

**Towards a Better Teacher Bargaining
Model in British Columbia**

**Report to Honourable Graham Bruce
On the Teacher Collective Bargaining**

**Don Wright
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I INTRODUCTION

The origin of this report was the Education Services Collective Agreement Act, passed in January 2002. Section 5 of that Act provided for the establishment of a commission to make recommendations as to how the collective bargaining of teachers' contracts in British Columbia could be improved. Section 5 is reprinted as Appendix A of this report.

The Minister of Skills Development and Labour, Honourable Graham Bruce, determined that it would be useful to receive some advice prior to establishing the commission. In particular, he requested that:

- consultations occur with the current parties to teacher collective bargaining, as well as other key K - 12 education stakeholders, seeking their recommendations;
- the recent history of teacher collective bargaining in BC, as well as in other jurisdictions be reviewed; and
- a set of draft terms of reference for the commission be developed.

I was asked to take on this project, and this is the report of my findings, analysis and recommendations.

The structure of the main body of the report is as follows:

- Section II briefly outlines how I went about my task;
- Section III provides a summary of the history of teacher collective bargaining over the past two decades;
- Section IV summarizes what I heard from the parties and key stakeholders;
- Section V considers questions concerning the funding of public education;
- Section VI considers issues surrounding collective bargaining in the education sector;
- Section VII provides my recommendations to the Minister;
- Finally, Section VIII provides my concluding comments.

II HOW I WENT ABOUT MY TASK

In the time available for my task, it was not possible to throw my consultation net too widely. Accordingly, I focussed on what I thought would be the key parties and stakeholders. I sent letters inviting input from each of the following organizations:

- British Columbia Teachers' Federation (BCTF)
- British Columbia School Trustees Association (BCSTA)
- British Columbia Public School Employers' Association (BCPSEA)
- British Columbia Confederation of Parent Advisory Councils (BCCPAC)
- British Columbia School Superintendents Association (BCSSA)
- British Columbia Principals' and Vice-Principals' Association (BCPVPA)
- British Columbia School District Secretary Treasurers' Association (BCSDSTA)
- Canadian Union of Public Employees (CUPE) BC.

A number of those groups provided written input, copies of which are provided in Appendix B. I also met with representatives of a number of those groups for face-to-face discussions, in some cases several times.

In addition to these groups, I benefited from discussions with representatives from organized labour and business, as well as other educators and labour-relations practitioners.

Within government, I consulted with the Ministry of Education and received background information from the Ministry of Skills Development and Labour.

Additional reference material was recommended to me by several of the organizations I consulted, and I have compiled a list of the most useful pieces in Appendix C.

After gathering all of this input, I tried to distil the essence of what I had heard, sift through the recommendations and identify what I believe to be the root causes of the extraordinary stresses in teacher collective bargaining in British Columbia. This provides the analytical basis for my recommended terms of reference for the commission.

III THE HISTORY OF TEACHER COLLECTIVE BARGAINING IN BRITISH COLUMBIA

Given the very different positions adopted by the parties to teacher collective bargaining, it is not surprising there will be different interpretations of history.

The following provides my best attempt at an “objective” summary of the essential elements of this history over the past two decades. I have placed "objective" in quotation marks because I recognize there is inevitably an element of subjectivity in any history. The several papers published by the BCTF listed in Appendix C are useful references to understand the view of history held by that organization, and the papers published by BCPSEA provide the equivalent from the employers’ side.

Prior to 1987 teachers did not have the right to strike. Teachers did bargain collectively with their local school boards, but the scope of issues bargained was limited - generally focussed on compensation issues. Binding arbitration was used in the event of an inability to reach an agreement.

In 1987 the provincial government brought in legislation allowing teachers full collective bargaining with the right to strike. It should be noted that the BCSTA supported the extension of organization and collective bargaining rights to teachers in 1987. One of the reasons for this support was unhappiness with binding arbitration as a dispute settlement mechanism. The BCTF was successful in certifying local teacher associations in every school district in the province.

Between 1987 and 1993 there were three rounds of collective bargaining in British Columbia. The bargaining occurred at the school district level, although the BCTF co-ordinated strategy at the provincial level. The degree of co-ordination at the school board level was much less consistent and comprehensive.

The BCTF's general view of this bargaining structure was positive. While they admitted to some problems, their position was that these were generally transitional problems arising from the need for both sides to develop a mature understanding of the process and the change in relationships resulting from the move to full collective bargaining with the right to strike.

The view of trustees and school board management was generally less favourable. There was a general feeling of unequal bargaining power - that the highly co-ordinated approach taken by the BCTF resulted in the school boards being "whipsawed" - resulting in an escalation of costs considerably in excess of the rate of inflation.

It has been suggested that school boards could have done a better job at taking a co-ordinated and unified approach to the BCTF. This may well be true. Even if the school boards had done a better job, it is questionable whether they could ever have fully matched the discipline of the BCTF. School boards are accountable to their local publics,

and this means that the province-wide implications of precedents they agree to in local settlements are not relevant in their decision making. In contrast, the purpose of a disciplined provincial teachers' organization is to advance a province-wide teachers' agenda. Certainly the anecdotal evidence from the 1987-93 period is replete with evidence of such an asymmetrical relationship.

Whether or not the school boards could have done a better job of taking a unified and coordinated approach to the BCTF, school boards generally believed themselves to be in an unequal bargaining relationship. As one individual portrayed it to me: "It was like the local pick-up team (the school board) playing the travelling all stars (the BCTF). Guess who won every game?"

Over the course of these three rounds of bargaining there were a number of strikes/lockouts at the school district level.¹ The BCTF has articulated the position that the fact the strikes tended to be of short duration, and occurred in a minority of school districts (approximately 20%) in each round, indicated the right to strike in the context of bargaining at the district level was not overly disruptive, and this model of collective bargaining worked fairly well.

The perception from the employers' side was somewhat at variance with this. The fact that strikes tended to be short in duration is said to indicate the public's unwillingness to accept any but the most minor of disruptions in the school year, and underlined an unequal bargaining position between the local school board and the BCTF.

In 1991 a new provincial government was elected in British Columbia. Early on in its mandate it established a Commission of Inquiry into the Public Service and Public Sector (the Korbin Commission). Labour relations in the K-12 system were among the issues examined by the Korbin Commission. The BCTF submission to the Commission, entitled "Face to Face", argued for a continuation of collective bargaining at the school district level. Employers, on the other hand, expressed serious concerns about continuing on with that structure unchanged. It is worth quoting the Commission's summary of what it heard in this regard:

"The Commission also received numerous submissions concerning the need to establish a method of balancing the power of the parties for collective bargaining purposes. Put another way, there is a perception of a power imbalance. It is believed by many that there are powerful local teachers' associations acting in concert with a more powerful central teachers' federation, whipsawing individual school boards into accepting teachers' bargaining demands because, on a district-by-district basis, they are not able to resist those demands. Consequently it is perceived that school boards are forced to agree to teachers' settlements beyond the funding ability of a particular district."²

While employers were unhappy with the local collective bargaining model, they were not

¹ A summary of the strikes lockouts is provided in BCPSEA's discussion paper, April 2001,

² Korbin, Volume Two, Final Report, F-20.

generally prepared to go completely to the other extreme of a totally centralized model. The BCSTA argued for a "three-tiered" structure. There would be a "precontracting conference" involving the provincial government, school boards and teachers at which broad issues of education policy, regulation and funding would be discussed and resolved. There would be provincial bargaining of "terms and conditions of employment which have a predominantly provincial impact and are not governed by regulation." The third tier would be local bargaining of "terms and conditions of employment which have a predominantly local impact and are not governed by provincial contracting or regulation."

While the Korbin Commission was compiling its recommendations in the spring of 1993, there were a number of strikes in school districts. One of these strikes - in Vancouver - led the provincial government to bring in legislation bringing it to an end.

