

## Class Size Update

In our February 2011 backgrounder, [The Class Size Story](#), we provided an overview of the background, history, and current status of the provincial dispute concerning class size and composition.

Since the amendment to the class size legislation in 2006 (Bill 33, *Education Learning Enhancement Statutes Amendment Act*), there have been 14 arbitration awards rendered by Arbitrator Dorsey on the interpretation of this legislation. Further, there have been awards by Arbitrators Gordon and Diebolt concerning arbitrability matters related to class size.

However, the BCTF has now decided to no longer attempt to resolve the thousands of classes under grievance for the 2010-11 school year by applying the principles learned in Arbitrator Dorsey's awards to the representative classes with respect to the issue of "appropriate for student learning." The BCTF change in direction has occurred after approximately 100 days of arbitration and hundreds of pages of rulings by Arbitrator Dorsey, and only months before the expected issuance of his May 20, 2011 award on an additional 44 representative classes, which deals solely with the issue of "appropriate for student learning."

As a result, the BCTF has now referred three grievances to expedited arbitration under s. 104 of the *Labour Relations Code* to be heard by three different arbitrators. At the hearing on March 11, 2011, BCPSEA heard for the first time that the BCTF does not agree with Arbitrator Dorsey's rulings on the issues of redress and "appropriate for student learning" (rule of 33) — despite the fact that these rulings by Arbitrator Dorsey had been issued on August 21, 2009 and January 11, 2010 and were not appealed by the BCTF.

The reasons given for the BCTF's recent change in venue to expedited arbitration with different arbitrators, while the provincial process of representative classes is still in motion, include:

- The process is too slow
- They do not agree with the "rule of 33" established by Arbitrator Dorsey
- The approach is not yielding remedies that are satisfactory to teachers
- They are asking the new arbitrators under s. 104 to depart from and not follow the previous awards of Arbitrator Dorsey on redress and appropriate for student learning
- They do not believe that the outstanding classes under grievance should be settled on the principles learned from the representative classes arbitrated by Mr. Dorsey.

On March 15, 2011, Arbitrator Steeves issued the first award of these expedited arbitrations, granting the BCPSEA application for adjournment. This bulletin will review the agreed-upon provincial approach, the expedited arbitration referrals by the BCTF, and the decision of Arbitrator Steeves in denying the BCTF position and finding in favour of the employer.

## **Provincial Approach**

### **Representative Classes to Provide Guidance<sup>1</sup>**

As there were thousands of classes under grievance and this was new legislation that had never been interpreted or arbitrated before, the BCTF and BCPSEA agreed to appoint Arbitrator Dorsey to take jurisdiction of all class size grievances stemming from the 2006–2010 school years. The parties agreed to identify and arbitrate representative classes and common interpretive issues in order to provide the parties with guiding principles and procedural interpretations that could be applied throughout the province.

In his award of August 21, 2009, Arbitrator Dorsey wrote:

The agreement on this process was predicated on an intention it would produce some clear criteria for addressing recurring differences on the same issues, establish some predictable guidelines for resolution of many differences and avoid divergent outcomes before different arbitrators. One goal is to fashion some structured approach that provides predictability and efficiency in resolving many, if not most, differences over classes that exceed the legislated class size and composition standard.

After approximately 100 days of hearings by Arbitrator Dorsey, to a great extent this objective has been accomplished. The rules and case law are now quite clear in the areas of class size redresses, processes, procedures and consultation requirements, and the parties have received important direction in the area of “appropriate for student learning” (69 out of the 71 classes found to be appropriate and creation of the “33 rule” of presumptive deference and deference with explanation).

### **Filling in the Gaps: Looking to May 20**

Following the release of what became known as the *Merits Award*, it became evident that further direction in the area of “appropriate for student learning” was still required. The gaps include grade and subject levels not covered by the original award as well as determination of more classes at the higher end of the spectrum (number of students in the class plus the number of those students with an IEP totalling 34 – 41).

In response to filling these gaps, the provincial parties agreed to arbitrate an additional 44 representative classes in five schools (one primary, one middle and three secondary) in two school districts with 34 of the 44 classes being in the higher range of the spectrum (total sum of 34 – 41).

