

***SERVICE DELIVERY PROJECT***

**Report from the Legal  
Services Group**

**November 27, 2013**

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## II. Executive Summary

The Legal Services Working Group was established as part of the Service Delivery Project to review all forms of legal services utilized by school districts.

In making changes to the process for delivery of legal services to boards of education, important considerations include:

- the governance responsibilities of Boards of Education
- the need for a solid trust relationship with legal counsel
- the need of boards of education for independent legal advice

The largest component of school district legal expense relates to labour and employment. The group determined that strategic management of these legal services would improve the effectiveness and cost efficiency of these services. For labour litigation, the most important consideration in achieving province-wide savings not only in legal costs but in preserving the rights of boards to effectively manage their work force is not the hourly rate paid for legal services but the strategic management of services to minimize duplication of effort and manage arbitrations for the best provincial advantage.

Options for efficiencies in the labour litigation area were considered by the Working Group and are more fully discussed in the Business Case in Appendix A. The Group is recommending movement to a labour litigation risk pool.

As part of its mandate, the Legal Services Working Group reviewed the current status of labour litigation in the province and how best to strategically manage the costs so that districts receive needed legal advice and there is limited duplication of legal research and advice costs. The concept of a labour litigation risk pool managed in the same manner as general liability litigation and as risk mitigation for school districts is unique and favourable. It utilizes existing processes, coordinates the use of appropriate legal services, ensures districts have the appropriate advice, and allows district to budget in a planned manner. It also can be implemented to provide for local relationships and decision making.

There are two key components to the proposed “Labour Litigation Risk Pool”

1. Centralized assessment and management of all labour matters
2. Actuarial determination of costs over a number of years and pooling and reservation of funds for payment of defence costs

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Although implementation of either component would be advantageous for boards of education and lead to cost savings, the Group recommends combining these components to maximize cost savings and effectiveness.

The question of mandatory participation remains an open one but certainly to obtain the greatest economies of scale and to promote consistent and favourable results from labour dispute litigation, participation of all boards of education is preferred.

The savings from strategic coordination of labour litigation is likely to be significant over the long term.

Next steps should include formation of a technical committee, consultation with Boards and district staff, consideration of Risk Management Branch requirements, a legislation review, BCPSEA agreement to be the contracted experts, and approval by boards of education.

Boards of education spend money on many other types of legal services besides those related to labour and employment. The Group reviewed these for potential cost savings opportunities. The types of services, the current providers, and the Group's conclusions about potential cost savings are laid out in Table A.

Except for labour relations, the only area for which the Group saw potential significant legal service cost savings is in the area of Information and Privacy services. The example of School District #23 (Central Okanagan), which contracts out to other boards of education its expertise and services in the area of Worker Compensation claims, might be considered by a board with staff expertise and capacity in this area.

Many services, especially in relationship to property transactions, are provided by local law firms. The Group's view was that these were generally cost effective. The school district is considered a valued client and treated as such. The relationship benefits the local community. Local knowledge may be important in providing an effective service. The Group's recommendations do not include any recommendations for changes in this area.

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### **III. Background of the Working Group**

#### **A. Terms of Reference**

The Terms of Reference for the Legal Services Delivery Working Group approved by the Service Delivery Committee were specified as set out below.

#### **B. Membership of the Group**

The terms of reference provided for a working group made up of a project lead plus representatives from the Ministries of Education and Finance, BC School Trustees Association (BCSTA), BC Public School Employers' Association (BCPSEA), BC Association of School Business Officials (BCASBO) and BC School Superintendents Association.

The membership of the Working Group is as follows:

**Judith Clark**, Working Group Lead, Retired Legal Counsel, BC School Trustees Association

**Kelly Thomson**, Director Internal Audit and Risk Management, School District No. 36 (Surrey),  
BCASBO

**Russell Horswill**, Secretary-Treasurer, School District No. 71 (Comox Valley), BCASBO

**Audrey Ackah**, Legal Counsel, BC School Trustees Association

**Jennifer Duprey**, Legal Counsel, BC Public School Employers Association

**Kim Oldham**, Director Claims and Litigation Management, Risk Management Branch, Ministry of Finance

**Teresa Downs**, Superintendent of Education, School District No. 74 (Gold Trail), BCSSA

**Mary Shaw**, Director, Governance and Legislation, Ministry of Education

#### **C. Purpose**

The Legal Services Working Group will review all forms of legal services utilized by school districts or provided to school districts by other organizations and provide advice to the Service Delivery Committee on opportunities for improved effectiveness and cost efficiency. The group will consider the services currently provided by organizations such as School Protection Program, BCPSEA and BCSTA when developing options for the provision of legal services.

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The group will provide options for the provision of legal services and implementation plans for school districts and associated organizations to consider. The group will also review the Tier 1 Opportunity in the report of:

“12. Coordination and delivery of legal services for employment litigation”

#### **D. Responsibilities**

The Legal Services Working Group will undertake the following:

- Provide a project plan that defines the goals and objectives for their work including documenting the current use of legal services, the options for the provision of legal services, opportunities to reduce risk, build capacity and coordinate services for the benefit of the K-12 system. The options will include the advantages and disadvantages of each.
- Provide a business case, budget, implementation plan and timeline for completion for **the** preferred options that provide effective legal services.
- Provide advice on engagement and communications, key activities and deliverables, issues and constraints, and resource requirements for the preferred options for legal services opportunities
- Provide advice on the ongoing operating structure for the preferred options for legal services opportunities including how savings would be distributed, how ongoing reinvestment and initial start-up costs would be funded
- Consider the use of the legal services currently provided from organizations such as the Schools Protection Program, BCPSEA and BCSTA, when developing options for the provision of legal services
- Provide regular updates to the Service Delivery Project Committee on the progress of their work and a final report

#### **E. Deliverables**

Legal Services options and strategies are offered to schools districts with clear operational plans for implementation. School Districts are able to take advantage of the opportunities as demonstrated by implementation of the options in a number of school districts.

### **IV. Research by the Group**

#### **A. For what types of issues do boards use legal services?**

Boards may call on lawyers for help with matters that are not strictly legal (such as governance problems) and call on non-lawyers for guidance and help with matters that may or may not require legal advice in the near or short term.

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**For purposes of this report, “legal services” includes: labour relations advice where lawyer expertise is sought, claims and issues going to court, and advice to avoid future litigation.**

The need for legal services varies considerably from district to district depending on both internal resources and external challenges.

Requests for legal services may come from many different departments in a school district.

Table A gives examples of situations in which a board of education might seek legal services and the connections within the school district organization.

## **B. Who provides boards with legal services?**

### **1. Survey Data**

The initial survey sent out by the service deliver project asked school districts about their providers for four types of legal matters: “Property Liability”, “Human Resource issues”, “Board Procedural Issues”, “Capital Projects and zoning”. No definitions were included and it is apparent that respondents interpreted the questions in varying ways. Respondents may not always have reflected the full use of legal services across the whole organization. Each respondent could include more than one choice in an answer, e.g. SPP and Harris and Company and a local law firm.

For Property Liability, the 31 respondents identified:

- School Protection Program (17),
- a Vancouver based business law firm (Koffman Kalef) (4),
- a Vancouver based labour and employment (including education law) law firm (Harris and Company) (5),
- another major Vancouver law firm (Borden Ladner Gervais),
- named and unnamed local law firms (6),
- Unnamed various providers (3).

For Human Resource issues: the 34 respondents named

- BCPSEA (5),
- Harris and Company (32),
- other Vancouver-based firms (2),
- Other unnamed local firms (1).

For Board Procedural Issues, the 33 respondents identified:

- BCSTA (12),
- Harris and Company (16),
- 1 other named Vancouver firm (Borden Ladner Gervais),
- 1 other named local law firm.

For Capital Projects and Zoning, 30 respondents named a wider variety:

- Vancouver-based large firms (10) (the most commonly named was Koffman Kalef (4))



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- Local firms (9)
- Various unnamed (6)

Interpreting the survey data, the committee members concluded that:

- Use of BCPSEA, SPP, and BCSTA may be under-represented because respondents may have been basing their responses on payments made.
- The use of law firms other than Harris and Company (especially Roper Greyell) for labour and employment issues is probably understated.
- “Property liability” was probably construed by some respondents to refer to property contracts and transactions and by others to refer to tort liability arising from the use of property.

Extrapolating from the survey and based on the individual experience of the committee, the committee concluded that the profile of service providers approximated that shown in [Table A](#)

## **2. In house counsel interviews**

In some other jurisdictions (the US, Alberta, Ontario), large boards are likely to employ in-house counsel but this is not common in BC. The formalities of special education appeals in these other jurisdictions may account for this in part. In BC, Vancouver and Surrey School Boards have in the past employed in-house legal counsel; in Langley the Director of Human Resources is also a lawyer. In Greater Victoria the Manager of Labour Relations is a lawyer, North Vancouver and Surrey have used a lawyer seconded from a private law firm. Interview information indicates that the most valuable contributions are in building internal capacity, providing proactive advice and education, especially with respect to human resources issues, as well as coordinating external counsel work. It appears that in BC, In-house legal counsel has usually been expected to address a wide range of issues and is not able to fully replace specialist external counsel.

## **C. What legal services are provided through cooperative structures?**

### **1. Schools Protection Program**

The Ministry of Finance Risk Management Branch, under the authority of the Financial Administration Act, operates a range of insurance programs for ministries and public bodies, including the Schools Protection Program to look after the insurance needs of public school boards.

#### ***a) Liability***

Under the School Protection Program, a self-funded comprehensive liability insurance policy defines coverage for claims against boards. This essentially pools the legal costs that boards would incur in defending claims against them (as defined in the coverage documents) and amortizes the costs on an actuarial basis. Boards pay premiums based on their enrolment.

The types of claims covered involve monetary damages and are laid out in the General Liability Agreement (compensatory damages for personal injury or property damage arising out of an

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occurrence), a Trustees', Directors' and Officers' Liability and Corporate reimbursement Agreement (monetary damages arising out of a claim for a wrongful act). Agreement wordings are based on insurance industry standards and reflect the broadest coverage available in the insurance market.

Some types of claims include remedies that are covered as well as other remedies. For example, a wrongful dismissal action may include a defamation claim (covered), a claim for damages for mental anguish (covered) and wage loss (not covered). A human rights complaint may seek damages (for injury to dignity: these claims have been treated as covered by SPP although their obligation is not clear) and orders against the school district (not covered). In these situations, the program negotiates how to share costs and control on a case by case basis. Control can be contentious where there is tension between short term costs (e.g. of a settlement) and longer term implications. These problems mostly surface in employment related matters. SPP has negotiated special rates with preferred law firms. Coverage tends to be interpreted liberally. Because boards of education pay for the coverage and completely fund the plan, they would appear to have a right to change the scope of coverage, provided that the operation of the plan falls within the scope of the Financial Administration Act, which provides for the operation of risk management and insurance services. Current coverage might therefore be expanded beyond what would be covered under a conventional insurance policy, if there was a general consensus on a definable type of claim where boards wanted to spread their risk and amortize their costs, or some criteria for covering defence costs. This has not been done since the inception of the Plan. Changes have been initiated by the Risk Management Branch or the Ministry of Education.

SPP also has the ability to act as coordinator to pool the purchase of legal services for the benefit of boards of education collectively or to manage common issues. SPP has done this on a "one-off" basis for the Building Envelope Program (coordinated claims by boards of education against those responsible for leaky school buildings) and for a class action claim against 25 boards of education for recovery of summer school fees.

### *b) Property*

The deductible for property claims is currently set at \$10,000. When property damage exceeds this amount, SPP will hire counsel to recover the amounts paid out by SPP as well as by the school district, paying out the school district first and sharing costs. Even if amounts are below the deductible, SPP may sometimes help districts to recover; essentially providing the district with legal services for which the district reimburses SPP out of the amounts recovered.

## **2. BC School Trustees Association**

The BC School Trustees Association (BCSTA) is the representative body for boards of education - the voice of BC's locally elected school trustees. Guided by member resolutions, BCSTA advocates for students and public education. BCSTA was established in 1905. BCSTA has an elected board of directors.

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BCSTA employs in house legal counsel and provides legal services to member boards of education as part of its member services; costs are included in member fees which are based on enrolment. BCSTA membership is voluntary but for most of the past decade all boards have been members of BCSTA and this continues for 2013-14.