In June 1993 the Korbin Commission released its final report which recommended that public sector bargaining generally be brought under a greater degree of central co-ordination and control. In July 1993 the Public Sector Employers Act was passed, establishing a Public Sector Employers Council (PSEC) and employers' associations in each public sector, including the K-12 public school system. In June 1994 the Public Education Labour Relations Act was passed, establishing BCPSEA as the accredited bargaining agent for all public school boards and the BCTF as the certified bargaining agent for all public school teachers.

BCPSEA has a Board of Directors that consists of nine school trustees elected by representatives from the sixty public school boards and four representatives of the provincial government. The Chair and the Vice-Chair are school trustees. In addition, there is a non-voting representative from each of the BC School Superintendent's Association and the BC School District Secretary Treasurer's Association. BCPSEA gets its mandate from two sources – the school boards through the trustee representatives, and the provincial government through its representatives and through PSEC. The potential ambiguity of where BCPSEA gets its mandate would be a challenge for it. Is BCPSEA primarily accountable to school boards, or is it primarily accountable to the provincial government?

The Public Education Labour Relations Act required that the parties negotiate which matters should be subject to province-wide negotiating and which matters should be dealt with at the local table. In practice over the next eight years, no local bargaining ever occurred.

The establishment of BCPSEA and province-wide bargaining was strongly opposed by the BCTF at the time. In fact, I was told by the Federation that a number of teachers who were "long-time members of the NDP tore up their party cards in protest." The BCTF opposition remains to this day, and is reflected in their submission.

Whether or not the prescription of province-wide bargaining between the BCTF and BCPSEA was the right thing to do, it is significant that the government of the day chose

to do so. That a government which had received significant support from teachers in the previous election chose to proceed over the objections of the BCTF speaks to elements which transcend partisan positions, left-right labels, and pro-labour versus pro-management sympathies. There is something about the reality of providing public education, and what the public expects of its government, that exerts a powerful influence on how any government behaves.

For a variety of reasons, province-wide bargaining between the BCTF and BCPSEA over the past eight years has been unsuccessful in reaching a comprehensive contract. In April 1996, after a year of negotiations that bore little fruit, the provincial government passed the Education and Health Collective Bargaining Assistance Act, which ensured there would be no labour disruption during the imminent provincial election. The provincial government then drove a Transitional Collective Agreement (TCA), which increased teacher salaries by a modest amount, rolled over the existing language in each of the local collective agreements in place and added some minor provisions on a province-wide basis. The TCA was ratified by both sides, although, in the case of school boards, just barely.

The TCA expired on June 30, 1998. Negotiations to replace it began in 1997. By early 1998 little progress had been made. The provincial government then in essence went around BCPSEA and negotiated directly with the BCTF. In general terms, the BCTF agreed to limited wage increases (two years of 0 percent increase followed by 2 percent in the final year) in exchange for reduced class sizes at the K-3 level, required ratios of non-enrolling teachers in each district, and maintenance of all the other existing terms in each school district.

School boards were extremely unhappy with this agreement, partly for process reasons, partly for content reasons. School boards overwhelmingly turned it down, forcing the provincial government to legislate the agreement through the Public Education Agreement Act.

That agreement expired on June 30, 2001. Bargaining began in March 2001 for a replacement agreement. Suffice it to say there was a large gulf between the position of the BCTF and that of BCPSEA. The most obvious gulf was between the cost of the BCTF proposal and the incremental dollars in BCPSEA's mandate, but there were also underlying philosophical differences. This gulf was not narrowed by the election of a new government in May 2001.

In the fall of 2001 teachers began a series of escalating work actions. These actions played out in the context of the designation of education as an essential service under Section 72 of the British Columbia Labour Relation Code, which had been put in with the Skills Development and Labour Statutes Amendment Act in August 2001.

The government legislated a new collective agreement through the Education Services Collective Agreement Act in January of 2002 after it had concluded that a negotiated settlement was not possible in a timely way. This Act provided for three annual wage

increases of 2.5 percent and, in conjunction with the Public Education Flexibility and Choice Act, removed provisions in existing contracts with respect to class size, workload/staffing ratios, and made other changes.

The BCTF views these two pieces of legislation as draconian exercises in "contract stripping". School boards have a more mixed view. On the one hand, many viewed positively the increased flexibility to make the most educationally effective use of the funds available to them. On the other hand, there are concerns about the effect of the imposed agreement on teacher motivation and morale. Further, school boards expressed concern that the costs of the second and third year of the teacher's salary increase have not been fully matched in increased funding from the province.

In summary, the past sixteen years of teacher collective bargaining have not resulted in a happy legacy. One individual who had participated in several rounds of collective bargaining put a point on this by telling me "nobody does it as badly as we do." No party seems to believe that the existing structure, unchanged, can lead to successful collective bargaining in the future.

IV WHAT I HEARD FROM THE PARTIES AND OTHER STAKEHOLDERS

In Section II above reference was made to “the extraordinary stresses in teacher collective bargaining.” The key word is extraordinary. Collective bargaining is an inherently stressful process. It structures an adversarial relationship that is driven by the threat of each side to inflict harm upon the other if a settlement cannot be reached. Nonetheless, society accepts collective bargaining as a useful institution which, when functioning well, equalizes bargaining power between employer and employee and, paradoxically, can transform a situation where interests of the two partners are in opposition to one where interests are aligned.

My consultations have confirmed that the historical developments described above have led to an extraordinary level of stress in teacher collective bargaining in British Columbia. Indeed, many might find that to be a gross understatement of the situation.

That extraordinary stress manifests itself in damaged relationships amongst the key parties and stakeholders, and very different proposals as to how to improve the situation. I believe it is best to let the various parties and stakeholders speak for themselves, so Appendix B provides the complete written submissions provided to me. In the following subsections I will summarize the essence of what I gathered from those submissions as well as from conversations with a number of representatives of the organizations.

1 Relationships in the K-12 System

Not one party I heard from was happy with the state of relationships in the K-12 system within the context of teacher collective bargaining.

The BCTF is clearly angry with the provincial government for designating education an essential service under Section 72 of the British Columbia Labour Relations Code and for legislating a contract in January 2002 that it found to be unacceptable. Further, the BCTF believes the establishment of BCPSEA as the designated bargaining agent for employers in 1994 was a mistake and makes it clear it is unhappy with the role BCPSEA has played and continues to play. It believes the provincial government is not providing adequate funding for the system.

For its part, the provincial government believes that the BCTF's position in the 2001/02 collective bargaining round was detached from the economic and fiscal reality facing the province.

The BCSTA articulates a more nuanced critique of the situation, which may reflect the reality that school boards are accountable for both the success of their schools and responsible fiscal management of their budgets. Nonetheless, it is clear that trustees see several problems with the current situation - blurred accountability, dysfunctional collective bargaining, and the risk that the situation could lead to a demoralized, de-

motivated teaching force. While not stating so explicitly, the BCSTA brief implies frustration with being the "meat in the sandwich" between the provincial government and teachers, and the resulting strain on the relationship between school boards and both of those parties.

Both the BCTF and BCSTA have questioned whether BCPSEA can objectively comment on its own structure and the government role in collective bargaining. I found, however, BCPSEA to be frank, albeit careful, in analyzing the situation. In addition to its brief, BCPSEA has written a series of discussion papers that are referenced in Appendix C. In those discussion papers, it is quite clear that BCPSEA thinks there are serious problems with the way teacher collective bargaining has been conducted in British Columbia, and is open to an in-depth consideration of systemic improvements.

Additional submissions were provided by the BC Confederation of Parent Advisory Councils (BCCPAC), the BC Principals' and Vice-Principals' Association (BCPVPA), and jointly by the BC School Superintendents Association (BCSSA) and the BC School District Secretary-Treasurers' Association (BCSDSTA). The BCCPAC expresses concerns about the impact of negotiations and disruptions on the service and atmosphere in the schools, as well as the impact of collective agreements on parents' voices in the system. The BCPVPA expresses concerns about the "negative impact on the culture of schools that eventually hinders our ability to serve students" arising from the ongoing conflict. The joint brief of the BCSSA and BCSDSTA does not comment on the state of relationships within the K-12 system, but focuses exclusively on recommendations for the terms of reference of the commission to be established.