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<sup>1</sup> Arbitrator Dorsey’s August 21, 2009 decision is referred to as the *Merits Award*.

A decision by Arbitrator Dorsey on these 44 representative classes is expected to be rendered on May 20, 2011. Following the issuance of this award, BCPSEA is hopeful that the parties will then be in a position of having enough guidance on the issue of “appropriate for student learning” from the representative classes to attempt to resolve all past, present, and future grievances.

## **In Search of a Change in Venue: A Local Approach — Section 104 Expedited Arbitration Referrals by the BCTF**

With respect to the 2010-11 class size grievances, three local grievances have been referred by the BCTF to expedited arbitration under section 104<sup>2</sup> of the *Labour Relations Code* (SD Nos. 35 (Langley), 67 (Okanagan Skaha) and 70 Alberni)), and one local grievance has been referred to formal arbitration (SD No. 57 (Prince George)).

BCPSEA believes that this action by the BCTF, in referring these matters to arbitration prior to receiving Arbitrator Dorsey’s award on the 44 representative classes, is outside the spirit and inconsistent with the representative approach agreed to by the parties; i.e., arbitrate representative classes and attempt to resolve the outstanding classes based on the findings of these representative classes.

Although Arbitrator Dorsey is seized of all the class size grievances for the 2006–2010 school years, has heard approximately 100 days of arbitration, has written over 500 pages of awards and is scheduled to issue an important award on May 20, 2011 on the remaining 44 representative classes, the BCTF has refused to await this award or, in the alternative, agree to use Arbitrator Dorsey in these s. 104 cases for the 2010-11 school year. This action on the part of the BCTF may result in confusion, duplication of resources, unnecessary arbitration costs and the issuance of inconsistent awards by a variety of arbitrators.

As a result, BCPSEA is seeking adjournment in the three cases that have been referred to three different arbitrators by the BCTF under s.104 of the *Labour Relations Code* until Arbitrator Dorsey has issued his award on May 20, 2011 and the parties have had an opportunity to attempt to use this case law (representative classes) to settle the outstanding class size grievances.

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<sup>2</sup> Section 104 *expedited arbitration* provides for a time bound process for matters to be heard and decided by an arbitrator. Either party to a collective agreement may bypass the arbitration provision in their collective agreement and seek an expedited resolution. Given the nature of the process, it is expected that limited evidence will be required and the matter at issue is or can be well defined.

## **Application for Adjournment — Arbitrator Steeves Award, March 15, 2011**

In his award dated March 15, 2011, Arbitrator Steeves granted BCPSEA's application for adjournment, stating:

...the Employer's application to adjourn the hearing of this grievance is allowed. It is, however, not adjourned generally or indefinitely. My office will contact counsel within a reasonable time after the receipt of the next arbitration award under the representative model (expected May 20, 2011) in order to discuss the continuation of the hearing of this grievance.

During the arbitration on this adjournment application, the local teachers' union president testified that the local union was not in agreement to follow or apply the previous class size awards of Arbitrator Dorsey on the representative classes with respect to the 33 rule or remedies. As a result, the local union was not willing to settle the present grievances based on these awards. The local union was instead seeking that Arbitrator Steeves (under the s.104 expedited arbitration process) depart from these rulings that had been previously established by Arbitrator Dorsey (Merits Award). On pages 6 and 14 of his award, Arbitrator Steeves summarized this evidence:

The local union in this arbitration has not withdrawn any grievances because of this rule. Mr. Kevin Epp, the President of the local, testified that his members are "still disagreeing" over this issue and many believe that class sizes of 33 or less should be changed in order to meet the educational needs of students. He also agreed that a large majority of the outstanding class size/composition grievances in this school district are ones involving less than 33 students. Mr. Epp testified that he did not think that I, sitting as arbitrator on this grievance, was bound by the 33 rule and it was generally open to the local Union to seek different remedies than were decided by the Merits Award.

The second concern is that the representative approach is not providing remedies that are satisfactory to teachers. Teachers in the local Union involved in this grievance seek to make alternative submissions about issues that were decided by the Merits Award. For example, teachers in this local Union are concerned about the 33 rule. While some local Unions have accepted this rule and withdrawn the grievances that come under this rule, the teachers in this school district have not done so. As Mr. Epp put it, they are "still disagreeing."