BCSTA provides boards of education with the following legal and policy services:

- Provide legal and policy advice to boards of education (excluding labour relations issues)
- Develop resource materials for boards of education regarding legal developments (e.g. legislative changes, case law) that affect boards of education and advise on the implications for boards of education
- Produce the *Guide to School Legislation in British Columbia* by Judith Clark. This is the definitive reference source on BC school law.
- Deliver presentations about relevant legal topics at meetings, conferences and workshops
- Provide support or representation for external bodies regarding legal matters relevant to boards of education
- Give referrals and liaise with outside counsel

BCSTA provides advice regarding a wide range of subject areas. The following are a few examples of matters on which written or oral advice has been provided:

- School trustee conflict of interest
- Use of school buses and licensing requirements
- Guidance for school administrators in custody and access disputes
- Review of draft policies and resolutions of boards of education
- Preparing template bylaws, policies and procedures for boards of education (e.g. template procedural bylaw, development of child abuse policy, procedures and protocols, media consent forms)
- Elections issues
- School board procedures (e.g. Robert's Rule of Order)
- Requests for information under the *Freedom of Information and Protection of Privacy Act*
- School closures
- Safety
- Student and parent matters

BCSTA's written opinions are organized in a non-public database that is a valuable resource for members but is accessed primarily through BCSTA counsel. Direct access by members would create the risk that the opinion accessed is outdated because of legal developments or does not address the actual problem. It is effectively used when mediated by BCSTA's in house counsel,

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i.e. the problem is explained and the lawyer can then identify relevant existing material and supplement with qualifications or information about how the written material might apply. BCSTA does not provide legal representation for boards of education in litigation matters. It does not duplicate BCPSEA services to boards. Services are provided by in house counsel, who is supported by a small budget that may be used for external counsel assistance and special projects.

### **3. BC Public School Employers Association**

#### ***a) Membership***

All boards of education are required by statute to belong to BCPSEA.

#### ***b) BCPSEA Mandate***

BCPSEA's mandate is defined by:

- *Public Sector Employers Act*, RSBC 1996 c. 384, especially section 6 which establishes public sector employers' associations and defines the purpose of the employers' associations to be to coordinate the compensation for exempt employees, benefit administration, human resource practices and collective bargaining objectives. Additional purposes are to foster consultation with the representatives of employees and to assist the Public Sector Employers' Council ("PSEC") in carrying out any objectives and strategic directions that it establishes for the sector.
- *Public Education Labour Relations Act*, RSBC 1996 c. 382, which establishes BCPSEA as the accredited bargaining agent for all boards of education in BC and provides exclusive authority to bargain collectively for the boards, for both teachers and support staff (s. 4).
- BCPSEA Constitution and Bylaws, Schedule 2, which among other things, requires members to abide by all decisions of the Association regarding relations with any union with respect to any matter for which the Association is the accredited bargaining agent (s. 2.2), requires the Directors to adopt policies and procedures for delegation of authority for matters involving support staff unions and for local matters involving teacher's unions (s.2.3). Policies and procedures for delegating authority for support staff unions must include authority to resolve any disputes arising out of the collective agreement and reporting by boards of significant developments in collective bargaining and contract administration (s. 2.3). Policies and procedures with respect to teacher unions must include delegation of authority to negotiate agreements on local matters, delegation of authority to resolve disputes that have only a local impact, mandatory reporting to BCPSEA of significant developments in contract administration on local matters (s. 2.5).
- BCPSEA Policy 94-02, Collective Agreement Administration, Grievance Management and Arbitration Assistance, which sets out SD and BCPSEA responsibilities with regard to

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grievance reporting and management, criteria used by BCPSEA to determine provincial implications and level of support, and procedures.

### *c) Services*

BCPSEA provides a wide scope of human resource and labour relations advice and resources to all sixty school districts in British Columbia. Many of these services have a legal component.

- As the accredited bargaining agent for the province's 60 public boards of education, BCPSEA negotiates provincially with the British Columbia Teachers' Federation for a provincial teachers' collective agreement and coordinates local bargaining between boards of education and their local teachers' associations. In the summer of 2013 the government assumed responsibility for negotiation of collective agreements.
- BCPSEA has managed all three phases of teacher-public school employer collective bargaining – preparation, negotiations and implementation/administration. It provides specialized advice and assistance to school boards for concluding and administering collective agreements – including the provision of research, legal advice, coordination within the sector and where requested, becoming involved directly in negotiations or dispute resolution. In July of 2013, the provincial government assumed responsibility for negotiations and replaced the elected BCPSEA board with an administrator. BCPSEA has continued to deal with contract administration.
- BCPSEA receives and manages the referrals to arbitration of all grievances filed by the BCTF, both provincial and local.
- BCPSEA leads, manages and funds arbitrations and legal proceedings considered to have provincial implications, and coordinate other arbitrations and legal proceedings where appropriate.
- BCPSEA conducts and provides labour relations research to school districts, education organizations in other districts, and other management organizations within the BC public sector, and provides costing analyses and settlement comparisons within and outside the sector.
- BCPSEA provides advice and standards in respect to a wide range of human resource matters and legal issues, including termination of employment, job evaluation and re-classification, pension and benefits management and administration, application of government compensation guidelines, safety, claims and assessment issues with WorkSafe BC, and the interpretation and application of federal and provincial legislation including the *School Act*, *Freedom of Information and Protection of Privacy Act*, *Workers Compensation Act*. etc.
- BCPSEA has developed and provides a wide variety of professional development opportunities through the HR Learning Series and other workshops for district staff, including district-specific training in labour relations and human resources topics.
- BCPSEA created and maintains the Employment Data and Analysis System (EDAS) which collects employment data to improve understanding and assist in analysis of the K-12 labour force.

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- BCPSEA created and maintains Make A Future, a comprehensive recruitment and employment service supporting BC's school districts in finding, attracting and retaining top-quality employees.

#### *d) Governance*

On July 31, 2013, the provincial government replaced the Board of Directors of BCPSEA with a public administrator.

The previous structure provided for governance by a board of directors composed of 9 trustees, elected by the membership, up to four government appointees and up to three non-voting members: past president (currently vacant) and representatives of BCSSA and BCASBO.

BCPSEA's budget has been approved by the Representative Council of the association, comprised of the Board of Directors and a representative from each member board.

Although BCPSEA bylaws provide for membership fees to cover the Association's operation costs after government grants have been applied, BCPSEA costs in recent years have been paid from grants from government. In 2013, a portion of the BCPSEA grants were paid from "holdback" funds of the Ministry of Education, reducing the amounts that boards received from these funds.

#### *e) Grievance Management*

BCPSEA provides advice to boards through its labour relations specialists and in house counsel. As the employers accredited bargaining agent it has grievance management authority with respect to both teacher and support staff unions, except as it is delegated to local boards or groups of boards through its policies, pursuant to its Constitution and Bylaws.

With regard to support staff unions, BCPSEA policy requires boards to report unresolved grievances; BCPSEA will exercise its grievance management authority with respect to grievances that have province-wide strategic implications and /or province-wide legal implications. Because of local bargaining, these issues are rare.

With regard to teachers, school districts are required to report unresolved BCTF grievances to BCPSEA prior to commencement of the last in-house step of the grievance procedure. When a grievance involves an issue arising out of language negotiated by the provincial parties or regarding an interpretation of a statute, the district is required to contact BCPSEA at the first indication of a dispute. BCPSEA staff determines the degree of province-wide interest and whether BCPSEA will pay some or all of the external costs of an arbitration including cost of counsel and whether the district or BCPSEA will manage the grievance. For grievances that have a high degree of provincial implications but do not directly stem from provincially negotiated language, or legislation, funding is limited to a percentage of costs based on money available in the current operating budget designated for arbitrations. Staff decisions on funding and management of a grievance may be appealed to the BCPSEA Board of Directors. BCPSEA uses in house legal (2 lawyers) and labour relations personnel and external legal counsel to provide its legal and labour relations services to boards. External legal counsel is used for court and arbitration work, although in house counsel may assist with such cases to reduce costs (e.g. communication, wit-

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ness preparation). BCPSEA advises that it has not had sufficient resources to assume responsibility for all grievances with province-wide implications. However boards receive advice on management of the grievances that are referred back to them, considering the overall strategic situation with regard to particular issues.

#### **4. Okanagan Labour Relations Council**

##### ***a) Purpose***

The Council is a not for profit organization set up for the purposes of providing labour relations advice on matters requested by the members or non-members in accordance with its own Rules and in accordance with the Constitution, Bylaws and Policies of BCPSEA, and to conduct collective bargaining for support staff and local teacher bargaining as requested.

The OLRC has evolved from a regional organization of BCSTA that was an accredited bargaining agent for 10 boards in the Okanagan area into a separate organization with voluntary membership that supplements and supports district human resources and labour relations staffing. It is still an accredited bargaining agent for one CUPE collective agreement involving three school districts.

##### ***b) Membership and Governance***

Current member school districts in the OLRC are SD 19 (Revelstoke), SD 22 (Vernon), SD 51 (Boundary), SD 53 (Okanagan Similkameen), SD 58 (Nicola Similkameen), SD 67 (Okanagan Skaha) and SD 74 (Gold Trail). The OLRC also represents SD 83 (Okanagan Shuswap) for CUPE bargaining purposes and on a fee for service basis although it is not a member district. OLRC provides support for six CUPE collective agreements and seven teacher collective agreements for member districts, with the addition of an eighth teacher collective agreement on a fee for service basis with SD 83.

The OLRC has two employees: an executive director who is a human resources professional, and an executive assistant. It is overseen by a Board of Directors appointed by the member districts. The membership fees for the OLRC are based on half of the fees being an equal share between all of the members and half of the fees reflecting student enrolment.

##### ***c) Services***

The OLRC provides member districts with labour relations, collective bargaining, contract administration and management support services. Services address teacher, support staff, and exempt staff issues. Specifically, in addition to collective bargaining and training, during the 2010-2011 year the OLRC opened 149 files, including 57 incidents involving teachers or administrative officers and 92 incidents involving support staff. In the 2011-2012 school year there were 209 files opened, including 54 incidents involving teacher or administrative officer issues and 152 incidents involving support staff. In the first five months of 2012-2013 year, the OLRC opened 108 files, 37 with teachers or administrative officers and 71 with support staff.

The primary areas of support provided to members are outlined below:

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1. **Investigations and Progressive Discipline** – Support typically begins at the time a complaint is received and includes a determination as to whether an investigation is appropriate given the circumstances, assistance with the notice of investigation, if required, planning of the investigation – identification of witnesses, timing of investigation and creation or editing of the interview questions. It concludes with a review of all of the information gathered, a recommendation of required action and preparation of necessary correspondence and support during the grievance process if required.

2. **Grievances and Arbitration Management** – The OLRC supports districts in the grievance process and assists with developing appropriate responses to the union and often participates in the final stages of the grievance process as part of the employer committee for both CUPE and teacher grievances.

The OLRC assists in negotiating resolutions to grievances with the union and helps ensure consistency of response across districts on similar issues to prevent the erosion of management rights and/or bargaining through the grievance procedure. The OLRC can assist in preparing and managing interpretation arbitrations and provide advice and file management on discipline arbitrations.

In the 2010-2011 year and in the 2011-2012 year the majority of grievances that the OLRC was involved with were resolved prior to traditional arbitration. However, the OLRC did support two districts in alternative dispute resolutions involving interpretations of collective agreement language and the application of management rights. In these cases the parties sought third party intervention from the Labour Relations Board using a more informal mediation/arbitration format. The grievances were resolved successfully in a timely basis with a combination of in-person mediation and written submissions. No external counsel was used and the cost of the mediator/arbitrator obtained through the LRB was significantly less than other private sector alternatives. In the 2012 year there were also two cases where the districts felt that a traditional arbitration would be more appropriate and those were handled by outside counsel.

When outside counsel is used, the district selects counsel and has control of the case but may request OLRC to remain involved in liaison and coordination.

3. **Collective Agreement Administration** – The OLRC provides interpretation, advice and guidance on matters arising from the collective agreements based on historical information, past practice, arbitral jurisprudence, legal precedents, general labour relations principles and experience to ensure problems are resolved and management rights are protected. Interpretations are documented and included in interpretation manuals for the relevant collective agreements. The OLRC also provides advice on attendance management issues and helps to diagnose problem areas for special attention. The OLRC works closely with BCPSEA on teacher issues that have provincial implications.

4. **Collective Bargaining** – The OLRC Executive Director acts as spokesperson on behalf of the Employer for CUPE negotiations either through direct delegated authority with the CUPE 523 group or as a service to members who are responsible for bargaining



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authority at the Board level. Negotiations support includes working with the employer bargaining committees and districts to develop employer proposals and related strategy for negotiations that are consistent with the PSEC mandate and coordinated with BCPSEA; providing advice to bargaining committee on bargaining tactics and responses; development of comparative information concerning contract provisions, benefits and wages as appropriate; organizing the bargaining documentation; acting as a liaison with the union committee through the union spokesperson; generation of a final Memorandum of Agreement and Collective Agreement, and ensuring legal requirements of relevant statutes are met. The OLRC also acts as an advisor and/or spokesperson for local teacher negotiations as practicable, given available resources. Historical bargaining records are maintained at the OLRC for all supported negotiations and research can be done on bargaining history as required.

