less strict in circumstances of financial exigency, the precise contours of these restrictions and their exceptions are not yet clear. However, experiences in other provinces suggest that back-to-work legislation—passed after lengthy disputes involving full withdrawal of services, where significant efforts have been made to assist the parties—that directs the matter to interest arbitration rather than imposing a contract, is an available mechanism (e.g., *York University Labour Disputes Resolution Act* 2009). It is unlikely that back-to-work and collective agreement legislation such as the BC government has repeatedly resorted to will meet the new *Charter* requirements except, perhaps, in extraordinary fiscal or other circumstances.

This new and significant limitation on the government's power to intervene will likely require the government to reconsider whether to permit work stoppages to play out without government interference, or whether to end the "pretense" and introduce another dispute resolution mechanism that it finds more acceptable.

CONCLUSION: LOOKING AHEAD

Teacher collective bargaining in British Columbia's K–12 public education sector has an unenviable record. For decades negotiations have been difficult and conflict-ridden, marred by legal and illegal work stoppages, litigation, imposed collective agreements, and other legislative and government intervention in bargaining. Neither the system of local collective bargaining, in place between 1987 and 1993, nor the existing two-tier

bargaining structure, employed since 1994, has produced constructive or successful negotiations or outcomes. Most recently, the five rounds of two-tier bargaining have resulted in only one voluntarily negotiated collective agreement. The highly managed nature of that round of bargaining in 2006 and the unique circumstances surrounding it suggest that this singular success does not mark a new trajectory for teacher bargaining in this province.

As we look ahead to future rounds of negotiations in this sector, it is worth considering what impediments remain and what has changed, as well as reflecting on what lessons can be learned from these experiences and where new uncertainties lie. This chapter then concludes with some thoughts on the prospects for teacher labour relations in this province.

Teacher bargaining in British Columbia suffers from several “historical hangovers”—persistent, unresolved sources of conflict that interfere with constructive negotiations. First, several long-standing structural impediments exist. These include the lack of a dispute resolution mechanism, given the effective unavailability of strikes, and the lack of a truly provincial agreement unencumbered by substantial remnants of pre-1994 local agreements. Nearly two decades later, this remains a tremendous burden on negotiations and between-rounds administrative resources. Second, for decades the BCTF and successive provincial governments spanning the political spectrum have been locked in an extraordinarily acrimonious relationship. Writing in 2004, with a Liberal government in power, Commissioner Wright emphasized the enduring and pan-political nature of this discord, and his words remain fitting today:

It would be a mistake to think this [unhealthy relationship] is solely a function of the attitude and approach of the current administration on either side. The current state of affairs is the result of developments over more than twenty years. There have been three separate political parties in power over that period of time, all struggling with a common challenge—how to manage the expectations of the public and public sector employees over a period of disappointing economic performance. (58)

All too often, this struggle has been ended by a government that is too impatient to allow teachers’ negotiations to play out to conclusion. Instead, government ends the dispute by directly intervening in bargaining, bypassing the statutory bargaining agent, or legislating a solution. Such ad hoc solutions have caused lasting damage to the parties’ capacity to negotiate, angering and alienating those subjected to this blunt governmental power.

Similarly, some BCTF members, school board representatives, and government officials nurse ancient grudges that continue to taint relations and negotiations long after the original harm. For example, there is

a lingering anger among employers who see themselves as having been victimized and subjected to unfairness during the 1987 to 1993 local bargaining era. Not only did this lead employers to approach early rounds of two-tier negotiations as a chance to “level the playing field” and reverse what they felt to be unfair provisions, but these resentments continue to influence today’s discussions of teacher bargaining structures. Another enduring focus of conflict among parties is the negotiation of working and learning conditions, which shows little indication of being resolved without leaving one or more education stakeholders bitterly disappointed.