On pages 15 and 16 of the award, Arbitrator Steeves then considers the two different approaches. He concludes that the provincial representative approach initially agreed to by the parties is preferable to that of the local approach now proposed by the union:

Taken overall, I am being asked by the local union to find that the agreed upon provincial representative model is broken. Further, the local Union seeks to commence, through this local grievance, an alternate process that would be faster and that would provide the opportunity to seek different remedies than, for example, those decided by the Merits Award.

I appreciate the concerns of the local union but, in my view, there is value at this stage in deference by me to the representative approach chosen and developed by the parties. A

system is in place that is moving towards the resolution of all of the disputes over class size/composition. That model includes the identification of patterns in the disputes and then focuses on representative classes that will assist in resolving those disputes. It is true that not all disputes have been settled by the representative approach but a large number have. It is also true that it is taking a long time but that is, in large measure, a function of the scale of the project.

The grievance before me seeks another approach to the issues of class size and composition. This approach is locally based and it apparently contemplates having different results than the representative approach on issues such as, for example, the 33 rule and use of release time. That is a matter of concern because it contemplates that different school districts would have different solutions to the same problem. That may have some superficial appeal as a way to reflect local concerns but, in my view, it is more likely that the results would be a patchwork of different practices across the province.

In my view, what is now at stake is the potential for two very different approaches to the resolution of disputes over class size and composition. On the one hand there is the provincial, representative approach that began in 2008 while, on the other hand, there is a locally-based approach as represented by the grievance in this case. I conclude that there is considerable labour relations sense in deferring to the established representative approach already underway. I am very reluctant to commence a different process for the parties to continue their disputes when there is a real prospect of the current process producing results to resolve some of the issue in the grievance before me (as it has in the past). This reluctance is more justified if the objective behind this local grievance is to seek different results than have so far been produced by the current process. The expedited nature of the proceedings before me is acknowledged but, at this time, I conclude that the unique facts in this case justify an adjournment of the grievance before me.

**Significance:** As the adjournment has been granted, the parties and Arbitrator Steeves will now have the benefit of the Dorsey award of representative classes when attempting to settle or, in the absence of settlement, when reaching his decision. Arbitrator Steeves recognized that the union's proposed approach "contemplates that different school districts would have different solutions to the same problem' and would likely result in "a patchwork of different practices across the province".

## **Status of Outstanding Grievances and Arbitrations**

### **1. 2006-07 and 2007-08 School Years**

- Originally 1,652 classes grieved in 18 districts.
- These classes went through the two-party and four-party grievance resolution process agreed to by the provincial parties.
- There are between 400-700 classes remaining (primarily on the issue of "appropriate for student learning"). It is hoped that the May 20, 2011 award will provide enough direction to the parties to resolve these remaining classes.

## 2. 2008-09 and 2009-10 School Years

- The BCTF is close to finalizing the identification of approximately 9,000 classes being grieved for these two school years.
- Once the identification of these classes is finalized, these classes will go through a grievance resolution process which will attempt to confirm the basic facts for each class, identify the issues being grieved, and attempt to reach possible resolution. Although final agreement to this grievance resolution process has not been reached, it is expected that the provincial parties will reach an agreement on such a process in the next few weeks.

## 3. 2010-11 School Year

- BCTF advised BCPSEA that for the 2010-11 school year, class size grievances would be filed at the local district level rather than at the provincial level as had been done in the previous four years.
- Apart from the normal steps in the grievance procedure, there is no agreed to resolution process for these grievances.
- BCPSEA is aware of a total of 2,855 classes that are under grievance in 54 districts (six districts that have not reported or the union has not provided the specifics).
- Of this total of 2,855 classes being grieved, approximately half are below the 33 rule.
- The BCTF has presently referred four local grievances to arbitration. Many of the other grievances are still in the grievance procedure.