In summary then, it is clear that the overall state of relationships in the K-12 system has been very negatively impacted by the history of collective bargaining in British Columbia. I do not believe it is particularly fruitful to opine as to "who is to blame" for this state. The behaviours of, and decisions made by, the various parties over the past two decades were reasonable in the context in which they occurred. All of the parties have been motivated by an understandable mixture of commitment to the public education system, self-interest, and differing views about how the world does and should work. The fact that we would have desired a happier history does not push me to determine whose fault that was. Rather it tells me we should determine how to restructure our approach so that the "future history" is happier than what we know right now.

2 Anxieties About What This Means in Schools

Many of the people I talked to raised anxieties about what they felt is the most significant cost of all of this. It was not the time lost to strikes, and it is not the time and money spent on negotiations. Rather it is, at the risk of sounding overly mystical, the diminishment of the magic that happens in the classroom and in the school.

Teaching is a profession. Indeed, I would suggest it is a moral profession that is a calling. Schools are not factories. There are all kinds of intangible factors that make for a successful school – collegial relationships amongst staff, and between staff and management; the freedom for professional judgement to be used in deciding how best to teach particular classes and individual students; teachers believing they are respected and supported; positive relations between home and school; and so on. This is all put at risk when labour conflict is brought into the school, when relationships and professional issues are overly rule-based, when the division between management and staff in the school becomes too stark, when teachers begin to doubt how well they are supported, and when students and families are brought into the disputes between management and staff.

If the conflict is relatively infrequent and of short duration, and if the reliance on rules is kept to what reasonably is required to balance amongst fairness, motivation and excellence, the magic will remain undiminished. I sense, however, a growing anxiety amongst members from all components of the K-12 community that things have been too chronic for too long, and that the magic is at risk.

3 Recommendations for Moving Forward

All of the representations I received agreed on the need to change the current structure. Beyond that the consensus breaks down.

The BCTF is clearest in their desired reform. In general terms, they would like to see a return to the full right to strike, full scope bargaining at the school district level, with school districts given taxation authority to fund "richer" collective agreements if the local teachers association is successful in achieving those at the bargaining table. Understandably then, its recommendation is that the terms of reference of the commission should be broad enough to at least be permissive of such an ultimate conclusion. In addition, the BCTF, alone amongst the groups providing input, made an explicit recommendation about the composition of the commission.

The other parties and stakeholders were less categorical about what changes would be beneficial. No organization echoed the BCTF preference for a return to the 1987-93 scenario. But beyond that, the recommendations tended to be more of the nature of factors to be taken into consideration or questions to be asked/answered by the commission.

Several themes emerged from these recommendations. First, there is no simple answer. The commission needs to take into account that there are a number of dimensions to the problem - e.g. bargaining structure, scope, dispute settlement, accountability - that interact in complex ways. Solutions to the problem that focus primarily on one of the dimensions are likely to result in unintended, unhappy consequences. Indeed, the argument was often, at least implicitly, advanced that the unhappy history of the past is the result of a sequence of deceptively simple solutions that had exactly such unintended, unhappy consequences - binding arbitration, full scope collective bargaining, province-

wide bargaining, essential services designation, etc. Because none of these "fixes" was thought through in the context of the full complexity of the problem, the results were disappointing at best.

The second theme, related to the first, is that the commission should pay particular attention to the British Columbia reality that is a legacy of our history. While there is value in examining different approaches used elsewhere in the world, it should always be kept in mind that what works elsewhere might not work here.

A third theme that I came across consistently, albeit described somewhat differently by different organizations, was the need for an alignment of responsibility, accountability and authority.

The final theme was that, through it all, we should not lose sight of the basic goal - a quality education for our children. Some might think this is merely obligatory dressing up of each organization's self-interested position. I believe, however, that, notwithstanding all the differences amongst the parties and stakeholders, there is a genuine commitment of all to this calling.

Beyond these four themes, most organizations have the same general set of questions that they believe the commission has to grapple with:

- Who should bargain what?
- What should be bargained by whom?
- How should disputes be settled?

The apparent redundancy between the first two points is apparent only. The set of issues to be dealt with is complex, and allowance needs to be made for the possibility that different elements will be negotiated at different levels.

There were different approaches to subdividing and repackaging them, but these three questions were the essence of every list submitted to me.

These three basic questions also represent three potential dividing lines between the parties. On the question of who should bargain, as indicated above, the BCTF takes the position that it should be local school boards and local teacher associations. While other organizations have not coalesced on a definitive alternative to local bargaining, there is a general view that there is a need for some provincial agent for bargaining at least the major cost elements of the collective agreement.

In terms of what should be bargained, the BCTF is again the clearest - it would like no restriction on the scope of issues to be determined at the collective bargaining table. Some other groups believe that there are some issues that should be established as "educational policy" by the province in consultation with parties and key stakeholders.

The question of dispute resolution is also clearly contentious. The BCTF believes

strongly that the ability to strike is a fundamental right and is the best lever to precipitate agreement at the bargaining table. It also believes that education should not be deemed an essential service, and that the disruption and hardship brought on by the occasional strike is not excessive in the total scheme of things. In other words, while it does not deny that there are costs associated with strikes, in its opinion the long run benefits of the right to strike exceed those costs.

Other parties and stakeholders have greater or lesser concerns about an unqualified right to strike. Some of the submissions seem to imply a preference for an outright ban. Others struggle with an attempt to balance fairness to teachers with fairness to students and their parents. In this regard, I think it is informative to cite three passages from the submission I received from the BCSTA:

"In 1987, BCSTA supported the extension of organization and collective bargaining rights to teachers. We do not believe trustees would see removal of these rights as fair."

"Many trustees supported the introduction of essential services legislation that has limited the right to strike in the education sector."

"School trustees are well aware that strikes are not the worst thing that can happen to a school system... A demoralized, de-motivated teaching force is one of the worst things that can happen."

Those three passages capture the tension that exists between the two competing arguments.

In addition to the dividing lines that the three basic questions expose, there remains one other major source of tension - the level of funding provided for the K-12 sector. The BCTF makes no secret of its belief that the basic problem facing the K-12 system is what it believes to be a chronic underfunding of the system. The implication is that a good deal of the problems over collective bargaining would go away if only there was an "adequate" level of funding provided. I believe it is fair to say that the other organizations would be happier with an increased level of funding for the K-12 system.

While the dividing lines arising from the three questions discussed above run between the parties and other key K-12 stakeholders, the dividing line arising from the question of funding runs between all the K-12 parties and stakeholders on the one hand and the provincial government on the other. This is understandable. The focus of K-12 parties and stakeholders is the success of that system and the standard of living of those employed in it. The focus of the provincial government is to balance those considerations against a host of other considerations - adequate funding for the health care system, a good highways and transportation system, income support for those unable to support themselves, putting in place a competitive tax and business climate so that British Columbians can sustain a high standard of living, ensuring that the level of taxes

paid by British Columbia residents is consistent with their preferences as to how much of their income should be spent on shared objectives through government and how much should be left with them to spend on themselves, and so on.

To state that there is naturally a tension between K-12 parties and stakeholders and the provincial government appears to belabour the obvious. I believe, however, that the root cause of the extraordinary stress in teacher collective bargaining in British Columbia is that we have not adequately thought through the consequences of this tension. We have not understood why that tension has grown over time, and our attempts to structure and restructure teacher collective bargaining have not been adequately informed in this regard.

Because I believe this issue is so fundamental, I “belabour the obvious” in the next section.

V FUNDING PUBLIC EDUCATION IN A DEMOCRACY

Because I believe that there are some fundamental issues to understand here, it is useful to go back to first principles and ask and answer some basic questions that lay at the heart of the public education enterprise:

1. Why do we have public services?
2. How do we decide how much to spend on public services?
3. Do we spend enough on public education in British Columbia?
4. Who is accountable for this?

1 Why Do We Have Public Services?

The answer to this may seem so obvious as to not require a moment's thought. But I believe it is more significant than that. As a society, we choose **not** to provide most goods and services through the public sector. Rather, we leave the decisions as to who will consume what, and who will provide what, to individuals and firms acting out of their own self-interest - i.e. we "leave it to the market". Why do we choose to use the public sector over the private sector for some goods and services?

