

Really? The Fact and Fiction of the Arbitration Awards: Class Size and Composition Grievances for the 2006-2007 and 2007-2008 School Years

Due to the complexity of the class size and composition grievances that were the subject of recent arbitration awards by arbitrator James Dorsey, clarity is important.

- **AUGUST 21, 2009:** Arbitrator Dorsey issued his award concerning class size and composition grievances for the 2006-2007 and 2007-2008 school years. Of the 157 schools identified in the BCTF grievances representing 1,622 classes, the parties agreed to arbitrate 81 classes that were grieved in seven representative schools in seven school districts.

Dorsey found 21 of the classes in violation of Bill 33, *Education (Learning Enhancement) Statutes Amendment Act* — **only two of those classes were found to be “inappropriate for student learning”** due to their size or number of designated special needs students.

Dorsey determined the remaining 19 classes were **process** violations, not class size/composition violations:

- **Preparation Relief Teachers (6 classes)**
The arbitrator ruled that although the consultation with the assigned teacher of the class met the requirements of the legislation, there was also a requirement to consult with the preparation relief teacher of the class, which had not occurred.
- **Job Share and Related Teachers (1 class)**
The arbitrator ruled that although the consultation with the teacher who taught the class five days of a six-day cycle met the requirements of the legislation, there was also a requirement to consult with the teacher who taught this class for one day in a six-day cycle, which had not occurred.
- **Group Consultation (7 classes)**
The arbitrator ruled that although there was agreement with the union to conduct a group consultation, the consultation requirements of Bill 33 had not been met for these classes, as the group consultation centered around the resource issues of the school rather than that of the individual classes.
- **Date by Which Classes Must be Deemed “Appropriate for Student Learning” (10 classes)**
The arbitrator ruled that although the principal arrived at his opinion that the classes were appropriate for student learning later in the fall, there had been a violation of Bill 33 as the principal had not reached this opinion by September 30.

The parties met to attempt to determine remedy but were unable to do so. The matter of remedy was referred back to arbitrator Dorsey, which was the subject of the January 11, 2010 award.

- **JANUARY 11, 2010:** Arbitrator Dorsey issued his award on remedy arising from the above-referenced award.
 - Qualicum — no remedy
 - Saanich and Vancouver — one day of paid release time for two teachers in Saanich and seven teachers in Vancouver (it should be noted that in Vancouver all of the affected teachers had agreed to the group consultation — the arbitrator determined that a group consultation did not meet the requirements of Bill 33).
 - Coast Mountains — one teacher got nine days of paid release time and the others got six days. In reality, the Coast Mountain school district was in compliance on October 30 but the legislation requires compliance on September 30. Dorsey held the September 30 date has no flexibility to it so his order was for the entire year.

The remedy determined by the arbitrator is significantly less than what the BCTF sought. The BCTF asked for:

- “Compensation for the teachers of the classes which were in violation of Bill 33 in any manner in the form of paid release time from teaching in the current year. The amount of release time...is to be calculated based on the number of students which exceeded the Bill 33 class size or composition limit...per month and the amount of time during the school year the teacher taught that class....
- AND
- Compensation for the students in the classes which were in violation of Bill 33 in the form of the cost of teacher time paid to the Local Association for the district in which the violation occurred, to be used by the Local Association for providing professional development to teachers in the district to address the individual needs of students.”

What the BCTF Asked For and What They Got	
BCTF requested teacher redress	\$83,728 (261.65 release days)
BCTF requested union redress	\$109,893
BCTF total requested remedy	\$193,621
Remedy awarded by arbitrator Dorsey	\$22,624 (less than 12% of the BCTF request)

After the 2006 school year, the BCTF grieved every class and every school in the province. Does that mean that every class in every school is in violation of the legislation or are there other motivations that underlie this approach?

The BCTF and the provincial government have been at odds on a variety of education issues since the government came to power in 2002. The matter of class size enshrined in legislation rather than the collective agreement, and the Foundation Skills Assessment, are the issues that have been in the headlines recently, and are areas that can be characterized as a *philosophical divide* of sorts.

Due to the complexity of this matter, some media reports have mis-stated the arbitrator’s findings. Following is clarification of some of those statements.

