

Article A.9: Legislative Change

❖ Overview

This article replaces all language on legislative change found in the previous collective agreement. It applies to legislation that affects provincial and/or local matters. The article provides a mechanism to address the impact of new or amended legislation that significantly affects the application of some part of the collective agreement. BCPSEA has both the responsibility and the authority to deal with any legislative change that affects a provincial matter.

❖ Article A.9: Legislative Change

1. *In this article, “legislation” means any new or amended statute, regulation, Minister’s Order, or Order in Council which arises during the term of the Collective Agreement or subsequent bridging period.*
2.
 - a. *Should legislation render any part of the Collective Agreement null and void, or substantially alter the operation or effect of any of its provisions, the remainder of the provisions of the Collective Agreement shall remain in full force and effect.*
 - b. *In that event, the parties shall meet forthwith to negotiate in good faith modifications to the Collective Agreement which shall achieve, to the full extent legally possible, its original intent.*
3. *If, within thirty (30) days of either party’s request for such meeting, the parties cannot agree on such modifications, or cannot agree that the Collective Agreement has been affected by legislation, either party may refer the matter(s) in dispute to arbitration pursuant to Article A.6 (Grievance Procedure).*
4. *The arbitrator’s authority shall be limited to deciding whether this article applies and, if so, adding to, deleting from or otherwise amending, to the full extent legally possible, the article(s) directly affected by legislation.*

❖ Explanation

- A.9.1** 1. *In this article, “legislation” means any new or amended statute, regulation, Minister’s Order, or Order in Council which arises during the term of the Collective Agreement or subsequent bridging period.*

A.9.1 defines what is meant by “legislation” and, accordingly, what could trigger the application of Article A.9. The clause is specific: the term “legislation” is limited to new or amended statutes, regulations, Minister’s Orders, or Orders in Council. “Legislation” does not include directives from the Ministry regarding data collection, acceptable accounting practices, and so on.

The second element in A.9.1 is the period that the article covers, and it includes the bridging period provided under clause A.1.2, as well as the express term of the collective agreement. Accordingly, if new legislation is introduced after the collective agreement expires but prior to the date that a new agreement is concluded, the provisions of Article A.9 will apply.

- A.9.2**
2. a. *Should legislation render any part of the Collective Agreement null and void, or substantially alter the operation or effect of any of its provisions, the remainder of the provisions of the Collective Agreement shall remain in full force and effect.*
 - b. *In that event, the parties shall meet forthwith to negotiate in good faith modifications to the Collective Agreement which shall achieve, to the full extent legally possible, its original intent.*

A.9.2 provides a mechanism to allow the parties to address the impact of legislation on the collective agreement. At the same time, however, clause A.9.2.a also ensures that when legislation renders only part of a collective agreement null and void or substantially alters its operation, the unaffected parts or provisions of the collective agreement are not changed and will continue to apply.

Clause A.9.2.b requires the parties to meet without delay to review the affected parts or provisions of the collective agreement and to modify them, as far as legally possible, to restore the parties’ original intent when these parts or provisions were negotiated.

- A.9.3**
3. *If, within thirty (30) days of either party’s request for such meeting, the parties cannot agree on such modifications, or cannot agree that the Collective Agreement has been affected by legislation, either party may refer the matter(s) in dispute to arbitration pursuant to Article A.6 (Grievance Procedure).*

A.9.3 provides a dispute mechanism in the event that the parties are unable to agree whether legislation has affected the collective agreement, to what extent the legislation has impacted the agreement, or what modifications are necessary as a result of the change. Under any of these circumstances, either the BCTF or BCPSEA may refer the dispute to an arbitrator in accordance with clause A.6.7. If the issues in question fall within Appendix 2: Local Matters, then either the local or the school district may refer the matter to arbitration in accordance with clause A.6.6.

- A.9.4** 4. *The arbitrator's authority shall be limited to deciding whether this article applies and, if so, adding to, deleting from or otherwise amending, to the full extent legally possible, the article(s) directly affected by legislation.*

A.9.4 limits the authority of the arbitrator when a dispute has been referred to arbitration pursuant to this article. This clause does not allow an arbitrator to make broad changes to the collective agreement; rather, it limits any decision to amendments to an article or articles that have been directly affected. This clause does not permit changes to any articles that the legislation has not directly affected.

❖ Relationship to Other Articles

This article has the potential to impact various parts or provisions of your collective agreement. Much of the language impacted will be language that was negotiated locally but is now considered a provincial matter. Examples of such language include maternity/paternity provisions affected by the *Employment Standards Act*, health and safety provisions affected by the *Workers Compensation Act*, and any provision that could be affected by the *School Act* except when the legislation specifically disallows Article 9: Legislative Change to apply, as in the case of Section 27 of the *School Act*.