The answer I like best to this is that we use government to do together what we could not do, or could not do as well, acting individually. Some goods and services would not be provided through the market by the private sector. Some goods and services could be produced by the private sector, but we have decided we would not be happy with the quality, quantity or distribution that the private sector would provide.

Education is one of those services that our society has decided should be provided primarily through the public sector. There are a number of interrelated reasons for this - a belief that a well-educated population benefits society as a whole, a belief that every child deserves as equal an opportunity as possible regardless of his or her parent(s) ability to pay for a high quality education, and a belief in the importance of developing common understandings, values and a shared sense of citizenship.

2 How Do We Decide How Much To Spend On Public Services?

The decision to provide goods and services through the public sector fundamentally changes the way we make quantity, quality and distribution decisions. For goods and services flowing through the private sector, the market makes these decisions. How much of a particular good or service are people willing to purchase at different prices? How much of that good or service are firms willing to supply at different prices? At what price will the two sides of the demand and supply equation equilibrate? And so on.

The decision to use the public sector, however, reflects a fundamental decision not to rely

on the market. The decisions become mediated through the democratic political process, rather than through the market. Does the public wish to see a higher level of funding for a particular activity? Is it willing to pay higher taxes to provide that higher level of funding? If not, is it willing to see lower levels of funding for other activities? If it is not willing to pay higher taxes or see lower levels of funding for other activities, is its desire to see higher levels of funding for that activity genuine? Will it vote for or against a party that promises higher/lower levels of funding? Will it vote for or against a party that promises lower/higher levels of taxes? And so on.

While the mechanisms through which these decisions are mediated are fundamentally different (politics versus the market), they still deal with the same basic choice - allocation of resources amongst competing ends. The decision by an individual to buy a new television means less money available for other desired things – say, books. The decision by government to spend more on education means society will have less for something else - say health care, or private purchases because the increase is financed through higher taxes.

It is the job of those elected by the public to use their best judgement as to what the public really wants, make those choices, and be accountable to the public for those choices. If democracy is to operate well, it is the public's job to pay attention to the choices made on its behalf, and to use its voice to let governments know whether it is agreeing or disagreeing with those choices. The conditions required for the democratic process to operate well are discussed below.

3 Do We Spend Enough On Public Education in British Columbia?

The idealized discussion above talks about "the public" as if it is of one mind. Obviously this is not the case. People have widely divergent views about what level of government spending is appropriate and which taxpayers should finance which share of it.

When it comes to one particular part of government spending - say education - it is not possible for any one person to determine what the "correct" level of spending is. Over time, the level of spending will go up or down in response to what the elected government feels to be the public's wishes. If a government gets too far out of line with the public's wishes it stands to be "de-elected" and replaced with a government more aligned with those wishes.

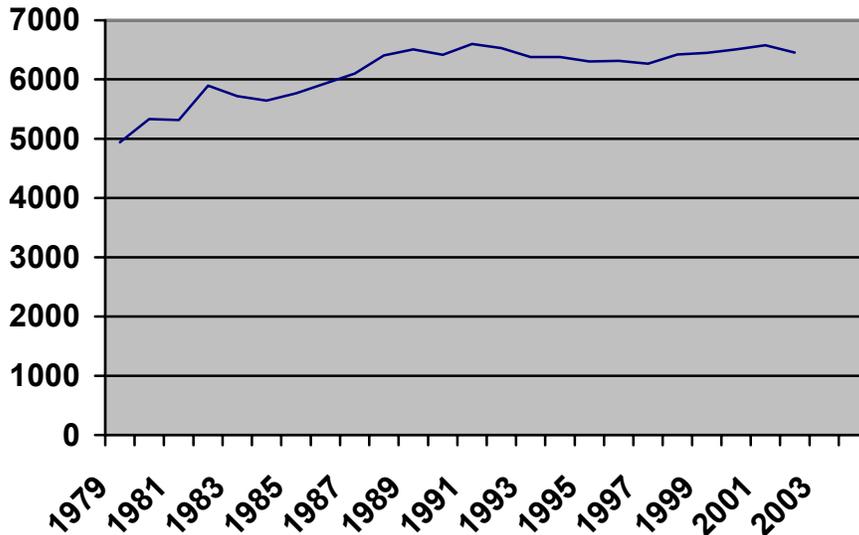
While it is not possible to answer the question posed in this subsection directly, it is possible to provide perspective by looking at the amount we spend in British Columbia relative to a number of comparisons:

- relative to what we have historically spent;
- relative to the overall level of wealth we have in British Columbia to spend on all goods and services; and
- relative to what other jurisdictions spend.

First of all, however, a word of caution. Government spending figures over time and between jurisdictions are always prone to the "apples-to-oranges problem". Accounting definitions of what is included and what is excluded from any particular figure change over time within any one jurisdiction and vary between jurisdictions at any particular time. While I have tried to get data that is as much apples-to-apples as possible, some care should be taken in reading too much into these numbers. It would be prudent to use them collectively to develop an "impressionistic" view of things rather than rely on any one series as "the definitive word".

Figure 1 shows how total school board operating expenditures per student has varied in British Columbia from 1979/80 through 2002/03.³ These expenditures have been corrected for inflation.

Figure 1- Operating Expenditures Per Student (Jan. 2003\$)



Source: Ministry of Education

It is apparent that there are four basic periods captured over that period of time. Up to 1982/83 expenditures per student were on an upward trend. From 1983/84 through 1985/86 expenditures per student were restrained or flat. From 1986/87 through 1991/92 expenditures were again on an upward trend. Finally from 1992/93 through the present, per student expenditures have been essentially flat.

Two observations about the pattern in expenditure per student are can be noted. First of all, the periods of growth or restraint in expenditures are closely correlated with the

³ It should be noted that this does not represent the total amount spent on K-12 education – other items such as activities performed directly by the Ministry of Education and financing for school construction are not included in these figures. School board operating expenditures were chosen because it is the most consistent series over time.

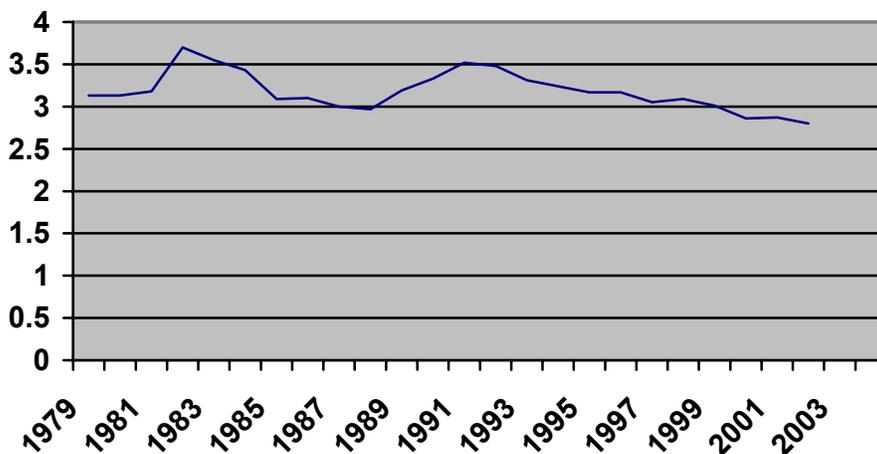
economic and fiscal situation in British Columbia. Up until 1982 economic growth in British Columbia was quite robust, and the provincial government's budget was in a surplus/small deficit position. In 1982 British Columbia suffered from its worst economic downturn since the 1930s, and the provincial budget moved into a large deficit position. Strong economic growth returned in the 1985-89 period, and the provincial government's budget moved into a surplus position. Since 1990 economic growth has been below historical trend and the provincial government's budget has been in deficit for most of that period.

Second, the long-run trend in per student expenditure has been up, though there has not been much movement since the early 1990s. Care needs to be taken in drawing conclusions from shorter periods, particularly ones that start at or near a cyclical peak.

