Voice, Accountability and Dialogue

Recommendations for an Improved Collective Bargaining System for Teacher Contracts in British Columbia

Commission to Review
Teacher Collective Bargaining
Don Wright, Commissioner
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I. Introduction

This is the Final Report of the Commission to Review Teacher Collective Bargaining.

I was appointed the Commissioner by the Minister of Skills Development and Labour almost one year ago. Prior to agreeing to take on this role, I had provided a report to the Minister which reviewed the history of bargaining for collective agreements for teachers in British Columbia and made recommendations about the terms of reference for the Commission.[1] The Terms of Reference for the Commission are provided in Appendix A.

I pursued my task with the objective of engaging as fully as possible with the parties and key stakeholders interested in bargaining for collective agreements for teachers in British Columbia. I have met numerous times with each of the British Columbia Teachers' Federation (BCTF), the British Columbia Public School Employers' Association (BCPSEA) and the British Columbia School Trustees Association (BCSTA). I also met with many of the individual school boards and local teacher associations from all parts of the province. I invited input from, and met with, representatives of several of the key education stakeholder organizations. Appendix B provides a list of the organizations with which I met and / or from which I received written submissions.

In March I sent out sixty questions that covered the range of collective bargaining issues to each of the BCTF, BCPSEA and BCSTA. I was pleasantly surprised by the number of other organizations which also volunteered for this substantial assignment.

[1] Don Wright, Towards a Better Teacher Bargaining Model in British Columbia, Report to Honourable Graham Bruce, November, 2003.

Readers who wish to review this report can find it online at www.labour.gov.bc.ca/teacher-bargaining.

In May, we held a two-day facilitated session, jointly organized by the BCTF, BCPSEA and BCSTA, in which we explored the issues and identified where there might be common ground and where differences still remained.

In August, I issued a discussion paper – "Options for Teacher – Employer Collective Bargaining" which explored options around the five major questions which I believe I needed to address. My terms of reference required me to provide options for consideration, and I have made repeated references to this paper in the report, so I have reproduced it here as Appendix C.

Finally, in September, I received the final submission from each of the BCTF, BCPSEA and BCSTA.

I believe I have benefited immensely from this engagement, and I would like to thank all concerned for participating with me in an always civil exchange.

In this report I make twelve specific recommendations which I believe will, taken together, lead to healthier collective bargaining – I use the label "mature collective bargaining." Those twelve recommendations are consistent with what I believe are three key principles:

- Teachers must have an effective **voice** in influencing the terms and conditions of their employment;

- There must be sufficient transparency so that proper **accountability** can be established; and,

- We need to find the ability to engage in a true **dialogue** about how to make a good public school system even better.

The organization of the report is as follows:

- In Chapter II I discuss the political and economic context of bargaining for collective agreements for teachers in British Columbia;

- In Chapter III I identify what I believe to be the key necessary conditions for mature collective bargaining;

- In Chapters IV through VIII I detail, and explain the rationale for, my recommendations with respect to the five key questions that need to be addressed:

    - Where will issues be bargained?

    - Who should be the bargaining agent for the employer?

    - How will impasses at the bargaining table be resolved?

    - What is to be bargained?

    - What transition measures are needed?

- Finally, in Chapter IX, I speak to the need for a healthier dialogue amongst the parties.

II. Political and Economic Context

Collective bargaining occurs within a particular political and economic context, and will be affected by that context. This is generally true for any collective bargaining, whether it be in the private or public sector. It is particularly true with respect to collective bargaining in the public sector. The decision making that allocates funding to the public sector, and to particular parts of the public sector (e.g. health care vs. education vs. highways, etc.), is mediated primarily through a "political marketplace" rather than an economic marketplace. The funding available to the public sector reflects, in addition to choices made by the elected representatives of the public, the general health of the economy. The healthier the economy, the more government revenue will be generated for the same level of taxpayer "pain." It is also arguably the case that taxpayers will be more willing to pay higher taxes when they feel they are doing well personally, a situation more likely under robust economic circumstances.

Because political and economic context has affected the state of teacher collective bargaining in British Columbia, and because it will continue to do so, it is worthwhile spending a little time up front examining that context.

The Politics of Collective Bargaining in the K – 12 System in British Columbia

In my report to the Minister last year, I discussed how collective bargaining in the public sector generally differs from collective bargaining in the private sector, as well as what is distinct about the situation in the K – 12 system. There were three key points of that discussion.

First, provision of services in the public sector is generally done through a monopoly or near-monopoly arrangement – the public affected by any disruption is likely to have limited alternatives available to it. This is unlike the typical situation in the private sector where a firm's clients / customers can generally find alternative sources of goods or services.

Society's decision to provide a good or service through the public sector, particularly as a monopoly, as opposed to the private sector means the primary decision criteria become political. In the private sector, management and labour ultimately share a common interest in a viable enterprise in a competitive environment. If the enterprise is not successful, management and labour stand to lose their jobs and the firm's investors stand to lose their capital. In the public sector, management and labour would benefit from general public approval of the way the "enterprise" is run, but the dynamic if the enterprise is not successful is generally quite different. Rather than "bury their differences" so both sides can survive in the economic marketplace, management and labour are more likely to heighten their differences and take their respective arguments to the public in order to survive in the "political marketplace."

Secondly, society generally attaches a very high importance to education. There is a general consensus that a high quality public education system is one of the most important enterprises run by government. It is an investment in society's future, in equalizing opportunity and in developing a sense of shared citizenship. If it is this important, it does not take much of a stretch to deem it "essential," at least in the rhetorical sense.

In this context, there is a natural concern about any serious disruption to the school year, and whether instruction time lost in a long strike / lockout can be made up adequately afterwards.

Finally, there is what has become called the custodial function of the school. Over the past thirty years, the proportion of families headed by single parents, or where both parents work, has increased significantly. These families have come to rely on the school system as an integral part of their child care arrangements. Any strike / lockout in the school system will impose hardships on the parents involved. They are forced to find alternative and often costly arrangements, stay home and lose income, or live with the anxiety that their children may not be adequately looked after.

This is the political context in which collective bargaining in the K – 12 system operates. The reality is that there will be intense political pressure on the provincial government to prevent, or to intervene in, any dispute that carries on for any length of time.

History in this province is revealing in this regard. Prior to 1987 full collective bargaining with the right to strike was not available to teachers in British Columbia. Education has been in the past, as it is now, deemed essential under the *Labour Relations Code*, or predecessor Acts. Governments of both the "left" and the "right" have felt compelled to legislate ends to strikes and / or impose settlements.

This constant intervention has contributed in no small measure to the unhealthy state of bargaining with respect to collective agreements for teachers in this province. I have often heard an opinion expressed over the past year that goes to the effect of "if only the provincial government would stay out of things, bargaining for collective agreements between teachers and employers could reach a healthy state of maturity." While I understand where this sentiment comes from, it seems somewhat akin to King Canute expecting the tides to respond to his commands. We live in a democracy, and the public will inevitably have expectations to which governments will respond.

Rather than wish away the political context and reality, we would be better advised to ask ourselves some hard-headed questions about their implications for a workable collective bargaining regime:

- How much disruption to the K – 12 system will the public be willing to tolerate before the provincial government feels compelled to intervene with legislation?

- What structure / processes will minimize the likelihood that the provincial government will feel compelled to intervene?

- If the reality is that there will, *de facto*, be constraints on the ability to have strikes / lockouts in the K – 12 system, what is the fair and effective alternative?

- As this is all going to play out in the "political marketplace," how can this be made as transparent as possible to the public, so that it is able to make an informed judgment about the outcome, and who should be held accountable for that outcome?

I will return to these questions in Chapter VI below when I make my recommendations about how to resolve impasses at the bargaining table.

Economic Performance in British Columbia over the Past Twenty-Five Years

It was noted above that the health of the economy affects collective bargaining in the public sector because it has obvious implications for how well funded a public sector the taxpayer can afford. This is significant in the context of teacher collective bargaining in British Columbia because a significant contributing factor to the state of collective bargaining is the teaching profession's unhappiness with the amount of public funds allocated to the K – 12 system.

My reading of history in this regard suggests three key periods over the past twenty-five years. In the early-middle 1980's, the British Columbia government undertook a serious exercise in fiscal restraint which inevitably impacted resources in the K – 12 system. This strengthened the determination of the British Columbia Teachers Federation to achieve full collective bargaining with the full right to strike, which was achieved in 1987.

In 1994, the provincial government made the decision to move to a more centralized model of public sector bargaining, including in the K -12 system. One of the rationales for this move was to enable the provincial government to maintain better control over the cost of the public sector. The BCTF was opposed to this centralization and remains so to this day.

The move to centralization coincided with a "flattening out" of funding for the K – 12 system. Real per student funding in the K – 12 system had generally increased over the period from 1986 / 87 through 1991 / 92; the trend from 1992 / 93 through the present has been essentially flat. This relative constraint on funding has contributed to the BCTF's unhappiness with the province-wide bargaining regime.

Finally, in 2002, the provincial government legislated a new collective agreement which removed previously negotiated provisions with respect to class size, workload and staffing ratios. This coincided with a slight reduction in real (i.e. after correcting for inflation) per student funding between 2001 / 02 and 2003 / 04[2] as well as with declining enrollments in the system overall. In combination, these factors resulted in the elimination of a significant number of teaching positions and the closure of a large number of schools across the province. The coincidence of budgetary restraint with changes in collective bargaining would serve to further increase teacher animosity about those changes.

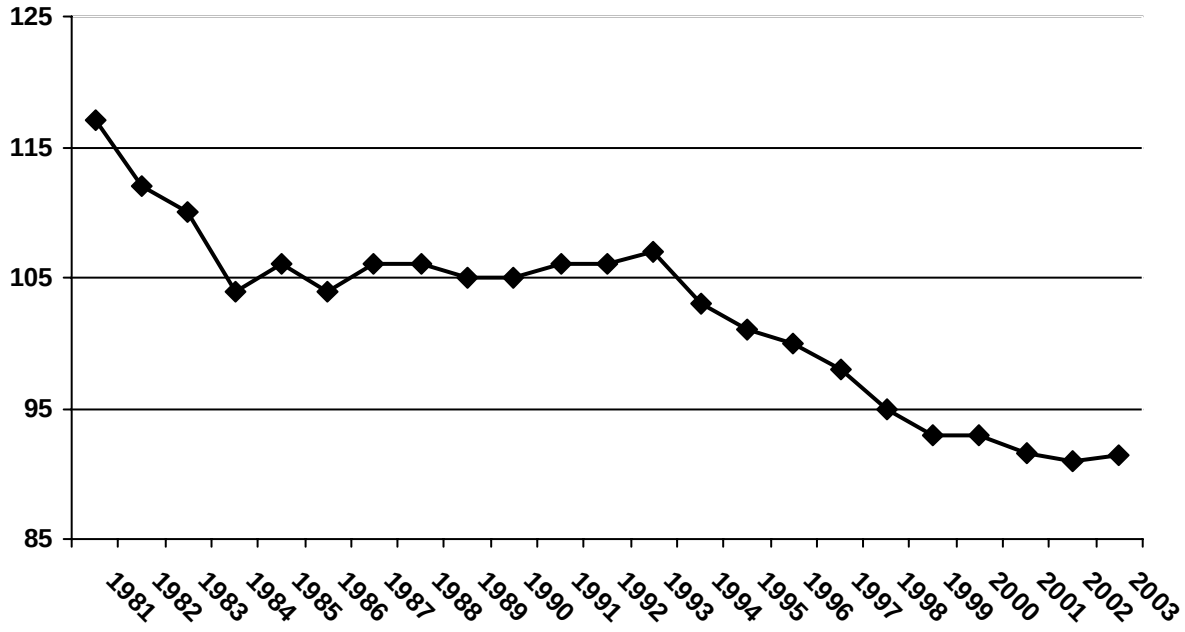
It is natural for any group of public sector employees to want to see the activities they deliver well funded. Their motivation for this is an understandable mixture of commitment and self-interest – they believe in the mission in which they are engaged, and have natural human concerns about working conditions and about the material well-being of themselves and their families. Accordingly, a level of disappointment among teachers about funding levels over the last dozen years or so is understandable, and it is not surprising that this would colour their views on which collective bargaining arrangements worked better than others.

It is necessary, however, to put this disappointment in context. The unhappy fact is that British Columbia has had, in economic terms, a disappointing quarter of a century. We had gone from being a "rich" or a "have" province at the start of the 1980's to a "poor" or "have not" province by the start of the twenty-first century.

[2] Between 2001 / 02 and 2003 / 04, the total operating grants provided to school boards by the Ministry of Education were held constant. Over the same period, full time equivalent (FTE) enrollments fell by 2.5%, while inflation (as measured by the B.C. Consumer Price Index) rose 4.4%, resulting in a reduction in real funding per FTE of 1.8%. It should be noted that real funding per FTE for 2004 / 05 has increased, bringing real per student funding close to the level of 2001 / 02. [Sources: Ministry of Education, 2003/04 Summary of Key Information; BC STATS.]

The Chart below shows British Columbia's Gross Domestic Product (GDP) per capita as a percentage of the Canadian average between 1981 and 2003. Gross Domestic Product is probably the best overall measure of the total income available to a society to allocate amongst purchases of goods and services, both private and public. At the start of this period, British Columbia had a per capita GDP that was 17% higher than the national average. By the end of the period the equivalent figure was 9% lower.

B.C.'s Per Capita GDP as % of Canadian Average

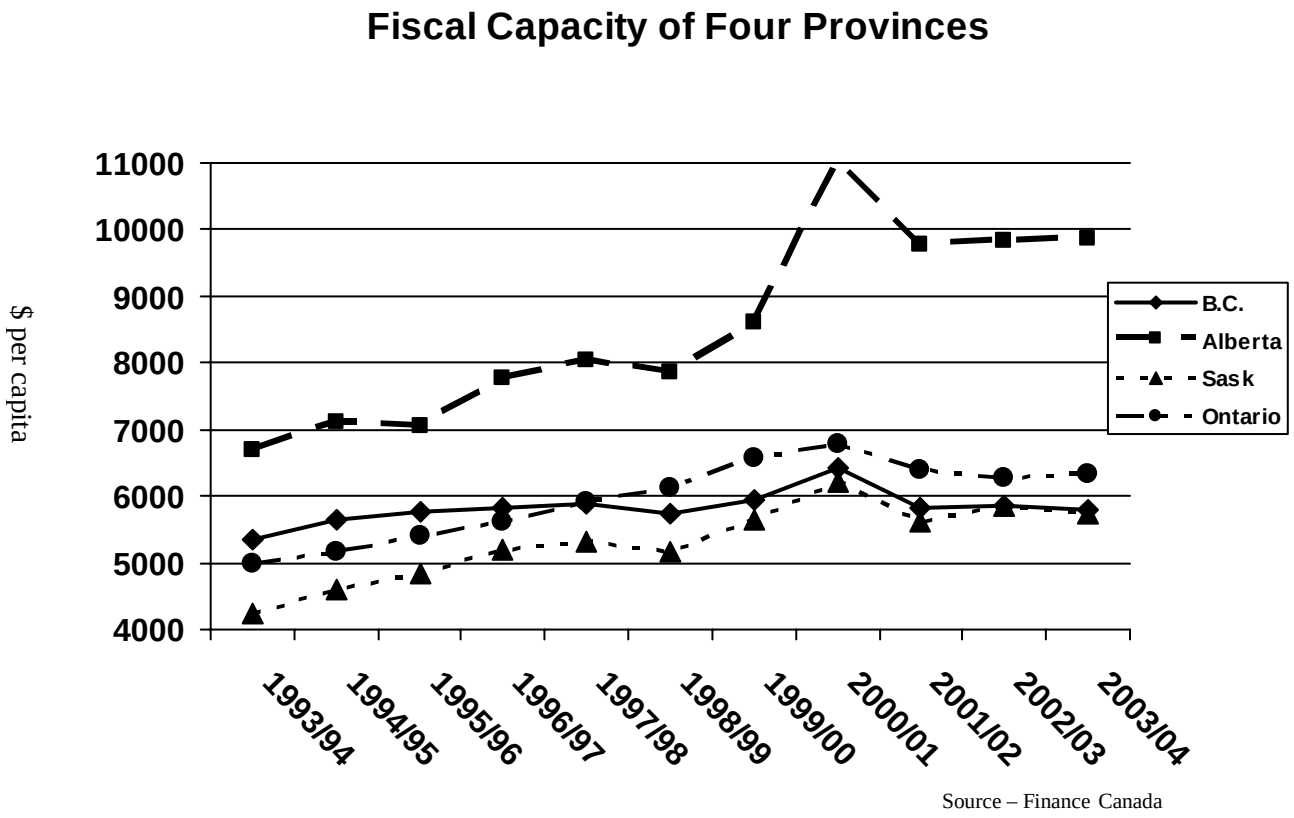


Source – B.C. Stats

This decline in relative wealth generating capacity has happened over an extended period of time, which has transcended changes in government. Discerning its causes would be outside the terms of reference of this report. The important point here is that British Columbia society saw a general reduction in what it could "afford" relative to the rest of Canada over the past twenty-five years.

This reduction in relative wealth generating capacity was mirrored in the provincial government's ability to generate revenue for public goods and

services. The next Chart compares Finance Canada figures for "Provincial Fiscal Capacities" for four provinces – British Columbia, Alberta, Saskatchewan and Ontario.[3]



Source – Finance Canada

In 1993 / 94, B.C. had the second highest (after Alberta) ability to generate government revenue per capita in Canada (all other provinces have lower fiscal capacities than the four shown on this chart). By 1997 / 98, B.C. had fallen behind Ontario, by 2002/03 it had fallen into a virtual tie with Saskatchewan, and over the whole period the gap between B.C. and Alberta grew in absolute and relative terms.

[3] The federal government calculates provincial fiscal capacities for its equalization program. These estimates show how much any particular province could raise if it were levying all potential taxes at the national average rate. These estimates are a useful way of measuring the relative ability of provinces to raise revenue.

