

From the Chair



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By E-mail: Three Pages

“Cooling-off” Period, Mediation, and...Return to Normal (?)

This has been, without a doubt, an extremely challenging school year. The Board of Directors is deeply concerned about the ongoing labour dispute with the BC Teachers' Federation (BCTF) and associated activities.

The *Education Improvement Act*, enacted in March, legislated a “cooling-off” period, continues the provisions of the 2006-2011 collective agreement, and institutes a process of mediation between BCPSEA and the BCTF. The legislation also includes a component to remediate Bill 28 (*Public Education Flexibility and Choice Act*) — as you know, the [BC Supreme Court](#) gave government a period of one year (to April 13, 2012) to address the repercussions of its findings with respect to the BCTF challenge of that particular legislation.

There are a number of activities underway associated with the legislation and collective bargaining — although I will touch on some of them in this report, these issues will be canvassed in greater detail at our upcoming Representative Council. We will also have greater clarity by that time in terms of the BCTF action plan in opposition to the legislation, given the vote of BCTF members that is scheduled to occur April 17-19.

Representative Council

We are looking forward to getting together with Trustee Representatives at the [Representative Council](#) scheduled for April 25. This will be our third meeting since we set the direction for the current round of BCPSEA–BCTF collective bargaining. The Council will provide information updates and offer a critical opportunity to hear from each other and discuss the way forward.

To ensure you receive the information you need to effectively work with your board of education, the Board of Directors would like to hear from Trustee Representatives in advance of the meeting with specific questions you need to have answered; for example, from your perspective, what are the critical workplace issues we now face as a consequence of the current bargaining circumstance? Please e-mail your questions to any member of the [Board](#), or to me directly at mjoy@sd8.bc.ca, no later than **Thursday, April 19**.

The Representative Council program will be distributed early next week. If you have not already registered, please proceed to [register online](#) by April 17.

Mediation Process

As you know, Minister of Education George Abbott announced the appointment of Dr. Charles Jago as the mediator under the *Education Improvement Act*. As referenced in the Ministry of Education news release accompanying the announcement, “The scope of mediation is broad and will seek to address all issues outstanding at the bargaining table, including:

- Manner and consequences of class size and composition
- Local–provincial split of bargaining issues
- Effective feedback and evaluation of teachers to promote improvements
- Alignment of professional development with teaching needs
- Scheduling and selection of teachers suited to student needs.”

Minister of Education George Abbott asked both BCPSEA and the BCTF to submit suggestions for potential mediators. The BCTF suggested either Mr. Justice Stephen Kelleher of the BC Supreme Court or Mr. Justice Ian Donald of the BC Court of Appeal.

In our letter response to the Minister, BCPSEA considered a number of individuals in the context of the specific criteria and the nature of the mediator’s mandate. We indicated that respected mediators such as Vince Ready, James Dorsey, Irene Holden, or Mark Brown, for example, could provide a labour relations perspective as well as a body of knowledge and experience in the K-12 public education sector. Senior education policy experts, such as former deputy ministers of education, would offer public education policy knowledge including an understanding of the intersection between policy and terms and conditions of employment. In our view, while any one of these individuals would represent a reasoned choice, none fall squarely within the framework established by the criteria. We also observed that the identified criteria and the breadth of the task at hand may lend themselves to consideration of an alternative dispute resolution model and suggested that if there was interest in exploring such a model we would be pleased to engage in that discussion, as both parties’ full participation and commitment are integral to achieving a successful outcome.

This is a unique mediation process, given that it falls under the auspices of legislation with specific parameters. We will continue our approach of being unconditionally constructive, and will work collaboratively and collegially within whatever process is required. We are prepared to meet at the call of the mediator.

The reality is, though, that after 78 bargaining sessions, we are entering mediation at the *initial proposals* stage with no in-depth discussion having occurred on any of the proposals put forward by the employer. Ideally by this point we would have had a substantive airing of the proposals and the principles underlying the proposals. We hope, whether through the mediation process or any other process, to engage with the BCTF in a discussion of best practices that would lead to agreement on a process of developing and implementing annual individual professional development and professional growth plans to foster professional currency and engagement; set clear and measurable expectations for all employees; and provide a process of regular feedback and support including mentorship options. These are positive and progressive human resources practices common to most “best employers.”

The status quo is simply not a viable option — and the principles we want to discuss are not “contract stripping,” nor will they lead to “...arbitrary and biased decisions about who to hire, transfer, retain and fire” as stated by the BCTF in their April 11 communication to their members, “Why vote yes on April 17, 18, and 19?” In fact, the BCTF characterization would be contrary to accepted labour laws and practices.

We are also awaiting the outcome of the BCTF challenge of Dr. Jago's appointment as mediator. As you know, the BCTF filed an application at the Labour Relations Board (LRB) on April 6 seeking to have his appointment quashed. The government's timeline to respond was as at the close of business April 13, and the BCTF must submit any reply submission by the close of business on April 17.

In any event, the parties continue to have an opportunity to achieve a negotiated agreement. That has been our objective all along. As recently as February 24, in our [letter to the Labour Relations Board](#), we are on the record as stating that, "The primary responsibility to reach an agreement rests solely with the parties themselves, as the union and employer must live with the result of the deal."

Report Cards

As a sector we are experiencing varying levels of return to normal operations. The Ministry of Education issued a letter to districts outlining its expectation that report cards reflective of each student's progress to date will be issued in a timely manner. The BCTF has stated its position that preparing report cards reflective of student progress to the date of enactment of the legislation is "struck work" and has essentially directed its members to not prepare report cards on that basis.

As you will have read in our [@issue](#) bulletins, there is no concept of "struck work" in this context that would allow teachers to continue to refuse to prepare report cards even after the lawful strike has concluded. It is not a concept that is applied to ongoing work when a union is no longer on strike and its members are resuming their normal duties.

Simply put, when a strike is over, employees are required to resume normal duties and there is no recognized exemption for work that may have accumulated during the strike. If that were the case, then accumulated garbage wouldn't be collected after a strike, undelivered mail wouldn't be delivered after a strike, and patients whose operations were delayed would not be operated on after a strike.

BCPSEA has been working with districts on this matter. Given the ongoing difficulties identified in many districts, on April 11 BCPSEA filed an application with the LRB asking the LRB to issue various orders and declarations including that the BCTF immediately rescind any and all directions or advice to members to refuse to submit marks in the ordinary manner, prepare report cards, or mark assignments. We asked the LRB to convene a hearing into this matter on Monday, April 16, 2012 and the LRB has now advised that a hearing is scheduled for 10:30 am on that date. We will keep you informed as events progress.

Stay in Touch

While we all recognize that issues and emotions are heightened, and a return to normal operations presents specific challenges, we still hope that professional and cordial discussions can be had and that we can work together to ensure as rewarding a school year as possible for our students. We look forward to seeing many of you on April 25.

Please don't hesitate to contact any member of your [Board](#) or [staff](#) for information or discussion as we move forward.



Melanie Joy, Chair