5. **Education** – The OLRC provides seminars for professional development/growth in areas of labour relations such as progressive discipline, Investigations, collective bargaining, job evaluation (jointly with CUPE). Guest speakers have been invited to attend OLRC in person board meetings to present on a topic of interest to the group.

6. **Management Support** – The OLRC is available for coaching and support for all manner of labour relations and human resources issues and can provide assistance with development of employer policies on existing and new initiatives in the human resources/labour relations area in conjunction with BCPSEA.

7. **Surveys** – The OLRC conducts surveys for information purposes and for coordination of practices throughout member districts.

8. **Liaison** – The OLRC acts as a liaison with BCPSEA and non-member school districts regarding legal, human resources and labour relations matters. The OLRC also acts as a liaison with CUPE at the Local, Provincial and National level.

9. **Job Evaluation Plan Administration for 523 Group** – The OLRC has been involved in pay equity and job evaluation since the formation of the plans and maintains records from the onset of the 523 plan. Currently, the OLRC supports the 523 group in the development and maintenance of appropriate job descriptions, keeps all records, organizes committee meetings and associated correspondence and documentation, and assists with rating inquiries. Support on job descriptions job evaluation is provided to other districts upon request.

#### **D. How do other provinces cooperate for savings on legal services?**

Telephone interviews and online sources provided information from school board associations in Alberta, Saskatchewan, Manitoba and Ontario on how legal services to boards were delivered to enhance efficiency and effectiveness. The diversity of models used is quite striking although there are some common features. All four have mechanisms to provide insurance services to school boards through a voluntary scheme, controlled by boards. Insurance programs are not involved with labour relations matters.

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Ontario and Manitoba have established special funds to support litigation of provincial significance. Alberta and Saskatchewan provide direct legal services to their members, the former based on fee for service and the other funded by membership dues.

## 1. Alberta

Alberta School Boards Association (ASBA) delivers legal services to its members through a fee for service model that in many ways resembles a private law firm. ASBA's legal group of 5 lawyers provides a wide range of services, including representation in court, tribunal or arbitration hearings. There are some exceptions: the group does not deal with real property transactions or collections. Labour and employment and educational issues account for the highest volume of cases.

The focus is on providing service to individual boards rather than coordinating a provincial strategic approach. In addition to services to individual boards, the legal services group provides services to the association for the benefit of all boards, such as presenting at workshops and conferences.

ASBA legal services operate separately from ASBA's insurance and risk management program, the Alberta School Boards Insurance Exchange (ASBIE), which is managed and directed by the Alberta School Boards' Association for its members but whose finances are separated from ASBA. Participation in ASBIE is voluntary. Current there are 53 members participating in the program, representing school boards in Alberta and the Northwest Territories. The insurance exchange is managed by a consultant and insurance services are provided by a private company.

Members have complete freedom to choose ASBA services or those of private law firms; ASBA thus competes with private law firms. Its rates are significantly discounted from those charged by competing private firms. It has an overflow arrangement at a discounted rate with a private Edmonton-based law firm for corporate and commercial work. This firm does not do labour and employment law and does not compete with ASBA. The arrangement originated with a tender process.

ASBA does not operate a lawyers' trust account but otherwise must comply with Law Society requirements, including liability insurance requirements, solicitor-client privilege and annual audits. Files are billed monthly; lawyers have billing targets to meet and compensation for lawyers is related to billings.

ASBA provides other services for hire: communications, governance and policy, and labour relations. Fee for service revenues amount to approximately 33 percent of association revenue and approximately 73 % of department costs. It was noted that there are substantial costs associated with operating this type of service and ongoing issues of recruitment and retention of qualified lawyers.

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ASBA shares information about legal developments through a subscription newsletter (vis a vis) for which members pay a reduced rate.

Four of the major boards in Alberta employ in house counsel.

**Working Group Observations: Such a model would not be readily adapted to BC circumstances. The development of an in house law firm that would compete with, rather than work with, the private bar, would require a long period to develop its credibility with boards. Please refer to page 22 of the report which addressed the fee for service option.**

## 2. Saskatchewan

Saskatchewan School Boards Association (SSBA) has 3 lawyers on staff and offers a broad range of legal services to member boards. Advisory services cover a broad range of legal issues arising in relation to students, parents and the public, a wide variety of contracts, facilities, access to information and protection of privacy, governance, operation of schools, school community councils, policies, labour and employment, and interpretation and application of legislation. Representation in legal actions, arbitrations, labour conciliation and before tribunals, such as the Labour Relations Board and human rights tribunals, is also provided.

SSBA does not operate a lawyers' trust account. No real estate transactions are handled. Grievance and arbitration work is done primarily by the human resources staff rather than the legal department.

Services are not charged back to the client; they are funded through membership fees.

Legal service is part of the same department as SSBA's insurance and risk management service provided by SSBA. Boards are required to have insurance under the Education Act but members are free to purchase insurance services elsewhere. All boards do obtain insurance services through SSBA because of advantageous pricing. The association also offers some coverage on a self-funded basis that is not otherwise available for purchase (e.g. property damage arising from mould). Insurance coverage is funded by annual fees charged on a per student basis and is determined in accordance with actuarial requirements. No formal process is involved in selection of counsel to represent boards with respect to claims.

Labour relations grievances are handled within the employee relations department. The same team that negotiates the teacher provincial agreement (four from SSBA, five from government, and four from the teachers' association) is also responsible for resolving provincial grievances. If a provincial grievance needed to go to arbitration, it would be handled by SSBA in house counsel and directed by SSBA; local boards would not be in control. There are very few grievances under either the teaching or non-teaching agreement.

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The director of Legal and Employee Relations Services also serves as General Counsel to the Association, reporting directly to the Executive. Advice is provided to the Executive, the Executive Director and work areas of the Association. Some of the responsibilities include analysis of proposed legislation and Ministry policy. Assistance is provided in the formulation of policy and positions on a variety of education issues.

Workshops and seminars are provided to school board members and senior administrators to support boards in their work.

Although some resources are available online, such as documents on duty to accommodate and freedom of information, there is no formal database of opinions or relevant decisions.

**Working Group Observations: This model would not be adaptable to British Columbia because of the differences in the volume of grievance arbitration and the different bargaining structure.**

### 3. Manitoba

Manitoba School Boards Association (MSBA) does not employ in house legal counsel. It has a staff of eight labour relations consultants who advise and represent school divisions in grievance arbitration processes, and an outside lawyer on retainer for advisory services.

A special fund, the Manitoba Universal Standards Trust, (MUST) is funded and administered by MSBA. It is intended to offset district legal costs in employer-employee matters with provincial implications. Decisions on coverage are generally made after the fact so school divisions retain full control of the litigation. Coverage decisions are made by a committee of trustees (elected from among regions) and a staff member. MUST is funded by an annual special assessment based on expected costs to complete existing but unfinished cases. Fund surpluses are rebated to members annually.

MSBA also provides risk management and insurance services (liability, property, directors and officers) to its members, funded by member premiums. A committee of trustees with a broker deals with changes to the program. Premiums are rebated if there are no large losses. Cases rarely proceed to court.

MSBA provides policy services and labour relations education sessions.

No database of opinions is maintained. Decisions and awards relevant to employment issues are posted online.

The usual volume of arbitrations is approximately six per year.

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**Working Group Observations: MUST shares the cost impact of significant litigation but does not provide a means for a strategic approach. BC boards expect greater legal support from their associations. The volume of grievances is wildly different from BC's.**

#### 4. Ontario

Ontario has four associations of school boards: Ontario Public School Boards Association (OPSBA), Ontario Catholic School Trustees' Association (OCSTA), Association franco-ontarienne des conseils scolaires catholiques (AFOCSC), Association des conseils scolaires des écoles publiques de l'Ontario (ACEPO). To facilitate sharing of services, they joined together with the Council of Ontario Directors of Education (CODE) to form a non-profit corporation, the Ontario Education Services Corporation (OESC).

None of the associations of neither school boards nor OESC currently employ in house legal counsel or provide members with direct legal services. (OPSBA formerly had a lawyer on staff but has discontinued this.) In response to an inquiry whether OESC would be considering providing legal services as part of their shared services mandate, the President indicated that it was not likely to be considered, because of the need for a range of legal specialties in education and the desire to be able to select the best legal advisor on a matter. The large Ontario boards often have in house counsel and there are a number of law firms with school board clients.

OPSBA maintains a Legal Defense Fund to allow OPSBA to take, or participate in, legal action on matters pertaining to the protection of the province-wide interests of public education and public school boards. The fund is not used for defense of individual trustees in matters of conflict of interest or the Criminal Code and generally does not support grievance arbitration until the issue reaches the stage of appeal to a court.

The fund may be used to initiate legal action, obtain intervener status, provide financial support to a member board involved in legal proceedings, and obtain legal opinions or advice. It is only rarely used to provide funds for a school board's case; it is more likely to be used to obtain intervener status. It is an ongoing fund with a minimum fund amount requirement, annually added to through the OPSBA budget (\$25,000/year). Decisions are made by the OPSBA board of directors on recommendations of staff.

OPSBA will circulate legal advice to members on occasion where it will be generally useful, will save everyone money and time, and support a consistent approach, e.g. on copyright and fair dealing.

A separate school board owned and directed organization, Ontario School Boards Insurance Exchange (OSBIE) provides member boards (71 out of 72) with general liability, property, and other standard coverages. It has no involvement in labour relations issues.

OESC's mandate is to provide services to all Ontario school boards at cost savings over alternative services. Among other services, it provides a "Provincial Portal," managed by

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OPSBA, to share labour relations information among staff of all 72 Ontario school boards. The Provincial Portal is a password secure site. Access is provided to Sr. Labour Relations and Human Resources staff only as it is a staff resource.

The Portal's arbitrations library contains relevant arbitration decisions (provincial and local) dating from 1996, for teaching and non-teaching staff in Ontario. There are also complete text decisions from school board districts across Canada that have been cited in Ontario decisions or may impact on Ontario school boards. The Portal also contains Libraries for court decisions (including judicial reviews of arbitration decisions), Ontario Labour Relations Board decisions and Human Rights Tribunal decisions – all related to school board labour relations issues.

Legal opinions posted on the Portal are obtained from OPSBA's legal counsel, are full text and pertain to education labour relations issues. They are purchased by OPSBA on behalf of member boards.

Legislative analysis on new education legislation and regulations, when requested by OPSBA, is provided by legal counsel and is uploaded to the Portal.

The Portal is funded by an annual subscription fee paid by Ontario's 72 Public, Catholic and French-language school boards.

**Working Group Observations: Because there are four school board associations, it was necessary to create another organization to provide cooperative services to all boards such as information sharing. This is not the case in BC. The OPSBA Legal Defense Fund provides a mechanism to protect the common interests of boards in litigation of provincial import but would be swamped if it took on arbitration work as well.**

#### **E. How much is spent on external (private) legal service providers?**

The Deloitte report, based on 2007-08 estimated spending of \$3 million (district), extrapolated to \$5 million province wide, on labour relations related legal services.

The 32 respondents to the survey done by the Services Delivery Project reported legal spending between 0 and \$400,000 per annum, the mean being \$87,000 per annum and the median lying between \$40,000 and \$50,000. Twenty-four districts reported spending \$100,000 or less, five districts reported spending between \$100,000 and \$200,000, and 3 districts over \$200,000. Total legal spending was approximately \$2.8 million; this was not all for labour. We have no information enabling us to extrapolate these amounts to the other boards (e.g., we don't know what percentage of the student population is represented by the respondents.)

The Committee concluded that the figures were unreliable and probably understated legal spending. Surrey did not respond to the survey and was estimated to spend over \$500,000 just on human resources issues.

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## **V. Guiding Principles and Criteria to be used when considering options:**

- District choice: Boards need to be able to freely select their source of legal services
- Some cost-saving strategies require wide participation to achieve sector wide efficiencies
- Recognition of local expertise and levels of service: especially with regard to property matters, knowledge of local context can be very important.
- Cheapest hourly rate is not necessarily the most cost-effective
- Strategic use of legal services can save money in other areas
- Use of legal services is often a response to lack of adequate staff support or other appropriate support:
  - Appropriate use of other services such as HR or FOI consultants can often reduce legal expenditures.
  - Measures of cost savings and/or efficiency need to include considerations of effectiveness and whether district goals are attained.
  - Prior knowledge of bargaining history or other background to an issue can save money.
  - Building capacity at the school district level (professional development and other value-added services to educate clients ) can create cost-savings
  - Boards vary greatly in their internal resources and external challenges; this influences their need for external legal services.