It is important to emphasize that these figures do not reflect a decision by British Columbia governments to take less in tax revenues – the numbers are calculated as if any particular province were taxing at the average Canadian rate. In fact, Finance Canada's estimates for 2003 / 04 suggest that British Columbia's "tax effort" is slightly above the national average.

The point in all of this is to underscore that teacher collective bargaining in British Columbia has taken place under difficult circumstances for most of the past two decades. British Columbians have traditionally viewed their province as a "rich" one, which entails expectations of high quality public services and better (relative to other parts of Canada) than average pay for public sector employees. As the fiscal reality diverged from this self-image, it was inevitable that an extra source of stress on the collective bargaining process would result. At the end of the day, however, it is unreasonable to expect that any part of the public sector could have been saved harmless from British Columbia's relative reduction in fiscal capacity.

The flip side of this is that, if and when British Columbia's relative economic performance improves, it is not unreasonable for some of the benefits of that to flow through to public sector employees, including teachers. But this does not negate the basic message here – collective bargaining in the public sector must be informed by the general state of economic and financial health of the province.

III. Necessary Conditions for Mature Collective Bargaining

Throughout this report I use the phrase “mature collective bargaining.” By this I mean a state where parties go to the bargaining table with an expectation that a settlement will be reached, are prepared to make the compromises that will be required to achieve that settlement, and generally prefer making the necessary compromises to avoid the consequences of an impasse – whether that be a strike, a lockout or a settlement imposed upon the parties. This does not mean there would never be an impasse in collective bargaining between the parties – it is a question of whether impasses are the exception or the norm.

In contemplating what would be necessary in order to reach a state of mature collective bargaining with regard to teachers’ collective agreements in British Columbia, I have concluded that there are five key conditions that must be met:

i. The government recognizes that teachers must have an effective voice in determining the terms and conditions under which they teach;

ii. Teachers recognize the government’s interests in funding the K – 12 system;

iii. Both parties have a genuine desire to avoid legislative intervention;

iv. The bargaining agents on both sides are governed effectively so that they come to the table with the ability to make a deal;

v. The public is able to hold the appropriate agency accountable for the adequacy of funding provided to the K – 12 system, the

effectiveness of how that funding is utilized, and the outcomes of the collective bargaining process.

Effective Voice

The relationship between an individual employee and his or her employer is generally an asymmetric one – the employee is generally much more vulnerable to the termination of the relationship than is the employer. The basic motivation for most labour law in the western world is an attempt to rebalance fairly the power relationship between employer and employee. In particular, the acceptance, protection and regulation of collective bargaining can be seen as an attempt to give employees a collective "voice" to compensate for their relative powerlessness as individuals.

To achieve its purposes, this voice must be effective. It must be accepted as the legitimate representation of the employees represented. Furthermore, it must be "heard" – it must demonstrably be able to affect the terms and conditions of employment.

If the voice is not effective in this way, it is unlikely that employees will feel they are being treated fairly, their representatives are unlikely to come to the negotiating table with the motivation to engage in the give and take of bargaining, and the likely result is a demoralized and demotivated group of employees.

Government's Interests

Unions in the private sector are disciplined by the knowledge that if the employer becomes uncompetitive in the marketplace, the union's members stand to lose

their jobs. Thus, there is a strong incentive to take, if only implicitly, an “interest based” approach to bargaining.

The incentive in the public sector to make the connection with the interests of the employer (or its funder) may not be so obvious. But the government does have real interests that need to be taken into account if a mature collective bargaining relationship is to evolve.

The interests of the government in funding any part of the public sector consist of:

- Meeting the public’s expectations for the delivery of high quality services in that particular part of the public sector;

- Meeting those expectations as cost effectively as possible;

- Balancing the public’s expectations with respect to that particular part of the public sector against the competing expectations for the use of scarce taxpayers funds;

- Managing the public’s finances so that the economy remains competitive and capable of sustaining a high standard of living and sustaining the ongoing provision of public goods and services; and,

- A perception by the public that the government is being managed in the overall interests of the general public and citizens, including public servants, are being treated fairly.

If the bargaining agent for employees is not able or willing to recognize the interests of the funder of the “enterprise”, it will generally elicit a response from the government that is analogous to that of employees when they

believe their voice is not effective – the employer's bargaining agent is less likely to come to the negotiating table with the motivation to engage in the give and take of bargaining, and is more likely to be willing to accept legislative solutions.

Genuine Desire to Avoid Legislative Intervention

None of the parties and key stakeholders I engaged with over the past year is happy with the legacy of the January 2002 legislation. And yet, looking back over how the negotiations in 2001 / 02 played out, one can ask rhetorically whether, given the position, strategies and tactics adopted by both sides in those negotiations, some kind of legislative intervention was not inevitable.

The legislated settlement in 2002 followed a pattern established over close to ten years. In the last round of local collective bargaining, in 1993, the provincial government brought in legislation ending strike action. In 1996, the provincial government passed the *Education and Health Collective Bargaining Assistance Act,* which ensured there would be no labour disruption during the imminent provincial election, and then drove a Transitional Collective Agreement. The settlement in 1998 required legislation to implement it after being rejected on the employers' side.

Bargaining to settlement is hard work, with tough internal politics to be managed on both sides. Unless both sides want to avoid legislative settlements except as an absolute last resort, it may be easier to negotiate, not with the objective of getting a settlement at the bargaining table, but with the objective of positioning most advantageously with respect to the expected legislated settlement.

Effective Governance

The ability of an organization to organize itself to develop a negotiable mandate, empower a bargaining team to sit down at the negotiating table, engage in the give and take of bargaining, and bring back a tentative agreement that it will try to sell to its membership is far from a trivial capacity. Furthermore, the governance that will be effective under one particular structure of collective bargaining may not be effective under another structure.

Public Accountability

As argued in Chapter II, bargaining with respect to collective agreements for teachers will inevitably occur in a highly political context. Unlike a private company, the success of which is judged in the economic marketplace, the public sector is judged largely in the political marketplace. If this judgment is going to provide the right incentives for behaviour in the public interest, it must be based on an accurate understanding of who is responsible for what. There must be sufficient transparency to allow the public to hold the appropriate agencies accountable for the adequacy of funding, the effectiveness of how that funding is utilized, and the outcomes of the collective bargaining processes.

Without that transparent accountability, it is likely to be more difficult for the political marketplace to act properly. The general public may be dissatisfied with the status quo, but be unclear about whom exactly to “blame” for that, what changes would improve the situation, and which candidates at election time are more likely to take things in a better direction. Without a properly acting political marketplace, there is likely to be less of an incentive for the

parties at the table to change positions, attitudes and behaviors in the direction of a more mature state of collective bargaining.

To a greater or lesser degree, these five key necessary conditions are not present under the current state of collective bargaining with respect to collective agreements for teachers. The effect of the absence of these conditions is cumulative and multiplicative. To take the most obvious example, the belief that teachers have lost their effective voice plays against a government perception that the BCTF does not substantively acknowledge the government's legitimate interests in financial affordability and cost effectiveness. But it is easy enough to see how failures in each of these key areas reinforce the failures in each of the others.

My belief that it is necessary to establish these conditions has driven my recommendations in the next chapters. While I believe my recommendations will assist in the establishment of a mature state of collective bargaining, it should be clear that changes in structure and process can only go so far. At root, there are attitudinal and behavioral changes that will be required. With respect to these, I can observe and advise, but ultimately the control rests in the hands of the parties themselves. I will return to a discussion of this in my final chapter.

IV. Where Will Issues Be Bargained?

The question of where issues should best be bargained is made complex by the fact that in British Columbia, as in most Canadian jurisdictions, we have a "co-governance" model – responsibility for funding, education policy and delivery is shared between the provincial government and local school boards. In broad general terms, funding and major policy direction is primarily the responsibility of the provincial government, while delivery sensitive to local needs is the responsibility of local school boards.

I believe this division of responsibilities has generally served British Columbia well, and I did not receive any submission or representation that suggested any significant change to this division of responsibilities.

In particular, I received no suggestion that the financing of schools be changed dramatically. While there were suggestions that local school boards be given back the ability to raise incremental taxes, there was no suggestion that we return to a situation where local school boards are primarily responsible for making the decision about how much to spend on public education. The provincial government should continue to be responsible for determining and allocating the bulk of funding for the school system.

In both my report last year and in my August options paper, I stressed how critical it was to maintain alignment between bargaining structure and the accountability for financing the K – 12 system. Given that the provincial government will continue to be responsible for providing virtually all of the funding for the K-12 system, I do not believe this will be possible unless items that are major cost drivers of the system are bargained at a provincial table.

On the other hand, the direct employer – employee relationship is between teachers and local school boards. Accordingly, it is logical to have issues that are primarily about that local employer – employee relationship negotiated at the local table.

My general recommendation therefore is to maintain the two-tier bargaining approach that we currently have had, at least on paper, in British Columbia since 1994. After consulting widely across the province, however, I have also concluded that it is advisable to revisit the split of issues between the provincial and local levels. In particular, more of the issues should be negotiated at the local level, and these should be done with greater "autonomy" from the provincial level than is currently the case.

There are two reasons for this conclusion. First of all, issues that are primarily "relational" are better negotiated "face to face" where the direct relation is – at the local level. While some of these issues will have a cost element associated with them, if they are not major cost drivers, there is, I believe, a compelling argument to let local autonomy take over.

Secondly, I believe one of the reasons why progress has been so slow at getting to a full province-wide agreement is that the provincial table has been overloaded with issues. Some sort of "triage" needs to be done so that the provincial table can focus on the major provincial items. The logical items to take off the provincial table are those where the "lowest common denominator problem" is the highest – relational issues which will have highly localized content.

If issues are to be negotiated at the local level, this revision of the split of issues needs to be real. In particular, the local tables need to have the autonomy to negotiate whatever agreement makes sense to the local board and the local teachers' association. Accordingly, anything within the division of issues defined

as local should not be subject to approval from the provincial bargaining agent on either side.

I recommend that the list of matters to be negotiated locally include the following:

- Non-cost matters (all matters now identified as local under the *Public Education Labour Relations Act* and in the current provincial / local split of issues);
- Unpaid leaves of absence;
- Leaves of absence paid or subsidized by the employer;
- Discipline and dismissal for misconduct;
- Evaluation;
- Posting, filling and assignment;
- Layoff, and recall;
- Supervision duties and duty free lunch.

All other matters would be negotiated provincially, unless the provincial table determines otherwise.

A few comments on this recommended split of issues are in order. First of all, some of the matters designated as “local” have cost implications. They are not, however, what I would label as major cost drivers. Furthermore, they are the types of issues more likely to require local variation to reflect local realities, and

they are more likely to directly affect the relationship between the local school board and its teachers.

Secondly, some of the matters which, by exclusion from local bargaining, are designated as provincial are not demonstrably major cost drivers. These items are, however, provisions common or generally common to all collective agreements regardless of industry, and items where the need for local differentiation appears to be low.

Recommendation One:

British Columbia should maintain a two-tier bargaining approach where the major cost items continue to be negotiated at the provincial table.

Recommendation Two:

The split of issues between the provincial and local tables should be revisited, and a wider range of issues – ones that are primarily "relational" - should be negotiated at the local level. Local agreements about local issues should not be subject to ratification by the provincial table.

V. Who Should Be the Bargaining Agent for the Employer?

The British Columbia Teachers Federation has been established under the *Public Education Labour Relations Act* (PELRA) as the bargaining agent for teachers. Had I recommended a return to the situation where all bargaining was done at the school district level, then there would be an argument for making the local teacher associations the certified bargaining agents. As I have recommended that major cost items continue to be bargained at the provincial level, the BCTF should continue to be the bargaining agent for teachers.

While the recommendation to leave the BCTF the bargaining agent for the teachers seems relatively straightforward, the case of the bargaining agent for employers is more complex. Once again, the challenge arises from the fact that the provincial government and local school boards share responsibility for governance and funding of the K – 12 system. There are, in essence, two parties to the negotiations on the employer side, and the challenge is how to allow the interests of those two parties to get properly represented.

In my August paper I suggested three possible approaches to this challenge:

i. an employers' bargaining agent explicitly controlled by the provincial government;
ii. an employers' bargaining agent explicitly controlled by the school boards;
iii. an employers' bargaining agent jointly accountable to both the provincial government and the school boards.

Either of the first two options would require some mechanism or contractual arrangement to incorporate the interests of the other employer party (school

boards or provincial government respectively) to the decision making of the bargaining agent. The third option requires the reconciliation of the two parties' interests within the deliberations of the bargaining agent itself.

The reality is that there is no perfectly "clean" alternative. On balance, I have concluded that the most practical approach is to stay with the model established in 1994 – where the employers' bargaining agent is accountable to a board with representatives of both local school boards and the provincial government. I make this recommendation mindful of the fact that the current agent – the British Columbia Public School Employers Association (BCPSEA) – has been criticized by the BCTF as well as some members of the trustee community. In my opinion, these criticisms are driven by three principal factors:

i. The fact that the past ten years of provincial bargaining have not been very successful in getting to settlements at the bargaining table;

ii. An opposition to the basic concept of bargaining at the provincial level;

iii. A lack of clarity about how BCPSEA's mandate is established, and who should be accountable for that mandate.

With regard to the first factor, while there are undoubtedly areas where BCPSEA as an organization could improve its performance, I feel strongly that it would be unfair to blame BCPSEA for the lack of bargaining success over the past ten years. 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.

With respect to the second factor, the BCTF has made it clear to me that it would prefer a return to local bargaining. I understand that position. Given how we have chosen to finance K – 12 education in this province, however, I do not believe negotiating the major cost items of teacher collective bargaining at local tables would be consistent with good public accountability. But the basic issue of local vs. provincial bargaining is a separate one from whether or not BCPSEA is the appropriate instrument for provincial bargaining.

The final factor – the lack of clarity about how BCPSEA's bargaining mandate is established and who should be accountable for it – should be addressed. For the most part this is an exercise in confirmation.

School boards are faced with the on-the-ground reality of employer-employee relations. They are responsible for school and district organization. They experience the local labour markets and the realities of recruiting and maintaining teachers in their districts. They are aware of the state of morale and expectations of their teachers. The trustee representatives on the BCPSEA Board advocate for a mandate that addresses all of those issues.

The provincial government will continue to provide virtually all of the funding for the K-12 system, and it is accountable to the public for the adequacy of the funding of that system. The provincial government also must be concerned about patterns of compensation in the overall public sector. Accordingly, it 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.

While I have recommended maintenance of both the BCTF and BCPSEA as the accredited bargaining agents for the employees and employers respectively, I have also recommended in the previous chapter that more of the issues be negotiated at the local level. I recommended that these negotiations should be conducted with greater "autonomy" from the provincial table. This will require, through amendments to the *PELRA* if necessary, delegation of authority to negotiate and sign agreements with respect to issues identified as local to the local teachers' associations and school boards.

Recommendation Three:

The bargaining agent for the employers should continue to be accountable to both the provincial government and school boards.

Recommendation Four:

The process and accountability for the development of the employers' mandate for negotiations through BCPSEA should be confirmed.

Recommendation Five:

The authority of school boards and local teacher' associations to negotiate agreements on local matters should be established as a delegated authority from the BCPSEA and the BCTF respectively. The Public Education Labour Relations Act should be amended accordingly, if necessary.

VI. How Will Impasses at the Bargaining Table be Resolved?

In my August options paper I identified three options for impasse resolution. Feedback and discussion subsequent to the release of that paper have led me to distinguish between two variants of one of these options, so I now present four:

i. Regular (relatively unrestricted) right to strike / lockout;

ii. Essential services designation as currently exists under legislation (i.e. “controlled” strike / lockout);

iii. Essential services designation which more specifically defines what is to be considered essential in the case of a strike or lockout;

iv. Arbitration.

In the August paper, I discussed the pros and cons of options i., ii. and iv., and rather than repeat that discussion refer the interested reader back to the discussion in that paper, reproduced in Appendix C. The focus here will be on briefly explaining option iii.

Discussion with a number of people over the past few months has focused on the lack of definition of what exactly is protected in the event of a strike or lockout under the existing essential services legislation. Under that legislation, it is up to the Labour Relations Board to determine, when required, what is essential in any particular strike / lockout situation. It is argued that this is a problem for two reasons. First of all, it is not clear, to some who believe essential service designation is the right thing to do, as to whether what “should” be essential is

actually protected or not. Secondly, it is argued by people, who may or may not have a position on the "rightness" of essential services designation, that the lack of certainty impaired in some way the rational calculation of the parties at the collective bargaining table in the 2001 / 02 negotiations, and made reaching agreement more difficult. The implication is that there would be an expectation that the same dysfunctional dynamic will play out again if the legislation remains as it is currently.

Accordingly, I deliberated on what, if one believes that the K – 12 system should be subject to essential services legislation, would be considered the "most essential" services provided by that system. That deliberation has led to the identification of two key elements:

i. The protection of students' ability to graduate, with the appropriate recognition of their academic achievements, from Grade 12 on time;

ii. The custodial role for young children (say, below the age of 12) and children with special needs.

So, option iii. above would entail modification to the appropriate legislation to provide this greater clarity.

Now, having identified this option, I believe it would be prudent to underline that I am not taking a position for or against it. In fact, as will become clear below, my recommendations steer clear of taking a position on this issue. I include it because my terms of reference did require me to identify options, and in reviewing discussion subsequent to the release of my August paper, this seemed to be one option that should be added for consideration.

In my report last year, in the questions I sent out to parties in March of this year,

and in my August options paper, I wrote about the difficulty of determining what instrument, mechanism or process parties should have available if there is an impasse at the bargaining table. The purpose of such an instrument is twofold:

- To compel the parties to reach agreement at the bargaining table (or at least to legitimately exhaust good faith bargaining at the bargaining table);

- To provide "balance" or "fairness" in the ultimate collective agreement that is established.

Achieving each of these two objectives is highly correlated. If the "instrument" does not promise balance and fairness, the party that perceives it will be favoured by bringing the instrument into play will have little motivation to make compromises at the bargaining table. Accordingly we will find that the norm in collective bargaining will be to **not** settle before triggering the impasse instrument – i.e. we will not reach the stage of mature collective bargaining defined in Chapter III.