Probably the best overall measure of the total income available to a society to allocate amongst purchases of goods and services, both private and public, is the gross domestic product (GDP). GDP measures the market value of all the goods and services produced in a society, net of the cost of intermediate goods used in their production. It corresponds closely to the income earned by individuals and firms in the economy. Expenditures as a percentage of GDP speaks to the relative share of society's income that is being spent on a particular activity.

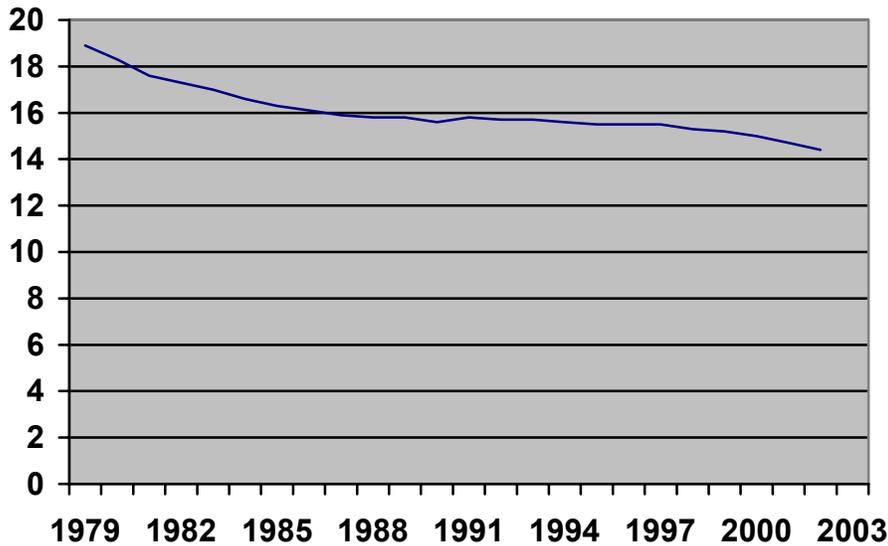
Figure 2 shows school board operating expenditures as a percentage of British Columbia's GDP over the period 1979 through 2002. There may be a slight negative trend over the whole of that period. Over the same period the student population as a share of the total population has declined much more definitively and much more rapidly, as shown in Figure 3.

Figure 2 – Operating Expenditures as a % of GDP



Sources: Ministry of Education, BC STATS

Figure 3 – K-12 Student Population as a % of Total BC Population



Sources: Ministry of Education, BC STATS

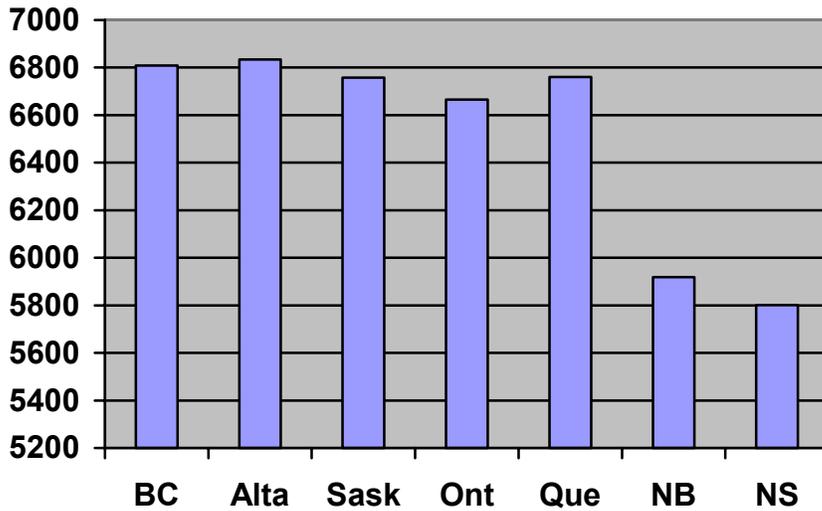
While any trend of the expenditure-to-GDP ratio is relatively weak, there are two peaks, one occurring in the early 1980s and the other occurring in the early 1990s. These peaks correspond with the upward spending momentum that developed in the "good times" before the economic slowdown occurred in the early 1980s and 1990s respectively. In both cases this spending momentum was unwound over the next few years by the government of the day. Again, care needs to be taken in drawing conclusions from periods that start at or near a cyclical peak.

The final comparison is what British Columbia spends per student relative to other Canadian provinces. For this comparison the most recent data available is for the 2000/01 school year. Figure 4 compares operating expenditures per student in British Columbia to the provinces for which there is data for 2000/01.⁴ In that year, British Columbia expenditures per student were second to Alberta's.

As stated above, none of this can definitively "prove" British Columbia spends too much or too little on K-12 education. Different people, coming from different interests and perspectives will argue that British Columbia spends too little or too much. Furthermore, it says nothing about how effectively the money is spent or how much of it "ends up in the classroom."

⁴ The definition of per student operating expenditure for the interprovincial comparisons is slightly different than for the British Columbia historical series in Figure 1. The priority here is to maintain an "apple-to-apple comparison" with each series – i.e. over time for the historical series and between provinces for the interprovincial comparison.

Figure 4 – Operating Expenditures Per Student (Current \$), 2000/01



Source: Inter-Provincial Education Statistics Project

4 Who Is Accountable for This?

The answer to whether public education is appropriately funded or not is ultimately a political question and it will be settled in the political arena along the lines outlined above.

In the elementary “Civics 101” discussion above, reference was made to the conditions required in order for the democratic political process to work well. Stated succinctly, the primary condition is that the public needs to be able to “follow the money”. The public needs to be able to hold accountable the government that is ultimately responsible for determining the level of funding provided for any particular public service. There are two elements to this accountability. One is the question of how much funding is provided. The other, just as important, is how that funding is paid for. Were taxes raised or were levels of funding to other public services reduced? This has to be as transparent as possible in order for the democratic political process to work as well as possible.

When the public education system was established in Canada in the nineteenth century the conditions for well-functioning democratic accountability were in place. The primary financing vehicle for school boards was the local property tax. The scale of school districts tended to be quite small. A large percentage of households had children in the school system at any one point in time. The costs and benefits of higher or lower funding for K-12 education were readily understandable and were debated in the local community. The accountability “line of sight” was short and worked well.

Over the past century, however, these conditions have been eroded. The scale of school districts has grown. A much smaller percentage of households have children in the

school system at any one point of time. Most fundamental, however, is that the financing of the K-12 system is now provided almost exclusively by the provincial government. This shifting of financing to the higher level has occurred incrementally. School districts were amalgamated to provide a more even tax base for school boards. The provincial government began providing significant funding to equalize the financial capacity of school districts – British Columbia society wanted to see children receive essentially the same educational opportunity regardless of whether they lived in “rich” districts or “poor” districts. The provincial government began rebating a portion of school property taxes paid to homeowners. The ability of school boards to levy discretionary taxes on non-residential property was taken away. Finally, the ability of school boards to levy discretionary taxes on residential property without resorting to referenda was taken away.

The reasons for this shifting from the local to the provincial were complex. It can be generally understood in the context of society’s changing values and the evolution of the overall public sector. This is not to say the shift could not be reversed, though this is an issue that is far beyond my terms of reference for this review. The basic point here is that, for whatever reasons, the shift has occurred. In terms of the basic accountability question, what this means is that when the public follows the money for the funding of the K-12 system, it ends up at the provincial government.

5 Implications for Collective Bargaining

Now juxtapose this shift with the history of teacher collective bargaining in British Columbia. It would be an exaggeration to say that teacher collective bargaining is exclusively about the level of funding for the K-12 system. It is a fact, however, that the issues that have been negotiated at the bargaining table – e.g. compensation, preparation time, class size, class composition, etc. – are the largest drivers of costs in that system. Unless there is alignment between the structure of collective bargaining and the accountability for financing the K-12 system, it is extremely unlikely that there will be satisfactory results at the bargaining table.

