

BCPSEA Applies to the Labour Relations Board for Relief from BCTF Strike Activity

Background

Teachers were involved in a lawful partial strike from September to mid-March, which culminated in a three-day full withdrawal of duties. Prior to that strike action, teachers performed a wide range of duties and activities as part of their work for boards of education. Teachers' duties were typically performed both during and outside of instructional time. Most teachers' duties are expressly required by their employer boards, the collective agreement, and/or relevant legislation, regardless of when they are performed (e.g., student tutorials, parent–teacher conferences, school-based team meetings) (“Required Duties”). Some teachers also perform duties at their individual option, typically outside of instructional time (e.g., some team coaching or club activities) (“Optional Duties”).

On March 17, 2012, the *Education Improvement Act* (the Act) became law. The Act, among other things:

- imposes a cooling-off period until August 31, 2012, during which strikes and lockouts are prohibited and the terms and conditions of employment of the previous collective agreement remain in force
- provides for a mediator to work with BCPSEA and the BCTF to attempt to conclude a new collective agreement, and
- establishes a Learning Improvement Fund.

BCTF Action Plan

BCTF is strongly opposed to the Act for a number of reasons and has developed with its members an Action Plan to compel the provincial government to change its legislative course. Certain aspects of the Action Plan — referred to by the BCTF and local teachers' association officials in many parts of the province as “job action” — constitute a strike very similar in nature to the BCTF's “Phase 1” partial strike earlier in the school year.

In particular, the BCTF has directed its members to refuse to perform all activities that the BCTF has termed “extracurricular/voluntary.” BCTF includes within that category “all activities that occur and/or are organized by teachers outside of instructional hours.”

In other words, the BCTF has directed its members to withdraw a very broad range of duties that teachers typically perform as part of their teaching job, based upon the fact that those duties are typically performed either before or after the school bell rings. The BCTF's call for service withdrawal captures both duties that are clearly and expressly required of all teachers and duties that are performed by some teachers at those teachers' option.

BCPSEA Application

BCPSEA has applied to the LRB for a declaration that the BCTF and its members have declared or authorized or are engaging in an illegal strike, contrary to the *Labour Relations Code* and the *Education Improvement Act*. The application also asks for orders that the BCTF and its members cease from declaring, authorizing or participating in an illegal strike and that BCTF rescind its direction and advice to members to refuse to perform certain work.

In our view, the BCTF's direction to its members to engage in a concerted refusal to perform these duties constitutes an illegal strike in violation of the *Labour Relations Code* and the *Act*. The BCTF has authorized the withdrawal of both the Required Duties¹ and the Optional Duties² described as the continuation of BCTF "job action" or other similar language denoting a strike. The BCTF has required teachers' participation in the concerted withdrawal of the Required Duties and the Optional Duties through threat of discipline, including fines. The BCTF has advised its members that such discipline would be pursuant to the provisions of its Members' Guide relating to strikes and lockouts, rather than pursuant to provisions relating to "collective strategies."

BCPSEA's application covers both Required Duties and Optional Duties because the term "strike" is defined in the *Labour Relations Code* to include any concerted or coordinated withdrawal of work in a manner that affects services.

These activities have clearly been coordinated and directed by the BCTF. Teachers are not withdrawing from either Required or Optional Duties based upon their individual choice but are, instead, acting in concert in a manner that constitutes a strike. The concerted withdrawal of all of these teacher duties has negatively curtailed the services available to students and parents, both in relation to ongoing educational support and the continuation of extracurricular activities. The concerted refusal by teachers, at the insistence of the Union, to participate in these activities, including those that teachers typically perform at their individual option, will result in boards of education not being able to offer the services and activities associated with those activities, which BCPSEA considers an important part of the educational experience for students.

BCPSEA will continue to update school districts as this matter progresses.

Questions

Please refer to the following **Frequently Asked Questions** or contact your BCPSEA [labour relations liaison](#) if you require further information.

¹ Most teachers' duties are expressly required by their employer boards, the collective agreement, and/or relevant legislation, regardless of when they are performed (e.g., student tutorials, parent-teacher conferences, school-based team meetings) ("Required Duties").

² Some teachers also perform duties at their individual option, typically outside of instructional time (e.g., some team coaching or club activities) ("Optional Duties").