In evaluating the options for impasse resolution, therefore, two key questions must be answered:

- Will the instrument / mechanism / process for impasse resolution motivate the parties to want to negotiate a settlement at the bargaining table? Stated alternatively, will the costs and / or uncertainties of triggering the impasse resolution be symmetrically undesirable for both parties?

- Will the instrument / mechanism / process fairly balance the interests of both parties? Referring back to the discussion of Chapter III, will the impasse resolution allow a real voice for employees while at the same time taking into account the interests of the employers and their funder?

To these two questions I will add a third:

- Is the impasse resolution instrument politically feasible?

One of the aphorisms that has stuck with me from my years as a public servant is: "Good public policy that cannot be implemented is not good public policy." On the surface this might seem trite and trivial, but it speaks to something very profound. We live in a democracy, and if some significant element of public policy – no matter how justifiable it may seem based on "first principles" and "good public policy" – is not acceptable to the broad public, it is unlikely to be implemented as intended. If, in the face of this, it is implemented anyway, at least *de jure*, political realities are such that it is likely to have *de facto* effects with unintended consequences.

The ability to resort to strike / lockouts in response to impasses at the bargaining table has generally been an effective way to motivate negotiation at the bargaining table in the private sector in North America. Strikes / lockouts impose costs on both parties that they wish to avoid. Furthermore, both parties have a shared interest in the ongoing viability of the enterprise, which provides a strong dynamic for a fair and balanced resolution of any impasse.

It is important to note, however, that governments have been willing to intervene in disputes in the private sector when the impacts of those disputes threaten to impose undue costs on third parties. Such intervention is most often motivated when the company or industry involved provides some good or service that is deemed to be "essential" and the company or industry is the sole or dominant provider of that good or service.

With respect to the acceptance of strikes / lockouts as an impasse resolution instrument within the public sector, there has been significant variation across

jurisdictions, across time and across different parts of the public sector. To some extent this reflects the political climate of the particular jurisdiction at a particular time. For example "right to work" states in the United States generally provide little opportunity for public sector workers to strike.

More significant in the Canadian context, however, is the extent to which the goods or services provided by a particular part of the public sector are deemed to be "essential," and the public has little or not alternative for the provision of that good or service. So, for example, fire and police services have rarely been afforded the right to strike in Canada. General government workers, on the other hand, have generally had a much broader right to strike.

The situation with respect to teachers in Canada falls between these two extremes, but shows significant variability across provinces. In some provinces the right to strike / lockout with respect to teacher collective bargaining is not differentiated under labour legislation. In some provinces, the right to strike / lockout is prohibited. And in some provinces, the right to strike / lockout is subject to essential services legislation. Clearly, there is no general pattern here that strongly indicates which way British Columbia should go. That determination will have to be informed by the particular realities in our own province.[4]

In my opinion, if a relatively unrestricted right to strike / lockout were implemented in British Columbia and **if** the dynamics of a strike / lockout were

[4] To get a broader perspective research was done that reviewed how other jurisdictions deal with the complex set of issues surrounding teacher collective bargaining. The jurisdictions reviewed were all Canadian provinces, selected states in the United States, the United Kingdom, New Zealand, New South Wales in Australia and Ireland. This research is summarized in Appendix D. The general conclusions I drew from this research were:

i. the set of issues we are grappling with in British Columbia are not unique;
ii. there is a wide variety of approaches in the English-speaking world;
iii. I could not identify any jurisdiction that had found "the" answer. There are complex tradeoffs involved, and there are costs and benefits to any particular approach;
iv. the systems that seemed to work best were those where a broader and deeper dialogue provided context for collective bargaining.

allowed to play out to their "natural" conclusion, this would bring about relatively quickly a maturing of the bargaining process. I believe that teachers would conclude that the strike option is a lever it would not be overly anxious to use, and this would be paralleled by an employer desire to avoid a strike. This in turn would have a powerful motivating effect on both sides' bargaining agents to organize their mandate development, bargaining tactics and ability to make compromises so that they are capable of getting to a deal. So, in theory, recommending a relatively unrestricted right to strike / lockout may look like "good public policy."

There was, however, a crucial qualifier in the previous paragraph – "**if** the dynamics of a strike / lockout were allowed to play out to their "natural" conclusion." To put more of a point to this, what would probably be required to precipitate the maturing of collective bargaining with respect to teacher collective agreements in British Columbia would be at least one full scale strike / lockout of significant duration. This requires us to return to my third question above: is this going to be politically feasible?

Reference was made in Chapters II and III above to the inability or unwillingness of governments in British Columbia to allow a full right to strike / lockout play itself out to its natural conclusion. Governments of both the "right" and the "left" have felt compelled to bring in legislation to end strikes, to prevent or restrict strikes, and to impose settlements. I take this as compelling evidence that, at least for the foreseeable future, the public in British Columbia will demand that governments prevent or significantly restrict disruptions in the K – 12 system.

If this is the case, it is time to face reality and accept that a resort to strikes / lockouts cannot be the primary mechanism for dealing with impasses at the bargaining table. I would suggest that 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.

The first step in facing up to reality is for the government to clarify, as a matter of public policy, what disruption, if any, in the K – 12 system it believes is in the public interest in the context of an impasse at the collective bargaining table. On paper, the government's policy is represented by the current legislative designation of education as an essential service. If this remains in place, if and when an impasse at the bargaining table results in a strike or a lockout, it will be up to the Labour Relations Board to determine essential services levels. This is likely to result in something less than every student receiving full school services as per normal every day. Is the government, acting on what it believes the public expects, willing to accept this? Or is the reality that such a ruling from the Labour Relations Board would precipitate legislation to restore full services? If the answer is the former, strike / lockouts may still have a role in resolving impasses at the bargaining table. If the answer is the latter, however, maintaining a pretense that there is a role for even limited strikes / lockouts is unlikely to promote the evolution of mature collective bargaining.

The second step in dealing with this reality is to provide an alternative mechanism. I return to one of my basic principles – teachers must have an **effective** voice. While there may be justification for restricting the right to strike / lockout, it would not be fair, nor would it be wise to use this to "hold the teachers hostage" so to speak. To the extent that the right to strike is *de jure* or *de facto* neutralized, there needs to be an alternative way for teachers' voices to be heard.

My recommendation in this regard is to establish a process with an independent third party who would be available to report to the public, mediate between the

parties, and if necessary arbitrate a settlement. This process would provide fairness and balance between teachers' and employers' (and their funder's) interests and also provide incentives for agreements to be reached at the bargaining table. How the process would do this is best explained by first outlining the process, followed by a discussion of what its effects would be.

The Proposed Collective Bargaining Process

Teacher collective agreements in British Columbia generally have duration of at least two years and expire on June 30. On the expectation that this will continue to be the norm, a process is defined with specific milestones and phases:

Phase 1 – April 1 to September 30

- "Normal" collective bargaining (no imposed conciliation, mediation) between the parties;
- Initiated on April 1 prior to expiration of previous agreement.

Phase 2 – October 1 to October 31

- If no agreement is reached by September 30, a Commissioner is appointed to investigate the status of negotiations;
- Negotiations continue through the month; parties may ask for assistance of the Commissioner by mutual consent;
- If no agreement is reached by October 31, the Commissioner will issue a public report outlining:
    - Issues at the table;
    - Which issues are resolved;
    - Which issues remain unresolved;
    - Position of the parties; and,
    - Financial and other implications of those positions.

Phase 3 – November 1 to January 31

- The Commissioner is appointed as a Mediator / Arbitrator;
- The Commissioner attempts to mediate an agreement between the parties.

Phase 4 – February 1 to February 28

- If no agreement is reached by January 31, the Mediator / Arbitrator gives each party two weeks to propose a final offer, encompassing all issues that either side has put on the table and not withdrawn;
- Negotiations can continue if both parties agree;
- If no agreement is reached by February 28, the Mediator / Arbitrator chooses one of the final offers as the "default contract."

Phase 5 – March 1 to March 15

- Parties may try to negotiate an alternative agreement. If they reach settlement by March 15, the alternative agreement becomes the contract;
- If no alternative settlement is reached, the "default contract" becomes the contract.

The independence, fairness and wisdom of the Commissioner / Mediator / Arbitrator are of fundamental importance to this process working out as intended. He / she should be an experienced mediator/arbitrator in the context of British Columbia labour relations. Ideally, he / she should be chosen by mutual consent of the parties. Failing this, both parties would forward three names to an impartial authority (e.g. Chief Justice of the Supreme Court of British Columbia) that would choose one of the six possibilities as the Commissioner / Mediator / Arbitrator.

The terms of reference for the arbitration, if necessary, must be established carefully to fairly balance the interests of both teachers and employers (and their funder). My recommendation would be along the following lines.

The arbitrator must have regard to the following:

(a) The need for terms and conditions of employment sufficiently attractive to ensure that high quality teachers continue to be attracted and retained in the British Columbia public school system; and
(b) The state of the economy in British Columbia and the state of finances of the Government of British Columbia.

This process has been designed to give effective voice to teachers on the presumption that their right to strike is explicitly or implicitly circumscribed. This voice will be "heard" through a combination of independent third party evaluation and transparent and objective presentation of positions to the public.

The process has also been designed to provide both sides to the negotiations incentives to engage in good faith negotiations. There is a risk / cost to both sides to not reaching agreement by the end of Phase 2 – that they will be "exposed" to the public for staying with unreasonable, unfair or irresponsible positions at the bargaining table. There is a risk / cost to both sides to not reaching an agreement by the end of Phase 3 – that they are put into a "roll of the dice" situation where they potentially lose control over the terms of the contract. There is a risk / cost to both sides in not putting forward a reasonable final offer in Phase 4 – that the arbitrator will chose the other side's offer because it is deemed to be more reasonable. Finally, the parties have one last chance to fashion an agreement that works best for both sides in Phase 5.

An additional aspect of the process recommended is that it addresses a theme I have been highlighting since my report last year. That is the need to enhance accountability to the public. I discussed above how in private sector collective bargaining the ultimate source of discipline comes from the economic marketplace, while in public sector collective bargaining the ultimate source of discipline comes from the political marketplace. It is ultimately the public that

must pass judgment on the adequacy of funding to the public school system, the extent to which teachers are being treated fairly and the extent to which teachers are behaving responsibly. By providing more transparency to the public through an objective source, the public would be better equipped to make that judgment. This, in turn, should motivate both sides at the bargaining table to find the compromises necessary to get to negotiated agreements.

The Right to Strike versus Arbitration

I recommend the process outlined above mindful of the fact that the BCTF has a strong position about the right to strike, and the government has similarly strong concerns about putting government expenditures in the hands of an "unaccountable third party" (i.e. arbitrator). I expressed above my skepticism about the political feasibility of a *de facto* as opposed to *de jure* right to strike for teachers in British Columbia at this point in time. I also made clear my belief that, in the absence of a right to strike, teachers must be provided with an alternative way to have an effective voice, and I am not aware of any alternative to the combination of public transparency and ultimately arbitration, if necessary, proposed here to achieve that.

If I am wrong in my judgment about the feasibility of a right to strike, the arbitration at the end would not be necessary. I would still, however, recommend maintaining the basic process proposed here. The only modification is that the final offer selection at the end of Phase 4 would be a "recommended contract." After that recommendation the parties would remain free to pursue their options unencumbered by arbitration.

Recommendation Six:

The provincial government should clarify, as a matter of public policy, what level of disruption, if any, in the K – 12 system it believes is in the public interest in the context of an impasse at the collective bargaining table.

Recommendation Seven:

If the right to strike practically does not exist, teachers must have an alternative mechanism to provide them with effective voice.

Recommendation Eight:

A well-defined process for collective bargaining should be established. This process would have prescribed steps and consequences if a collective agreement has not been reached by particular dates. The process would establish a role for an independent Commissioner to report to the public, mediate between the parties and arbitrate a settlement if necessary.

VII. What Is To Be Bargained? –The Scope of Bargaining

With the possible exception of the issues surrounding impasse resolution and the right to strike, the most contentious issue in the context of bargaining for collective agreements for teachers in British Columbia is the scope issue – what can be negotiated at the collective bargaining table.

Prior to 1987, teachers had a limited right to collective bargaining which was restricted to salaries and bonuses. Employee working conditions and policies concerning how services were to be delivered were generally a matter of local school board policy. Some school boards voluntarily negotiated "Working and Learning Agreements" with local teacher associations.

In 1987, collective bargaining rights for teachers were significantly expanded – both in terms of obtaining the right to strike and in the scope of what could be bargained. In the rounds of local bargaining from 1988 through 1993, many districts negotiated agreements that contained language concerning class size and composition. In 1998 the BCTF and the government negotiated language in the provincial agreement around non-enrolling ratios as well as K – 3 class sizes. The agreement on K – 3 class sizes was "outside" the collective agreement and expired in 2001. Legislation was passed in 2002 and 2004 restricting the ability to negotiate:

- Class size and composition;
- Case loads or teaching loads;
- Staffing levels or ratios, or the number of teachers employed by the board;
- Assignment of students to a class, course or program.

The provisions that provided for such limits or restrictions were deleted from the existing collective agreement. In their place, district-wide average class size limits and individual class size limits were placed in the *School Act.*

The BCTF believes this legislative restriction on the scope of bargaining is unfair and should be reversed. Opinions on the employer side are more varied, but on balance seem to favour excluding class size, composition and staffing ratios from the scope of bargaining. I will try to briefly summarize the arguments I have heard from both sides of this question.

The BCTF argues that class size, composition and staffing ratios are clearly working condition issues. Other things being equal, a teacher's workload and stress level will be higher the larger the size of the classes he / she teaches, the greater the proportion of children with special needs, and the less supplemental resources (e.g. school librarians, counselors, psychologists, etc.) are available to assist in that teaching. As working condition issues, the BCTF feels these should be the subject of collective bargaining.[5]

Those that argue in favour of limiting the ability to negotiate these issues in collective agreements do not generally dispute that there are issues concerning teacher workloads and stress levels here. Rather, their concern is that collective agreements are not the best place to deal with these issues. School organization decisions require professional judgment amongst colleagues. This decision making requires consideration of intangible as well as tangible criteria. When rules around class size and composition become overly rigid as, it is argued, is inevitable in the context of a collective agreement, it is not possible to fully take into account all of these criteria. Furthermore, the refereeing of these decisions

[5] A supplemental argument that is almost invariably made is that working conditions are inseparable from learning conditions – smaller class sizes and additional teaching resources are good for students as well. While I understand the political attractiveness of this argument, I would suggest that, in terms of arguing for what should be within the scope of collective bargaining, the BCTF is on firmer ground when it focuses on working conditions.

through collective agreements impairs the collegiality that is necessary for good schools.

The costs of meeting rigid class size and composition rules may be quite high and there may be more effective uses for scarce educational funding. Finally, it is precisely because these issues involve learning conditions that affect a broader constituency than the parties at the bargaining table that they are more properly dealt with as "educational policy" issues for which the provincial government must be ultimately responsible to the public.

The BCTF's counter to these arguments is that, while there are generally shared professional interests between the classroom teacher and school and district administration, there still remains an asymmetry of power between management and the individual teacher. Teachers must have some ability to influence the direction of resources to the classroom, as opposed to administration, and to protect individual teachers against arbitrary and unfair treatment.

I hope I have been fair to both sides in the quick summary of their arguments above. I also hope I have conveyed to the reader how difficult a set of issues this is to referee – I find legitimate principles in the arguments on both sides. Is it possible to find the "fair middle ground" between them?

A major challenge in finding the "fair middle ground" here is what I would describe as the current raw emotional state of teachers on this set of issues. I think it is important to understand from where this has come.

In my report last year, I suggested that teaching is a "moral profession that is a calling". Committed teachers are passionate about what they do.
Teaching has become a more challenging profession over the past quarter century or so. There are two key reasons for this. First of all, educational

research and philosophy has ingrained into the committed teacher the value of a much more individualized approach to students. Students in the same class have vastly different aptitudes, interests and learning styles. The committed teacher feels compelled to provide as much of this individualization as possible. This is more of a challenge than teaching the whole class at the same speed and with the same style.

Secondly, the composition of the typical class has changed dramatically. As a society we have made the decision to integrate all students as fully as possible into the school and classroom. We have sought to, and have been very successful at, retaining a greater share of students in the system all the way through to Grade 12.[6] In the major urban school districts, children for whom English is a second language make up a large and growing percentage of the student population. The system is becoming more successful at maintaining the participation of aboriginal children.

The recognition of the value of providing more individualized instruction and the greater heterogeneity of the student body have made teaching more challenging for the committed teacher.

For the classroom teacher, collective agreement language around class size, class composition and staffing ratios was how these challenges were being addressed. Furthermore, I would posit that this language represented, symbolically, recognition by society that teaching is a respected and challenging profession.

[6] As I was finalizing this report the Ministry of Education issued a press release reporting the secondary school completion rate (the percentage of students graduating from high school within six years of entering Grade 8 for the first time.) In the mid-1960's this rate was 47%; ten years ago this rate was 68%; in 2003/04 it was 79%. This is remarkable progress, but the point here is that it has entailed a dramatic change in the composition of the "typical" high school class.

The removal by legislation of the class size, class composition and staffing ratio provisions from the collective agreement has been taken by many teachers as a devaluation of their role in society – a sign of disrespect.

There is a rationale for the legislation of 2002 and 2004 that has to do with the fiscal capacity of a province that has not been doing very well for quite some time (as per my discussion in Chapter II) and legitimate differences over how to spend scarce taxpayer dollars most cost effectively to achieve the best overall educational results. Given the tone of the relationship between the BCTF and the government, these balancing arguments are likely to have largely been lost on the typical classroom teacher.