## **VI. Options Considered for Delivery of Labour and Employment Legal Services**

The Working Group decided to focus separately on legal services related to labour and employment. There is little doubt that this is the largest category of legal expense, both for individual school districts and for the K-12 education system as a whole. There are also existing services to be considered.

The Working Group considered a variety of service models before arriving at the three options specified in the Business Case set out in Appendix A.

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## **A. Option 1-Support Best Use of Resources within Existing Structures**

### **(1) Summary**

- Continue current mandates of existing providers.
- Provide more explicit best practices guidance: Ensure school district staff is aware of the resources available and their most effective use. For example: Schools Protection Program (SPP) and School District might appoint same counsel to investigate sexual abuse allegations against staff.
- Enhance BCPSEA litigation budget to enable it to support more cases at the arbitration level based on its existing definitions of province-wide interest.

### **(2) Advantages**

- BCPSEA staff maintain knowledge of provincial trends and current legal developments and apply this knowledge to effectively advise districts
- Integration of labour relations advice and legal advice and services
- Legal services and labour relations support risk management advice and prevention
- BCPSEA staff enjoy confidence of school district personnel
- Districts have a degree of choice and local control
- No duplication of legal work on provincial issues that are funded by BCPSEA
- Provincial issues handled by BCPSEA can achieve results that avoid negative province wide precedents (e.g. whipsawing) and create efficiencies across the system
- BCPSEA can build capacity and competition within the private bar through its referrals on provincial issues and can encourage law firms to do succession planning as expert lawyers near retirement.
- Outsourcing of hearing work allows BCPSEA staff to focus on strategic coordination and management, support relationships with private bar which has recognized expertise and enjoys district confidence.
- Boards have responsibility for investigations but can readily access BCPSEA advice.
- Maintains local accountability for cost of external legal services: the cost of poor labour relations decisions is borne locally.



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- BCPSEA participation in a case sends a message to BCTF that the issue is being taken seriously.
- BCPSEA involvement removes local pressure from trustees.

### (3) Disadvantages

- BCTF and BCPSEA processes don't align: BCTF centralizes the teacher issues but BCPSEA does not manage local issues. BCTF manages almost all its grievances, a much higher percentage than BCPSEA does. BCTF approaches all issues strategically and can divide and conquer. Strategic management is needed on both provincial and local issues. Process to determine extent of BCPSEA involvement takes time and resources.
- Legal firms may duplicate legal research and work for same issues as districts engage different lawyers, even within the same firm. When different firms are engaged in similar issues under local control, there is no mechanism to avoid duplication of research.
- BCPSEA cannot force districts to coordinate choice of counsel when BCPSEA does not pay for it; boards expect choice if they have to pay.
- Split in services results in lower volume at a provincial level, which does not allow negotiation of significantly reduced rates from legal firms
- BCPSEA is not seen as "district owned" due to PSEC oversight and co-governance model. In many districts trustees are not involved in the decision whether or not to proceed to arbitration and are therefore less aware of BCPSEA's assistance.
- BCPSEA outsourcing of hearing work is expensive. However, it allows BCPSEA to access substantial expertise. BCPSEA has the ability to monitor and manage billing and to provide some in house support to minimize costs in complex cases (e.g. district liaison, witness preparation, such as was done in essential services cases).
- Boards may require legal advice at the investigation stage (carried out locally) but not obtain it in a timely way and therefore end up in more costly proceedings.
- There is no formal mechanism for coordinating with SPP when a disciplinary or termination investigation also raises possible coverage issues. SPP may be appointing counsel to do investigation to know their exposure: may be more efficient to use one lawyer for investigations that are primarily fact-finding. Districts can address this by discussing choice of counsel with SPP.
- Where issues are managed by individual districts, legal counsel must deal with districts individually, which is more time-consuming and therefore more expensive than dealing with a single client (BCPSEA) would be.

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- Districts sometimes do not know where to take their legal concerns, so may contact private legal counsel when they could obtain service without charge from BCPSEA, BCSTA or SPP.
- No accurate measures are readily available of the amount districts spend on outside counsel under the current system and the amount they save when they best use existing resources.
- When issues involve exempt staff, districts may seek advice from BCSTA (especially with regard to relations between board and senior staff), BCPSEA (especially with regard to termination standards), SPP (when coverage may be triggered) and private counsel (e.g. if severance negotiations are called for.)

#### (4) Conclusion

The Group was strongly of the view that any changes made should build on the infrastructure and expertise that has already been developed.

Although it can be assumed that some savings would result from better understanding of what resources are available and how to use them most effectively, it is unlikely that any significant measurable gains in effectiveness or efficiency would be achieved by this means alone.

## **B. Option 2 - Expand BCPSEA Mandate and Resources**

#### (1) Description

- BCPSEA manages all teacher grievance arbitrations, regardless of degree of provincial significance. Over time, this may be applied to support staff grievances.
- Districts may exercise choice, in consultation with BCPSEA, about such things as the law firm or lawyer utilized; recognizing that trust and confidence are important elements in a solicitor-client relationship.

#### (2) Advantages

- Eliminates the difference in practice between provincial and local issues: saves the time and resources used now to determine whether an issue is provincial or local
- Reduces duplication of legal work on district local issues or provincial issues paid for by districts
- Increases control over province-wide issues

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- Strategic management of issues supports more efficient and effective use of private legal services. For example, BCPSEA staff can connect with district staff and prepare those staff as needed
- Strategic case management may enable development of protocols with BCTF to support efficient resolution of differences.
- BCPSEA is authorized under existing legislation to do this work. (Changes would be required to BCPSEA bylaws and policies.)
- Shares labour relations expertise. (School districts struggle to hire expertise or have in district positions to do this work.)
- Increases legal volume at a provincial level, which may allow negotiation of reduced rates from legal firms
- BCPSEA would not have to go through RFQ process to identify its preferred suppliers
- Reduces pressure on trustees by local unions to settle matters in ways that could prejudice other boards.

### (3) Disadvantages

Requires substantial increase in BCPSEA resources.

Savings to districts would be difficult to estimate and forecast, and would be perceived as unevenly distributed, so it may be difficult to get school district support for increased member fees.

May change district practice around grievance steps and avoiding arbitration, because of the perception that arbitration costs would be covered. Thus efforts to resolve locally may be reduced. If this plan is applied to support staff grievances, it may increase activity in support staff grievances at the provincial level.

Would reduce trustee and school district control over local relationships with unions.

Apprehension by districts of government interference and control may affect school district support for this plan

### (4) Conclusion

The Working Group concluded that strategic management of grievances would be the most significant element of any strategy to achieve efficiencies with respect to legal costs.

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This option is presented as the third option in the Business Case.

### C. Option 3 - Fee for Service

#### (1) Description

BCPSEA (or alternatively another existing or new not for profit organization) offers expanded legal services at fees lower than private law firm competition. Staff lawyers would conduct hearings rather than contract out as BCPSEA does now.

This would be similar to Alberta School Boards Association model.

#### (2) Advantages

- SDs have freedom of choice as to where they go for labour relations legal services
- Staff lawyers specialize in school district labour issues so over time will acquire expertise to compare with that available in the private bar.
- Boards can make decisions around the use of their legal budget without having to pay an “insurance” premium. The true annual cost of legal services used by the school district is reflected in district financial statements and districts are therefore accountable both at the staff level and the political level for their decisions.

#### (3) Disadvantages

- Puts BCPSEA in competition with current legal counsel rather than being in partnership with the law firms
- Creates a law firm, with all associated costs and administration to ensure compliance with Law Society requirements.
- May put boards at a disadvantage to BCTF with respect to the ability to use highly recognized lawyers
- BCPSEA currently lacks the capacity to do this type of work (lack of research staff, juniors, expertise and background)
- Can anticipate challenges in attracting, and especially retaining qualified legal staff
- Risk of unfavourable results is fully assumed by BCPSEA (or other organization), not shared with the law firm.
- Organization would have to balance allocation of work and lawyer compensation related to non-billable work such as education and communications with billable work.

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- BCPSEA would be perceived to have a conflict of interest with regard to whether an issue was of province-wide significance if it were also the entity offering legal services for a fee to handle cases that were not approved for BCPSEA funding.
- BCPSEA may be perceived to have a conflict of interest in negotiation of collective agreements if it also received fees for services to resolve labour relations issues
- BCPSEA's ongoing relationships with unions may be prejudiced by direct involvement of its fee for service staff in litigation
- Solicitor/client confidentiality may limit the sharing of information about similar cases in different districts being handled by fee for service staff.

#### (4) Conclusion

This model would not improve strategic management and may actually cause increased fragmentation. This approach would require a significant infusion of resources to establish and operate this structure. Net cost savings from using in house personnel cannot be determined but are unlikely to be substantial.

### **D. Option 4 - Expansion of regional labour relations centres**

#### (1) Description

- Like the Okanagan Labour Relations Council (OLRC); sharing of human resource services through regional centres
- Human resources staff conducts investigations, coordinate and manage grievances to arbitration stage to the extent requested by the district; refer matters to outside counsel as required.
- May divert cases to alternative dispute resolution, e.g. med/arb through Labour Board
- Districts choose counsel and control arbitrations

#### (2) Advantages

- Works well for districts using OLRC service (e.g. carrying out investigations)
- Supplements BCPSEA services,
- Supports communication between school districts and BCPSEA
- Provides good up front support before legal counsel is engaged

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- Provides human resources support as well as labour relations
- Provides expertise not available at the district level, which otherwise might be sought from law firms; reduces legal costs accordingly.

(3) Disadvantages

- Boards may be concerned that regional involvement could prejudice good local relationships with trade unions
- Duplicates some services already provided by BCPSEA staff
- Not all districts need the additional support because they are large enough to support their own expertise.

(4) Conclusion

This model would benefit some boards with their legal costs as well as their human resources management if they have been relying on external legal counsel for functions that could be performed by human resources personnel. It is not clear how many boards outside of the geographic reach of the OLRC would benefit. It does not necessarily increase strategic management of grievance arbitration.

**E. Option 5 - Expand numbers of School District In-House Legal Counsel**

(1) Description

- School Districts create staff positions for legal counsel. These may be shared with other school districts.
- Counsel would co-ordinate with outside counsel as required
- Advises staff
- May conduct some hearings.

(2) Advantages

- Known cost can be budgeted

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- Would provide a layer of support within the districts not currently available, especially in areas other than labour relations (such as student and parent matters, information and privacy, contracts)
- Supports district training and capacity building

(3) Disadvantages

- Difficult to have all the expertise in one lawyer-may be hired for labour but will draw in- to other work that could be done by HR staff or already available from BCPSEA, or drawn into other board work (e.g. student issues) to such an extent that not available for arbitration hearings. Board is still likely to need support of specialist outside legal counsel.
- Difficult to hire the skill set and have succession plan
- In-house counsel may be too closely involved with management to provide same level of objectivity that is expected from outside counsel.
- Does not address strategic management of grievance arbitrations across the province.

(4) Conclusion

This model does not improve strategic coordination of grievances and may diminish it. It may be suitable for large boards but B.C. boards that have tried it have found it challenging to make it work in a way that reduces their overall legal costs.

## F. Option 6 - Pre-Qualified Suppliers with Preferential Rates

(1) Description

- Similar to Risk Management Branch process for legal services.
- May focus on individual lawyers rather than law firms.
- SPP requires approved lawyers not to charge school districts any higher rates when they are contracted directly by SD.
- Could be managed by BCPSEA for labour relations and human resources issues.

(2) Advantages

- May offer an opportunity to negotiate reduced rates.
- Provides choice of qualified counsel.

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- Formalizes present informal process of referral and recommendation
- BCPSEA not bound by cumbersome and inflexible government RFP processes

### (3) Conclusion

Unit cost is not the true cost driver for legal services; effectiveness is. This approach could be combined with strategic management of grievance arbitration but by itself will not achieve significant savings.

## **G. Option 7 - Expansion of Insurance Coverage: Employment Practices Liability Policy**

### (1) Description

- This proposal originated with Risk Management Branch as a means of clarifying its obligations with respect to Human Rights Tribunal complaints, wrongful dismissal cases, and other administrative tribunal matters arising from the workplace.
- Separate policy wording for an Employment Practices Liability coverage would be developed and the Comprehensive General Liability wording would be amended accordingly.
- Claims would be funded from the same pool of funds supporting the current Comprehensive General Liability.
- As proposed by SPP, this would not include coverage for labour relations matters.