## 4. SD No. 70 (Alberni): Replacement of Education Assistant — BC Court of Appeal Decision

- Issue: Can the union challenge the appropriateness of a class throughout the year or only in September?
- An Education Assistant (EA) was not replaced for five days in April. The union argued that, as the opinion in September was partially based on these resources being in the class throughout the year, the class was no longer appropriate for student learning in April when the EA was not backfilled.
- Finding: Arbitrator Dorsey ruled that the grievance was inarbitrable. Since the opinion of the principal and superintendent on appropriate for student learning is based on the information on hand in September, evidence after October 1 is inadmissible. As a result, unless the class actually increases in number or IEPs after October 1 (triggering s. 76.4 of the *School Act*), the legislation does not trigger the issue of appropriate for student learning after that initial opinion is provided in September.
- The BCTF appealed the February 2, 2010 award of Arbitrator Dorsey.
- The matter was heard by the BC Court of Appeal on December 3, 2010. We are currently awaiting their decision.

## 5. Bills 27 and 28

The BCTF is challenging in the courts the government's 2002 legislation that removed the class size and composition language from the collective agreement. The BCTF is arguing that these actions were unconstitutional and, as a result, the class size language should be reinstated with redress. The government is currently awaiting the decision of the courts, anticipated in spring 2011.

## Next Steps

- BCPSEA will make similar applications for adjournment in the other two grievances that have been referred to expedited arbitration by the BCTF under s.104 of the *Labour Relations Code*.
- Once the parties receive the May 2011 award of Arbitrator Dorsey on the 44 representative classes, it is hoped that the parties will rely on and apply this award and the previous awards of Arbitrator Dorsey in an attempt to resolve all outstanding class size grievances. The potential success of resolution, to a large part, will depend on the parties' willingness to accept and apply, where possible, what is learned from awards in the agreed-upon representative classes process.

## Questions

Should you have any questions or would like to discuss further, please contact your BCPSEA labour relations liaison

Attachment: Chronology of Class Size Disputes

## Chronology of Class Size Disputes

### January 2002: *Public Education Flexibility and Choice Act*

- Removed class size and composition language from the collective agreement and moved it into public policy (legislation)
- District averages for K (19), Grades 1-3 (21), Grades 4-7 (28), Grades 8-12 (30)
- Hard number maximum for each kindergarten class (22) and Grades 1-3 classes (24)
- No numbers for Grades 4-12 classes or composition issues.

### January 13, 2004: *Arbitrability of Class Size Legislation — Munroe Award*

- Issue: Are class size disputes arising out of the *School Act* (s.76.1) arbitrable?  
Finding: No, matters concerning class size and composition are not arbitrable.
- BCTF appealed this decision.

### February 18, 2005: *Arbitrability of Class Size Legislation — BC Court of Appeal*

- Issue: Are class size disputes arising out of the *School Act* (s.76.1) arbitrable?  
Finding: Yes — the BC Court of Appeal set aside the Munroe award and determined that arbitrators have jurisdiction to determine whether there has been a violation of s. 76.1 of the *School Act*.
- The employer sought leave from the Supreme Court of Canada to appeal the finding
- Supreme Court of Canada declined to hear the case. Court of Appeal ruling stands.

### September 29, 2005: *Timeliness of Grievances — Burke Award*

- Issue: In November 2002, the BCTF filed a grievance on behalf of 15 districts for the 2002-03 school year. In May 2005 the BCTF attempted to add to this original grievance, grievances for school years 2003-04 and 2004-05.  
Finding: The grievance was confined to matters originally grieved for the 2002-03 school year. The union was not permitted at this date to add alleged violations for the 2003-04 and 2004-05 school years.

### January 16, 2006: *Three Interpretive Issues of s. 76.1 — Munroe Award*

- Issue 1: When must the school district be in compliance with the statutory class size averages/numbers?  
Finding: Must be in compliance by September 30 and maintain compliance throughout year
- Issue 2: When calculating district averages, does the principle of rounding apply?  
Finding: No. Can't round down; i.e., can't round 21.1 down to 21 and still be in compliance
- Issue 3: How do you calculate K-1 and Grades 3-4 splits?  
Finding: Maximum for K-1 split = 22; maximum for Grades 3-4 split = 24.