In addition to these deep-rooted difficulties, recent years have brought several new sources of uncertainty to the legal environment governing teacher bargaining and governments’ ability to directly control public sector labour relations. A series of recent court decisions clearly signals that governments substantially interfering with collective bargaining, such as by removing terms from negotiated agreements and prohibiting future bargaining on those matters, may unjustifiably violate the *Charter* freedom of association (*BCTF v. BC* 2011; *Health Services* 2007; *Ontario v. Fraser* 2011). The contours of this new limit on government action are still unclear. This creates significant uncertainty among the parties as government is suddenly left with doubtful access to a once familiar tool of governments in this province. Moreover, the recent Court decision concluding that the Bill 28 removal of certain working and learning conditions from the agreement and future bargaining is unconstitutional has left stakeholders uncertain about procedurally how government will correct this breach, whether through bargaining, consultation, or legislation and what the substantive outcome will be (*BCTF v. BC* 2011).

In searching for a more hopeful future for teacher bargaining in British Columbia, it would be prudent to keep in mind some practical lessons learned from the past and from the thoughtful and enduring reviews of Commissioners Wright (2003, 2004) and Ready (2005, 2006a, 2006b, 2007). The key lessons of the local bargaining era are the importance of ensuring alignment between accountability and the source of funding (Wright 2004, 19) and of preventing a mismatch between bargaining parties. Failure to do so in the past generated enduring problems and resentment. More concretely, and reflecting Commissioner Wright’s final recommendations (2004), this means that should the location of bargaining be revisited and local parties be given greater autonomy, as he recommended, it is crucial to ensure that this is genuine independence and genuine local bargaining. This is particularly important regarding teachers’ associations given the experience in the local era of the very strong, provincial body centrally controlling negotiations. A similar dynamic could occur even voluntarily between locals and the provincial BCTF, with similar results. At the same time it is important to ensure school boards have sufficient capacity and support to negotiate on an equal footing with teacher locals. Otherwise,

expanded local bargaining is inviting the same type of centralized teacher coordination and rolling-pattern bargaining that school boards believed led to unsustainable and unbalanced agreements in the past.

However, overall, there is not much cause to be optimistic about significant improvement in the teacher bargaining experience in British Columbia in the short term. New rounds of negotiations are commencing without adopting the procedural supports used and recommended by Commissioner Ready (2007) in the successful 2006 negotiations, such as the use of timelines and facilitators; and without addressing many of Commissioner Wright's (2004) recommendations such as revisiting the split of issues and authority of local agents, and improving channels of communication and data-sharing. What's more, these negotiations are taking place in the context of significant uncertainty and continuing, intense conflict between BCTF and the government.

Although the structure of collective bargaining has been identified by government and other stakeholders as the cause of the negotiating difficulties, it is worthwhile for all involved to consider that both Commissioners Ready and Wright ultimately concluded that among the most significant impediments to constructive negotiations in this province is the lack of commitment to the process by key participants. In short, it is the players rather than the structure that are most in need of reform in this case.

NOTES

1. In this chapter "education" refers to the kindergarten-grade 12 ("K-12") public education system in British Columbia, and "teacher" refers to teachers in this system.

This research includes semi-structured interviews with several key informants, conducted between winter 2008 and spring 2011. These include past BCTF presidents Irene Lanzinger (2007–10), Jinny Sims (2004–07), and Larry Kuehn (1981–84, currently BCTF Director of Research and Technology); British Columbia Public School Employers' Association's Chief Executive Officer, Hugh Finlayson; and Kenneth Halliday, a labour relations expert who has negotiated on behalf of school boards.

2. For a detailed history of this period of the BCTF's history see Johnson (1964), Muir (1969), and Thompson and Cairnie (1973).
3. Interview with Larry Kuehn, 12 September 2010.
4. Ibid.
5. Ibid.
6. Ibid.
7. This contrasted with the earlier language of the *Essential Services Disputes Act* limiting application to "substantial disruption in the delivery of educational services" (BCPSEA 2002, 38).
8. Interview with Hugh Finlayson, 23 November 2008; and Ken Halliday, 14 November 2008.
9. Interview with Larry Kuehn, 12 September 2010.
10. Ibid.