### (2) Advantages

- Would clarify Human Rights and Wrongful dismissal coverage.

### (3) Conclusion

This proposal, which originated with SPP independently of the Service Delivery Project, could be expanded upon to provide a means of funding labour arbitration matters. This led to the development of the recommended option: the Labour Litigation Risk Pool.

## **H. Option 8 - Labour Litigation Risk Pool**

A litigation risk pool is a reserved pool of funds that are actuarially determined to cover the costs of litigation over time through the receipt of premiums and investment earnings of the pool of funds



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There are two key components to the proposed "Labour Litigation Risk Pool"

3. Centralized assessment and management of all labour matters
4. Actuarial determination of costs over a number of years and pooling and reservation of funds for payment of defence costs

(1) Description

1. All disputes are recorded in a claims management system that provides historical claim and disposition information, which will allow access by SPP and BCPSEA (and possibly school districts), and which will help to avoid future litigation and reduce time to deal with disputes.
2. Disputes would be reported at the outset of the dispute in the same manner as current general liability matters.
3. Schools Protection Program would contract with the B.C. Public School Employers Association to administer the Labour Litigation Pool and the conduct of the cases as the body with labour relations specialists.
4. Pool would be actuarially determined and invested through Risk Management Branch for returns to offset future premiums.
5. Pool will cover all or a specified portion of defence costs (i.e. a co-payment) but districts would be responsible for all remedies and/or damages or compensation ordered or agreed upon.
6. Premiums paid to the Pool could be determined on an FTE basis (students or staff) or a base plus experience rating.
7. All disputes are managed through the Pool and there is no further need to determine what is provincial or local under the Teachers Collective Agreement.
8. Pool will cover collective agreement-related disputes with all unionized employee groups and all exempt staff issues where litigation is required.
9. Implementation could be phased, starting with the teachers
10. Could be implemented either with mandatory or voluntary participation by all school districts

(2) Advantages:

- Strategic management of collective agreement disputes with coordinated response and due diligence
- May more closely match the management of labour issues by the trade unions
- Each school district budgets a premium rather than trying to estimate annual legal costs that vary from year to year, often unpredictably
- Best advice should be available to the district
- Reduces legal research costs on common issues by centralizing a source of expertise

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- With full participation by boards, ensures a unified approach that seeks a common resolution to similar legal issues that arise in the course of proceedings from different school districts
- Management of pooled funds as part of the Insurance Risk Management Account. This may allow for a slower capitalization of the Pool. It ensures best management of the funds at the highest returns.
- Takes advantage of the tendered legal rates of the Risk Management Branch

### (3) Disadvantages:

- Districts may relinquish some local autonomy
- Employees and their representatives may feel that they are unable to resolve a grievance with local managers and board of education
- Difficult to initially value the funds required for the Pool and how to fund that portion

### (4) Participation of Districts Considerations

- If participation were optional, BCPSEA would have to determine which services were Pool-related (available only to participating districts and paid for under Pool contract) and which services were available to all member school districts.
- If participation were optional, non-participating boards may seek rights in the Pool reflecting their past participation in it, or seek equivalent government support, especially if they are targeted by union groups.
- If participation were optional, actuarial calculations may be complicated by boards joining and withdrawing; may require a substantial notice period for withdrawal
- Non-mandatory participation would maintain local control
- Non-mandatory participation would promote accountability for the management of the Pool and claims.
- Non-participating boards may be subjected to additional research costs because the common resources of the participating boards may not be available to their chosen legal counsel.
- Settlements or resolutions of common issues by non-participating boards may undermine the strategic approach of the participating boards.
- Boards that chose not to participate in the Pool would still benefit from the strategic management of grievances in other school districts but without sharing in the costs.

### (5) Conclusion

The Group considered the Labour Litigation Risk Pool as the best option to provide coordination of services, appropriate management of the expenditures and use of the systems and expertise of the Risk Management Branch (Schools Protection Program) and BC Public School Employers' Association.

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The question of mandatory participation remains an open one but certainly to obtain the greatest economies of scale and to promote consistent and favourable results from labour dispute litigation, participation of all boards of education is preferred.

The savings from strategic coordination of labour litigation is likely to be significant over the long term.

## **VII. Other Types of Legal Services**

Boards of education spend money on many other types of legal services besides those related to labour and employment. The Group reviewed these for potential cost savings opportunities. The types of services, the current providers, and the Group's conclusions about potential cost savings are laid out in Table A.

BCSTA legal services has an important role to play in acting as a form of Help Desk, where district officials can get answers to frequently asked questions, sometimes in the form of written opinions from BCSTA's bank of opinions and policy backgrounders, or be directed to an appropriate resource. BCSTA might consider further promoting this function among district officials, particularly ones that are new to their positions or to the province.

The only area in addition to labour litigation for which the Group saw potential cost savings is in the area of Information and Privacy services. The example of School District #23 (Central Okanagan), which contracts out to other boards of education its expertise and services in the area of Worker Compensation claims, might be considered by a board with staff expertise and capacity in this area.

Many services, especially in relationship to property transactions, are provided by local law firms. The Group's view was that these were generally cost effective. The school district is considered a valued client and treated as such. The relationship benefits the local community. Local knowledge may be important in providing an effective service. The Group's recommendations do not include any recommendations for changes in this area.

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**VIII. Table A: School District Use of Legal Services and Main Suppliers; Recommendations**

Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
Human Resources and Labour Relations	Grievances referred to arbitration	Representing district in arbitration: including arbitrator selection, witness preparation, research of case law and presentation at arbitration	Districts vary as to when they involve legal counsel depending on complexity and in-house expertise. Lawyers may sometimes be involved at stages preceding referral to arbitration, for coaching and advice or occasionally attendance.	BCPSEA  District-paid or BCPSEA-retained law firms  OLRC provides labour relations support to members.	See Option 1: Labour Litigation Risk Pool.
Human Resources and Labour Relations	Arbitration appeals; matters referred to Labour Board	Representation of the board of education	(E.g. jurisdictional issues, essential services).	BCPSEA  District-paid or BCPSEA-retained law firms	Labour Litigation Risk Pool

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
Human Resources and Labour Relations	Investigations (employee misconduct, harassment investigations)	<p>Coaching, review of investigation reports prior to board hearing to ensure consistency with jurisprudence</p> <p>Conducting investigations in exceptional cases (eg senior staff )</p>	Consultants hired by SDs are often retired educators.	<p>BCPSEA provides advice, training.</p> <p>Independent external consultants.</p> <p>Outside lawyers for coaching, advice, review of documents.</p> <p>OLRC provides investigation services to members.</p> <p>SPP if coverage might be triggered (e.g. sexual impropriety) (investigation may be conducted by counsel to ensure privilege).</p>	Labour Litigation Risk Pool may play role
Human Resources and Labour Relations	Exempt staff contracts	Advising, negotiating, drafting offers and agreements		<p>BCPSEA</p> <p>BCSTA</p> <p>District-paid law firms</p>	No change.

Report from Legal Services Delivery Working Group

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
Human Resources and Labour Relations	Exempt staff terminations	Wrongful dismissal claims		SPP (legal expenses not damages)  BCSTA (process)	Labour Litigation Risk Pool
Human Resources and Labour Relations	Conflict resolution (alternate dispute resolution)	Investigating, mediating, reporting	BCPSEA provides referrals. Justice Institute provides conflict resolution training	BCSTA may provide services through staff or contractors	No change
Human Resources and Labour Relations	Administrative tribunals	Advice on compliance, potential claims, representation of district in complaints made under Human Rights Act, Employment Standards Act, Workers Compensation Act	SPP may provide under D & O coverage;; under CGL depending on nature of relief claimed  Human rights issues (e.g. mandatory retirement, pay equity)	BCPSEA for general advice  SPP for possible coverage  Specialist labour and employment law	SPP to clarify existing coverage under Employer Liability wording, or bring into Labour Litigation Risk Pool where issue arises from workplace relationships (e.g. Employment Standards)

Report from Legal Services Delivery Working Group

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
			BCPSEA provides advice on Workers Comp compliance. SD23 contracts with other school districts for WCB investigations, advice and representation	firms	
Human Resources and Labour Relations	Teacher Regulation Branch	Advice on reporting and disclosure obligations, representation of exempt staff at request of district	Indemnity bylaws or employment contracts may require district to defend exempt staff in some proceedings.	District-paid law firms	No change.
Payroll	Garnishments	Advice on contentious garnishing orders		District-paid law firms	No change
Finance	Compliance	Advice on income tax		District-paid law firms	No change.

Report from Legal Services Delivery Working Group

November 27, 2013

Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
		compliance			
Secretary Treasurer	Board Procedures	Advice		BCSTA Parliamentarians District-paid law firms	No change
Secretary Treasurer or Superintendent	Policy Review	Review of board policy (existing or proposed) for consistency with law	BCSTA maintains policy database. BCSTA may provide some policy templates	BCSTA District-paid law firms BCPSEA (employment related)	BCSTA could explore technology for boards to simultaneously update BCSTA site with their own, encourage boards to keep database up to date.  BCSTA could make use of focus groups to assist with policy development.



Report from Legal Services Delivery Working Group

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
					<p>Government could provide more lead time for policy development when introducing new requirements.</p> <p>BCSTA could add its templates to policy database.</p>
Secretary Treasurer or Superintendent	Trustee Conduct Conflict of Interest	Advice on roles and responsibilities of trustees, conflict of interest opinions	BCSTA also provides facilitation services	<p>BCSTA</p> <p>District-paid law firms</p> <p>BCPSEA provides advice on conflicts relating to their bylaws</p>	No change
Secretary Treasurer or Superintendent	Communications and Public Relations	Advice on legal aspects of contentious issues; reviewing or		BCSTA	No change

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
		drafting correspondence		SPP (in context of claims)	
Secretary Treasurer or Election Officer	Elections	Advice on election procedures.  Representation of district or chief election officer in contested election	BCSTA distributes election bulletins covering FAQs during election period.  BCSTA provides election night hotline service through contracted specialist law firm  Many SD election officers are local government officers or have local government background and confer with local government resources	BCSTA  Ministry of Education; Ministry of Community, Sport and Cultural Development advisors  Municipal Officers Association  Municipal law firms, District-paid law firms	No change

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
Secretary Treasurer	Appeals	Advice to administration; Assist board at hearing; Draft or review written reasons; Draft responses to SOA appeals	Ministry did training when legislation for SOA appeals introduced.	District-paid law firms  BCSTA  In house counsel (where exist)	No change.
Secretary Treasurer	Legal challenges to board decisions (especially school closure)	Advice on avoiding claims; appropriate procedures.  Representation of board in judicial review court proceedings	BCSTA has published resource on school closure processes	BCSTA (summary advice)  District-paid law firms	No change.
Business	Property acquisition and disposition	Conveyance for property purchases, swaps, sales	Ministry of Education (capital projects) provides advice on com-	District-paid lawyers;	No change.

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
			pliance with ministry requirements.		
Business	Zoning, Assessments	Representation of district in applications for re-zoning, in assessment appeals	Local knowledge of-ten helpful in property dealings, fees often less than large business law firms	District-paid lawyers	No change.
Business	Rentals	Review new lease agreements and amendments where SD is renter. Draft template agreements; provide advice on SD's rental agreement where SD is owner. Resolution of tenant disputes. Review and assist with drafting Joint Use Agreements	Local knowledge of-ten helpful in property dealings, fees often less than large business law firms	District-paid lawyers  BCSTA has provided templates for licence agreements	No change.

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
Business	Construction	Review competitive bid documents (new language and changes); Construction contracts: advise on disputes over interpretation, review contract amendments, terminations;		District-paid lawyers	No change.
Risk Management		Defense of civil actions against the district and/or staff		SPP if within coverage  District-paid lawyers	No change.
		Defense of small claims actions against the district and/or staff		School Protect Program if within coverage;  District-paid lawyers	No change.

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
		Pursuit of recovery for district property damages caused by third party negligence and less than \$10,000.	SPP covers larger losses and may pursue recovery	District-paid lawyers	No change.
Risk Management		Defense of human rights complaints against the district and/or staff	SPP may provide partial coverage	SPP or district-paid lawyers	No change.
Risk Management		Advise on responses to "legal letters", draft or review responses		SPP (if within coverage)  District-paid lawyers  BCSTA	No change.
Risk Management		Consult on wide variety of specific mat-	Examples: parent custody disputes, reli-	SPP provides risk management advice,	No change.