### September 2006: *Bill 33, Education Learning Enhancement Statutes Amendment Act*

- New processes, procedures and reporting requirements were added to the 2002 legislation
- K-12: Composition was added — classes with more than 3 IEPs required consultation and the opinion of the principal and superintendent that the class was appropriate for student learning



- Grades 4-7: Classes in excess of 30 required the consent of the teacher and the opinion of the principal and superintendent that the class was appropriate for student learning
- Grades 8-12: Classes in excess of 30 required consultation with the teacher and the opinion of the principal and superintendent that the class was appropriate for student learning.

**December 18, 2007: Settlement Reached — 2002-03 and 2005-06 School Years**

- Acknowledged with prejudice that no district, teacher, or union could agree to exceed the class size limits set out in s. 76.1(2) for K (22) and Grades 1-3 (24)
- Agreed to a total payment of 140 Teacher on Call (TOC) days to be used and distributed among 6 districts
- Represented full and final settlement of all 2002-03 and 2005-06 school year matters under grievance.

**September 24, 2008: Preliminary Objections on Arbitrability for 2006-07 and 2007/08 — Dorsey Award**

- All five preliminary objections dismissed
- Pointed comments from Arbitrator Dorsey on need to examine the merits of the grievances and interpretation of the legislation
- Findings: A BCTF grievance of general application covering the entire province is permissible; grievances do not have to be grieved or attempted to be resolved at the local level; particulars of alleged violations can be provided by the union during the arbitration process through pre-hearing disclosure requests; and any issue of prejudice to the employer can be argued for redress purposes

**April 9, 2008: Acceptance of the Superintendent's Class Size Report to the Board — Gordon Award**

- In SD No. 39 (Vancouver) the union challenged the procedural rules of the Board with respect to their vote and acceptance of the class size report
- Issue: Is this matter arbitrable?  
Finding: No. These are internal administrative matters. The essence of the dispute was an alleged breach of a bylaw/internal meeting/voting procedures and not class size.

**June 27, 2008: Class Size Regulations Amended to Include Definition of "Consult"**

- *Class Size Regulation* was amended to contain a definition of "consult" for the purpose of the class size provisions of the *School Act*.

**November 17, 2008: Privacy Protection of Students' Personal Information — Dorsey Consent Order**

- Access and use of confidential information on students (reports, IEPs, etc.) was limited for the purpose of arbitration
- Confidentiality terms imposed on the union, including the return of documents at the conclusion of the arbitration proceedings.

**January 30, 2009: Attempted Expansion of 2007-08 Grievance — Dorsey Award**

- The BCTF attempted to add classes from SD No. 43 (Coquitlam) and SD No. 37 (Delta) to the 2007-08 school year grievance.  
Finding: Arbitrator Dorsey agreed with BCPSEA that SD Nos. 43 (Coquitlam) and 37 (Delta) were excluded from the 2007-08 arbitration proceedings and could not be added at this late date.

**June 19, 2009: BCTF Collection of Student Support Information — Privacy Commissioner Letter**

- Issue: Teachers in several districts were asked by the BCTF to complete forms listing the names of students and any supports that they are, or in the teacher's view should be, receiving and provide this information to their staff representative  
Ruling: The investigator found that the information being collected consisted of the student's name and associated support requirements. The purpose of collecting this information was to address what the BCTF felt was a lack of resources available for students' support needs. The investigator concluded that the BCTF and its representatives are not authorized under the *Personal Information Protection Act* (PIPA) to collect student personal information for this purpose and were directed to cease this unauthorized collection.

**August 21, 2009: 81 Representative Classes — 354-page Dorsey Award**

- 81 of the 1,681 classes under grievance were arbitrated
- 54 days of arbitration involving seven representative schools in seven school districts
- Two of 81 (2.5%) classes found to be inappropriate for student learning
- 19 of the 81 classes in violation of procedural provisions
  - ✓ 10 classes – no opinion from the principal by September 30<sup>th</sup>
  - ✓ 7 classes – group consultation
  - ✓ 2 classes – no consultation with preparation teacher
- Dorsey rejected core arguments presented by the BCTF on consultation requirements and on review of appropriate for student learning.
- Rule of 33 established (presumptive deference v. deference requiring an explanation)
- Strict adherence by arbitrator to timelines in legislation
- No role for staff representative in process in legislation
- Obligation on principals to be informed.