The unresolved issues surrounding class size, composition and staffing ratios will have to be dealt with before a lasting, mature collective bargaining relationship can be achieved. Notwithstanding this, in my report last year I recommended "parking" the scope of bargaining issue in the context of my suggested terms of reference for the commission. It is worth repeating what I said back then:

> *"Nonetheless, I have concluded that now is not the time to tackle this issue head on. There are three related reasons why I have come to this conclusion.*
>
> *First of all, I am concerned that even the more limited terms of reference I am recommending will pose a significant challenge for the commission. Directing us toward a better structure, set of processes and dispute settlement is no small task. I believe adding scope issues to this list could well be the proverbial straw on the camel's back.*
>
> *Secondly, I have concluded that the wide gap in views amongst the parties on scope issues – i.e. what is a legitimate issue concerning working conditions as opposed to an issue which properly belongs in the*

domain of "education policy" – is more a symptom than a cause of the unhealthy or immature relationships amongst the parties. If we can foster healthier, mature relationships, I believe the gap will begin to narrow. Hence, I believe the priority should be on fixing structures and process, because that is the first step in improving the relationships.

Thirdly, history has shown that, over time, the parties find a way to discuss and negotiate issues, regardless of whether legislation or regulation technically say that they should or should not. Better, I think, to let this evolve naturally than to have a potentially divisive fight right now, and then try to constrain negotiations within the Procrustean bed that results."

A former colleague of mine used to say "I reserve the right to be wiser today than I was yesterday." After having spent close to a year engaging with the parties and other key stakeholders, meeting with teachers in their schools, being buttonholed by teachers at weekend parties, and so on, I have concluded that steps must be taken to find the "fair middle ground" sooner, rather than later.

There are legitimate differences of opinion about where the most constructive table to discuss / negotiate class size, class composition and staffing ratios is. I can see the legitimate interests of teachers in their working conditions. On the other hand, I can understand the concerns of those who believe that collective agreements may not be the most efficient and effective way to deal with complex educational and professional issues. I frankly was unable to bridge the divide between these two camps in my engagement with them over the past year, and I am afraid that if I were to recommend something at either end of the spectrum it would not encourage a maturing of the relationship.

If I were to recommend a return to full scope bargaining at this stage, I fear that both sides would approach negotiations from hardened positions which would

significantly reduce the probability of mature collective bargaining emerging. We could be sentencing ourselves to a repeat of the past dozen years.

On the other hand, I do not believe telling the teachers, in essence, “trust us to deal with your working conditions in a fair way” is going to give teachers a feeling of sufficient voice on one of their most important issues.

What I recommend in light of this is that the government establishes policy discussions, parallel to the bargaining table. The purpose of this policy forum would be to seek agreement on cost effective approaches to improving working and learning conditions in British Columbia’s public schools. The higher level objective of these discussions would be to ensure that B.C.’s public school system continues to be one of the best in the world and that the system can continue to attract and maintain a high quality, highly motivated and effective teaching force.

The Ministry of Education should play the leading role for the provincial government in these discussions. The employers’ side should have representation from the school districts, both at the trustee and administrative level. Both the employers’ and teachers’ representatives should be drawn from individuals who are not involved in the collective bargaining process. Teachers’ representatives should make up roughly fifty percent of the participants.

The discussions should be collaborative and interest-based, and should be facilitated by an individual acceptable to both sides. Ideally, this individual would have a thorough understanding of education policy, operational reality and labour relations. He / she must be a skilled facilitator, but must also be capable and comfortable with speaking some uncomfortable truths.

It is fundamental that these discussions are seen by teachers as “real” – I return again to my theme of voice. The discussions need to be seen as seriously

directed at dealing with substantive working condition issues, and not just an exercise in "talking out the clock." Accordingly, I recommend a key feature of the terms of reference for the facilitator be that he / she must issue a report by June 30, 2006, which:

i. Evaluates the efficacy of the policy discussion approach to dealing with teachers' working conditions;

ii. Reports on whether both sides participated in the discussions in "good faith," trying to use the discussions for the intended purpose; and,

iii. In light of i. and ii., recommends what option(s) to deal with working and learning conditions should be pursued on an ongoing basis.

I would expect the facilitator's report would be informed by the behavior of the parties in these discussions. I am hoping to engender an atmosphere where maturity has its rewards, not the opposite. The terms of reference for the facilitator should motivate both sides to try to make this work.

A final comment is in order here. I have stated that this process should be collaborative and interest-based. I do so knowing that the concept of interest-based discussions or negotiations will be greeted, at least initially, with cynicism in some quarters. My recommendation was inspired in part by the Letter of Agreement reached earlier this year by the Nurses Bargaining Association and the Health Employers Association in which it was agreed to establish policy issue discussions. It may be useful for the parties to teachers' collective bargaining to sit down with the parties to nurses' collective bargaining to explore why the latter saw benefit in entering into collaborative and interest-based discussions.

Recommendation Nine:

Policy discussions, parallel to the collective bargaining table, be established to seek agreement on cost effective approaches to improving working and learning conditions in British Columbia's public schools.

These discussions should be facilitated by an individual acceptable to both sides. The facilitator would issue a report by June 30, 2006, which:

i. *Evaluates the efficacy of the policy discussion approach in dealing with teachers' working conditions;*

ii. *Reports on whether both sides participated in the discussions in "good faith," trying to use the discussions for the intended purpose; and,*

iii. *In light of i. and ii., recommends what option(s) to deal with working and learning conditions should be pursued on an ongoing basis.*

VIII. Transition

I recommended above in Chapter IV that major cost drivers continue to be negotiated at the provincial table, but that the range of issues which will be negotiated at the local level be expanded. In order for this to work effectively, attention needs to be given to three "transitional matters."

The Need for a Real First Provincial Agreement

While negotiations have happened at the provincial level since 1994, there is not a "real" provincial agreement in existence. In reality, what we have is an umbrella agreement that grandparented the existing seventy-five (now sixty) local agreements with:

- Salary adjustments that have been across-the-board increases, without addressing any of the intra-regional anomalies that have developed;

- Limited agreement on some provincial language;

- Significantly outdated language in many of the local agreements because of the difficulty in negotiating new language on a province-wide basis.[7]

The result is that, moving from school district to school district, there are differences in:

[7] It should be noted, however, that there has been some success under the Mid-Contract Modification process.

- Salaries for teachers with the same qualifications;
- The employer's share of benefit premiums;
- Coverage of extended health and dental plans;
- Benefits for part time teachers; and,
- Preparation and instruction time.

These differences represented different tradeoffs that local teacher associations and school boards made in the late 1980s and early 1990s. So, for example, some local teacher associations may have accepted lower salary scales than neighboring districts in exchange for smaller class sizes, different language on class composition, different preparation or instruction times, or other benefits. In the context of local bargaining, such differences were equitable in that they represented local arrangements agreed to locally.

With the passage of twelve years, with changes in how provincial funding is allocated, and with changes to the content of the collective agreement around class size, composition and enrollment ratios, the underlying equity of these differences is no longer self-evident. Districts where teachers agreed to lower salaries in exchange for other considerations may have seen those other considerations disappear in whole or in part. Districts where teachers receive higher salaries than in neighboring districts were initially based on a local trade off within that district. Now, however, those districts are effectively "subsidized" by other districts because the provincial funding formula takes into account average salaries district-by-district.

In terms of basic equity, it seems to me that, when the provincial government is funding virtually all of the K – 12 system, two teachers teaching in different

districts with the same qualifications and seniority should have the same salary, benefits and working conditions, except as is justified by local labour market conditions.[8]

In addition to this equity argument, there is a practical reason for wanting more uniform treatment of teachers across the province. Negotiations are about tradeoffs – for example, there may be a logic to trading something in Category A for something in Category B. If, however, there are currently 60 different versions of Category A and 60 different versions of Category B, the internal politics of making these trade offs become very much more difficult for the bargaining agents to manage. The risk is that the easiest position for the bargaining agent to manage, in terms of its internal politics, is to adopt a "no concessions" approach. This makes progress in collective bargaining very difficult, particularly in a period of fiscal constraint such as we have experienced in British Columbia for most of the past ten years.

I believe achieving a first "real" provincial agreement is important to putting the parties into a position where mature collective bargaining is more probable. Accordingly, I recommend that an Industrial Inquiry Commissioner[9] be appointed to supervise the establishment of a first "notional provincial agreement."

The Commissioner would first attempt to mediate a negotiated agreement amongst the parties. If, however, agreement was not reached by December 31, 2005, the Commissioner would arbitrate this notional contract by March 31, 2006. This contract would encompass:

[8] So, for example, salaries in the North can be somewhat higher because of the somewhat greater challenge in attracting and retaining teachers.

[9] This Industrial Inquiry Commissioner should not be confused with the Commissioner proposed in Chapter VI. These are separate processes. The Industrial Inquiry Commissioner proposed in this Chapter is to oversee the establishment of a first true province-wide agreement. The Commissioner proposed in Chapter VI would be appointed in subsequent rounds of negotiations if an agreement had not been reached by September 30 in the year of negotiations.

- A regional salary grid which removes anomalies except as necessary to reflect local labour market conditions;

- A common approach to benefits;[10]

- Benefits for part time teachers;

- Preparation and instruction time.

I should repeat what I stated in my August options paper – this will not be a pain-free process. The consolidation process will see relative improvements in some areas of the typical teacher's terms and conditions of employment, and the opposite in other areas.

To make this as fair as possible, I recommend the following:

i. The process have a notional net cost of $30 million. That is, the notional contract would require an additional $30 million;[11]

ii. No teacher will see a reduction in his or her salary from the process. Salaries above the regional grid will be "red circled" until the regional grid catches up to them;

iii. The notional contract would be "actualized" by using the first dollars of any negotiated salary increase to "level up" the salaries of teachers currently paid below the regional salary grid established in the process. Once all teachers have been leveled up in this way, negotiated salary

[10] I would suggest an openness to the flexible benefit approach whereby employees have some degree of flexibility to choose amongst how a given "benefit allowance" could be "spent" amongst various components of medical and dental benefits.

[11] $30 million represents the estimated cost of developing a regional salary grid which, in general, levels low salary districts up to the salary levels of high salary districts within the particular region.

increases could revert to being across-the-board, except as required to differentiate for emergent labour market issues;

iv. Any “extraordinary” retirement benefit provided to teachers in a district should be phased out over a period of five years. Whatever justification there may have been for such extraordinary benefits twelve to sixteen years ago, it is difficult to see how their equity can be defended under existing provincial arrangements. However, individuals near retirement age in those districts will generally already have planned around the expectation of receiving those benefits, and it would be unfair to precipitously take them away without warning. Accordingly, I recommend this phase out.

The discussion above has focused on the major cost items. Common language, where it does not already exist, will need to be established in those areas not designated as local matters.

Transition Issues for Local Negotiations

There will be no need to meld contract language for local matters. In fact, there will already be a “default agreement” for local matters which will reflect common language agreed to at the provincial table since 1994, or the language inherited from the last local agreements established prior to 1994. Some of the latter is admittedly somewhat stale-dated, and presumably the highest priority on resumption of local bargaining will be modernizing this language.

While the establishment of these default local agreements should be relatively straightforward, it probably makes sense for the Commissioner to supervise this process as well.

There are two transition issues with respect to local agreements on which I will make recommendations.

First of all, I believe it would be helpful if provincial and local agreements are negotiated in different years. There are two interrelated reasons for this. The first is that the logic of the separation of issues is that there are some issues that are best dealt with at the local level, and the probability of them being dealt with at the local level is greater if they do not get mixed up with the issues at the provincial table. Separating the negotiations in time is one way of minimizing the chances of this mixing happening. The second reason is that while local matters will be agreed to at the local level, it would make sense from an efficiency point of view if local school administrations and local teacher associations made use of the collective bargaining expertise and support that has been built up in BCPSEA and BCTF respectively. This support is more likely to be available if BCPSEA and BCTF are not involved in provincial negotiations at the time.

Accordingly, I recommend that, as a transitional measure, the expiry date of the local agreements be established either one year earlier or one year later, whichever is more practical in the circumstances, than the provincial agreement. Thereafter, the parties should endeavor to keep the expiry dates staggered in this way.

The second recommendation with respect to local negotiations was foreshadowed in the first. It has been almost twelve years since local school boards were responsible for their own negotiations. The collective bargaining "infrastructure" that existed at the individual board level no longer exists. While the range of issues to be negotiated at the local table is significantly less than between 1988 – 93, due consideration to how these local negotiations will be supported is necessary. As suggested above, support from BCPSEA should be a core part of the infrastructure needed. In addition, I recommend that local school boards look at the possibility of cooperating on a regional basis, as some

of them already do with respect to CUPE negotiations, in terms of efficiently developing the capacity for negotiations about local matters.

Recommendation Ten:

An Industrial Inquiry Commissioner be appointed to supervise the establishment of a first "real" provincial agreement. The Commissioner's mandate would be to establish a "notional provincial agreement" by March 31, 2006.

Teachers would be protected from any reduction in pay levels and any unfair change in other benefits.

This notional provincial agreement would be actualized when budgetary resources become available.

Recommendation Eleven:

The expiry date of local agreements be established either one year earlier or one year later, whichever is more practical in the circumstances, than the provincial agreement. Thereafter, the parties should endeavor to keep the expiry dates staggered in this way.

Recommendation Twelve:

Local school boards look at the possibility of cooperating on a regional basis, as some of them already do with respect to CUPE negotiations, in terms of efficiently developing the capacity for negotiations about local matters.

IX. Concluding Comments – The Need for Dialogue

I have provided a set of recommendations that may strike some as a little heavy on process. I have recommended a highly defined process for collective bargaining with prescribed steps and consequences if a collective agreement has not been reached by particular dates. I have recommended mechanisms to provide much greater transparency to the public. I have recommended a policy discussion process, with facilitation and a key reporting date. I have recommended the appointment of an Industrial Inquiry Commissioner to oversee the establishment of a first real provincial agreement.

There is one fundamental reason for this heavy reliance on process. In my opinion, the parties to bargaining for collective agreements for teachers in British Columbia are a long way from being ready to engage in what I have called mature collective bargaining. Accordingly, I have designed processes which I believe will encourage and motivate both sides to develop the capacity and the willingness to see the interests of the other side and to make the principled compromises necessary to get to good collective agreements at the table.

While I have concluded that the conventional impasse resolution mechanism – allowing strikes or lockouts to play out to their natural conclusion – is not likely politically feasible in this province at this point in time, I believe the consequences I have prescribed for failure to reach agreement are fairly and symmetrically adverse to the party(ies) unable or unwilling to engage in "good faith bargaining."

I can only go so far, however, with recommendations. Even if fully implemented, these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioral change on both sides.

The current state of the relationship between the BCTF and the government is, in something of an understatement, not very healthy. It would be a mistake to think this 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.

I am not interested in passing judgment on who is more responsible for the state of the relationship – "who started it?" and "who is keeping it going?" I am more concerned about who will take what steps to improve the situation.

There is a serious need for a real dialogue between teachers and the employer group (i.e. government, trustees, and school administrators). By "real dialogue" I mean a genuine attempt to arrive at mutual understandings. To put more point on this, I borrow a table from Yankelovich[12] that contrasts debate with dialogue:

DEBATE VERSUS DIALOGUE

Debate	*Dialogue*
Assuming that there is a right answer and you have it	Assuming that many people have pieces of the answer and that together they can craft a solution
Combative participants attempt to prove the other side wrong	Collaborative participants work together toward common understanding

[12] Daniel Yankelovich, The Magic of Dialogue: Transforming Conflict Into Cooperation (New York, Simon & Schuster, 1999), pp. 39 – 40.

About winning	About exploring common ground
Listening to find flaws and make counterarguments	Listening to understand, find meaning and agreement
Defending assumptions as truth	Revealing assumptions for reevaluation
Critiquing the other side's position	Reexamining all positions
Defending one's own views against those of others	Admitting that others' thinking can improve on one's own
Searching for flaws and weaknesses in other positions	Searching for strengths and value in others' positions
Seeking a conclusion or vote that ratifies your position	Discovering new options, not seeking closure

We are currently suffering from too much debate and not enough dialogue.

In order for the type of dialogue that I am advocating to occur, there will need to be some serious soul searching on both sides.

I would suggest that the British Columbia Teachers Federation should be prepared to engage in a self-critical review of the history of the past sixteen years. What has been its contribution to the current state of affairs? If my recommendations are accepted, it is time for the BCTF to accept the reality that major cost items will be negotiated at a provincial table. This, in turn, might suggest that the BCTF review how it organizes itself around provincial negotiations – does it have an organization and decision making process that really allows it to engage in mature collective bargaining? Finally, I would

suggest that the BCTF needs to develop the capacity, as part of its regular strategic planning process, to balance its admirable passion for education and defending the rights of teachers with an understanding of the competing demands for scarce taxpayer funds.

With respect to the employers' side, and government in particular, I would first and foremost ask for it to acknowledge the fundamental importance of voice, as I have defined it here, for teachers. There needs to be a conscious, substantive acknowledgement of the importance of the teaching profession, and the fact that it has become more challenging to be a teacher over the past twenty years as society's expectations have increased. I also think it would be helpful to acknowledge that, however compelling the argument based on cost-effectiveness and fiscal reality, the legislated changes to the teacher collective agreement in 2002 and 2004 left teachers feeling bruised. Finally, it would be helpful to signal that teachers will share in the benefits if and when the Province's finances are substantially on a stronger footing.

In Chapter II I talked about the disappointing economic performance of British Columbia over the past quarter century. This disappointing performance reflected two factors:

i. Adverse global trends in the real prices for our major exports;

ii. An inability to increase British Columbia's wealth generating capacity in line with the increase in its population.

There are preliminary indications on both of these fronts that the next quarter century could prove to be less adverse to British Columbia than the previous one.

British Columbia's public education system, more broadly including the post-secondary as well as the K – 12 system, is in a position to be a significant contributor to, and a significant beneficiary of, an improved economic performance in British Columbia.

It has become a cliché, but nonetheless true, to state that British Columbia can no longer prosper solely on the basis of a rich endowment of natural resources. A high standard of living can only be maintained if it is based on knowledge and ideas. The resource industries themselves are pointing the way here. The British Columbia interior lumber industry, for example, is a high-tech, high wage, globally competitive industry. It has no alternative – it cannot compete against lower wages elsewhere in the world.

Knowledge and idea-based industries locate, stay and grow where there is a first class education system – the system is necessary to produce the employees these industries need. In addition, highly-skilled and highly creative people are mobile and will chose to live where the quality of life is high. A high quality of life includes an opportunity for one's children to receive an affordable, first-rate education, and the benefits provided by an informed, engaged citizenry, both attributes of jurisdictions with good public education systems.