Clarification of Statements in the Media	
CBC Radio – <i>Early Edition</i> – 8:14 AM January 12, 2010	
Statement	BCPSEA Response
<p>“The subject of this award was a representative sample of 1,500 oversized classes in those years.”</p>	<p>This is a mis-statement. Of the 1,622 classes in 157 schools alleged by the BCTF to be in violation, the parties agreed to arbitrate 81 classes that were grieved in seven representative schools in school districts 5 (Southeast Kootenay), 36 (Surrey), 39 (Vancouver), 58 (Nicola-Similkameen), 63 (Saanich), 69 (Qualicum) and 82 (Coast Mountains).</p>
<p>“The government introduced Bill 33 and then did not fund that for school boards. So we ended up with thousands of classes that exceeded the Bill 33 limits.”</p>	<p>In his August 2009 decision, the arbitrator found 21 of the 81 classes to be in violation of the <i>School Act</i>. However, he found only two of the 81 classes that were grieved — or 2.5% — to be inappropriate for student learning due to their size or number of designated special needs students. The remaining 19 classes were found to be process violations as outlined on page 1 of this document.</p>
<p>“...an arbitrator has ruled school districts must pay for cramming students into classes that are too large. Four districts, including Vancouver, are now required to award up to nine days off with pay or pay in lieu for teachers who taught classes for more than 30 students.”</p>	<p>Arbitrator Dorsey found that 69 of the 81 classes that had been grieved had met the requirement of the principal and the superintendent holding the opinion that the classes were appropriate for student learning and that 67 of the 81 classes that had been grieved had met the consultation requirement under Bill 33.</p>
CBYG (CBC Radio) – 8:30 AM January 12, 2010	
<p>“An arbitrator has now ruled in favour of 21 teachers in four cities. They argued they had classes of more than 30 students, or with more than 3 special needs kids. That’s a violation of the provincial law. The teachers will receive between one and nine days off in compensation, or pay in lieu.”</p>	<p>This is incorrect. The arbitrator determined that of the 21 of 81 classes found in violation, only 2 were “inappropriate for student learning.” The remaining 19 classes were process violations only.</p>
CKNW, January 12, 2010	
<p>“In a 74 page decision Arbitrator James Dorsey has found the Vancouver, Saanich, Qualicum and Coast Mountain school districts ignored the rules limiting class size under Bill 33 and the 21 teachers involved should get compensation ranging from one to nine additional paid days off. “</p>	<p>The arbitrator issued no remedy in the Qualicum school district. The two teachers in Saanich and the seven teachers in Vancouver each got one day. It should also be noted that in Vancouver all of the affected teachers had agreed to the group consultation – the arbitrator determined that a group consultation did not meet the requirements of Bill 33.</p> <p>In the Coast Mountain school district, only one teacher got nine days and the others got six</p>

	<p>days. In reality, the Coast Mountain school district was in compliance on October 30 but the legislation requires compliance on September 30. Dorsey held the September 30 date had no flexibility to it so his order was for the entire year.</p>
<p>Global BCTV News Hour, January 12, 2010</p>	
<p>“And now, an arbitrator has ruled a big victory for the union, ruling that the government has effectively violated its own legislation in allowing some class sizes to be too big. On the face of it, it's not a big thing, only 21 teachers are affected in four school districts. However, the remedy applied them was basically more holiday time off for them but that's going to be applied to other grievances. Thousands of grievances throughout the school system will now be examined for that remedy to come into effect, and that could be, potentially, hundreds if not thousands of teachers being given extra holiday time, of course, at taxpayers' expense. So, a big loss for the Government, a big win for the union.”</p>	<p>In his August 2009 decision, the arbitrator found 21 of the 81 classes to be in violation of the <i>School Act</i>. However, he found only two of the 81 classes that were grieved — or 2.5% — to be inappropriate for student learning due to their size or number of designated special needs students. The remaining 19 classes were found to be process violations only, as outlined on page 1 of this document.</p> <p>Although the remedy requested by the BCTF would have cost \$193,621, the cost of the remedy awarded by the arbitrator is \$22,624, less than 12% of what was requested by the BCTF.</p>
<p>Class size grievances grow to thousands, bclocalnews.com, January 13, 2010</p>	
<p>“Teachers in hundreds of B.C. schools will get extra paid days off to compensate them for classes that are too large, or have too many unsupported special needs students to meet provincial legislation.”</p>	<p>This is an unsupportable extrapolation. Given that only 2 of the 81 classes were found to be “inappropriate for student learning” due to their size or number of designated special needs students, it is not reasonable to draw the stated conclusion.</p>
<p>“After the B.C. government legislated class size and composition limits in 2006, the B.C. Teachers' Federation filed 546 grievances on classes enrolled for the 2006-07 school year. The total grew to 1,122 grievances the following year, and the BCTF and B.C. Public School Employers' Association agreed to examine 21 of those outstanding complaints in arbitration hearings.”</p>	<p>Of the 157 schools identified in the BCTF grievances representing 1,622 classes, the parties agreed to arbitrate 81 classes that were grieved in seven representative schools in school districts 5 (Southeast Kootenay), 36 (Surrey), 39 (Vancouver), 58 (Nicola-Similkameen), 63 (Saanich), 69 (Qualicum) and 82 (Coast Mountains).</p>