**September 11, 2009 — Interpretation of new Definition of “Consult” — Dorsey Award**

- “Examination of mischief” to be addressed by change in definition
- Issue: What relevant information must be provided to the teacher and in what format?  
Finding: Principals are required to provide teachers with hard copies or, alternatively, electronic access to the information which the principal deems to be relevant. Although Arbitrator Dorsey ruled that it is the principal's responsibility to determine what is relevant, relevant documents must include the class list and a copy of the most recent IEP.

**January 4, 2010 — Content/Adequacy of the Superintendent's Report to the Board — Diebolt Award**

- Issue: Is the process and content of the superintendent's report to the board under s. 76.3(3) arbitrable?
- The BCTF grieved that the content of the reports was inadequate and the teacher's views were not being reported to the School Planning Council and Board of Education  
Finding: s. 76.3 reports to the board are not arbitrable, as the reporting provisions in the class size legislation do not create substantive rights for teachers  
Therefore, only the sections of the class size legislation that relate to the substantive rights of teachers are grievable.

**January 11, 2010 — Remedy for District Average Violation — Dorsey Award**

- Issue: What is the appropriate remedy in response to a district violation of the district average? In this case, the district was above the required average by 0.1 in one year and 0.2 in the subsequent year.  
Finding: BCPSEA's position on remedy was accepted. For the 2010-11 school year, the district class size average must be 0.3 below the legislated requirement.

**January 11, 2010 — Remedy for Representative Classes Found to be in Violation — Dorsey Award**

- This arbitration was with respect to calculating the remedy for the 21 classes found to be in violation in the August 21, 2009 award
- Dorsey created four tiers for remedy by adding the number of students in the class to the number of students with a designated IEP; i.e., class of 30 students of which four had an IEP = 34
- Tier 1: 33 or lower = .67 of a day/month release time; tier 2: 34 – 36 = 1 day/month release time; tier 3: 37 – 39 = 1.33 day/month release time; tier 4: 40 or more = 1.67 day/month of release time
- No redress for the month of September
- The amounts are pro-rated for classes less than a day and less than a year
- Only one remedy per class
- Remedy can be reduced if mitigating circumstances
- No remedy to the union
- BCTF claimed compensation for the 21 violations = \$193,000. Compensation awarded by Dorsey for these classes = \$22,000.

### **February 2, 2010 — SD No. 70 (Alberni) – Replacement of EA — Dorsey Award**

- Issue: Can the union challenge the appropriateness of a class throughout the year or only in September?
- An Education Assistant (EA) was not replaced for five days in April. The union argued that as the opinion in September was partially based on these resources being in the class throughout the year, the class was no longer appropriate for student learning in April when the EA was not backfilled.

Finding: Arbitrator Dorsey ruled that the grievance was inarbitrable. Since the opinion of the principal and superintendent on appropriate for student learning is based on the information on hand in September, evidence after October 1 is inadmissible. As a result, unless the class actually increases in number or IEPs after October 1 (triggering s. 76.4 of the *School Act*), the legislation does not contemplate addressing the issue of appropriate for student learning after that initial opinion is provided in September.

- The BCTF appealed this award which was heard by the BC Court of Appeal on December 3, 2010. We are currently awaiting their decision.

### **February 22, 2010 — Three Remedy Issues on Paid Release Time — Dorsey Award**

- Issue 1: How is paid release time allocated when a portion of the month is taught by the continuing teacher and the remainder of the month is taught by a temporary teacher?

Finding: The release time remedy is pro-rated between the two teachers

- Issue 2: When pro-rating the remedy of release time for a teacher teaching one block, is the redress pro-rated by 1/7 or 1/8?

Finding: 1/8

- Issue 3: Does the employer have any control or discretion when a teacher schedules their release time remedy?

Finding: No. Provided the teacher has provided the appropriate notice, the employer has no control or discretion on when a teacher takes their paid release time.