The causation from a strong public education system to improved economic performance is clear. But the causation goes the other way as well. It is so much easier for a society to maintain its commitment to adequately funding the public education system and adequately compensating its educators when it is doing well economically. We have the basis for a classic "virtuous circle" where stronger economic performance allows a jurisdiction to invest in more education which in turn leads to stronger economic performance.

Creating and sustaining this virtuous circle will require a commitment by society to invest in a first rate education system, a commitment from educators to use

that investment in the most cost effective way possible, and serious, sustained dialogue. The sooner we start on that, the better.

Appendix A

Terms of Reference for the Commission

APPENDIX A - Terms of Reference for the Commission

The Commission will:

(1) Inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;

(2) Review structures, practices and procedures used for teacher collective bargaining in other jurisdictions within Canada and elsewhere in the world;

(3) Propose options for improved teacher collective bargaining in British Columbia. The elements of each option must include:

(a) The definition of the bargaining relationship:

(i) The geographic definition of bargaining agents (i.e. provincial, regional or local);

(ii) Governance (i.e. who is at the table? how do they bargain? who sets the bargaining mandate?) of the employer bargaining agent(s); and,

(iii) Whether there should be different "tiers" of bargaining (e.g. some issues at the provincial level, some issues at the regional or local levels);

(b) The school financing and accountability system that would be aligned with the proposed structure for the employer bargaining agent in any single option;

(c) The process for facilitating the achievement of a negotiated collective agreement at the bargaining table;

(d) The procedure(s) to be followed in the event of an impasse at the bargaining table, including facilitative measures such as mediation and a mechanism for objective reporting to the public on the issues behind the impasse;

(e) The constraints, if any, to be placed on the right to strike or lockout in the event of an impasse at the bargaining table; and,

(f) What, if any, dispute settlement mechanism would be prescribed as an alternative to strike/lockouts.

In considering and proposing options, the Commission must balance the following factors:

(1) The public's interest in minimizing disruptions in the provision of education programs to students;

(2) The right of employees to be fairly compensated for their services;

(3) The value of maintaining and enhancing a positive atmosphere at all levels of the school system (i.e. classroom, school, school district and provincial);

(4) The value of a well-functioning collective bargaining system with appropriate incentives and pressures to encourage settlements at the bargaining table;

(5) The value of effective, efficient and expeditious collective bargaining and dispute settlement;

(6) The views of school boards, the BCTF, the employers association, the provincial government and other key stakeholders in the public education system; and,

(7) Any other factor that the commission considers relevant or that the Minister may direct.

Appendix B

List of Organizations that Participated in Consultations

APPENDIX B – List of Organizations that Participated in Consultations

The following organizations met with and / or provided written submissions to the Commission:

Provincial Organizations

British Columbia Public School Employers' Association
British Columbia School Trustees Association
British Columbia Teachers' Federation
British Columbia Confederation of Parent Advisory Councils
British Columbia Principals' and Vice-Principals' Association
British Columbia School District Secretary-Treasurers' Association
British Columbia School Superintendents' Association

School Boards

Alberni
Bulkley Valley
Campbell River
Central Okanagan
Comox Valley
Cowichan Valley
Delta
Kamloops/Thompson
Kootenay Lake
Maple Ridge – Pitt Meadows
Nanaimo – Ladysmith
Nechako Lakes
North Okanagan – Shuswap
North Vancouver
Peace River North

Prince George
Quesnel
Saanich
Surrey
Vancouver
West Vancouver

Local Teachers' Associations

Central Okanagan
Comox District
Coquitlam
Cowichan District
Creston Valley
Delta
Gulf Islands
Maple Ridge
Nanaimo District
Nelson District
North Okanagan – Shuswap
North Vancouver
Okanangan Skaha
Peace River North
Peace River South
Prince George District
Prince Rupert District
Terrace District
Queen Charlotte District
Vancouver Elementary School
Vancouver Secondary
Vernon
West Vancouver

Windermere

Other

Central Okanagan Principals and Vice Principals

Comox Valley District Parent Advisory Council

Comox Valley District Principals and Vice-Principals

Kootenay Lake District Principals and Vice-Principals

Prince George Principals and Vice-Principals

Society for the Advancement of Excellence in Education

Appendix C

Discussion Paper: Options for Teacher – Employer Collective Bargaining

INTRODUCTION

The purpose of this paper is to promote discussion about the options for teacher-employer collective bargaining structures and processes in British Columbia. This is part of the process I am using to engage with the parties to teacher collective bargaining to inform my final report.

The range of issues I have to deal with is very broad. The elements of collective bargaining structures and processes interact in complex ways. In order to allow discussion of options to be manageable, I have identified five key dimensions, to be discussed separately, which define the salient elements around which choices have to be made. The five dimensions, phrased as questions are:

- Where will issues be bargained?
- Who will be the bargaining agent for the employer?
- How will impasses at the bargaining table be resolved?
- What should be the scope of bargaining?
- What transition measures are required?

Considering these elements separately is necessary to make the issues at all tractable for discussion. Notwithstanding this, it is essential to keep in mind that each element interacts with all of the others in defining the "whole."

I have tried to delineate, along the five key dimensions, what I believe are the range of feasible options. I have tried to discuss the issues entailed as objectively as possible. I stress that I still have an open mind about key issues and, accordingly, I encourage the parties to take at face value the label "discussion paper" and continue their dialogue with me.

The next five sections of the paper consider each of the dimensions in turn.

I. WHERE WILL ISSUES BE BARGAINED/

From 1988 until 1993 teacher collective bargaining was done at the local level between the local teachers' association and the local school board. In 1994 the provincial government implemented a new bargaining structure which was to have two tiers of bargaining to it. Provincial items would be bargained between the bargaining agent for teachers and a bargaining agent for public school employers, both recognized by statute, while other items could still be bargained locally as before. In practice, the split of issues decided upon resulted in virtually all significant issues being designated as provincial items. The decision to move to provincial bargaining was a controversial one, and there remain proponents of returning all negotiations to the local level. There also have been other proposals of where bargaining should occur. I have identified five options for discussion.

If we are going to made a decision about where bargaining should happen, it is important to give due consideration to what would be necessary in order for that structure to be successful. Accordingly, under each option I will not only briefly discuss that options strengths and weaknesses, but also what, in my opinion, would be minimally necessary for that particular option to be capable of leading to effective collective bargaining. In this section I will concentrate on this question from the perspective of the dynamics of the bargaining table. In the next section I will look at the question from another perspective – the need to have an alignment between a particular bargaining structure and the accountability for financing the K-12 system.

1. All Issues Are Negotiated at a Common Provincial Table

All issues being negotiated at a provincial table would result in common standards across the province. This should contribute to teachers being treated

equally, regardless of which school district they work in. Common provisions may serve to enhance teacher mobility from district to district which could have benefits for both teachers wishing to move and districts looking to hire experienced teachers.

There are efficiencies resulting from having only one negotiating table and given the provincial nature of this form of bargaining there is a greater link with initiatives of the provincial government in terms of provincial policy and funding decisions.

On the other hand, one provincial agreement for everything would limit the ability to tailor contracts to local differences and needs. The "lowest common denominator problem" or the potential generalization of terms and conditions for all bargaining unit members poses challenges to both sides in being able to make a deal. There are issues that may be of particular significance in some, but not most districts or locals. Collective bargaining is inherently about making difficult tradeoffs. How does an organization find the political ability to make such tradeoffs in the context of this type of heterogeneity? How does it overcome the tendency to either neglect all such issues or allow them to become "showstoppers"?

The discussion in the previous paragraph points to the key consideration in making it possible to get to a collective agreement under this option – both bargaining teams must be able to come to the table with the ability and willingness to bargain. This may seem like a trite statement, but it is far from it. The ability of an organization to organize itself to develop a negotiable mandate, empower a bargaining team to sit down at the negotiating table, engage in the give and take of bargaining, and bring back a tentative agreement that it will try to sell to its membership is far from a trivial capacity. Even if an organization has that capacity, it may not choose to exercise it if it feels the "real deal" is going to be made by somebody other than the team sitting across the table from it.

In general there are provisions common to all collective agreements, those common to most agreements and those that address a particular workplace need unique to the services provided or particular location. Given the nature of provincial bargaining and the potential for the lowest common denominator problem identified above, for provincial bargaining to be successful a mechanism must be adopted for unique and important local issues.

In addition, there is a challenge that arises from the legacy of previous negotiations. When provincial negotiations commenced in British Columbia there were seventy-five local agreements in place. There was, and remains, a "transitional" challenge of transforming these separate agreements into one provincial agreement that may or may not be supplemented by local or regional sub agreements. This is discussed in more detail in Section V below.

2. All Issues Are Negotiated at a Local Table

The 1988-93 period, at least until the last round of negotiations, demonstrated that it is possible to get settlements where all bargaining is done at the local level. Local agreements arguably reflect local differences and needs. On the other hand, this differentiation can lead to unequal treatment of teachers and unequal learning opportunities for students in different school districts.

Many school trustees believed, and continue to believe that the bargaining power in 1988-93 was very unequal in favour of the teachers – that, in essence, local bargaining was not really local because of the highly disciplined and coordinated way in which the BCTF organized around local bargaining. In making this observation I am not in any way suggesting that the BCTF should be faulted for what it was able to achieve in that period – it arguably did an excellent job of what it was supposed to be doing in a collective bargaining context. But there is

a legacy, at least of perception, that would have to be addressed, if we were to return to local bargaining.

Finally, with respect to how bargaining tables are organized, the existence of many tables negotiating locally results in a considerable duplication of effort and infrastructure. This duplication is costly and represents a stress on the systems' financial and human resources.

The previous paragraph points to one of the issues that would have to be addressed. Unless the school boards believe they are well enough organized and coordinated to deal with a disciplined, coordinated BCTF, a repeat of the 1988-93 scenario is likely to unfold. It is difficult to see how that could lead to the stability and maturation that we are looking for. Accordingly, some thought would have to be given to the "bargaining infrastructure" to support local school boards as well as to the "rules of engagement" between local boards and local teachers' associations and their relation to their provincial associations.

An additional requirement for the success of the local approach would be that local school boards would need the fiscal autonomy to make the bargain with their local teachers' associations. This will be discussed more extensively in the next section.

3. All Issues Are Negotiated at a Regional Table

The concept here is to divide the province into a number (between five and twelve) of regions that would group school districts together that share common interests. The basic idea is that it would provide a reasonable compromise between local bargaining and provincial bargaining.

A regional approach would allow for greater attention to local differences than if everything was negotiated at the provincial level. It would also lessen the extent of, but not totally eliminate, the lowest common denominator problem. It would provide greater economies of scale in bargaining than if everything was done locally. Finally, it may be somewhat easier to get commonality across the province for issues for which this is felt to be important than in the case where all bargaining is done locally.

While the idea is to group districts that share common interests, it is not obvious where to draw the line. For example, should Prince George, essentially an urban district, be grouped in with rural school boards in the north central part of the province, or should it be its own "region?" Would the capital district be grouped in with the rest of Vancouver Island, or would it be its own region? What about Kelowna? Is there a lower mainland region or a metropolitan Vancouver region? And so on.

Perhaps the most significant issue is that, without a corresponding change in governance of the K-12 system, we may be making our alignment problem even worse – the negotiations would now be one level removed from both the provincial government and the local school boards. Who would the regional bargaining agent be accountable to?

Once again the last paragraph points to the major issue to be dealt with in order to allow for success. A workable governance model where both the provincial government and local school boards are able to delegate the mandate to make a deal would have to be developed.

4. Issues Are Split Between Provincial and Local Tables

This is the option that we have had, at least *de jure*, in British Columbia since 1994. In theory, this model enables the segregation of issues that are best dealt with at the provincial table from those that are best dealt with at the local level. This would allow tailoring of issues of particular significance to specific local districts. This, in turn should reduce the extent of the lowest common denominator problem.

Deciding on the split of issues can be problematic, particularly if there is disagreement about the desirability of provincial bargaining in the first place. It is also challenging when, as in our case, the parties are working from a series of local agreements without the benefit of a transition process to move from the local bargaining regime to the provincial one. The legislation establishing the current system states that "cost items" are to be dealt with at the provincial table. The parties, through agreement in 1994, applied the concept of cost items broadly. Many have expressed the opinion that, taken to its extreme, this leaves little of consequence to be dealt with at the local level. Related to this is a notion that, if there is no money to bargain with at the local level, it is more difficult to make tradeoffs around non-monetary items negotiated at the local level.

This model would require the same conditions identified under Option 1 above. In addition, there needs to be substantive agreement on the split of issues between the local and provincial tables.

5. Issues Are Split Between Provincial and Regional Tables

This option is a valid one, but there is little need to belabour a discussion of it – it essentially grafts the issues discussed under Option 3 to those just discussed under Option 4.

II. WHO WILL BE THE BARGAINING AGENT FOR THE EMPLOYER?

I take as a given that the bargaining agent for teachers is not an issue. If bargaining is to take place at a provincial table, the bargaining agent would be the BCTF. If bargaining is to take place at a local table, the bargaining agent would be the local teachers' association. In contrast to its current role as the bargaining agent, the BCTF as a provincial union would serve in an organizing and coordinating capacity to the local associations. If we were to move to bargaining at the regional level, there would need to be some re-definition of teachers' bargaining agents, but I do not believe there would be any significant issue there.

The answer is less automatic on the employers' side. This stems from the fact that we have a "co-governance model" in British Columbia in which the provincial government and local school boards share responsibility, accountability and authority for the K-12 education system.

In my report last November I argued that one of the key factors contributing to difficulties in teacher collective bargaining has been the lack of clarity/misalignment with respect to the structure of collective bargaining and the accountability for financing the K-12 system. I recommended:

> " . . . the terms of reference direct the commission to pay special attention to the need for alignment between any proposed bargaining structure and the accountability for financing the K-12 sector." (p. 21)

Accordingly, I believe it is essential in this Section to not only outline different options as to the bargaining agent for the employers, but also to identify what fiscal alignment would align responsibility, accountability and authority in a

democratically sustainable way with each particular option for the employer bargaining agent.

For purposes of discussion, it is useful to distinguish between options where the major cost items - salaries, benefits, etc. – are negotiated at a provincial table and where they are negotiated at a local table.

Options if Major Cost Items Are Negotiated at a Provincial Table

1. Employers' Bargaining Agent Explicitly Controlled by Province

Under this option the provincial government would bargain the agreement. In such an option there could be, and probably should be, provision for school boards to have representation on the employers' bargaining committee. The purpose of this would be to inform the employers' bargaining position as to the implications for schools and school districts of various contract proposals. It would, however, be clearly understood by all parties that the "deciding vote" is held by the provincial government.

Under this option provision to provide the human resource management and labour relations services that are not specifically focused on collective bargaining, that are currently provided by BCPSEA, would need to be made, possibly through other mechanisms and structures.

The fiscal alignment under this option would be pretty straightforward. There would be a clear understanding about where "the buck stops" – it stops with the provincial government. The provincial government would be responsible and accountable for both the financing of the system and the costs imposed on the system by the collective agreement negotiated with teachers.

Under the current financing arrangements in British Columbia, where the provincial government is responsible for virtually all of the funding of the K-12 system, this option would most clearly align the structure of collective bargaining and accountability for financing that system.

On the other hand, this option could be perceived as reducing the role of school boards in determining terms and conditions of employment for their employees.

2. Employers' Bargaining Agent Explicitly Controlled by School Boards

In such an option, the bargaining agent would be governed by a board elected solely by school boards – the provincial government would have no explicit role in governance of the agent. Membership in the provincial bargaining agent would be mandatory for all school boards.

There would be a significant potential for fiscal misalignment with accountability for financing under this option if all, or virtually all, of the funding for the K-12 system remains the responsibility of the provincial government while school boards have the lead in bargaining major cost items. To illustrate the problem here, consider two scenarios that could be realized.

In the first scenario, school boards negotiate a "very costly" (i.e. above the prevailing pattern in the rest of the public sector and/or in K-12 systems elsewhere in Canada) contract without due attention to the province's fiscal situation/projected grants to school boards. This would create a situation where the system would appear to be under funded, relative to the cost of the negotiated contract.

In the second scenario, school boards negotiate a "reasonable" (i.e. in line with prevailing patterns) contract and subsequently the provincial government

reduces real per student grants to the system. Again, this would create a situation where the system would appear to be under funded relative to the cost of the negotiated contract.

Under either scenario, the public is likely to be confused as to whom to hold accountable for the situation – the provincial government or school boards? Collective bargaining would not be aligned with accountability for financing the K-12 system.

There are two possible solutions to this misalignment. One would be to make local school boards primarily responsible and accountable for financing their local schools. How this would work is discussed below under Option 4.

The second solution would be some construct that clarifies responsibilities and accountabilities while still leaving the provincial government primarily responsible for financing the system. Such a construct would be a multi-year "fiscal contract" between the government and the school boards. The terms of this "contract" would require the provincial government to make multi-year (three or four years) funding commitments to the K-12 system. These commitments would be viewed as the minimum commitments the provincial government makes unless there are extraordinary economic circumstances (analogous to a *force majeur* clause in a contract) such as an unexpectedly severe downturn in the provincial economy. The contract would also require the provincial government to make explicit any other policy parameters that it will require the system to operate under.

The requirements for school boards under such a contract would include the acceptance of the requirement to run balanced budgets on an annual basis, as well as that a negotiated contract must be "actuarially level" within the terms of the contract funding commitment and the period thereafter. The purpose of this latter requirement would be to prevent a situation where a contract commits to significant backend loading of costs that could present the government with an

apparent under funding scenario just beyond the current planning horizon. Without these requirements for the school boards, there is the potential for regularly created “under funding crises’ which would in short order lead the provincial government to conclude that it could not live with the structure of collective bargaining – i.e. it would not be democratically sustainable.

Such a “fiscal contract” would lead to the required fiscal alignment if it were accepted by the provincial government, school boards and teachers. It would be clear that the primary responsibility for the funding of the school system rests with the provincial government. By corollary, the costs of teachers’ contracts will be primarily a function of the dollars provided to the K-12 system by the provincial government. At the same time, school boards, who are more directly responsible for the employer/employee relationship and for the day-to-day success of their schools, get to negotiate the actual contract with teachers.