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
		<p>ters that raise prospect of liability for boards.</p>	<p>gious clubs in schools, product liability, language for waivers and consents, environmental exposure, disputes with neighbours</p>	<p>has some template language for waivers, user groups, indemnity agreements.</p> <p>BCSTA provides summary advice</p> <p>District-paid lawyers</p>	
Insurance		<p>Advice with regard to insurance requirements</p>		SPP	No change.
Internal Audit		<p>Pursue recovery of misappropriated funds</p>	<p>If SPP pays claim under Crime coverage, it will recover</p>	SPP	No change.

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
<b>Contracts</b>					
Various		Advice on negotiation of tuition agreements with First Nations	Ministry of Education (Superintendent of Aboriginal Education) provides advice on Enhancement Agreements	District-paid lawyers	No change.
		International Student program agreements		District-paid lawyers  School Protection Program  BCSTA	No change.
		Review and advise on contract language presented to SD to sign		District-paid lawyers  BCSTA	No change.



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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
		Assist with drafting district developed contracts		District-paid lawyers	No change.
Purchasing		Contractual disputes, demand letters		District-paid lawyers	No change.
Information and Privacy Coordinator	Information requests	Advising on responses to information requests, representing board of education in proceedings before Information and Privacy Commissioner	<p>Issues can be high-level and politically sensitive or routine</p> <p>Requires expertise to process requests, which are often time-consuming</p> <p>Government has provided training in past</p>	<p>BCSTA</p> <p>BCPSEA (labour issue)</p> <p>Privacy Commissioner's office, Government Services</p> <p>Information and privacy consultants</p>	Opportunity exists for district with in house expertise to contract out services to other districts.

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
				District-paid lawyers	
	Privacy protection	Advising on protection of privacy, restrictions on information sharing.		BCSTA  Information and privacy consultants  District-paid lawyers	
<b>Training and Development</b>	Trustee Orientation and Development			BCSTA  BCPSEA (labour subjects)	
	Staff			BCASBO	

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Department	Subject	Service Description/Example	Notes	Service Providers	Recommendations
				Client seminars offered by law firms  BCPSEA (human resources)  CAPSLE (national)	

Report from Legal Services Delivery Working Group

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# Appendix A Business Case – Labour Litigation Risk Pool

## IX. Appendix A Business Case – Labour Litigation Risk Pool

Date: October 21, 2013 \_\_\_\_\_

### Working Group Legal Services Working Group

Working Group Participants:

<i>Judith Clark</i>	<i>Group Lead</i>
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<i>Jennifer Duprey</i>	<i>British Columbia Public School Employers' Association</i>
<i>Kelly Thomson</i>	<i>Director, Internal Audit &amp; Risk Management, School District No. 36 (Surrey), representing BC Association of School Business Officials</i>
<i>Kim Oldham</i>	<i>Schools Protection Program</i>
<i>Russell Horswill</i>	<i>Secretary-Treasurer, School District No. 71 (Comox Valley), representing BC Association of School Business Officials</i>
<i>Mary Shaw</i>	<i>Director, Governance &amp; Legislation Branch, Ministry of Education</i>
<i>Teresa Downs</i>	<i>Superintendent, School District No. 74 (Gold Trail), representing BC School Superintendents' Association</i>
<i>Joan Axford</i>	<i>Project Lead</i>

# Appendix A Business Case – Labour Litigation Risk Pool

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# Appendix A Business Case – Labour Litigation Risk Pool

## I. Executive Summary

As part of its mandate, the Legal Services Working Group reviewed the current status of labour litigation in the province and how best to strategically manage the costs so that districts receive needed legal advice and there is limited duplication of legal research and advice costs. The concept of a labour litigation risk pool managed in the same manner as general liability litigation and as risk mitigation for school districts is unique and favourable. It utilizes existing processes, coordinates the use of appropriate legal services, ensures districts have the appropriate advice, and allows district to budget in a planned manner. It also can be implemented to provide for local relationships and decision making.

There are two key components to the proposed “Labour Litigation Risk Pool”

5. “Centralized assessment and management of all labour matters
6. Actuarial determination of costs over a number of years and pooling and reservation of funds for payment of defence costs” (Deloitte Report)

Although implementation of either component would be advantageous for boards of education and lead to cost savings, the Group recommends combining these components to maximize cost savings and effectiveness.

The question of mandatory participation remains an open one but certainly to obtain the greatest economies of scale and to promote consistent and favourable results from labour dispute litigation, participation of all boards of education is preferred.

A Labour Litigation Risk Pool has the advantage of using the risk management and insurance expertise of the Schools Protection Program and the labour relations expertise of BCPSEA staff. School districts are experienced in using both services and this will assist with transition.

The savings from strategic coordination of labour litigation is likely to be significant over the long term.

## Appendix A Business Case – Labour Litigation Risk Pool

In making changes to the process for delivery of legal services to boards of education, important considerations include:

- the governance responsibilities of Boards of Education
- the need for a solid trust relationship with legal counsel
- the need of boards of education for independent legal advice

The Group is of the view that its proposal accommodates these considerations.

The initial funds required in the Labour Litigation Risk Pool would need to be actuarially determined. The initial start-up of the Pool needs to be funded. Prior to implementation, a decision on how to allocate ongoing costs to districts and government needs to be made.

Implementation should include consultation with Boards and district staff, consideration of Risk Management Branch requirements, a legislation review, BCPSEA agreement to be the contracted experts, and approval by boards of education.



# Appendix A Business Case – Labour Litigation Risk Pool

## X. Background and Opportunity Statement

The Service Delivery Project was created to evaluate and review the recommendations of the Deloitte Touché report, *BC Ministry of Education and School Districts: Service Delivery Transformation, Final Report*, dated August 24, 2012 (“the Deloitte report”). The Legal Services Working Group (“the Group”) was created to review all forms of legal services utilized by school districts or provided to school districts by other organizations and to provide advice to the Service Delivery Committee on opportunities for improved effectiveness and cost efficiency. The Group considered the services currently provided by organizations such as School Protection Program, BCPSEA and BCSTA. The Group was specifically asked to provide options for the provision of legal services and implementation plans for school districts and associated organizations to consider and to review the Tier 1 Opportunity in the report of:

- Coordination and delivery of legal services for employment litigation.

The Deloitte report outlined the following challenges resulting from current processes for managing litigation of employment matters, referring to labour relations grievance arbitration and related procedures:

- The current model for legal services is costly to the districts and requires extensive administrative costs to administer numerous contracts
- Lack of a provincial view of implications of specific grievances creates risk that bargaining process will be undermined through grievance process
- There is considerable duplication of effort and resources expended on similar issue grievance and legal files.

Deloitte Touché estimated savings were possible of \$1.0 to \$4.0 million. The opportunity to achieve savings through centralizing the coordination and delivery of legal services for employment litigation through BCPSEA is based on reduced legal costs from consolidating similar cases. The Deloitte report states:

- In the past year, districts independently procured legal services for their own employee litigation on 91 cases at an estimated cost of ~\$50k-\$70k per case
- Many of these cases are similar in nature and could be managed centrally

## Appendix A Business Case – Labour Litigation Risk Pool

Labour litigation costs are rising as a result of the increasing number of appeals of arbitration decisions. This results in the same issue being litigated multiple times and at various levels, a situation over which districts presently have little control.

Districts are also faced with estimating budgets for legal services without knowing the volume in any given year. Therefore the Group looked to reduce the volatility of costs over time and smooth out budgets for districts.

### XI. Working Group Objective, Process and Conclusions

#### Objective

An objective of the Working Group was to develop options to more effectively and efficiently manage the litigation services and legal costs for labour matters.

#### Process

The Group reviewed current processes for managing labour litigation. The Group concluded that strategic management and increased coordination across all school districts could reduce legal costs by leveraging knowledge and research so as to reduce duplication and to provide a more coordinated approach on arbitrations to achieve best results for the sector. Strategic management would provide for greater savings than the negotiation of better rates for legal services from providers because it would have the potential to reduce the number of arbitrations. It can be expected to provide more effective legal services by improving outcomes.

The successful and cost effective management of general liability litigation by the Schools Protection Program prompted the exploration of a similar concept for labour litigation, especially labour arbitration. Discussions were held with the Schools Protection Program of the Risk Management Branch of the Ministry of Finance to better understand the current model for coverage of third party liability claims and to determine if expansion of a risk pool to labour arbitration matters was possible.

#### Current System of liability insurance coverage for general liability

Section 30 of the *Financial Administration Act* authorizes the maintenance of the Insurance and Risk Management Account (IRMA) as a special fund to provide insurance and risk management services to school districts as well as other government entities. Risk Management Branch of the Ministry of Finance manages IRMA and provides the services. Section 84 of the *School Act* and Section 9 of the Regulations under the *School Act* ensure that all school districts participate in the insurance plan. An Order in Council (the Board Insurance Order) permits school districts to be given indemnities for the matters set out in

## Appendix A Business Case – Labour Litigation Risk Pool

the School Protection Program Reference Manual for Standard Comprehensive General Liability coverage and for Standard Crime coverage; these indemnities are paid from a sub-account of the Insurance and Risk Management Account.

Premiums are paid from district operating grants through a transfer between Ministry of Education and Finance and are expensed on school district financial statements.

Labour litigation is a significant financial risk for districts and may fall under the risk management services of the *Financial Administration Act*.

After much review and discussion the group looked to the benefits of the current system of general liability coverage as follows to see if there was an opportunity to use these benefits for labour litigation issues:

1. All districts participate so there are economies of scale on costs such as investigation and litigation. (SPP receives significantly reduced legal service rates and prequalifies legal and investigative services and handles all the RFP processes)
2. All incidents are tracked and logged for future reference and managed at the outset of the issue
3. School districts have expertise at their call
4. Schools Protection Program can ensure that districts are aware of safety matters and can manage in a common fashion – such as swing incidents where manufacturers were subrogated to pay costs of claims, 15 passenger vans where safety concerns were known and policies and practices to address were instituted
5. School districts do not need to employ insurance expertise on staff
6. Premiums are pooled and earn interest. The funds are capitalized and the required size of the pool and the premiums are actuarially determined
7. Instead of districts having to pay damage awards and associated legal costs as they come due, insurance costs are actuarially estimated and budgeted each year, reducing year-to-year unpredictability and volatility.

### Conclusion

The Group concluded that these benefits can be obtained through the use of a Labour Litigation Risk Pool. A litigation risk pool is a reserved pool of funds that are actuarially determined to cover the costs of litigation over time through the receipt of premiums and investment earnings of the pool of funds

There are two key components to the proposed “Labour Litigation Risk Pool”

## Appendix A Business Case – Labour Litigation Risk Pool

1. Centralized assessment and management of all labour matters
2. Actuarial determination of costs over a number of years and pooling of funds for payment of defence costs

### **XII. Anticipated Outcomes**

The Labour Litigation Risk Pool would hope to garner some of the benefits of the current system for general liability as follows:

1. It would be integrated with the Schools Protection Program currently in place to provide indemnity coverage for districts for general liability purposes. Benefits of the current General Liability Coverage Program through the Schools Protection Program that could be applied to labour litigation include:
  - o Economies of scale on costs such as investigation and litigation
  - o All incidents are tracked and logged for future reference and managed at the outset of the issue
  - o School districts have expertise at their call
  - o School districts can be made aware of emergent legal issues and given proactive risk management advice
  - o Premiums are pooled and earn interest.
  - o Costs are actuarially estimated and budgeted each year, with costs spread over a number of years, thereby reducing unpredictability and volatility between budget years.
2. All disputes could be recorded in a claims management system that provides historical claim and disposition information
3. Schools Protection could contract with B.C. Public School Employers Association, who have the expertise in management of K-12 labour matters, for the management of the claims: including advice and assistance through the grievance process, arranging for representation at arbitration and conduct of the proceedings, managing external counsel on arbitration matters, coordinating with other like matters and developing common strategies where appropriate.
4. Pool would be actuarially determined and earn investment returns to offset future premiums
5. Pool could cover all or part of defence costs (extent of coverage to be determined) but would not pay for any remedies granted at arbitration. (The districts would remain responsible.)
6. For the teachers collective agreement, there would no longer be a need to distinguish between provincial and local matters

# Appendix A Business Case – Labour Litigation Risk Pool

7. Pool could cover all collective agreement-related disputes for both teaching and support staff.

## A. Scope

### Description:

This business case evaluates options for legal services relating to labour litigation and not the other legal service needs of school districts, which are considered in the overall report of the Working Group.

## B. Stakeholders: School Districts – Board of Education and Staff

### Description:

This section lists stakeholders (internal and external) whose interests must be considered in proceeding to develop and implement this opportunity.

