

Letter to Boards from Local Teachers' Associations re BC Supreme Court Decision in Bills 27 and 28

A number of school districts have received a letter from their local teachers' association similar to the one below. If you have not yet received such a letter, it may be arriving from your local soon.

The letter states as follows:

The <local association> is writing to you in regard of the recent ruling from the Supreme Court of British Columbia in the matter British Columbia Teachers' Federation v. British Columbia, 2011 BCSC 469.

As you are aware, Madam Justice Griffin ruled Section 9 of PEFCA, which stripped language pertaining to working conditions of teachers and learning conditions of students, as no longer in force. Justice Griffin also declared that ss. 8,9 and 15 of PEFCA, and s.5 of the Amendment Act are unconstitutional and invalid.

While she suspends this declaration for a period of 12 months in order for the government to deal with the repercussions of the decision, this does not take away the School Board's need to plan for the reinstatement of our collective agreement provisions that were removed by Section 9 of PEFCA. The 12 month suspension will end in April of 2012, creating an opportunity to proactively plan the reorganization of our district for September, 2011 in an educationally sound manner.

We request that the Board immediately begin to plan for the reinstatement of our district class size and composition language. This may include, but not be limited to:

- ***planning the 2011-2012 budget to permit the restructuring of classes at both elementary and secondary levels to comply with our previous district language. Please find attached a copy of the stripped language that will once again be in force through our collective agreement as a result of this decision.***
- ***staffing for the commencement of the 2011-2012 school year based on limits and criteria set out in the attached articles, as applied to expected enrolment.***

<Local specifics>... the Board faces not only the time constraint within Justice Griffin's decision, but additional recruitment and retention pressures in completing the necessary post and fill process this decision warrants, ahead of the provincial timeline. It behoves [sic] us to meet as soon as possible to discuss how we may go forward in a timely manner respecting the ruling of Madam Justice Griffin.

The Association recognizes that there are significant challenges to be addressed. We look forward to working with you in a meaningful manner to meet these challenges.

Sincerely,

LOCAL Teachers Association

*cc. Superintendent of Schools/CEO
BCTF*

Suggested Response

As the BCPSEA [Backgrounder](#) regarding the BC Supreme Court decision notes, while the Court found that removing those provisions through Bill 19, the *Education Services Collective Agreement Act* in 2004 was unconstitutional, the government has 12 months to determine its course of action in this matter.

The government's determination will inform our Board in terms of next steps. The Court decision is largely based on the court's finding that the BCTF was not consulted properly prior to the legislation being enacted. The 12 month time period gives the government time to decide its policy moving forward, and then time to implement that policy by either engaging the BC Teachers' Federation (BCTF) in the appropriate consultation or negotiation process or, if it chooses, allowing the pre-2002 collective agreement provisions to be added back into the collective agreements.

The decision does not mean that the class size provisions of the *School Act* are no longer applicable. The class size and composition provisions of the *School Act*, introduced by Bill 33, the *Education (Learning Enhancement) Statutes Amendment Act* in 2006, were not challenged by the BCTF and remain intact. There is no requirement to meet the class size limits previously in the collective agreement from 2001 in advance of the 12 months and the government process.

As a result, BCPSEA recommends the following as a potential response to such a letter:

Dear Local President:

This will acknowledge your letter regarding the recent *the recent ruling from the Supreme Court of British Columbia in the matter British Columbia Teachers' Federation v. British Columbia, 2011 BCSC 469*.

While the court found that removing those provisions through Bill 19, the *Education Services Collective Agreement Act* in 2004 was unconstitutional, the declaration that their removal was "invalid" is suspended for 12 months. Our understanding is that the 12 month time period gives the government time to decide its policy moving forward and then time to implement that policy by either engaging the BC Teachers' Federation (BCTF) in the appropriate consultation and negotiation process or, if it chooses, allowing the pre-2002 collective agreement provisions to be added back into the collective agreements.

We also understand that, in the interim, the class size and composition provisions of the *School Act*, introduced by Bill 33, the *Education (Learning Enhancement) Statutes Amendment Act* in 2006, remain intact.

We look forward to receiving more information regarding next steps and will continue to discuss at this time.

Yours truly,

Board Chair

Questions

If you have any questions on this matter, please contact your BCPSEA labour relations liaison.