

BRITISH COLUMBIA
LABOUR RELATIONS BOARD

November 10, 2020

Re: **British Columbia Teachers' Federation (BCTF) – and – British Columbia Public School Employers' Association (BCPSEA) – and – the British Columbia Ministry of Education (the Ministry)**

Application under Section 88 of the *Labour Relations Code*

I write further to an application filed by the BCTF under Section 88 of the *Labour Relations Code* (the “Code”). Section 88 provides as follows:

Action by Labour Relations Board

88 If a difference arises during the term of a collective agreement, and in the board's opinion delay has occurred in settling it or it is a source of industrial unrest between the parties, the board may, on application by either party to the difference, or on its own motion,

(a) inquire into the difference and make recommendations for settlement, and

(b) if the difference is arbitrable, order that it be immediately submitted to a specified stage or step in the grievance procedure under the collective agreement or, whether or not the difference is arbitrable, request the minister to appoint a special officer.

Consistent with the purposes of the Code, Section 88 contemplates that the Board can play a role in assisting to resolve differences, whether on its own motion or on request of a party in a collective bargaining relationship.

When considering how best to proceed on an application under Section 88, the Board will assess what role it can play having regard to the broad and purposive language in Sections 88(a) and (b).

Having now familiarized myself with the nature of the issues raised in the application before me, I have concluded that they involve the interpretation and application of education and health policy, and thus extend beyond the labour relations policy framework in Section 88 of the Code.

Despite this, and to their immense credit, the named parties in the application before me are committed to establishing a problem-solving framework for addressing challenges arising from the impacts of COVID-19 and reducing risks of transmission in the K-12 system.

I have been asked to make recommendations on how to best facilitate a process for providing clarity and for resolving issues expeditiously in this challenging and multi-stakeholder context.

The goal of these recommendations is to support existing collaborative processes, including multi-stakeholder bodies, as they continue to do the important work of guiding schools and school communities through the pandemic.

Multi-stakeholder collaboration

The Ministry of Education established a Steering Committee for the development of operational guidelines to assist school districts and independent schools to plan for school re-openings in September 2020.

The Steering Committee (the “SC”) is multi-stakeholder in scope and includes teachers, parents, Indigenous rightsholders, support staff, principals and vice-principals, school trustees, and the public health sector. One of the goals of the SC was to identify best practices and find solutions to potential issues.

I make the following recommendations with respect to the Ministry of Education:

1. The SC will meet to review and amend their terms of reference such that, prior to implementing changes in the Provincial COVID-19 Health and Safety Guidelines for K-12 Setting (the “Guidelines”), the SC will be provided with information on the nature of, and reasons for, the changes and stakeholders will be given the opportunity to provide their input;
2. In the event a change is made in response to an urgent circumstance, the SC will be provided with information as soon as is practicable thereafter and in a manner consistent with my recommendation 1., above;
3. The SC will meet on a regular basis to discuss real or perceived inconsistencies in the interpretation or application of Guidelines and refer any issues to a Ministry of Education coordinator (set out below); and
4. The Ministry of Education will designate an individual to coordinate input (the Coordinator) as follows:
 - a. The SC will refer issues identified in that forum to the Coordinator for consideration and action as determined appropriate by the Ministry of Education;
 - b. The Coordinator will provide regular communication with school districts on changed Guidelines or recommendations for best practices;

- c. The Coordinator will review school district plans for consistency with Guidelines and, where appropriate, may seek input from stakeholders, including but not limited to those on the SC; and
- d. The Coordinator will work with WorkSafe BC, the Ministry of Health, and Health Authorities to provide clarity and consistency in the application of the Guidelines as required.

K-12 Workplace Stakeholders

With respect to workplace parties, there are existing processes for addressing challenges, including health and safety committees, labour-management committees, collective agreement grievance-arbitration, and investigations conducted by WorkSafe BC.

These processes can and should be used to resolve issues. My recommendation, below, is not intended to replace them. In the unique context of this pandemic, the named workplace partners in the matter before me, the BCTF and BCPSEA, acknowledge that there exist challenges that may not easily fit into one of these existing processes or there is an expeditious need for a process for clarifying issues and identifying solutions for them.

In this context, I make the following recommendations:

1. Effective Monday, November 16th, 2020, the Labour Relations Board will make neutrals available, including Vice-Chairs, Mediators, and Special Investigating Officers, to troubleshoot issues on an expedited basis, including evenings or weekends where necessary;
2. This process is available, on request, to the BCTF and its locals, support staff unions, BCPSEA, and school boards (a “Party” or the “Parties”);
3. On the request of a Party, the Board will assign an available troubleshooter to assist the Parties to discuss and resolve issues arising between them that involve implementation of the Guidelines and related health and safety issues or other pressing COVID-19 related issues that arise;
4. The role of a troubleshooter is, using an informal and collaborative approach, to fact-find and to make non-binding recommendations. Those recommendations may include, but are not limited to, directing Parties to an existing process on an expedited basis where possible;
5. The Board will track the nature of the disputes referred through the troubleshooter process and provide interim reports to the Parties. The Board may, in its discretion, make recommendations to address recurring issues coming before the troubleshooters or to establish an independent troubleshooter mechanism;

6. The Parties shall each be responsible for reviewing and identifying the issues before being referred to the troubleshooter; and

7. The Board will review the troubleshooter process with the Parties after three months and make any further recommendations as may be reasonably necessary.

In closing, I wish to recognize the high degree of collaboration shown by the named parties in the application before me. All of us are impacted by this pandemic, including the stress, anxiety, and uncertainty it brings. I am grateful to BCPSEA, the BCTF, and the Ministry for their ideas and their commitment to working cooperatively.

Yours truly,

LABOUR RELATIONS BOARD

A handwritten signature in black ink, appearing to read 'Jacquie de Aguayo', with a horizontal line extending to the right from the end of the signature.

Jacquie de Aguayo
Chair