Stakeholder Group	Represented by	Interests, Expectations, Concerns
Boards of Education	BCSTA and BCPSEA	<ul style="list-style-type: none"> <li>• Workable solutions that are efficient for the district, cost effective, and provide for improved strategic management of labour related litigation</li> <li>• The management of labour relations grievances must support the quality of education programs in the district</li> <li>• Solutions respect the governance responsibilities of districts and their relationships with employee groups</li> <li>• To ensure that BCPSEA has the infrastructure, expertise and resources to support the new processes</li> <li>• The expertise that has been developed in management of K-12 labour relations is retained and used to best effect to support public education</li> <li>• Expertise of private law firms is available to boards and trust relationships maintained</li> <li>• Implementation timelines are realistic and take into account board budget processes</li> <li>• Any cost savings should accrue to boards of education for further investment into public education; current government contributions should be retained and costs should not shift to boards.</li> <li>• Individual boards will continue to have input into the management of their labour relations litigation.</li> <li>• Boards of education would expect an accountable</li> </ul>

## Appendix A Business Case – Labour Litigation Risk Pool

		<p>governance structure to determine significant changes to the parameters of the Labour Litigation Risk Pool</p> <ul style="list-style-type: none"> <li>• Co-governance: Boards have an opportunity to decide whether or not to approve of this proposal</li> </ul>
District Administration	BCASBO and BCSSA	<ul style="list-style-type: none"> <li>• Accurate budgeting</li> <li>• To ensure that the administration can effectively work with new processes and procedures and that they do not impose additional administrative burdens</li> <li>• To ensure that district administration can appropriately advise their Boards</li> <li>• To ensure that district administrators continue to have a good working relationship with their employee groups</li> <li>• To ensure that costs are controlled</li> <li>• To have outcomes of labour relations disputes support their ability to manage district staff</li> </ul>
Province	Ministry of Education and Finance	<ul style="list-style-type: none"> <li>• To ensure that new options are workable for the province and comply with legislation</li> <li>• To achieve systemic cost savings</li> <li>• To preserve and support the quality of education provided by the boards of education</li> </ul>
	Risk Management Branch	<ul style="list-style-type: none"> <li>• To ensure that the appropriate expertise is available to manage labour litigation files</li> <li>• To ensure appropriate levels of funding of the Pool</li> </ul>

### XIII. Environmental Analysis: Current Management of Labour Litigation

BCPSEA provides advice to boards through its labour relations specialists and in house counsel.

As the employers' accredited bargaining agent it has grievance management authority with respect to the teacher union. When there is a dispute, BCPSEA staff determine the degree of province-wide interest and whether BCPSEA will pay some or all of the external costs of an arbitration including cost of counsel and whether the district or BCPSEA will manage the grievance. For grievances that have a high degree of provincial implications but do not directly stem from provincially negotiated language, or legislation, funding is limited to a percentage of costs based on money available in the current operating budget designated for arbitrations. Staff decisions on funding and management of a grievance may be appealed to the BCPSEA Board of Directors.

## Appendix A Business Case – Labour Litigation Risk Pool

With regard to support staff unions, most authority over grievances is delegated to local boards or groups of boards through its policies, pursuant to its Constitution and Bylaws. BCPSEA policy requires boards to report unresolved grievances

BCPSEA uses in house legal (2 lawyers) and labour relations personnel and external legal counsel to provide its legal and labour relations services to boards. External legal counsel is used for court and arbitration work, although in house counsel may assist with such cases to reduce costs (e.g. communication, coordination with districts, witness preparation). BCPSEA advises that it has not had sufficient resources to fund the legal costs for all grievances and makes decisions to fund those with province wide implications based on defined criteria. However boards receive advice on management of the grievances that are referred back to them, considering the overall strategic situation with regard to particular issues.

When districts manage the grievance and hire local legal counsel, the cost is absorbed by local districts. There can be duplication of research effort when several districts are independently responding to similar grievances, especially when they choose to use different law firms.

District budgets can be challenged by an excessive number of grievances in any fiscal year. This volume may be beyond the control of the district, for example, if the district is targeted by the BCTF for strategic reasons. The cost of litigation and remedies must be paid out of current budget funding.

Government has announced a desire for longer term collective agreements. These allow for stability around bargaining but often result in more grievances as the only outlet to address contract language that is challenging or confusing.

Schools Protection Program presently provides some coverage for some litigation that arises from workplace issues, such as some human rights claims or wrongful dismissal suits. It is contemplating the implementation of an Employment Practices Policy that would clarify its coverage obligations.

# Appendix A Business Case – Labour Litigation Risk Pool

## XIV. Options

### A. Option 1 – Establish a Labour Litigation Risk Pool and implement processes and procedures that would have all districts participate

Establish a Labour Litigation Risk Pool to provide litigation and management support for defence of labour relations issues. This could be combined with a pool providing other employment-related insurance coverage (such as proposed Employment Practices Liability coverage), be a stand-alone pool, or be combined with the existing School Protection Program pool that provides coverage for general liability claims.

Whether or not this can be considered “insurance” under the *Financial Administration Act* s. 30, it can be considered a risk management service. Risks that can be ameliorated in this way are the risks that individual settlements by school districts are detrimental to the overall position of school districts under their collective agreements and the risk to individual boards of unplanned and unpredictable legal costs that might result in operating deficits.

#### Characteristics and Management of the Labour Litigation Risk Pool

1. All school districts participate to maximize the advantages to the system.
2. All disputes are recorded in a claims management system that provides historical claim and disposition information, which will allow access by SPP and BCPSEA (and possibly school districts), and which will help to avoid future litigation and reduce time to deal with disputes.
3. Disputes would be reported at the outset of the dispute in the same manner as current general liability matters.
4. Schools Protection Program would contract with the B.C. Public School Employers Association to administer the Labour Litigation Pool and the conduct of the cases as the body with labour relations specialists.
5. Pool would be actuarially determined and invested through Risk Management Branch for returns to offset future premiums.
6. Pool will cover all or a specified portion of defence costs (i.e. a co-payment) but districts would be responsible for all remedies and/or damages or compensation ordered or agreed upon.
7. Premiums paid to the Pool could be determined on an FTE basis (students or staff) or a base plus experience rating.



## Appendix A Business Case – Labour Litigation Risk Pool

8. All disputes are managed through the Pool and there is no further need to determine what is provincial or local under the Teachers Collective Agreement.
9. Pool will cover collective agreement-related disputes with all unionized employee groups and all exempt staff issues where litigation is required.
10. Implementation could be phased, starting with the teachers.

### Advantages:

- Strategic management of collective agreement disputes with coordinated response and due diligence
- May more closely match the management of labour issues by the trade unions
- Each school district budgets a premium rather than trying to estimate annual legal costs that vary from year to year, often unpredictably
- Best advice should be available to the district
- Reduces legal research costs on common issues by centralizing a source of expertise
- Ensures a unified approach that seeks a common resolution to similar legal issues that arise in the course of proceedings from different school districts
- Management of pooled funds as part of the Insurance Risk Management Account. This may allow for a slower capitalization of the Pool. It ensures best management of the funds at the highest returns.

### Disadvantages:

- Districts may relinquish some local autonomy
- Employees and their representatives may feel that they are unable to resolve a grievance with local managers and board of education
- Difficult to initially value the funds required for the Pool and how to fund that portion

### Issues and Concerns:

The Group identified a number of issues and concerns that would need to be addressed for this option to be properly considered and potentially implemented.

1. How would the initial start-up of the Pool be funded?
2. By what process would premiums be determined?

## Appendix A Business Case – Labour Litigation Risk Pool

3. Should the Pool cover exempt staff litigation or human rights proceedings related to workplace issues?
4. How do boards of education participate in ongoing decision-making with regard to the Pool, such as scope of coverage, deductibles or co-pay?
5. How much control over the grievance will be exercised locally? At what grievance step does the dispute pass from local control to the control of the insurer/BCPSEA: from the outset, or at the step before referral to arbitration (as at present under BCPSEA policies)?
6. How best to consult with Board and District Staff and how to obtain Boards of Education approval
7. Timeframe for implementation-phase in and enough lead time for district budget processes

Risk, Event or Assumption	Likelihood to Occur (L, M, H)	Impact if Occurs (L, M, H)	Mitigation Plan
Actuarial Pool Value is determined at less than actual costs. This could happen if the Pool is overwhelmed by volume of grievances or if government did not support grievances of province-wide significance.	L	H	Government provides funding and/or districts would be faced with fluctuating contributions to the Pool until the size of the Pool covered costs.  Combine with existing general liability pool to share risk to get greater smoothing
Collective agreement disputes and other litigation do not reflect issues common to more than one board and systemic savings from a coordinated approach are not obtained	L	H	Implement cost-sharing process to reflect degree of provincial interest in the dispute  Consider exclusions from scope of coverage for some types of grievances or litigation where little or no common interest  Re-evaluation of the extent of the use of a pool option
Collective agreement disputes become more difficult to resolve at the provincial level than they would have been at the local level, so systemic costs of dispute	M	H	Retain local authority over grievances for initial grievance stages.

## Appendix A Business Case – Labour Litigation Risk Pool

resolution increase.			
Boards face further loss of local labour relations expertise, including staff and local law firms, in order to pay for pool assessments, resulting in higher volumes of grievances at higher costs of resolution	M	M	Boards are encouraged to use in-house expertise in support of proactive programs to reduce grievances. Government provides initial and ongoing contribution to Pool.
Individual boards take issue with provincial management and seek to withdraw, or refuse to use the services and manage their own grievances	L	L	Statutory mandatory participation in the plan. Cost benefit of using the plan will militate against most boards dealing with claims independently of the plan.

### B. Option 2 – Implement a Labour Litigation Risk Pool and have individual school district participation optional

Pool would have the same characteristics as Option 1 except that individual boards of education decide their participation and school districts may decide to pursue litigation (or to settle it) even if there is contrary advice from BCPSEA advisers. Non-participating boards would still have access to BCPSEA advisory services but would pay costs of litigation from their own budgets.

#### Advantages:

- Strategic management of collective agreement disputes with coordinated response and due diligence for participating districts
- May more closely match the management of labour issues by the trade unions than current processes
- Participating district budgets a premium rather than trying to estimate annual costs which likely vary from year to year
- Districts can choose their preferred source of advice
- Best advice should be available to the participating districts
- Common approach to resolving labour disputes for participating districts
- Reduces legal research costs on common issues by centralizing a source of expertise

## Appendix A Business Case – Labour Litigation Risk Pool

- Ensures a unified approach that seeks a common resolution to similar legal issues that arise in the course of proceedings that arise in different school districts
- Respects local control
- Promotes accountability for the management of the Pool and claims.
- If government funding support is available through the Pool, most boards will prefer to take advantage of that support.

### Disadvantages:

- Participating districts may relinquish some local autonomy in the form of control over the resolution of collective agreement disputes and other litigation.
- Employees and their representatives from participating districts may feel that they are unable to resolve a grievance with local managers and Board
- Difficult to initially value the funds required for the Pool and how to fund that portion, especially if not all boards participate.
- BCPSEA would have to determine which services were Pool-related (available only to participating districts and paid for under Pool contract) and which services were available to all member school districts.
- Non-participating boards may be subjected to additional research costs because the common resources of the participating boards may not be available to their chosen legal counsel.
- Settlements or resolutions of common issues by non-participating boards may undermine the strategic approach of the participating boards.
- Non-participating boards may seek rights in the Pool reflecting their past participation in it, or seek equivalent government support, especially if they are targeted by union groups.
- Actuarial calculations may be complicated by boards joining and withdrawing; may require a substantial notice period for withdrawal
- Boards that choose not to participate in the Pool still benefit from the strategic management of grievances in other school districts but without sharing in the costs.

### Issues and Concerns:

The Group identified a number of issues and concerns that would need to be addressed for this option to be properly considered and potentially implemented.

## Appendix A Business Case – Labour Litigation Risk Pool

1. How would the initial start-up of the Pool be funded, especially if not all boards decide to participate?
2. By what process would premiums be determined?
3. Should the Pool cover exempt staff litigation or human rights proceedings related to workplace issues? If boards choose not to participate in the Pool, they would not have access to the coverage either, some of which may have been covered in the past through Schools Protection Program.
4. How do boards of education participate in ongoing decision-making with regard to the Pool, such as scope of coverage, deductibles or co-pay?
5. How much control over the grievance will be exercised locally? At what grievance step does the dispute pass from local control to the control of the insurer/BCPSEA: from the outset, or at the step before referral to arbitration (as at present under BCPSEA policies)?
6. How best to consult with Boards of Education and school district staff and how to obtain approval by Boards of Education; whether collective approval by Boards of Education is necessary if participation is optional.
7. Timeframe for implementation-phase in and enough lead time for district budget processes
8. How to coordinate with non-participating districts?
9. How would BCPSEA deal with non-participating boards that were faced with issues that had significant provincial importance and there was a concern about the precedential effect of a decision or settlement?
10. What conditions would there be on joining and withdrawing from the plan?

