

BCPSEA Responses to BCTF and Local Teachers' Association Statements

Class Size Arbitration Process: A Matter of Control

Brief Background

- In January 2002, class size was removed from the teachers' collective agreement and collective bargaining process, and was replaced by statute in the *School Act* and the *Class Size Regulation* under Bill 28, *Public Education Flexibility and Choice Act*.
- The BC Court of Appeal determined in February 2005 that arbitrators have the jurisdiction to determine whether or not there has been a violation of the *School Act* or *Class Size Regulation*.
- The BC Teachers' Federation (BCTF) filed 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.
- Arbitrator Dorsey, in an August 2009 award, 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.
- The BCTF and BCPSEA agreed to apply the principles from Dorsey's decision to assist in resolving outstanding grievances in other schools and districts. This allowed a large number of grievances to be resolved. This second set of representative schools and arbitration proceedings will further clarify what is appropriate for student learning and should allow the parties to resolve the remaining outstanding grievances for 2006/07 and 2007/08.
- The BCTF filed a policy grievance covering **all schools and all classes in the province** for the 2008-2009 and 2009-2010 school years.
- For 2008-2009, the BCTF have now reduced the scope of the grievance from 14,000 classes to approximately 5,400 classes.
- For the 2009-2010 school year, the BCTF have grieved all classes over a combined total of 33 (class size and number of IEPs)
- For the 2010-2011 school year, the BCTF have advised that instead of filing a provincial policy grievance covering all classes and districts in the province, they are instead contemplating filing local grievances in each district to be addressed by the local parties.

Legal vs Political Challenges to the Legislation

It appears the BCTF and its local teachers' unions remain politically committed to defeating the class size legislation, at least in part through the grievance and arbitration process. Clarity provided to both parties through the arbitration process would normally eliminate future conflict, but this does not appear to be the case in this instance.

To date, the BCTF and its locals have not been successful in arbitration. After considerable expenditures in arbitration, including time and resources, the BCTF has seen very little redress.

Although processes will continue to be refined, we have entered into a state of perpetual dispute on this issue — a state of dispute that will not likely be solved through the traditional labour–management practices and awards.

Clarification of Statements in the Media	
News Release — Vancouver Secondary Teachers' Association: Employer Wasting Vast Sums Fighting to Keep Oversized Classes in Vancouver Schools, November 4, 2010	
VSTA Statement	BCPSEA Response
The costs of arbitrating class size and composition disputes have spiralled out of control, said Guthrie-Warman. "We are calling on the Vancouver school trustees to rein in BCPSEA's runaway spending."	The BCTF has chosen to adopt a highly litigious strategy. The employer is responding to the grievances filed by the BCTF.
Last August, after a 54-day hearing that cost hundreds of thousands of dollars, arbitrator Jim Dorsey issued a 350-page decision on 81 representative classes from across the province. He found that 21 of the 81 classes were in violation of the class size limits in the <i>School Act</i>.	This is incorrect. The arbitrator determined that of the 21 classes found in violation, only two were "inappropriate for student learning." The remaining 19 classes were process violations only.
"We have been urging BCPSEA that, instead of spending hundreds of thousands of tax dollars on lawyers, we use an alternate dispute resolution process that would get to the heart of the dispute and provide guidance for the parties without involving a huge expenditure of much-needed education funds and without tying up School Board personnel, principals and teachers in arbitration hearings,"	The motivation behind this statement is unclear. BCPSEA and the BCTF have agreed to a process which allows for some matters to be resolved by the two local parties (the school district and local teachers' union) and others to be resolved through a four-party process, which includes both the local and provincial parties (BCTF and BCPSEA).