On the other hand, it might be argued that, given the provincial government’s funding role, teachers are effectively negotiating with the provincial government, and this would be done more transparently as under Option 1. There may also be concerns about the “enforceability” of the contract on both sides.

3. Employers’ Bargaining Agent Is Jointly Accountable to School Boards and the Province

This is a “hybrid” of Options 1 and 2, analogous to the current BCPSEA.

Notwithstanding that the provincial government is actually on the “inside” in this model, in my opinion there will still be a need for a more clearly defined understanding of responsibility, authority and accountability. How would the bargaining mandate be established – who is ultimately accountable for that? Is it clearly understood that the provincial government is ultimately accountable for

the interaction of the cost of collective agreements and the funding provided for the system? I believe that some of the criticism leveled from time to time at the current BCPSEA model stems from lack of clarity on these types of issues.

This clarification would ideally be reflected in a "fiscal contract" between the province and the board analogous to that outlined under Option 2. The major difference between this option and the previous one is that the "enforcement" of the contract may happen more automatically through internal (i.e. within the governing board) discussion over the development of the bargaining mandates.

Adopting this option would be relatively easy to do, given the existence, structure and resources of BCPSEA. The "hybrid" approach may be the most effective way to recognize, and manage the reality of co-governance where the provincial government provides virtually all of the funding for the system.

This model, like collective bargaining since 1987, would come with historical baggage. Even with careful clarification of accountability for mandate development, it will be an ongoing challenge to maintain that clarity. If school boards were to become primarily responsible for financing the school system, the hybrid approach would be hard to justify.

Option if Major Cost Items Are Negotiated at Local Tables

4. Employer Bargaining Agent is the Individual School Board

If major cost items are to be negotiated at local tables, then the obvious bargaining agent would be the local school board. School boards would be free to organize themselves in the way that best suits the circumstances at the time. Having said this, one of the lessons of 1988-93 is that school boards need to

have a level of coordination, support and discipline symmetrical with that of the BCTF if negotiations are to reflect a relatively equal balance of power.

The significant issue here is not the definition of the bargaining agent, but what is necessary to affect the appropriate fiscal alignment. Virtually everybody seems to agree that, if major cost items are to be negotiated at the local level, the local boards must have enough fiscal autonomy to make the bargain. For example, if a local school board wants to pay its teachers somewhat more than average, or if it would like to have a lower pupil/teacher ratio, it needs access to its own source of revenue.

In theory, local school boards do have access to their own source of revenue – they have the ability to hold a referendum to raise incremental property taxes on local ratepayers. The conventional wisdom is that this theoretical possibility is not practical. Accordingly, some advocate that, while the provincial government should remain responsible for funding the bulk of the K-12 enterprise, that local school boards should have the ability to levy additional taxes to "top up" provincial funding.

After due consideration, I have concluded that this would not get the alignment of responsibility, authority and accountability right. If local school boards are going to be responsible for negotiating the major cost items, it will only be democratically sustainable if they are also accountable for the majority of financing of their schools. I see no other way than to have the level of government responsible for determining the cost of the enterprise also be accountable for the financing of that cost.

As I discussed in my report last November, democracy requires government to make difficult choices about the allocation of scarce taxpayers' money amongst competing public imperatives. For democracy to work well, the public has to know which governments to hold accountable for which choices.

The problem with the “top up model” is that it would obscure accountability to the public for adequate funding of the school system and the taxation required for that funding. If a member of the public feels that the schools in his/her community are inadequately funded, would he/she blame the provincial government because it does not transfer sufficient monies to the local school board, or would he/she blame the local school board for not levying sufficient “top up taxes?” If, on the other hand, a member of the public feels her/his local taxes are too high, would she/he blame the provincial government because it does not transfer sufficient monies to the local school board, or would she/he blame the school board for negotiating “excessively” costly collective agreements with its employees?

What this means in practice is that, in order to have local bargaining determine the major cost items, we would need to return to a situation where school boards are responsible for raising the significant majority of their funds through local taxes. This would appropriately align responsibility, authority and accountability. If voters in a particular school district would like to see more money spent on their local schools, they can vote for candidates who support that. In turn, the school board will be directly accountable to local taxpayers for the level of taxation.

I believe most British Columbians would have concerns about such a scenario on equity grounds – without some mechanism to equalize revenue raising capacity across school districts there would likely be significantly greater differences in educational opportunities between children who live in districts with relatively low property tax bases and children who live in districts with relatively high property tax bases than currently.

This could be addressed through an equalization system – analogous to the one the federal government runs to transfer money to the “have not” provinces.

While such a system would be technically complex, there is no reason why the provincial government could not transfer revenue between districts so that any district that levies taxes at the average rate, regardless of how rich or poor its tax base is, would have access to the average revenue per student. Those districts that decide to tax at a higher rate would have access to greater than average revenue per student. Conversely, those districts that decide to tax at a lower rate would have access to lower than average revenue per student. So, while there would still potentially be differences in the money spent per student from one district to another, those differences would arise from democratic decisions made at the local level, not from a disparity in taxing capacity between districts.

The reader may note that I have written above about "taxes," not specifically "property taxes." There is a reason for this. Perhaps contrary to what many homeowners might think when they pay their annual property taxes, the amount of money nominally collected by the provincial government as "school taxes" only covers a fraction – approximately one third – of the expenditures on British Columbia's K-12 system. To return to a situation where most of the costs of the school system could be financed through local property taxes would require an increase in the average total (i.e. municipal and school) property tax in the order of magnitude of fifty percent. Such an increase is unlikely to be politically practical. If this is indeed true, then, to make this realignment of financial accountability feasible, there would have to be an alternative/supplemental revenue source identified and agreed upon. To maintain the appropriate alignment this alternative/supplemental source would have to be one for which the local school board was transparently accountable to the local taxpayer.

I need to make it clear that I am taking no position here on whether or not local bargaining should be re-adopted in British Columbia, or whether or not funding of the K-12 system should be realigned in the way outlined here – the latter would clearly be outside my terms of reference. I am merely saying that there would need to be a major realignment of funding along the lines outlined here **if** we

were to return to local bargaining of major cost items – and such an opinion is required by my terms of reference.

A return to local bargaining, with the realignment described above, would result in the cleanest alignment of responsibility, authority and accountability of all of the options. It would also result in the most direct definition of the employer/employee relationship.

On the other hand, it could lead to a balkanization of the education system with, in particular, greater disparity in working conditions for teachers and learning opportunities for children within British Columbia.

If Major Cost Items are Negotiated at the Regional Table

Again, there seems to be little need to belabour a discussion about the possibility of regional tables. The issues in this case would essentially be the same as in the case where major cost items are negotiated at a provincial table, and the options discussed in that context (albeit replicated by the number of regional tables) would be the same here.

III. HOW WILL IMPASSES AT THE BARGAINING TABLE BE RESOLVED?

Undoubtedly the most contentious dimension in this exercise is the question of dispute settlement – if the right to strike/lockout should be restricted in any significant way, and if so, what alternative mechanism(s) are available to bring the parties to agreement.

Before examining the options, it is useful to provide a little context by reviewing the basics of collective bargaining theory.

The "Simplified Theory" of Collective Bargaining

Because the interests of management and labour are not completely aligned (e.g. other things being equal management would prefer lower compensation costs and labour would prefer higher compensation), there needs to be some pressure to compel **both** sides to find a fair compromise.

Since the 1930's in most of the western world strikes/lockouts have become the generally accepted way for this pressure to be felt. A strike/lockout imposes costs on both parties, and is generally viewed as the "weapon of last resort," but the fact that it is available to either party provides a powerful incentive for both parties to be "reasonable" at the table.

Because of the stakes involved, all jurisdictions have established Labour Relations Codes (or equivalents) that lay out the rules for how and under what circumstances this mechanism can be employed.

Ideally, agreements are reached at the bargaining table without resort to strikes/lockouts and without imposition by a third party. In a "mature" collective

bargaining relationship strikes/lockouts are relatively infrequent and, when they do occur are relatively short lived because the two parties have worked out constructive relationships where they have found the basis for a fair sharing of the responsibilities for, and the benefits of, a successful "enterprise."

The evolution from an "immature" to a mature relationship is difficult, if not impossible if: i) either party perceives the "power balance" in the relationship to be essentially unequal; or ii) there is outside intervention that "saves the parties" from the consequences of failing to be able to reach agreement at the bargaining table. In fact, these two factors are likely to interact – a party that perceives itself as weaker at the table is likely to position itself for an appeal for external intervention.

Ideally then, the parties should be left to work out their issues on their own, perhaps with facilitation or mediation assistance as needed. However, because strikes/lockouts can impose costs on third parties –suppliers and customers in the private sector, clients and families of clients in the public sector – governments in most jurisdictions retain the right to intervene in one form or another to mitigate the costs on third parties, and/or to expedite or impose a settlement. The range of interventions include, among others:

- controlled strike/lockout – limitations on the right to strike/lockout (e.g. essential services designation);
- an imposed "cooling off" period;
- legislating an end to a strike/lockout;
- imposing a settlement;
- imposing a settlement procedure (e.g. arbitration).

While these interventions are justified on the basis of the costs that a strike/lockout can impose, the interventions themselves have costs. They can prevent the development of the mature bargaining relationship described above.

Parties may not feel an “ownership” of the settlement imposed upon them, and may not feel an obligation to make it work. If the third party intervention is perceived as being biased in favour of one party or another, the party that feels it has been disadvantaged may find other, counterproductive ways to make its voice heard.

There is no costless method of settling impasses at the bargaining table. There will inevitably be difficult choices to make that involve tradeoffs between short-term considerations and long-term considerations, and between the interests of the parties at the collective bargaining table and of affected third parties.

Options for Impasse Resolution

1. Regular Strike/Lockout

As discussed above, a strike/lockout imposes costs on both parties at the table. The party initiating the strike/lockout is demonstrating its “resolve” to require a better offer from the other party. At a certain point the desire to end the costs borne by the parties provides the basis for the compromises necessary to get to agreement.

If left to work itself out over a sufficient period of time, the collective bargaining relationship will generally mature to the point where the two parties develop a mutual respect for each other and a common understanding of a fair sharing of the responsibilities for and the benefits of a successful enterprise. The experience of a strike/lockout in which the parties are not “saved from themselves” by outside intervention can have a sobering effect that ultimately forces the parties to work out the issues themselves.

This, admittedly idealized, notion of a maturing relationship can run counter to some real world experience. The notion of third party costs has been raised above – the implicit question to be answered is whether it is fair to impose those costs on third parties while the parties to collective bargaining go through their "maturing" process. Another factor to consider is whether the bargaining power between the parties is fundamentally unequal, in which case a real maturing is unable to happen. Finally, human beings and their organizations are imperfect vehicles for pursuing rational self-interest – patterns of decision making may reflect a whole host of cognitive, emotional, and power-related issues that can get in the way of the mature relationship. An adage from the labour relations world that is symptomatic of this last point is the notion that "it is much easier to take them out on strike than to get them back to work."

2. Controlled Strike/Lockout (Essential Service Designation)

For most of the past thirty years teacher collective bargaining has been subject to restrictions or limitations including legislation that allows for the designation of education as an essential service which means that, in the instance of a work stoppage, the levels of service which may be withdrawn are subject to essential service designation – i.e. the level of strike/lockout activity is subject to control, hence the label "controlled strike." The only significant instance over this period of time when this actually played an explicit role was in the 2001/02 round of collective bargaining which ultimately ended in the legislated contract of January 2002.

The political justification for essential service designation is that a full disruption of the K-12 system imposes excessive costs on key segments of society that are not directly represented at the bargaining table – students and their families. The history of the past dozen years in British Columbia – in which governments of both the "right" and the "left" have legislatively intervened to end or prevent work

stoppages in the K-12 system can be taken as evidence that the public views the costs of those stoppages as being "excessive." Hence, essential service designation is meant to inject the "public interest" into the equation.

The BCTF's position is that essential service designation is an unwarranted restriction on free collective bargaining.

There is a significant public policy issue here that requires weighing conflicting rights, values and interests. At this stage, however, I want to focus on a somewhat more pragmatic question – how does essential service designation, and the particular way it is defined and implemented, affect the likelihood of getting to a negotiated settlement.

Recall the discussion above about the logic of the strike/lockout weapon in compelling agreement at the bargaining table because it brings pressure on both sides. If it is still intended that the strike/lockout tool will continue to be the primary motivation to bargain through an impasse to a collective agreement, then essential service designation must be defined and implemented in such a way that **both** sides bear a cost, and a substantial cost, for allowing the strike or lockout to continue. The BCTF argues that if services are maintained in full or to a large extent there is little pressure on the employers' side to settle. On the other hand, if the way essential service designation is defined and implemented in the K-12 system allows teachers to resort to a significant level of withdrawal of services without paying an economic cost in terms of lost salary, the pressure on the employees' side to settle is reduced as well.

Essential service designation was not fully defined and implemented in the 2001/02 contract dispute, so it cannot be said definitively whether the "balance of costs calculus" described above ultimately would have borne fruit in terms of a negotiated settlement. Furthermore, care needs to be taken in generalizing from one instance. It is reasonable to raise the question, however, as to whether the

essential service designation of education, as currently reflected in legislation is likely to facilitate the parties getting to a negotiated settlement at the bargaining table. A related question is whether the result will be a prolonged, "low intensity" work action that will not be sufficient to compel the parties to get to agreement, but may do more long-term damage to the overall K-12 enterprise than a short-term full scale strike/lockout might do.

If the intent of essential service designation is to minimize or even totally eliminate the disruption of education services, then the strike/lockout lever is essentially not available as an impasse resolution tool. The implication of this is that third party resolution of some sort is the only tool available to resolve an impasse, and it probably would be better to recognize this fact upfront in the design of the collective bargaining process.

3. Arbitration

As a substitute for the strike/lockout process, or perhaps after the strike/lockout process has not resulted in an agreement after a reasonable period of time, a third party is asked to find the "fair compromise" between the two parties. There are many different arbitration models/approaches:

- Conventional interest arbitration;
- Final offer arbitration;
- Mediation-arbitration;
- Interest arbitration with pre-established criteria;
- Non-binding arbitration;
- Etc.

At this point, it would be premature to go through an exercise in exhaustively reviewing the strengths and weaknesses of each. The more basic issue is the

positives and negatives of arbitration as an alternative to allowing the strike/lockout dynamic to play itself out and letting the parties reach agreement at the bargaining table.

Arbitration does avoid, or ends, the costs to the parties and to third parties of a strike/lockout. It may be the only way to get to a fair settlement between parties that are "irreconcilably" far apart in positions.

On the other hand, parties may become reliant on arbitrators to do their "heavy lifting" for them in making the tough tradeoffs that bargaining requires. This reliance is likely to prevent the development of a mature relationship between them. As noted above, a contract determined by a third party also reduces the sense of ownership of the agreement, potentially reducing parties' willingness to make the agreement work. The arbitrator, no matter how wise and fair, cannot possibly understand the full implications of choices/tradeoffs for the enterprise as well as the parties can; accordingly, tradeoffs made by the arbitrator may not be the same ones that two parties sharing a mutual interest in the success of the enterprise would make. Finally, both parties experience an inevitable loss of control – they may have terms imposed upon them that they would never have agreed to, even after a long strike/lockout.

4. Legislatively Imposed Settlement

The only other alternative to settle an impasse at the bargaining table would be for the government with the appropriate authority to legislate a new contract for the parties. Such legislation is sometimes based upon terms recommended by a mediator, but not accepted by one or both of the parties. Sometimes it is based upon terms that one of the parties had agreed to but the other party rejected. And sometimes the legislation is based upon the government's own view of what is "fair."

A legislatively imposed settlement comes with essentially the same positives and negatives that an arbitrated settlement with two key differences. First of all, it makes the government, which is ultimately accountable to all of the people in a jurisdiction, rather than an arbitrator, responsible for the terms of the contract. At election time, the public can hold the government accountable for its decision and the consequences of it. Secondly, there is an additional cost over an arbitrated settlement in that a legislatively imposed settlement is likely to be perceived as unfair by at least one of the parties to the dispute.

Collective Bargaining as a Repeated Exercise

The outline of the options above runs the risk of portraying each option as an isolated case. It needs to be emphasized that each instance of a contract established under any of those options will occur in a particular historical context. This context encompasses both the sequence of stages in the current round of collective bargaining as well as the "lessons learned" in previous rounds of collective bargaining. It is also influenced by how bargaining objectives are determined and the way in which the bargaining agents create and manage constituent expectations concerning bargaining achievements.

The figure on the page 96 is meant to portray a simplified depiction of the various forks in the road that the collective bargaining process might take. To keep the figure from getting unduly complex and confusing, not all of the possible intermediate processes that might have occurred – mediation, fact finding, cooling off periods, etc. – have been represented.