### **July 20, 2010 — Consultation that Occurs After 15 days but Before October 1<sup>st</sup> — Dorsey Award**

- Issue: Is the 15-day timeline to consult with the teacher in s.76.2 mandatory; i.e., since the superintendent's report to the board is not required until October 1, there would be no prejudice to the teacher or the union if the consultation occurred after the 15 days but prior to October 1

Finding: The 15-day timeline in 76.2 is mandatory. Any consultations after the 15 days are in violation of 76.2 of the Act. The burden of proof would lie with the employer for any reduction in redress due to mitigating circumstances.

### **July 20, 2010 — Effect on Remedy if Class Increases During the School Year — Dorsey Award**

- Issue: Does the remedy and tier calculation increase or stop when students and/or IEPs are added during the school year?

Finding: Redress stops. S.76.4 would be triggered and would require a new consultation and new opinions of the superintendent and principal. Any claim to a violation and/or further redress by the union after the date s. 76.4 was triggered would be subject to a separate alleged violation under s.76.4 under a separate grievance.

### **October 18, 2010 — Counting of the 15-Day Timeline — Dorsey Award**

- Issue: When counting the 15 school day time line under s. 76.2 of the Act, is the first day of school included in that count?  
Finding: No.

### **October 18, 2010 — S. 76.4 – Class Changes and New Classes after October 1 — Dorsey Award**

- Arbitrator Dorsey interpreted the processes and legislative requirements that must occur after October 1 when there are changes to existing classes or new classes are created. Application of this award is on a prospective basis.
- Issue 1: After October 1, which circumstances trigger the principal's obligation to consult with the teacher and provide the opinion that the class is "appropriate for student learning"?  
Finding: Three situations: (a) existing classes that were triggered by s. 76.1 in September that increase further after October 1; (b) existing classes that were not triggered by s. 76.1 in September but now after October 1 become a class for which consultation would be required under s. 76.1 of the Act; (c) all second semester classes organized in a manner that would require consultation under s. 76.1 of the Act.
- Issue 2: What timelines apply to the principal to fulfil his/her obligations to consult with the teacher and provide the opinion that the class is "appropriate for student learning"?  
Finding: Within 15 school days after (a) the principal is notified that a student in a class has been designated; (b) the placement in the class of a student increasing the size of the class; (c) the school opening day of the second semester.
- Issue 3: Does the definition of "consult" in s. 1(4) of the Class Size Regulations apply to these consultations?  
Finding: Yes.
- Issue 4: Is the principal required (within the 15 days) to communicate to the teacher his/her decision about the appropriateness of the class for student learning?  
Finding: Yes.

### **February 11, 2011 — Teacher Attendance at Consultation Meetings — Dorsey Award**

- Issue: If a teacher chooses not to attend the "consult" meeting to provide their views on the class, have the "consult" requirements of s. 76.1 been satisfied?  
Finding: Yes. "There is no legal obligation on a teacher to participate in the consultation process. Teacher cooperation in the consultation process is presumed by the legislation. It is not forced. A teacher cannot be compelled to attend a consultation meeting. When a teacher does forego the opportunity to be consulted, a principal can assume the teacher either has no concerns with the organization of the class or any concerns are not serious enough to pursue. The principal is not required to offer paid release time or other incentive to entice the teacher to a meeting."

### **March 15, 2011 — Application for Adjournment — Steeves Award**

- The BCTF decided to no longer attempt to resolve the thousands of classes under grievance for the 2010-11 school year by applying the principles learned in Arbitrator Dorsey's awards to the representative classes with respect to the issue of "appropriate for student learning."
- The BCTF change in direction occurred after approximately 100 days of arbitration and hundreds of pages of rulings by Arbitrator Dorsey, and only months before the expected

issuance of his May 20, 2011 award on an additional 44 representative classes, which deals solely with the issue of “appropriate for student learning.”

- With respect to the 2010-11 class size grievances, three local grievances were referred by the BCTF to expedited arbitration under section 104 of the *Labour Relations Code* and one local grievance has been referred to formal arbitration.
- BCPSEA is seeking adjournment in the three cases that have been referred to three different arbitrators by the BCTF under s.104 of the *Labour Relations Code* until Arbitrator Dorsey has issued his award on May 20, 2011 and the parties have had an opportunity to attempt to use this case law (representative classes) to settle the outstanding class size grievances.
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