11. Interview with Ken Halliday, 14 November 2008.
12. Interview with Hugh Finlayson, 23 February 2011.
13. Interview with Larry Kuehn, 12 September 2010.
14. This two-tier bargaining is commonly referred to as “provincial bargaining” by the parties, reflecting the fact that virtually all issues are negotiated at the provincial table.
15. Interview with Ken Halliday, 14 November 2008.
16. *Ibid.*; interview with Hugh Finlayson, 28 November 2008.
17. Interview with Hugh Finlayson, 28 November 2008.
18. Interview with Ken Halliday, 14 November 2008.
19. *Ibid.*
20. *Ibid.*
21. *Ibid.*
22. Health care unions challenged Bill 29 (*Health and Social Services Delivery Improvement Act 2002*), companion legislation to Bills 27 and 28. On 8 June 2007, the Supreme Court of Canada held that key provisions of Bill 29 violated the *Charter* guarantee of freedom of association in a manner that could not be justified in a free and democratic society but suspended declaration of invalidity of the provisions for 12 months (*Health Services 2007*).
23. Interview with Ken Halliday, 14 November 2008.
24. Interview with Irene Lanzinger, 13 April 2009.
25. Interview with Hugh Finlayson, 28 November 2008.
26. Interview with Jinny Sims, 13 April 2009.
27. See Schucher and Slinn (2011, Table 6) for a detailed list of restrictions on the scope of bargaining.
28. Note that strikes and lockouts are only lawful at the provincial level because only the provincial parties—not local teachers’ associations or school boards—have the authority to authorize a work stoppage (*PELRA 1994, s. 8*).

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APPENDIX A

TABLE A1
Work Stoppages in BC Teacher Bargaining: 1988–2010

School District	Start Date	End Date	Length (Days)	Stoppage Type	Issues	Number of Workers Involved	Teacher Days Lost
Local negotiations							
Round 1							
80 Kitimat	28-Nov-88	12-Dec-88	14	General strike	Wages	136	1,360
88 Terrace	3-Jan-89	30-Jan-89	27	General strike	Wages	310	5,890
65 Cowichan	16-Jan-89	25-Jan-89	9	General strike	Wages	410	2,870
57 Prince George	23-Jan-89	27-Jan-89	4	General strike	Wages	1,200	4,800
89 Salmon Arm	6-Feb-89	7-Feb-89	1	General strike	Collective bargaining procedure	311	180
15 Penticton	13-Feb-89	14-Feb-89	1	General strike	Collective bargaining procedure	240	120
35 Langley	27-Feb-89	24-Mar-89	25	Rotating strike	Working conditions; other issues	850	4,510
34 Abbotsford	6-Mar-89	20-Mar-89	14	General strike	Rand Formula	675	6,080
23 Kelowna	13-Mar-89	24-Mar-89	11	General strike	Rand Formula	900	7,650
76 Agassiz	1-Mar-89	13-Mar-89	12	General strike	Wages	45	360
14 South Okanagan	3-Mar-89	14-Apr-89	42	Lockout	Wages	120	1,160
13 Okanagan	7-Mar-89	13-Mar-89	6	General strike	Wages	39	160
33 Chilliwack	8-Mar-89	13-Mar-89	5	General strike	Wages	434	1,300
2 Cranbrook	3-Apr-89	18-Apr-89	15	General strike	Wages	197	2,170
92 Nass Valley	17-Apr-89	19-May-89	32	General strike	Wages	32	780
76 Mission City	3-Oct-89	18-Oct-89	15	General strike	Wages	338	3,380
Totals						6,237	42,770
Round 2							
35 Langley	06-Mar-90	26-Mar-90	20	General strike	Sympathy	850	11,900
14 Osoyoos	04-Sep-90	03-Oct-90	29	General strike	Subcontracting	130	2,730
42 Maple Ridge	13-Nov-90	21-Nov-90	8	Rotating	Wages	700	1,050