Frequently Asked Questions

1. What activities are being withdrawn from schools now?

The BCTF and its members are refusing to perform a number of duties and activities on the basis that those duties and activities fall within a definition of “extracurricular/voluntary” that has been adopted by the BCTF Executive. This is a unique definition. The BCTF includes within that category “all activities that occur and/or are organized by teachers outside of instructional hours.” The duties and activities that are being withdrawn are duties/activities regularly and ordinarily performed by teachers as part of their normal work day.

2. Are the activities being withdrawn activities that teachers individually volunteer to do at lunch or after school?

Most teachers’ duties are required to be performed by boards of education, the collective agreement, and/or legislation, regardless of when they are performed (e.g., meetings with principals, parent–teacher conferences, school-based team meetings, student tutorials). Some teachers also perform duties at their individual option, typically outside of the instructional day (e.g., some team coaching or club activities). The BCTF’s direction to withdraw services captures both duties that are clearly and expressly required of all teachers and duties that are performed by some teachers at those teachers’ option.

3. Isn’t it up to an individual teacher to determine if they want to participate in some activities?

Some of the activities that the BCTF has required its members to withdraw are normally performed by teachers at their individual discretion or option; however, many of the activities that are being withdrawn are in no way voluntary and are required of all teachers, whether or not they occur outside of instructional hours. It is the BCTF’s Action Plan, which the BCTF is enforcing through threat of discipline against its members, that has taken away the individual choice from teachers as to whether they wish to participate in certain activities.

4. Why has BCTF told teachers to withdraw school activities and duties?

The BCTF is strongly opposed to the *Education Improvement Act* (the Act) and has developed an “Action Plan” with its members to compel the provincial government to change its legislative course. Certain aspects of that Action Plan include withdrawal or non-participation in school activities and duties that constitute activity which is very similar in nature to the BCTF Phase 1 strike that commenced on the first day of school in September 2011 and was ended with the enactment of the Act.

5. What is a strike?

A strike is defined by the *Labour Relations Code* as being “A cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production of services.”

6. Doesn’t the BCTF have the right to strike?

The BCTF and its members engaged in a strike from September 2011 until the middle of March 2012. This was a strike that involved the withdrawal of certain duties, referred to as Phase 1, and a three-day full withdrawal of duties. It was a legal strike and was subject to the terms of an Essential Services Order. In March the *Education Improvement Act* became

law. Section 3 of the Act required teachers to resume their full duties and precludes strikes and lockouts during a “cooling-off” period until August 31, 2012. Further, during this time the collective agreement that expired on June 30, 2011 is presently in force and the *Labour Relations Code* prohibits strikes when a collective agreement is in effect.

7. Why has BCPSEA applied to the Labour Relations Board?

The application to the LRB is a complaint that the BCTF and its members have declared or authorized or are engaging in an illegal strike, contrary to the *Labour Relations Code* and the *Education Improvement Act*. The application asks for a declaration that the BCTF has declared or authorized an illegal strike and asks for orders that the BCTF and its members cease from declaring, authorizing or participating in an illegal strike and that BCTF rescind its direction and advice to members to refuse to perform certain work.

8. Is the purpose of this application to compel teachers to perform voluntary activities?

No. BCPSEA is not trying to limit the rights of individual teachers. BCPSEA is trying to ensure that during the cooling-off period, during which strikes are not permitted, school districts can continue to offer students and parents the services to which they are entitled.

9. Is bargaining still happening?

The *Education Improvement Act* also provides for the appointment of a mediator to facilitate the conclusion of a collective agreement. The work of the mediator is subject to specific terms of reference. Specifically, the new agreement negotiated through mediation must:

- cover the period July 1, 2011 to June 30, 2013
- not create any new costs that would result in a net increase in the total annual cost of the collective agreement
- enable high quality teaching and learning through:
 - effective feedback and evaluation of teachers
 - alignment of professional development with teaching needs
 - scheduling and selection of teachers suited to student needs.

The mediator must provide non-binding recommendations by June 30, 2012. If a mediated settlement is not reached, the government has the option of legislating terms and conditions after June 30, 2012 and before August 31, 2012.

The provincial government appointed Dr. Charles Jago as the mediator. Dr. Jago has a schedule of meeting dates through May and June with BCPSEA and the BCTF.