Indeed, my belief is that the main reason that the history of teacher collective bargaining has been so unhappy in this province is that the structure of that bargaining has consistently lagged behind the evolution of the accountability for financing of the sector. When full collective bargaining at the local level - with the right to strike - began in 1987, the provincial government was already providing more than half of school board operating funding. Then discretionary taxation authority was taken away from school boards. The move to province-wide bargaining in 1994 can be understood as an attempt to realign with this reality. With the benefit of hindsight, however, it did not get the alignment right.

The BCSTA submission focussed on this when it stated:

“BCSTA has as its first policy on accountability that: **Responsibility, accountability and authority should reside in the same place.** Our sense is

that trustees’ major concern about the way that the present process has functioned is that it has violated this principle.” [emphasis in the original]

In retrospect, it is not surprising that the current structure has led to frustration amongst all the parties.

In consideration of all of this, one of my major recommendations is that the terms of reference direct the commission to pay special attention to the need for alignment between any proposed bargaining structure and the accountability for financing the K-12 sector.

6 What I Am Not Saying

Because there are a number of sensitive issues connected to all of this, I believe it is important to make it clear what I am **not** saying. First of all, nothing in what I have written above should be taken to imply that there is no longer an important role for school boards. Certainly the role of school boards has evolved over time, and they are not currently responsible for determining funding levels. But there remains a fundamental need for the public to have a strong voice in how the schools operate in their community. What is needed is greater clarity as to what the school boards are, and are not, accountable for to their local publics.

I am also not saying school boards should have no role in collective bargaining. It is important that trustees be part of the collective bargaining process. There must, however, be an appropriate alignment of responsibility, accountability and authority.

Finally, I am not saying that a return to local bargaining is not open for consideration. As we have seen, one of the major parties – the BCTF – argues in favour of this. What I am saying is that, if it is decided that such a move is in British Columbia’s interest, it will require a significant restructuring in how the K-12 system is financed if we are not to repeat the frustrations of the past. We would need to create a system where the public understands that the primary accountability for the benefits **and** costs of funding for the K-12 system rest with school boards. I leave the question of whether such a change should be an option to the commission.

VI COLLECTIVE BARGAINING IN THE EDUCATION SECTOR

In the previous section I took some time to examine how the dynamics of democratic decision making surrounding funding of public education should inform the terms of reference of the commission. Because the decisions to appropriate to, and allocate resources within, the public sector are mediated through the political process, particular attention needs to be paid to accountability for that decision-making. Stated simply, there are different dynamics in the public sector than in the private sector which require specific consideration.

After having read the different perspectives of the key parties and stakeholders, and having had face-to-face meetings with several of them, I have concluded that a similar consideration of the implications of the differences between the public and private sector within the specific context of collective bargaining would be useful.

The approach again will be to go back to first principles and ask some basic questions:

1. Why does society support collective bargaining?
2. What is different about collective bargaining in the public sector?
3. What is special about education?

1 Why Does Society Support Collective Bargaining?

Why does society accept a process that is essentially adversarial, can create great stress within the workplace and, through strikes or lockouts, can impose great economic harm and inconvenience not only on the parties directly involved, but on the public at large? To paraphrase Churchill: because it is the worst possible system, except for all the others. It is the institution that we have created over the past hundred years or so that best redresses the asymmetry of bargaining power that can exist between the employer and an individual employee, gives the employee a “voice” in the operations of the organization and, if properly channelled, can actually promote the alignment of interests between the employer and employee. While there are costs to everything that comes with this institution, society has decided that the costs of doing without it – in terms of unfairness and conflict channelled in more harmful directions – would be greater.

This is not to say that there are not conflicting considerations at play here. Labour law has evolved over the decades, and continues to evolve, to reflect the ongoing struggle to get the balance between the conflicting considerations right. Governments of different persuasions have different notions of what that right balance is. What is noteworthy, however, is that all governments, whether of the “left” or the “right”, understand that it is essentially an exercise in balance. A system that is too tilted in favour of one side or the other, or ignores the interests of the broader public, will lose legitimacy and will cease being an institution that society supports.

2 What is Different About Collective Bargaining in the Public Sector?

It has been argued often, and in many different jurisdictions, that there is inherently a more naturally balanced collective bargaining situation in the private sector than in the public sector. BCPSEA summarized this argument in one of its discussion papers:

“The underlying dynamics of collective bargaining and dispute resolution are different in the public and private sectors. In the private sector there is a dimension to decision making and costs of agreement and disagreement that is largely absent in the public sector. Further, it can be argued that a natural or inherent structural limit on bargaining and disputes exists in the private sector. Collective bargaining occurs within the context of the marketplace with competition and the ability of a business’s clients to go elsewhere should a business be unable to provide products and services as a result of a strike or lockout. The marketplace structure creates a limit on the terms a union can expect to achieve and the manner it uses to achieve them.

In contrast, the public sector has so such structural limits that are equivalent. Where the government is the monopoly provider of a service there is typically no substitute for that service. No other organization or competitor can take the business over in the event the government cannot provide the service. Arguably, the absence of the marketplace as a limiting structural feature of public sector collective bargaining makes the settlement of agreements quite different and in some case more difficult than private sector agreements.”⁵

This argument has been used, in one form or another, to justify different collective bargaining regimes, limits on the right to strike, and, ultimately recourse to legislated settlements. This argument is amplified when the particular public good or service being provided is deemed to be “essential”.

There is, of course, another side to the argument. It is argued that the right to collective bargaining and to strike is a right in a democratic society, that the possibility of a strike/lockout is the incentive to reach a settlement at the bargaining table, and that other dispute settlement options (e.g. arbitration, legislated settlements) undermine the collective bargaining process. To echo the point from the previous subsection – limiting the right to strike does not come without costs.

Society’s decision to provide a good or service through the public sector, particularly as a monopoly, as opposed to the private sector means the primary decision criteria become political. In the private sector, management and labour ultimately share a common interest in a viable enterprise in a competitive environment. If the enterprise is not successful, both management and labour stand to lose their jobs and the firm’s investors stand to lose their capital. In the public sector, management and labour would benefit from general public approval of the way the “enterprise” is run, but the dynamic if the enterprise is not successful is generally quite different. Rather than “bury their

⁵ BCPSEA discussion paper, April 2001, p.13.

differences” so both sides can survive in the economic marketplace, management and labour are more likely to heighten their differences and take their respective arguments to the public in order to survive in the “political marketplace”.

3 What is Special about Education?

This general issue seems to be amplified in the context of public education. The history of teacher collective bargaining provides ample evidence of this. Until 1987 full collective bargaining with the right to strike was not available to teachers. Education has in the past, as it is now, been deemed “essential” under the Labour Relations Code, or predecessor acts. Governments of both the “left” and the “right” have felt compelled to legislate ends to strike and/or impose settlements.

The point here is not whether the government of the day was right or wrong to put these restrictions on free collective bargaining. It is that there is a political dimension to collective bargaining in the K-12 sector that transcends partisan considerations – governments have felt that they had to intervene to limit work stoppages.

It also should be noted that other jurisdictions across Canada, and, indeed, around the world grapple with this issue. No one “model” is emerging as “the” way to go.⁶ Some jurisdictions restrict the right to strike. Some jurisdictions have put in place bargaining processes and/or dispute settlement procedures specifically tailored to the public education system. Some jurisdictions have very little differentiation between general labour relations law and that applying to the public education system.⁷

What specifically is it about education that makes it “special” in this regard? There are three arguments that seem to motivate the particular treatment of teacher collective bargaining. The first one is the general importance attached to education by our society. There is a general consensus that a high quality public education system is one of, if not the most, important enterprises run by government. It is an investment in society’s future, in equalizing opportunity and in developing a sense of shared citizenship. If it is this important, it does not take much of a stretch to deem it “essential”, at least in the rhetorical sense.

The second argument, related to the first, is what may be called the “lost time argument.” There is only a limited amount of time in a school year for children to benefit from school time. If a significant part of the year is lost to a strike, that time is “lost forever.” As one stakeholder put it to me: “Kids are not two-by-fours. After a lumber mill goes on strike, the lost production can be made up in a relatively short period of time. The equivalent is not possible after a school strike.” It is suggested that this argument applies

⁶ BCPSEA has researched different models used in Canadian provinces and some international jurisdictions. A summary of this research is provided in its January 2003 discussion paper.