... continued

**TABLE A1
(Continued)**

School District	Start Date	End Date	Length (Days)	Stoppage Type	Issues	Number of Workers Involved	Teacher Days Lost
37 Delta	22-Nov-90	29-Nov-90	7	Rotating	Wages	950	1,430
61 Victoria	31-Jan-91	18-Feb-91	18	General strike	Wages	1,700	16,000
68 Nanaimo	12-Feb-91	18-Mar-91	34	Rotating	Wages	960	11,280
44 North Vancouver	14-Feb-91	16-Feb-91	2	Rotating	Failure to negotiate	1,000	1,000
39 Vancouver	18-Feb-91	28-Feb-91	10	Rotating	Working conditions	3,606	24,050
70 Alberni	19-Feb-91	20-Feb-91	1	General strike	Not reported	350	180
85 Vancouver Island	20-Feb-91	22-Feb-91	2	General strike	Various workload issues	280	280
63 Saanich	04-Mar-91	25-Mar-91	21	General strike	Various workload issues	471	5,650
1 Fernie	06-Mar-91	25-Mar-91	19	General strike	Wages	250	2,990
49 Bella Coola	06-Mar-91	08-Apr-91	33	General strike	Various workload issues	32	560
80 Kitimat	20-Mar-91	30-Apr-91	41	Rotating	Working conditions	155	2,500
60 Fort St. John	08-May-91	28-Jun-91	51	General strike	Working conditions	300	11,100
88 Terrace	13-May-91	14-May-91	1	General strike	Interunion matters	350	350
17 Princeton	13-May-91	27-May-91	14	General strike	Collective bargaining procedure	50	450
Totals						12,134	93,500
Round 3							
36 Surrey	18-Jan-93	19-Jan-93	1	General strike	Delay in negotiations	1,900	1,900
36 Surrey	25-Jan-93	08-Mar-93	42	Rotating	Wages, other issues	2,800	5,520
1 Fernie	04-Jan-93	29-Jan-93	25	Lockout	Wages	240	4,560
28 Quesnel	08-Jan-93	04-Mar-93	55	Rotating	Delay in negotiations	310	5,170
40 New Westminster	15-Feb-93	29-Mar-93	42	Rotating	Working conditions	241	1,310
47 Powell River	15-Feb-93	06-May-93	80	Lockout/rotating	Working conditions	220	5,960
42 Maple Ridge	01-Apr-93	13-Apr-93	12	General strike	Delay in negotiations	740	4,440
84 Gold River	08-Mar-93	20-Apr-93	43	Rotating	Delay in negotiations	56	970
85 Port Hardy	08-Mar-93	14-May-93	67	Rotating	Delay in negotiations	200	5,900
39 Vancouver	05-May-93	31-May-93	26	Rotating	Wages and other issues	4,500	47,250
36 Surrey	19-May-93	03-Jun-93	15	General strike	Working conditions	2,800	16,800

80 Kitimat	17-May-93	25-May-93	8	General strike	Working conditions	140	770
54 Smithers	26-Apr-93	31-May-93	35	General strike	Delay in negotiations	170	2,210
70 Port Alberni	11-May-93	20-May-93	9	General strike	Wages	500	2,000
71 Comox	12-May-93	13-May-93	1	General strike	Delay in negotiations	515	260
24 Kamloops	17-May-93	18-May-93	1	General strike	Delay in negotiations	797	400
44 North Vancouver	17-May-93	21-May-93	4	Rotating	Delay in negotiations	1,250	630
Totals						17,379	106,050
Two-tier negotiations							
Round 1 (1994-96)	-	-	-	-	-	-	-
Round 2 (1997-98)	-	-	-	-	-	-	-
Round 3 (2001-02)	-	-	-	-	-	-	-
Various locations	28-Jan-02	28-Jan-02	1		Failure to negotiate	35,000	35,000
Round 4 (2004-05)	07-Oct-05	24-Oct-05	17		Negotiated issues	38,000	380,000
Provincewide	-	-	-	-	-	-	-
Round 5 (2006)	-	-	-	-	-	-	-

Source: Special data request, Human Resources and Skills Development Canada; Various records of the British Columbia Teachers' Federation (BCTF) and British Columbia Public School Employers' Association (BCPSEA).