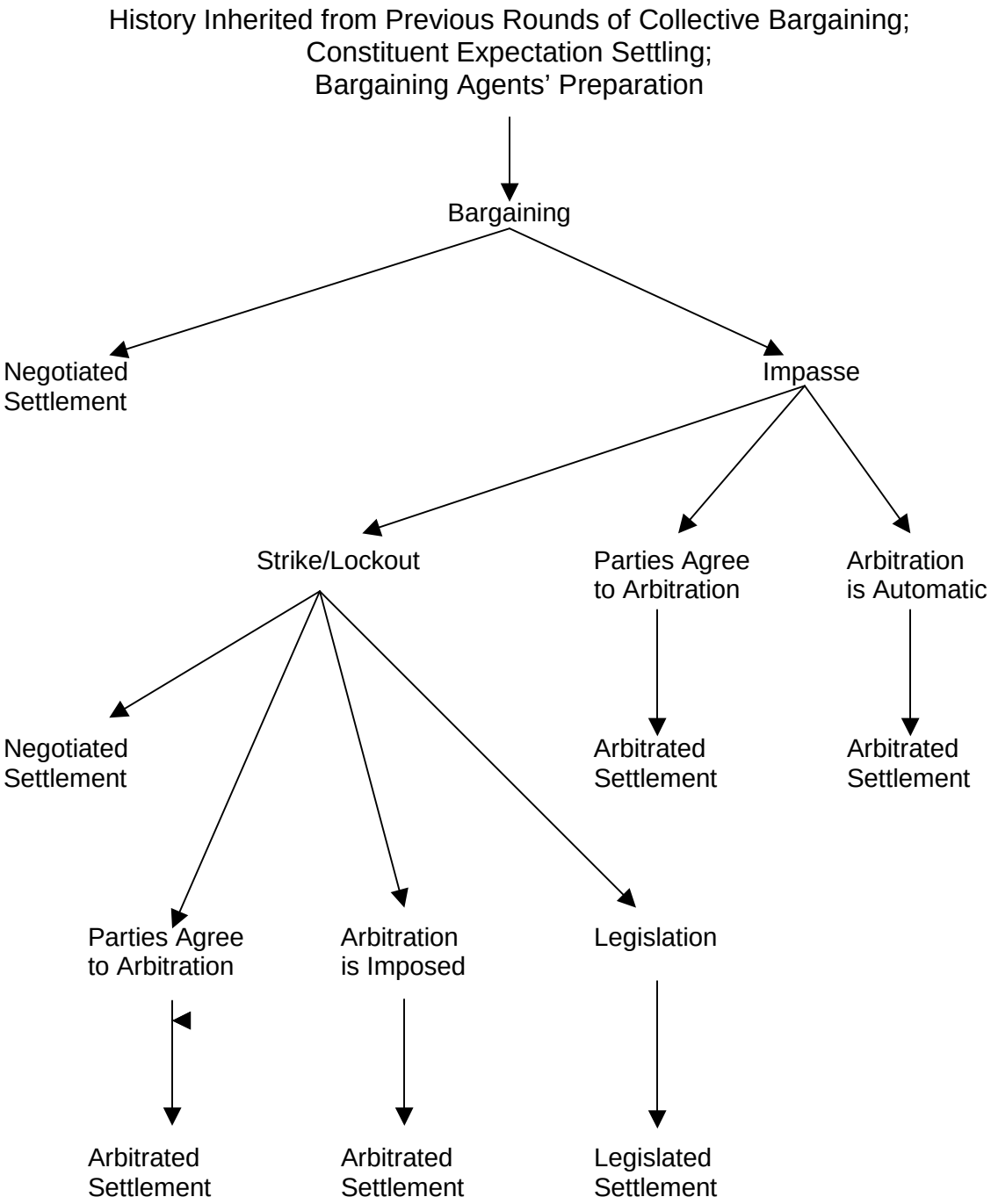
In general, the collective agreement is likely to be viewed as more satisfactory to both parties the further "north" and the further "west" on the diagram we end up.

Ideally then, we should want to maximize the probability that we end up in the northwest of the figure rather than in the southeast.

A more subtle, but perhaps more important, point is that the beliefs, strategies and behaviours brought to each round of collective bargaining will be conditioned by the way previous rounds played out. If, for example, previous rounds ended up with imposed settlements of one form or another, it would not be surprising to find parties positioning themselves on the expectations that pattern will repeat itself. This likely has a negative effect on the ability to get to a negotiated settlement. The inability to get a negotiated settlement then triggers a repeat of the imposed settlement pattern, reinforcing the "lesson."

A fundamental question for the parties is whether they are capable and willing to make changes that will reduce the likelihood of this pattern repeating itself. A fundamental question for my final report is what changes in structures and processes would encourage/support/reinforce such changes by the parties.

Simplified Depiction of Bargaining Outcome Possibilities



IV. WHAT SHOULD THE SCOPE OF BARGAINING BE?

In my report last November, I recommended, for a variety of reasons, that it would be better if the Commission did not examine scope of bargaining issues (see the discussion on page 30 of my November report). In discussions with parties earlier this year, most notably with the BCTF, I agreed to at least consider whether I should revisit this conclusion. Accordingly, I included several questions about scope of bargaining in questions I sent to the parties at the end of March. These questions were also discussed in the facilitated session held with the parties in May. For purposes of discussion, four options with respect to scope are identified.

1. Current Legislated Restrictions on Scope of Bargaining

Legislation in 2002, complemented by legislation in 2004 restricts the ability to negotiate:

- Class size and composition;
- Case loads or teaching loads;
- Staffing levels or ratios, or the number of teachers employed by a Board;
- Assignment of students to a class, course or program.

In place of collective agreement class size and composition provisions, school district-wide average class size limits and individual class size limits were placed in the *School Act.* The government rationale for the legislation was to entrench class size limits in the *School Act* and remove it from the bargaining table. Class size and related matters affect a broader constituency than the parties at the bargaining table. The public policy decision of the government was designed to remove these matters from the bargaining table due to their importance to

students and parents. The BCTF believes this legislation is an unfair restriction on teachers' ability to negotiate their working conditions.

The legislation limiting the scope of bargaining and the statutory class size provision in the *School Act* and regulations were not in existence during the last round of provincial bargaining. The effect of the legislation on the content of bargaining proposals and the interpretation to be advocated by the parties during future bargaining session on the effect of the legislation on bargaining proposals is unknown at this time. What scope the *School* Act allows for reconciling the implications of policy decisions around class size and composition on teachers' working conditions will likely be the subject of future discussions and possible referrals to the Labour Relations Board, arbitration hearings or court challenges. Any conclusions would be highly speculative.

2. Substantive Consultations on Education Policy Macro-Parameters

Given the nature of public education there is a strong connection between learning conditions for students and the working conditions for teachers. Having said that, there are differing opinions as to whether learning conditions should be the subject of collective bargaining – directly or indirectly – or whether matters deemed primarily matters of public policy should be determined in another forum. If you accept the proposition that you can distinguish learning conditions from working conditions, an option to give teachers and other public education advocates more voice would be to supplement the current scope of bargaining with substantive consultations between government and the public education policy advocates over "macro-parameters" – student/teacher rations, average class size, maximum class size, etc. now contained in the *School Act* and regulations.

In addition to consultation about the macro parameters, it may make sense to have a broader dialogue about overall funding and other elements of education

policy. This advice, advocacy, policy formulation forum would not be collective bargaining in the same sense that terms and conditions of employment are determined.

While there would be no contractual requirement for the government to respond to the positions put forward by the public education advocates in such a consultative forum, it could effectively give those advocates, in particular teachers, more voice than currently if:

- The consultation were part of a genuine effort on both sides to establish a real dialogue; and/or
- The consultation was part of a politically transparent process which demonstrates to the public the policy choices and tradeoffs that the government has available to it.

3. Provincial Negotiations of Macro-Parameters

This option would broaden the scope of bargaining beyond that in Option 1. It would allow the BCTF to bargain, and make tradeoffs to achieve changes to working conditions through the establishment of parameters or a framework. The parameters or framework would be the basis upon which school organization decisions are made at either the district or school level. This macro approach would allow the employer side to easily understand the cost implications of negotiated changes, while maintaining districts' ability to allocate resources amongst specific schools and classrooms in accordance with locally-determined needs.

4. Return to Full Scope Bargaining

This option would essentially entail a return to the scope of bargaining that existed from 1988-2002.

V. WHAT TRANSITION MEASURES ARE REQUIRED?

Regardless of whether major cost items will be negotiated at a provincial or at a regional or local level, there will be a major transition issue that needs to be addressed.

If Major Cost Items Are Negotiated at the Provincial Level

Arguably, a significant reason why province-wide negotiations since 1994 have not been more successful is that not enough thought was put into what would be necessary to move from a legacy of seventy-five individual collective agreements to one province-wide agreement. There was inevitably going to be a challenge in blending seventy-five agreements into one for two related reasons:

i. The lowest common denominator problem – on both the employer and employee side. Teachers and management in any district are going to be naturally reluctant to give up something they believed they had negotiated and "paid for" in a previous round of bargaining. Similarly, both sides are going to be reluctant to accept language or conditions believed to be more specifically tailored for other districts. This factor made it even more difficult for both bargaining teams to make the types of tradeoffs that are required to get to a collective agreement;

ii. An overloaded agenda. Arriving at a province-wide agreement in essence means negotiating a whole new agreement on all of the dimensions established in all of the local agreements. But the local agreements were themselves the results of three separate rounds of negotiations.

Without an explicit transition strategy/mechanism, it was almost inevitable that the "provincial agreement" would emerge the way it has:

- essentially an umbrella agreement that grandfathered the existing seventy-five (now sixty) local agreements with:

    - salary adjustments that have been across-the-board increases, without addressing any of the intra-regional anomalies that had developed;
    - limited agreement on some provincial language;
    - significantly outdated language in many of the local agreements because of the difficulty in negotiating new language on a province-wide basis.[13]

Such a platform makes progress at a province-wide table even more challenging than it otherwise would be.

If the decision is made to keep the negotiations of major cost items at the provincial level, a first order of business will be to deal with this problem.

1. Continuing Negotiations

In theory, the parties could negotiate the common agreement. The evidence of the past ten years is that this may be an insurmountable challenge. Accordingly, another option should be put on the table.

[13] It should be noted, however, that there has been some success under the *Mid-Contract Modification* process.

2. Third Party Transition Process

The process suggested here is analogous to what was done in the 1990's in the healthcare sector in British Columbia when it underwent a major consolidation. Hundreds of bargaining units were consolidated into three provincial bargaining units. An Industrial Inquiry Commissioner was appointed to develop a process to arrive at a consolidated collective agreement for each unit

The process developed two different exercises – *melding* for arriving at common non-monetary provisions, and *leveling* for arriving at common monetary provisions. Where parties were unable to conclude an agreement on an issue or issues an expedited arbitration process was employed to resolve the matters at issue.

In the melding process all existing collective agreement language was examined and the parties chose, for each provision, that language which would best fit a single, consolidated collective agreement. It should be noted that no new language was developed in this process; rather, the parties were bound to choose only language which already existed.

Leveling addressed only monetary provisions. Here, as opposed to the melding process, the parties were able to develop new provisions. Each job was evaluated and a new wage benchmark was negotiated, to be implemented across the new consolidated bargaining unit. Reaching these new benchmarks was achieved within fiscal parameters consistent with an established net cost to government. Leveling was not a process of identifying the most generous provision for each job and implementing it within the funds available. Instead, the parties were negotiating to determine, given their content, the appropriate compensation for each job.

It should be stated frankly that this would not be a pain-free process. Leveling up to the most generous provision on each dimension would have a significant cost implication for government, and would probably not be the most effective use of incremental funds in the K-12 system, even presuming the provincial government was willing/able to provide the incremental funds. On the other hand, it would not be fair to teachers to follow the opposite route of leveling down to the least generous provision on each dimension. The fiscal parameters for this process (e.g. zero net cost to government, $X million available for transition, or whatever) would have to be established at the start of the process.

If Major Cost Items Are Negotiated at the Regional or Local Level

If the decision is made to move negotiations of major cost items to regional or local tables, a different type of transition problem would arise – that of negotiating capacity on the employers' side.

At the local level, school boards do not have the "industrial relations infrastructure" that they had ten years ago. Due consideration would have to be given as to how to rebuild this infrastructure. The same point, suitably modified, would apply to negotiations at the regional level.

CONCLUDING COMMENTS

As stated in the Introduction, this discussion paper is genuinely intended to promote discussion. I look forward to continuing the dialogue with the parties as I work towards writing my final report.

Appendix D

Review of Teacher Collective Bargaining in Other Jurisdictions

Canadian Teacher Bargaining Structures

	BC	Alberta	Saskatchewan
Education Funding How is the public school system funded?	100% Provincial	100% Provincial	42% Provincial, 58% Local
Union Density Percentage of public K-12 teachers that are unionized	94%	91%	92%
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	Bargaining is permitted on all matters that school boards have been given power or discretion under the *School Act* or the impacts stemming from those matters, with the exception of class size and composition; case/teaching loads; staffing levels or ratios; and the assignment of students to a class, course or program.	There are no statutory bargaining restrictions. Note: The government is reviewing the Commission on Learning's recommendations that class size, pupil-teacher ratios and hours of instruction should be excluded from bargaining.	The *Education Act* excludes teacher selection, course of study, program of studies and teaching methods from bargaining.
Bargaining Structure At what level does bargaining take place?	**Two-tiered** Provincial on all monetary matters; Local on all local non-monetary matters, or any matter that has not been designated by the parties to be provincial. Structure is highly centralized.	**Local** Note: The government is reviewing the Commission on Learning's recommendation for two-tiered bargaining with salary and benefits negotiated on a province-wide basis. The commission also recommends the establishment of an accredited province-wide bargaining agent for the employers.	**Two-tiered** Most economic matters including salaries, plus Group Life, criteria for persons not being teachers, sick leave and other designated matters are provincial. Local matters include leaves, substitute salaries, and pay periods.

Canadian Teacher Bargaining Structures

	BC	Alberta	Saskatchewan
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	Bargaining is controlled by an employers association for all the school boards. Government has representation on the employers association's board of governors, sets the financial mandate and coordinates the strategic direction for the entire public sector.	School district. The government controls funding.	The government has majority representation on the provincial bargaining team. The School Boards Association has minority representation on the provincial bargaining team, while school boards bargain local matters independently
Right to Strike Does the union have the right to strike during negotiations?	Yes	Yes	Yes
Essential Services Are employees designated or is strike suspended?	**Designated.** In the event of threat to public health, safety, welfare or the provision of education programs.	**Suspended** Labour Relations Code allows for suspension in the event the government determines there is an emergency due to unreasonable public hardship**.**	N/A
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Mediation at request of either party or by appointment by the LRB. Fact-finding at the discretion of the LRB. LRB has option to make fact-finding report public.	Mediation at the request of either party at the LRB's discretion or the request of the minister.	Mediation at the request of either party or at the Education Relations Board's discretion.
Dispute Resolution What is the method of settlement if all other options have failed?	Government may appoint an Industrial Inquiry Commission (IIC) with a specific mandate from the Minister. The union and employer may agree to be bound by the report of the IIC. The report must be made public in some manner.	Voluntary binding arbitration. In the event a strike/lockout is suspended as a result of an emergency order, the government must establish a procedure for settlement.	**Choice of Procedures Model** Either party can opt for binding arbitration or conciliation. A conciliation recommendation is only binding if both parties agree. If conciliation fails, both parties could agree to arbitration or proceed to strike/lockout.

	BC	Alberta	Saskatchewan
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	N/A	The voluntary arbtration procedures and evaluation criteria are not established by statute.	The arbitration panel is free to choose its own procedures and can consider any evidence that is appropriate.
Other Unique Features	No final dispute resolution mechanism.	14 day cooling off period imposed if mediation fails.	N/A

Canadian Teacher Bargaining Structures

	Manitoba	Ontario	Quebec
Education Funding How is the public school system funded?	74% Provincial, 26% Local	100% Provincial	78% Provincial, 22% Local
Union Density Percentage of public K-12 teachers that are unionized	89%	94%	95%
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	There are no statutory bargaining restrictions. A legislated temporary ban on sending disputes on class size and class composition was lifted in 2003.	The *Education Act* restricts class size, preparation time, pupil-teacher rations and the length of the workday and the school year from bargaining. Further restrictions include professional development time, contract expiry and instructional times.	There are no statutory bargaining restrictions.
Bargaining Structure At what level does bargaining take place?	Local	Local	**Two-tiered** All local or regional matters are listed in legislation and cover mostly non-monetary items. All other items are bargained provincially.
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	School district. Province contributes funding.	School district. Province controls funding.	On provincial issues, the government controls the negotiating committee.

Canadian Teacher Bargaining Structures

	Manitoba	Ontario	Quebec
Right to Strike Does the union have the right to strike during negotiations?	No	Yes	**Provincial - Yes** For salaries, strikes are only permitted over the first year of the contract. **Local - No**
Essential Services Are employees designated or is strike suspended?	N/A	N/A	Although teaching has not formally been designated an essential service, the Essential Services Council could make such a ruling. In the past it has declared teacher strikes illegal for not conforming to the law.
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Mediation at the request of either party or on the minister's initiative. Conciliation board at the minister's initiative. The minister may make mediation and conciliation reports public.	Conciliation and mediation at the request of either party. Conciliation board or mediator must report out to the minister. *Labour Relations Act* also allows the minister to appoint a special officer or a dispute advisory committee to help assist the parties.	**Provincial** Mediation at the request of either party. No mediation on salary issues. Report must be made public if mediation fails. **Local** Mediation at the request of either party.
Dispute Resolution What is the method of settlement if all other options have failed?	Binding arbitration at the request of either party.	Voluntary binding arbitration.	**Local** If an issue before mediation remains unresolved, it proceeds to binding arbitration if both parties agree. The arbitrator can decide to make no decision, leaving the clause or clauses in question unchanged. If an arbitrator does not make a reward, he or she shall make public any recommendations for settlement.

	Manitoba	Ontario	Quebec
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	The arbitrator or arbitration panel has the power to choose the method of proceedings and the evaluation criteria.	The voluntary binding arbitration procedure is not prescribed by statute.	Local voluntary binding arbitration procedure is not prescribed by statute.
Other Unique Features	N/A	No final dispute resolution mechanism. The *Education Act* includes a definition of strike that varies from the Labour Relations Act in order to capture the unique aspects of teacher job action.	**Local Bargaining** clauses remain in effect until they are altered by the parties. **Provincial Bargaining** Strikes are not permitted until 20 days after the minister has received the mediator's report on provincial issues. **Salary Negotiations** In the first year of the contract, the parties bargain normally. For each subsequent year of the contract, the parties, along with Treasury Board, attempt to reach agreement on salaries based on the annual public and private sector compensation report by an independent institute. If no agreement is reached, Treasury Board determines the salaries by regulation. The salaries cannot be inferior to the previous year.