⁷ Most recently, the province of Alberta received a report from a Commission on Learning, which, among other recommendations, has recommended significant changes to the structure and scope of collective bargaining.

particularly strongly to students who are near to graduation and are competing for places in the post-secondary education system or who are about to join the world of work.

The third argument, and somewhat distinct from the first two, is that over the past thirty years schools have taken on a custodial function that many parents and society as a whole have come to rely on. The proportion of families headed by single parents, or where both parents work, has increased significantly over the past few decades. In these families, there may be no one at home to look after younger children in the event of a school strike. This poses a hardship on parents – they are forced to find alternative arrangements (possibly costly to the parents), stay home and lose income, or live with the anxiety that their children may not be adequately looked after. In addition, the public school system has become an integral part of the delivery of important support services to some children and families.

This all contributes to the political pressure felt by governments to bring an end to school strikes. A former Minister of Education succinctly captured the political reality of this:

“Government of all political stripes know that a strike or lockout in the school system cannot be allowed to go on very long. There are nearly 600,000 students in public schools, and when a labour dispute closes the schools, their parents – the voters – get very angry. A shutdown of ten days, or maybe two weeks, is about all that parents or politicians are prepared to tolerate.”⁸

This political reality has had unfortunate implications for the general health of relationships within the K-12 sector. There is a plausible argument that it is the constant legislative intervention that has prevented the development of healthier, mature relationships between the parties.

I come to no normative conclusions about the implications of this for collective bargaining. I merely suggest that this political reality should inform the commission’s considerations. It will be up to the commission to make a judgement about its normative significance.

In making any judgement in this regard, I would think the commission would want to extensively review the different approaches used in other jurisdictions. Do some approaches seem to promote more harmonious relationships within the public education system? Would such approaches be adaptable to the particular circumstances and history in British Columbia? In the end, the model adopted in British Columbia will have to fit the realities here, but the issues are similar across the world where collective bargaining is the norm. On the basis of the preliminary review I undertook for this report, it appears that there may be relevant models to learn from in North America, Europe and elsewhere. The commission should investigate these models, and have a full engagement with the

⁸ Paul Ramsay, column in the Prince George Free Press, September 25, 2003. In the interests of full disclosure, I should point out that I was Mr Ramsay’s Deputy Minister for a short period of time in 1996-97.

parties and key stakeholders to assess whether some elements could be adapted to the situation here.

VII RECOMMENDATIONS

I now turn to my recommendations for proceeding with the commission. I will lay out my recommendations in whole, and then provide some discussion as to why I have made the particular recommendations I have and also, in one key area, why I have left something out of my recommendations.

I make recommendations in four key areas:

- terms of reference for the commission;
- review of Section 5 of the Education Services Collective Agreement Act;
- composition of the commission;
- preparation for expiration of the current collective agreement.

1 Recommendations

Terms of Reference for the Commission

The Commission will:

- (1) inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
- (2) review structures, practices and procedures used for teacher collective bargaining in other jurisdictions within Canada and elsewhere in the world;
- (3) propose options for improved teacher collective bargaining in British Columbia. The elements of each option must include:
 - (a) the definition of the bargaining relationship:
 - (i) the geographic definition of bargaining agents (i.e. provincial, regional or local);
 - (ii) governance (i.e. who is at the table? how do they bargain? who sets the bargaining mandate?) of the employer bargaining agent(s); and
 - (iii) whether there should be different "tiers" of bargaining (e.g. some issues at the provincial level, some issues at the regional or local levels);
 - (b) the school financing and accountability system that would be aligned with the proposed structure for the employer bargaining agent in any single option;
 - (c) the process for facilitating the achievement of a negotiated collective agreement at the bargaining table;

- (d) the procedure(s) to be followed in the event of an impasse at the bargaining table, including facilitative measures such as mediation and a mechanism for objective reporting to the public on the issues behind the impasse;
- (e) the constraints, if any, to be placed on the right to strike or lockout in the event of an impasse at the bargaining table;
- (f) what, if any, dispute settlement mechanism would be prescribed as an alternative to strike/lockouts.

In considering and proposing options, the Commission must balance the following factors:

- (1) the public's interest in minimizing disruptions in the provision of education programs to students;
- (2) the right of employees to be fairly compensated for their services;
- (3) the value of maintaining and enhancing a positive atmosphere at all levels of the school system (i.e. classroom, school, school district and provincial);
- (4) the value of a well-functioning collective bargaining system with appropriate incentives and pressures to encourage settlements at the bargaining table;
- (5) the value of effective, efficient and expeditious collective bargaining and dispute settlement;
- (6) the views of school boards, the BCTF, the employers association, the provincial government and other key stakeholders in the public education system;
- (7) any other factor that the commission considers relevant or that the Minister may direct.

Review of Section 5 of the Education Services Collective Agreement Act

Section 5 of the Education Services Collective Agreement Act should be reviewed to determine if it would restrict the ability of the commission to act under the recommended terms of reference. If it is determined that Section 5 would restrict the commission, the Act should be amended appropriately.

Composition of the Commission

The Minister should appoint one person to the commission after consultation with the BCSTA, BCTF and BCPSEA.

Preparation for the Expiry of the Current Collective Agreement

The Minister should consult with the BCSTA, BCTF and BCPSEA to determine what to do in the context of the June 2004 expiry of the current agreement and the scheduled upcoming bargaining.

2 Discussion

Terms of Reference

The terms of reference I have recommended takes Section 5 of the Education Services Collective Agreement Act as its starting point. I do not believe the recommended terms of reference are inconsistent with Section 5, but merely make explicit some of the factors that I have concluded are important to take into account in light of my consultations with the key parties and stakeholders, and my own analysis of history.

Inclusion of (3)(b) under what the commission will do is, I believe, fundamental in light of the discussion in Section V above. If careful consideration is not made of the need to align responsibility, authority and accountability, then I fear it is unlikely that any changes we make will significantly improve things.

Inclusion of items 3(c) through 3(f) are to allow for considerations of the issues discussed in Section VI above and to allow for the consideration of whether the approach to collective bargaining and dispute settlement should be specifically tailored to the unique circumstances of the public education system. The inclusion of a mechanism for objective reporting in item 3(d) is to allow for a reinforcement of accountability to the public.

The list of factors which the Commission must take into account reflects, I believe, a reasonably comprehensive listing of the conflicting objectives in structuring teacher collective bargaining. I state “conflicting”, and suggest the commission should “balance” the factors after due consideration. The discussion in Section IV about the dividing lines between the key parties, and the discussion in Section VI about the unavoidable political dimension to collective bargaining in the education sector lead me to conclude that there is no room for categorical positions that “this interest trumps that right”, or visa versa, if we hope to move forward towards an improved teacher collective bargaining situation. Decision making in the public sector inevitably requires balancing interests and rights, and it is advisable to be forthright about this. My intention here is to be permissive rather

than prescriptive – I believe the commission should be free to recommend within a broad range of alternatives.

It is important to discuss what has been left out of the terms of reference. In particular, there is one key omission that may raise eyebrows. I have not recommended that the commission examine scope of bargaining issues. As discussed above in Section IV, this is a dividing issue between key parties and stakeholders, and most of the submissions suggested the “what is to be bargained” question is a key issue. I am aware that, left unresolved, this question can be the “elephant under the table”. Nonetheless, I have concluded that now is not the time to tackle this issue head on. There are three related reasons why I have come to this conclusion.

First of all, I am concerned that even the more limited terms of reference I am recommending will pose a significant challenge for the commission. Directing us toward a better structure, set of processes and dispute settlement is no small task. I believe adding scope issues to this list could well be the proverbial straw on the camel’s back.

Secondly, I have concluded that the wide gap in views amongst the parties on scope issues- i.e. what is a legitimate issue concerning working conditions as opposed to an issue which properly belongs in the domain of “education policy” – is more a symptom than a cause of the unhealthy or immature relationships amongst the parties. If we can foster healthier, mature relationships, I believe the gap will begin to narrow. Hence I believe the priority should be on fixing structures and process, because that is the first step in improving the relationships.