Risk, Event or Assumption	Likelihood to Occur (L, M, H)	Impact if Occurs (L, M, H)	Mitigation Plan
Actuarial Pool Value is determined at less than actual costs. This could happen if the Pool is overwhelmed by volume of grievances or if government did not support grievances of province-wide significance.	L	H	Government provides funding and/or districts would be faced with fluctuating contributions to the Pool until the size of the Pool covered costs. For Option 2, this would pose a problem if only some boards benefited.
Collective agreement disputes and other litigation do not reflect issues common to more than one	L	H	Implement cost-sharing process to reflect degree of provincial interest in the dispute

## Appendix A Business Case – Labour Litigation Risk Pool

board and systemic savings from a coordinated approach are not obtained			Consider exclusions from scope of coverage for some types of grievances or litigation where little or no common interest  Re-evaluation of the extent of the use of a pool option
Collective agreement disputes become more difficult to resolve at the provincial level than they would have been at the local level, so systemic costs of dispute resolution increase.	M	H	Retain local authority over grievances for initial grievance stages.  In Option 2, boards with this perception may withdraw from the Pool.
Boards face further loss of local labour relations expertise, including staff and local law firms, in order to pay for pool assessments, resulting in higher volumes of grievances at higher costs of resolution.	M	M	Boards are encouraged to use in-house expertise in support of proactive programs to reduce grievances.  Government provides initial and ongoing contribution to Pool. (This s may be a problem where only participating boards benefit.)
Individual boards take issue with provincial management or the cost of same and withdraw.	L	L	Ensure that participation is demonstrably beneficial to boards.  Require advance notice of withdrawal.  Provide that withdrawing boards are not entitled to any share of the Pool.

### C. Option 3 – Existing structure with enhanced BCPSEA functions

BCPSEA resources are enhanced (through government funding or dues assessment) to enable it to assume conduct of all grievances with provincial implications. BCPSEA provides all boards with advisory services. Enhanced BCPSEA resources may permit more work to be done in house and increase support and coordination of local grievances.

One enhancement that could be added if members supported it would be the establishment of a litigation reserve fund to fund litigation costs.

## Appendix A Business Case – Labour Litigation Risk Pool

### Advantages:

- Board autonomy on purely local matters is respected
- Current relationships with local employee groups are maintained
- Employees and their representatives from participating districts feel that they are able to resolve a purely local grievance with local managers and Board
- Districts can choose preferred legal counsel or use in-house or collective resources (e.g. through OLRC) to deal with grievances if they are not managed by BCPSEA.
- BCPSEA could provide more strategic management of collective agreement disputes with coordinated response and due diligence
- Would more closely match the management of labour issues by employee groups than the current structure and processes
- If a litigation reserve were introduced, there would be reduced volatility of district budgets since more security of BCPSEA support
- Best advice should be available to the district
- Reduces legal research costs on common issues by centralizing a source of expertise
- Promotes a unified approach that seeks a common resolution to similar legal issues that arise in the course of proceedings from different school districts
- No opt-in or opt-out issues since all boards must belong to BCPSEA
- Decision-making about the reserve fund is within BCPSEA governance structure, not requiring support of Risk Management Branch.
- Would allow BCPSEA to build up a “war chest” over time

### Disadvantages:

- Volatility of costs of labour relations litigation makes it difficult for districts to budget a best estimate of costs, which vary from year to year, even with the knowledge that BCPSEA support will be more readily accessible.
- For locally managed grievances, there can be duplication of research effort when several districts are independently responding to similar grievances, especially when they choose to use different law firms.
- May be difficult for BCPSEA to reserve funds year over year under the BCPSEA accounting requirements.
- In light of recent government intervention with BCPSEA, it may be difficult for boards to have full confidence in the continuity and control of a BCPSEA litigation reserve

## Appendix A Business Case – Labour Litigation Risk Pool

- Any BCPSEA litigation reserve would not be part of IRMA under management of the Risk Management Branch.
- Any BCPSEA litigation reserve would accrue interest at commercial rates, not the higher rates accessible by IRMA.

Risk, Event or Assumption	Likelihood to Occur (L, M, H)	Impact if Occurs (L, M, H)	Mitigation Plan
Litigation Reserve may be established but not be adequate to deal with actual costs. This could happen if the Pool is overwhelmed by volume of grievances or if government did not support grievances of province-wide significance, such as those based on statutory interpretation.	M	M	Government provides startup funding and ongoing funding in accordance with past practice. BCPSEA raises levies for district contributions to the litigation reserve or restricts cost contributions to district-managed grievances.
Collective agreement disputes and other litigation do not reflect issues common to more than one board and systemic savings from a coordinated approach are not obtained	L	H	Implement cost-sharing process to reflect degree of provincial interest in the dispute Consider exclusions from scope of coverage for some types of grievances or litigation where little or no common interest Re-evaluate the need for provincial coordination
Collective agreement disputes become more difficult to resolve at the provincial level than they would have been at the local level, so systemic costs of dispute resolution increase.	M	H	Retain local authority over grievances for initial grievance stages.
Boards face further loss of local labour relations expertise, including staff and local law firms, in order to pay for pool assessments, resulting in higher vol-	M	M	Boards are encouraged to use in-house expertise in support of proactive programs to reduce grievances. Government provides initial and ongoing contribution to Pool.



## Appendix A Business Case – Labour Litigation Risk Pool

umes of grievances at higher costs of resolution			
Individual boards take issue with provincial management, refuse to use the services and manage their own grievances	L	L	Statutory mandatory membership in BCPSEA is continued. Collective control of BCPSEA is returned to boards. Cost/ benefit of using the plan will militate against most boards dealing with claims independently.
A BCPSEA litigation reserve, if established, is then used for other purposes or not maintained at adequate levels, especially in response to boards' immediate budget pressures.	H	L	Ensure that BCPSEA membership and government understand and support the litigation reserve. Re-evaluate usefulness of litigation reserve.

### XV. Cost/Benefit Analysis and Funding Considerations

#### Savings

The cost savings need refinement with better information and estimates of the grievance volume and an actuarial review of the capitalization of the risk pool. The annual new operating costs would need to be more completely worked out at a future stage of development. The costs assume continuation of existing services; they reflect additional costs. Start-up costs, such as initial funding of the pool, are not included.

Savings have been estimated based on two measurements:

1. The Deloitte report based estimates on 91 locally managed labour arbitration cases in 2011 at an average cost of \$50,000 or \$4.5 million, and estimated a savings with better coordination of 22 % of costs or about \$1 million.
2. Data from a survey of school districts was extrapolated to arrive at current province-wide costs of \$5.0 million; savings are estimated at 25% or \$1.3 million with full implementation.

Alternatives to Address				
Alternatives	Year 1	Year 2	Year 3	Year 4

## Appendix A Business Case – Labour Litigation Risk Pool

	Savings / New Annual Operating Costs	Savings / New Annual Operating Costs	Savings / New Annual Operating Costs	Savings /New Annual Operating Costs
1. Labour Litigation Pool-Mandatory	\$800,000/\$300,000	\$1,000,000/\$300,000	\$1,300,000/\$300,000	\$1,300,000/\$300,000
2. Labour Litigation Pool-Not Mandatory	\$300,000/\$300,000	\$550,000/\$300,000	\$800,000/\$300,000	\$800,000/\$300,000
3. BCPSEA Enhanced Functions	\$700,000/\$400,000	\$1,000,000/\$400,000	\$1,300,000/\$400,000	\$1,300,000/\$400,000

### Additional Annual Operating Costs

The costs assume that current school district budgets will be used to pay the risk pool premiums and there is additional cost of more strategic management of the litigation. These additional costs will reduce the annual savings realized from the risk pool.

1. Additional staff at BCPSEA may be required to support management of local grievances and garner the savings from strategic management of the labour litigation.
2. The pool would add costs to the Risk Management Branch for additional actuarial expenses. There will be third party payments for additional licenses for the existing SPP case management system. (The cost of 12 additional licences to allow BCPSEA access would be a one-time cost of \$57,000 and an annual cost of \$11,000. There would be an initial set up cost but it is possible that this work could be done in house by RMB staff. Additional licenses for school district access would cost more.) (RMB would allocate salary and other costs to the Pool so the increased costs would not appear in government budgets but are shown here to reflect overall systemic costs.)

### Qualitative Analysis – Non-Financial Benefits

- Coordination would reduce duplication of costs when the same dispute subject matter arises in different districts. It can be expected to also improve effectiveness for the sector and may also improve relationships with employee groups.

## Appendix A Business Case – Labour Litigation Risk Pool

- By seeking more uniform (and hopefully, favourable) outcomes, uncertainty is reduced and the total volume of grievances that might otherwise occur can be expected to be reduced.
- Important considerations include:
  - the trust relationship between boards and their preferred legal counsel
  - the need for boards to be able to obtain legal advice that is independent of government
  - The governance responsibility of Boards of Education, which makes elected representatives ultimately accountable for labour relations in the school district.

### Funding Considerations

The requisite amount to be held in the Labour Litigation Risk Pool would need to be actuarially determined on a regular basis based on reported claims and estimated costs.

BCPSEA would continue to need funding in the transition period to deal with cases that predate the start-up of the new system.

The initial start-up of the Labour Litigation Risk Pool needs to be funded, since costs would have to be paid out from the outset before there has been an opportunity to build up the Pool through school district premiums.

To support this plan, boards of education will need to be assured that the proposed pool structure will not increase the overall share of labour litigation costs that they are expected to bear from their budgets. Premium payment by school districts is one mechanism to support ongoing costs of administration of the Pool and of claims but stakeholders would expect a measure of government funding to support provincial grievances, especially since the provincial government has assumed responsibility for negotiating a provincial agreement and there has been government financial support for statute-based litigation.

Initial determinations would need to be made about how costs would be allocated to school districts. A governance structure for the Pool would need to be established to make ongoing decisions related to cost allocation.

# Appendix A Business Case – Labour Litigation Risk Pool

## XVI. Recommendations and Proposed Implementation Strategy

### A. Recommendation

Option 1 is recommended, as providing the best coordination of services, appropriate management of the Labour Litigation Risk Pool, and best use of the systems and expertise of the Risk Management Branch (Schools Protection Program) and BC Public School Employers' Association.

### B. Proposed Next Steps

#### 1. Technical Task Force

In order to better define the option and determine the value of the Pool and to better determine the viability and acceptability of the Pool, establish a Technical Task Force to further evaluate the litigation risk pool and determine the operation and address the issues and concerns outlined under Option 1. This task force would have representatives of the Risk Management Branch, Ministry of Education, BCPSEA and school district business officials. The task force would be charged with finalizing:

- a. The operating procedures of the Labour Litigation Risk Pool within the Insurance and Risk Management Account
- b. Review of legislative framework and determine whether any legislative change is necessary to establish the Pool
- c. Review of the ability of BCPSEA to be the administrative agent for the Risk Management Branch and the operational structure required.

#### 2. School District Consultation and Feedback and Approval

Once the Task Force work is completed undertake consultation, feedback and obtain approval from boards of education.

- Provide each Board and District staff with the report of the Working Group and the Labour Litigation Risk Pool Business Case and the follow up Task Force report
- Consult with boards of education through:
  - BCSTA Provincial Council, Board of Directors, or AGM (depending on timing and BCSTA preference)

## Appendix A Business Case – Labour Litigation Risk Pool

- Zone/Chapter meetings with Boards and District Staff.
  - Seek endorsement from individual boards of education.
    - Government could proceed to mandate the changes required for a program based on mandatory participation (Option 1) if the level of endorsement was sufficient to demonstrate widespread support. (Alternatively, if the program were based on optional participation such as Option 2, the individual boards would be asked to commit to participate.) Both BCSTA and BCPSEA use the same formula for weighting ballot votes according to student FTEs. For consistency, government could use the same formula as BCSA and BCPSEA use to determine the voice of boards of education.
    - Alternatively, rather than asking each board to endorse the Labour Litigation Risk Pool project, the government might ask for BCSTA and BCPSEA endorsement on behalf of boards of education.
3. Risk Management Branch of the Ministry of Finance seeks approval to establish the Labour Litigation Risk Pool within the Insurance and Risk Management Account.
  4. Ministries of Education and Finance review their legislative frameworks and determine whether any legislative change is necessary to establish the Pool.
  5. BCPSEA agrees in principle to be the administrative agent for the Risk Management Branch.
  6. BCPSEA makes necessary changes to its bylaws, delegation policies, processes and procedures and as required, works with employee groups.
  7. BCPSEA and Risk Management Branch negotiate a contract reflecting arrangements.