Canadian Teacher Bargaining Structures

	New Brunswick	Nova Scotia	Newfoundland & Labrador
Education Funding How is the public school system funded?	100% Provincial	83% Provincial, 17% Local.	100% Provincial
Union Density Percentage of public K-12 teachers that are unionized	82%	94%	96%
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	There are no statutory bargaining restrictions.	There are no statutory bargaining restrictions.	Pensions and benefits are excluded. Class size and teacher workload are dealt with by smaller dedicated committees.
Bargaining Structure At what level does bargaining take place?	Provincial	**Two-tiered** Salaries, benefit plans and general terms and conditions are provincial. The Province and the union can also agree to move local items to the provincial table. Leaves and other terms and conditions not included at the provincial table are local.	Provincial
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	The Province is the employer and controls the bargaining team. The team is made up of school district and ministry representatives.	The Province controls provincial bargaining; school boards control local.	The Province controls the bargaining committee. The committee includes school district representatives.

Canadian Teacher Bargaining Structures

	New Brunswick	Nova Scotia	Newfoundland & Labrador
Right to Strike Does the union have the right to strike during negotiations?	Yes	Yes - Provincial No - Local	Yes
Essential Services Are employees designated or is strike suspended?	There is essential services in New Brunswick but it only applies to threats to public health, safety or security.	N/A	N/A
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Conciliation at the request of either party. If conciliation fails, Conciliation Board/Commission at the request of either party or on the LRB's initiative. Board's report can be made public.	Conciliation at the request of either party. If conciliation fails, Conciliation Board/Commission at the request of either party or on the LRB's initiative.	Conciliation at the request of the employer. Conciliation board at the request of either party or at the minister's initiative.
Dispute Resolution What is the method of settlement if all other options have failed?	Voluntary binding arbitration.	**Provincial** Voluntary binding arbitration. **Local** Arbitration at the request of either party.	Voluntary binding arbitration.
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	The form of arbitration is not prescribed. Evaluation criteria are established by statute.	The form of arbitration and the evaluation criteria are not established by statute.	The form of arbitration and the evaluation criteria are not established by statute.
Other Unique Features	No final dispute resolution mechanism.	No final dispute resolution mechanism for provincial negotiations.	Labour Code allows for the suspension of a strike in an emergency.

Canadian Teacher Bargaining Structures

	PEI		
Education Funding How is the public school system funded?	100% Provincial		
Union Density Percentage of public K-12 teachers that are unionized	85%		
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	Pensions and benefit cost-sharing are excluded from negotiations. Student-teacher ratios are also excluded and are subject to the minister's directive.		
Bargaining Structure At what level does bargaining take place?	Provincial		
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	The government controls the bargaining agency. School board representatives are included in the agency.		
Right to Strike Does the union have the right to strike during negotiations?	No		
Essential Services Are employees designated or is strike suspended?	N/A		

	PEI		
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Conciliation at the request of either party or at the minister's initiative.		
Dispute Resolution What is the method of settlement if all other options have failed?	Arbitration at the request of either party or at the minister's initiative.		
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	The form of arbitration is not prescribed. Evaluation criteria are established by statute.		
Other Unique Features	N/A		

U.S. Teacher Bargaining Structures

The following is an overview of the public teacher bargaining structures in 15 state governments in the USA. Of the 50 states, only 33 have passed public sector statutes that permit teacher union and employer collective agreement negotiations over wages and other terms and conditions of employment. Ten of the states that permit teacher bargaining also grant teachers at least a limited right to strike.

The breakdown of all 50 states with regard to the ability of teacher unions to bargain collectively and engage in strikes in the event of negotiation impasses is as follows:

Teacher Bargaining and the Right to Strike

States with no Teacher Bargaining
Alabama, Arizona, Arkansas, Colorado, Georgia, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, South Carolina, Texas, Utah, Virginia, West Virginia and Wyoming.

States with Teacher Bargaining / No Right to Strike
Connecticut, Delaware, Florida, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts*, Michigan*, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey*, New York*, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee and Washington*.

States with Teacher Bargaining / Right to Strike
Alaska, California, Hawaii; Illinois, Montana, Ohio, Oregon, Pennsylvania, Vermont and Wisconsin (limited).

The overview below covers 15 states, including all states that permit teacher strikes and a sample of five states where strikes are prohibited: Massachusetts, Michigan, New Jersey, New York and Washington.

U.S. Teacher Bargaining Structures

	New Jersey	Michigan	Wisconsin
Education Funding How is the public school system funded?	38% State, 59% Local, 3% Federal.	69% State, 26% Local, 5% Federal.	54% State, 41% Local, 5% Federal.
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	Bargaining is restricted to wages and conditions of employment. Education policy matters are excluded	Wages, hours and other terms and conditions of employment are mandatory. Education policy, staffing, deployment, layoffs, reorganization are excluded, as is contracting, the school year, enrollment, pilot programs, use of volunteers, and use of technology. The impacts of layoffs, however, are included.	Wages, hours and conditions of employment are mandatory. Staffing, deployment and layoffs are excluded. State case law has interpreted education policy decisions to be permissive, but the effects of policy decisions must be bargained if they impact the mandatory subjects.
Bargaining Structure At what level does bargaining take place?	School district	School district	School district
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding and establishes financial limits through the Qualified Economic Offer law (see Other Unique Features).
Right to Strike Does the union have the right to strike during negotiations?	No	No	No right to strike unless the employer provides consent.
Essential Services Are employees designated or is strike suspended?	N/A	N/A	N/A

U.S. Teacher Bargaining Structures

	New Jersey	Michigan	Wisconsin
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Mediation at the request of either party, mandatory fact-finding and superconciliation at the request of either party. Both the fact-finding and superconciliation reports must be made public. The super conciliator has expanded powers to bring about a settlement, including the use of 24 hour negotiations.	Voluntary mediation and fact-finding.	Voluntary mediation only.
Dispute Resolution What is the method of settlement if all other options have failed?	No final dispute resolution mechanism.	There is an additional mediation step that allows the employer to unilaterally impose its last offer if both parties remain at an impasse after mediation. Since both parties must agree to this beforehand, this step is rarely used.	Binding interest arbitration on mandatory subjects only. If an employer has tabled a QEO, then arbitration is available for non-monetary items only. If a valid QEU has been tabled, it is unilaterally implemented if the parties have not reached an agreement on monetary matters 90 days prior to the expiry of the contract.

	New Jersey	Michigan	Wisconsin
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	N/A	N/A	Final full-offer selection. The arbitrator chooses one of the parties' final offers. Parties can modify their final offers prior to the formal arbitration hearing. Arbitrators must give the greatest weight to any state law or directive that limits an employer's expenditures or revenues; greater weight to local economic conditions; and weight to the lawful authority of the employer, the stipulations of the parties, the public interest, the financial ability of the unit of government to fund the settlement, wage comparisons with similar public employees (as well as other public employees and private employees in the same or similar community), inflation, and the total compensation package received by the employees.

	New Jersey	Michigan	Wisconsin
Other Unique Features	The use of super conciliation is unique to education.	Expanded definition of illegal strikes to include protests against employer unfair labour practices. For every day out on strike, employees are also subject to a fine of one day's pay	Presentation of initial proposals shall take place in a meeting that is open to the public. A QEO is the equivalent of an annual 3.8% total compensation increase. Of the 3.8%, 2.1% is for salaries and 1.7% is to maintain the existing benefits package. If benefit costs are above or below 1.7%, the savings or costs are passed on or taken out of the salary component. The salary component covers both general and increment increases. The net effect, is that a QEO guarantees a compensation increase, the general increase can be significantly less than 2.1%. Statute requires all teacher contracts to have a 2 two year length of agreement with a common expiry.

U.S. Teacher Bargaining Structures

	Hawaii	California	Illinois
Education Funding How is the public school system funded?	89% State, 2% Local, 9% Federal.	57% State, 31% Local, 12% Federal.	32% State, 59% Local, 9% Federal.
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	**Wages**, hours of work, salary scale, contributions to the health fund and other terms and conditions of employment. Staffing, classification, health fund benefits are excluded by statute. The LRB has also determined in some cases that call size and scheduling of teacher preparation periods can be excluded.	Wages, hours and other terms and conditions of employment, including class size are included. Employers must consult with the unions on most education policy matters, but they are not subject to bargaining.	Wages, hours and other terms and conditions of employment. Public policy issues including class size are permissive subjects, but the impacts of such issues are mandatory.
Bargaining Structure At what level does bargaining take place?	Statewide.	School district.	School district.
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	The state and the four counties are the joint employers.	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.
Right to Strike Does the union have the right to strike during negotiations?	Yes.	Yes	Yes

	Hawaii	California	Illinois
Essential Services Are employees designated or is strike suspended?	There is a provision for designating essential service employees, but the LRB has not considered teaching to fit the category.	Public sector strikes can be suspended if they pose a threat to public health or safety, but teacher strikes have not been considered essential services so far.	The employer can seek a court injunction if the strike threatens public health or safety. No injunctions have been sought against teacher strikes.
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Mandatory mediation and fact-finding	Mandatory mediation and fact-finding. Fact-finding panel must make non-binding recommendations for settlement based on prescribed criteria. The recommended settlement must be released to the public.	Mandatory mediation, including a fact-finding component.
Dispute Resolution What is the method of settlement if all other options have failed?	Voluntary binding arbitration.	N/A	Voluntary binding arbitration.
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	The form of optional binding arbitration is not prescribed by statute. The evaluation criteria are prescribed.	N/A	The form of optional binding arbitration and the evaluation criteria are not prescribed by statute.
Other Unique Features	Mandatory 60-day cooling off period is imposed in the event that mediation and fact-finding fails. The LRB must make public the final positions of the parties prior to a strike.	No final dispute resolution mechanism.	No final dispute resolution mechanism.

U.S. Teacher Bargaining Structures

	Pennsylvania	New York	Massachusetts
Education Funding How is the public school system funded?	40% State, 55% Local, 5% Federal.	49% State, 47% Local, 4% Federal.	36% State, 57% Local, 7% Federal.
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	Wages, hours and other terms and conditions of employment. Education policy is considered permissive with a provision for consultation, but the courts have tended to make policy matters mandatory if they touch on wages, hours and conditions of employment.	Wages, hours and other terms and conditions of employment are mandatory. Public policy, staffing and hours of work are permissive.	Wages, hours and other terms and conditions of employment, including class size and workload, are mandatory. Other education policy matters are permissive.
Bargaining Structure At what level does bargaining take place?	School district.	School district.	School district.
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.
Right to Strike Does the union have the right to strike during negotiations?	Yes	No	No
Essential Services Are employees designated or is strike suspended?	N/A	N/A	N/A

U.S. Teacher Bargaining Structures

	Pennsylvania	New York	Massachusetts
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Mandatory mediation and fact-finding. If both parties do not accept the fact-finding report it is published in a newspaper.	Mandatory mediation and fact-finding. Fact-finding report is made public if parties remain in dispute.	Mediation and fact-finding at the request of either party. The fact-finding report is released to the public if both parties do not accept it.
Dispute Resolution What is the method of settlement if all other options have failed?	Non-binding interest arbitration if strike threatens the school year.	N/A	Voluntary binding arbitration. Once the dispute resolution process is exhausted, the employer can unilaterally change the contract.
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	Final offer non-binding arbitration. The parties can choose either total package, issue-by-issue, or separation of economic and non-economic issues. Arbitrator must consider set criteria and choose either the final recommendations from either the union, employer or the factfinder. Arbitrator must also consider public comments.	No final dispute resolution mechanism.	The volunatary arbitration award is binding on the parties and the legislature, provided that the proceeding has been pre-approved by the school board.

	Pennsylvania	New York	Massachusetts
Other Unique Features	Cooling off periods imposed during fact-finding and arbitration. Selective strikes are illegal. Employer may hire substitutes used during the year. There is a strict timetable that must be followed throughout the bargaining and dispute resolution stages. Gov't can use injunction if strike would prevent end of school year by June 30	The legislature can take appropriate steps to assist the parties in reaching an agreement if fact-finding fails, but cannot impose an agreement. Strict illegal strike penalties, including loss of two days' pay for each day for employees and loss of dues for the union.	N/A

U.S. Teacher Bargaining Structures

	Oregon	Washington St.	Ohio
Education Funding How is the public school system funded?	53% State, 37% Local, 10% Federal.	61% State, 28% Local, 11% Federal.	46% State, 48% Local, 6% Federal.
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	Wages, hours and other terms and conditions of employment are mandatory. Education policy matters are permissive.	Wages, hours and other terms and conditions of employment are mandatory.	Wages, hours and other terms and conditions of employment are mandatory. Education policies are permissive.
Bargaining Structure At what level does bargaining take place?	School district.	School district.	School district.
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.
Right to Strike Does the union have the right to strike during negotiations?	Yes	No	Yes
Essential Services Are employees designated or is strike suspended?	If the dispute threatens public health, safety or welfare, the courts must order binding interest arbitration. Teacher strikes may not be covered.	N/A	

U.S. Teacher Bargaining Structures

	Oregon	Washington St.	Ohio
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Mediation at the request of either party. If mediation fails, the parties final offers and cost summaries are made public. Voluntary fact-finding.	Mediation and fact-finding at the request of either party. If no settlement, fact-finding report is made public.	Mandatory mediation and fact-finding at the request of either party. Fact-finding report is implemented unless both parties vote 60% against. If voted down, the report is made public.
Dispute Resolution What is the method of settlement if all other options have failed?	Voluntary binding arbitration.	Nothing prevents the parties from agreeing to their own dispute resolution process.	The parties are free to agree to any other form of dispute resolution mechanism.
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	The form of optional arbitration is not prescribed by statute. The evaluation criteria are prescribed.	N/A	N/A
Other Unique Features	No final dispute resolution mechanism.	N/A	N/A

U.S. Teacher Bargaining Structures

	Alaska	Montana	Vermont
Education Funding How is the public school system funded?	64% State, 24% Local, 12% Federal.	49% State, 40% Local, 11% Federal.	71% State, 22% Local, 7% Federal.
Scope of Bargaining What terms and conditions of employment are excluded from bargaining, if any.	Wages, hours and other terms and conditions of employment are mandatory. Education policies are permissive.	Wages, hours, fringe benefits and other terms and conditions of employment are mandatory. Education policies are permissive.	Wages, hours, fringe benefits and other terms and conditions of employment are mandatory. Education policies are permissive.
Bargaining Structure At what level does bargaining take place?	School district	School district	School district
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.	The school district controls bargaining. The state contributes funding.
Right to Strike Does the union have the right to strike during negotiations?	Yes	Yes	Yes
Essential Services Are employees designated or is strike suspended?	N/A	N/A	N/A

U.S. Teacher Bargaining Structures

	Alaska	Montana	Vermont
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Mediation at the request of either party or at the minister's initiative.	Mandatory mediation and fact-finding. Fact-finding report is made public if both parties fail to agree.	Voluntary mediation, fact-finding at the request of either party. Fact-finding report is made public if both parties fail to agree.
Dispute Resolution What is the method of settlement if all other options have failed?	Manadatory non-binding arbitration. The parties can also opt for binding arbitration.	Voluntary binding arbitration.	Voluntary binding arbitration.
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	The form of arbitration and the evaluation criteria are not prescribed by statute.	The form of arbitration and the evaluation criteria are not prescribed by statute.	Last best offer voluntary arbitration on either the full-package or issue-by-issue basis. The evaluation criteria are not established by statute.
Other Unique Features	No final dispute resolution mechanism.	No final dispute resolution mechanism.	N/A

International Teacher Bargaining Structures

	United Kingdom	New Zealand	New South Wales, Australia	Ireland
Scope of Bargaining What terms and conditions of employment must be bargained? What issues are permitted if both parties agree or excluded from bargaining?	Few or no restrictions.	Few or no restrictions.	Must ensure minimum standards.	There are no statutory bargaining restrictions.
Bargaining Structure At what level does bargaining take place?	The national pay review board process determines wages and any other matters that are referred to the review board by the Secretary of State for Education. All non pay review board matters are determined at the local level. The unions, local employers and the national government entered into a national workload agreement in 2003.	National - Separate bargaining for primary and secondary teachers.	Voluntary state-wide. Parties can opt for state awards if IR Commission approves.	**National Salaries** Since 1987 salaries have been determined by national public and private sector pay agreements. **Working Conditions** Established by Ministry of Education, but are subject to change based on agreements by the Teachers Conciliation Council, made up of union, employer and government representatives.

International Teacher Bargaining Structures

	United Kingdom	New Zealand	New South Wales, Australia	Ireland
Bargaining Control Who controls bargaining for the employer? What is the level of gov't involvement in bargaining?	National government makes submissions to the pay review board and can reject or modify the award. National government also controls funding.	State bargains directly.	Government bargains directly.	The State controls bargaining and funding.
Right to Strike Does the union have the right to strike during negotiations?	Yes, but the parties have agreed not to strike or lock-out over pay review board decisions.	Yes	Yes	Yes
Essential Services Are employees designated or is strike suspended?	N/A	N/A	Commission can suspend strike if there is no prospect for an agreement or it is having a detrimental impact on the public.	No
Bargaining Assistance What processes are in place to assist the parties if they are unable to reach an agreement on their own?	Voluntary conciliation or mediation.	Voluntary mediation.	Conciliation.	Conciliation.

	United Kingdom	New Zealand	New South Wales, Australia	Ireland
Dispute Resolution What is the method of settlement if all other options have failed?	No final dispute resolution mechanism.	No final dispute resolution mechanism.	If the Commission suspends a strike it can make an award to settle the dispute.	The Labour Court can make non-binding recommendations for settlement.
Binding Interest Arbitration What form of arbitration is used? Are evaluation criteria established by statute?	N/A	N/A	No criteria established	No criteria established.
Other Unique Features	The pay review board is an independent body appointed by government. Government is not bound by awards, but has done so in practice. Excessive awards have been delayed. The pay review board's most recent award covered wage increases for the 2004/06 period, recruitment and retention issues, the pay structure and performance pay. Previous boards have addressed workload and morale issues.	Conciliation and arbitration provisions deleted from State Sector Act in 1991 and have not been re-introduced.	Allows for cooling off period. All agreements must be approved by the IR Commission.	National pay agreements are negotiated by the government, employer and union organizations. Prior to the first national pay agreement, teacher salaries were determined by arbitration. Although strikes are rare under the pay agreement regime, secondary teachers did go out on strike in 2001 over salaries.