Thirdly, history has shown that, over time, the parties find a way to discuss and negotiate issues, regardless of whether legislation and regulation technically say they should or should not. Better, I think, to let this evolve naturally than to have a potentially divisive fight right now, and then try and constrain negotiations within the procrustean bed that results.

In recommending that the commission stay away from scope issues, there may appear to be a bit of a contradiction with the direction to consider whether there should be different “tiers” of bargaining. Such consideration will involve asking what should be bargained by whom – which might be taken to lead to the scope issue. What I have in mind in this context, however, is more a focus on clarifying where responsibility is best located than on the bigger “what is to be bargained” question.

Review of Section 5 of the Education Services Collective Agreement Act

In its submission the BCTF argued that:

“the terms of reference enunciated in 5(2)(a)(i-iii) [of ESCA] can only serve to validate and extend the existing system where the rights of one party are constrained by a reduced scope of bargaining and a limited right to strike.”

In my discussion above I suggested that the question of scope be “parked” for the time being. In doing so I make no judgement about whether either the scope of bargaining before January 2002 or after January 2002 is “valid”, merely that, in my opinion, it would not be productive at this time to take on that question.

In terms of the right to strike issue, I find myself sympathetic up to a point with the BCTF’s concerns. If the commission’s terms of reference were to unduly depreciate the value of collective bargaining, of achieving settlements at the bargaining table, and the role that the right to strike or lockout can have in promoting this, then the results of the commission could be unfairly slanted. On the other hand, as I explained above, I do not believe that any one right can categorically trump all other interests and rights in the context of public education. The commission must be free to consider the balance amongst these conflicting rights and interests.

While I believe the list of factors I have suggested in my terms of reference may appear more balanced than those in Section 5 of ESCA, I believe it is not inconsistent with that Section. It is important, however, to confirm this. Accordingly, I recommend that the minister obtain a quick legal opinion as to whether the current wording of Section 5 would invalidate the recommended terms of reference that I am proposing. If the opinion is that this would be the case, then I recommend that Section 5 of ESCA should be amended appropriately.

Composition of the Commission

With one exception, the submissions I received were silent on the composition of the commission. The exception was the BCTF. It is useful to reprint the passage in the BCTF submission that is addressed to this question:

“In June of 1994 [date in original], the report of the “Commission of Inquiry into the Public Service and [the] Public Sector” was made public. Judi Korbin, who headed that commission, observed that:

“A restructuring process born out of frustration with the current model that does not offer all parties an opportunity for meaningful input is not a guarantee for success. Finding a collective bargaining system that responds to the needs of the parties necessarily means including all of the parties in its formation.”

“Mindful of Korbin’s comments regarding the need to have all parties meaningfully involved, we recommend that the intended commission established under Section 5 of ESCA be comprised of the following:

- One person named by the BCSTA;
- One person named by the BCTF;
- A third person familiar with the K-12 system including human resource issues and collective bargaining agreed to by the two parties.

“A commission composed as we have recommended would enjoy the confidence of employers and employees alike. To the degree that it is possible, the commission should be free to operate beyond the direct control of government.”

While I agree with the passage cited from the Korbin Commission, I have concluded, after due consideration, that the BCTF prescription would not provide us with the desired result. There are two major reasons I have come to this conclusion.

The first has to do with the complexity of the issues to be balanced. As discussed in Section IV, there are dividing lines not just between the BCTF and employers (as represented by school boards), but between all the K-12 parties and stakeholders on the one hand and the provincial taxpayer (as represented by the provincial government) on the other. It is unlikely that a commission that gives explicit voice to parties on either side of the first dividing line, but no voice to the party on one side of the second dividing line will get the balance right. The structure proposed by the BCTF would silence the voice of the party that represents the people who currently finance the system – the government that is accountable to the British Columbia public and taxpayers.

I agree that the commission needs to have considerable autonomy from the provincial government, and needs to be viewed by all parties as fair and objective. But it seems to take that principle a bit too far to establish a commission that gives explicit voice to the BCTF, explicit voice to the BCSTA, and removes the voicebox of the financier of the enterprise.

In Section V I discussed the need for the public to be able to follow the money if democracy is to function well in determining the levels of funding for public services. It is not clear to me that this need would receive due consideration from a commission composed in the way the BCTF recommends.

The second reason I do not believe the proposed structure would work is because of the current entrenched positions of key parties and stakeholders. The suggested composition would create a situation with a strong probability of minority reports unless the parties show a greater ability to compromise than they have for the past eight years.

Judi Korbin’s basic admonishment is correct – all parties will have to have meaningful input. Certainly the commission will have to engage extensively with the parties, and truly listen to each party’s perspective on the issues. But if the commission is to be fair, objective and capable of taking a fresh look for solutions, it must have a level of independence and disinterestedness, not just with respect to the provincial government, but with respect to all parties.

For these reasons, I have concluded that the best opportunity for a commission that will come up with suggestions that will genuinely improve the situation is a one- person commission. Of course it is important that the parties have comfort that the person chosen is fair, objective and has the right knowledge and skills for the task. Ideally that person should inspire the trust and confidence of all key parties, which is why I have

recommended that the Minister consult with the BCTF, BCSTA and BCPSEA in an effort to come up with a mutually acceptable person.

Preparation for the Expiry of the Current Agreement

On the surface, it may seem paradoxical that I recommend the minister consult with the parties to determine what to do in the context of the expiry of the current agreement. Everything I have reported indicates that the parties believe it is extremely unlikely that a collective agreement can be reached without major changes to the existing structure, and it would be useless to even consider trying before those changes are in place.

There is, however, a question of timing. The BCTF stated in their submission:

“While the BCTF accepts the need for change, the decision to establish a commission of review in September of 2003 can hardly be considered timely. ... The Federation does not accept that collective bargaining should be postponed or curtailed in the event the commission is still functioning on June 30, 2004.”

Other parties and stakeholders raised questions about what should be done if the commission process and subsequent changes were to carry on through June 2004.

I am optimistic that a one-person commission charged with the terms of reference I am recommending, and set in motion relatively soon, could have a report to the Minister by early next fall. This may seem like a long time, but I have suggested in Section VI above that the commission cast its net widely in seeing whether there are useful lessons to be learned from other parts of the world. I have also just stated above that it is essential the commission have a full engagement with the parties regarding possible options. This will all take time.

Even after the commission has handed in its report, my experience in government tells me that it will take some time to translate that report into a new, hopefully improved, structure. The Minister will probably want to have further consultations about the options proposed by the commission. Legislation will be required, which will take time and may require more consultation. Establishment of new bargaining structures will take time to get up and running.

Given these timelines, and the concerns expressed, I recommend the Minister consult with the parties to determine what to do in the context of the expiry of the current agreement in June 2004.

VIII CONCLUDING COMMENTS

One of the risks in submitting a report like this is that it may leave an excessively negative image of British Columbia's public school system. I was asked to examine the state of teacher collective bargaining in British Columbia. I found significant problems, and have reported them frankly. But that should not be taken to mean I found significant problems with our public school system.

In fact, I believe, overall, we have quite a good public school system in this province. My evidence here is a combination of the objective and the subjective. At the objective level, British Columbia tends to show relatively well within Canada in interprovincial comparisons of student performance. Canada tends to show relatively well in international comparisons. When British Columbia is identifiable as a participant in international assessments, it does well, and does better than Canada as a whole. At the subjective level, I have a child in the system and get the opportunity to see how well served she is by that system.

This is not to say the system cannot be improved. But we should be viewing the exercise as improving an already good system, not fixing a fundamentally flawed system.

This optimistic scenario is, however, at risk. I talked in Section IV above about the magic that happens in our schools, and how many educators are concerned that the dysfunctional state of collective bargaining is putting that magic at risk. I share that concern. It is my sincere hope that the parties and key stakeholders will become fully engaged with the commission in its efforts to address this very real risk.