



British Columbia Teachers' Federation

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BCTF PROPOSAL AS TO HOW GOVERNMENT SHOULD ADDRESS REPERCUSSIONS OF JUSTICE GRIFFINS' DECISION (BILLS 27, 28)

This proposal is without prejudice to any positions the Federation may take in court

October 24, 2011

I. PREAMBLE

Madam Justice Griffin issued this oral ruling¹ on October 12, 2011:

[1] On April 13, 2011, this court rendered Reasons for Judgment in this matter [2011 BCSC 469]. The reasons concluded at paras. 381-385 as follows:

[381] I conclude:

a) In enacting ss. 8, 9 and 15 of *PEFCA*, and s. 5 of the *Amendment Act*, the government infringed teachers' freedom of association guaranteed by s. 2 (d) of the *Charter*.

b) This infringement was not a reasonable limit demonstrably justified in a free and democratic society under s. 1 of the *Charter*.

[382] I declare ss. 8 and 15 of *PEFCA* and s. 5 of the *Amendment Act* to be unconstitutional and invalid. I suspend the declaration of invalidity for a period of twelve months to allow the government time to address the repercussions of this decision.

[383] Section 9 of *PEFCA* is no longer in force. The teachers' have reserved their right to argue any additional remedies and they may seek a further hearing in this regard.

[384] I have also found that s. 4 of *ESCAA* does not infringe teachers' freedom of association and so is not unconstitutional. I have not found the government to have engaged in other unconstitutional conduct.

[385] If the parties cannot agree on costs, they may also seek a further hearing to address costs.

¹ 2011 BCSC 1372, The Honourable Madam Justice S. Griffin

II. INTRODUCTION

From the inception of collective bargaining in 1987, teachers have pursued improvements to class size and services to children with special needs. We negotiated firm limits on the size of classes and staffing formulae for specialist teachers, often in place of monetary and other collective agreement benefits. The ability to collectively bargain our working conditions, which are our students' learning conditions, is of paramount importance to teachers. As Justice Griffin notes in para. 295²:

It is clear from the history of teachers' labour relations that they have long considered their working conditions a significant priority to be negotiated collectively, and this includes the conditions of class size and composition, non-enrolling ratios, and hours of work.

Our right to bargain working conditions regarding class size and composition and staffing ratios as well as hours of work was prohibited after the government enacted Bill 28, the *Public Education Flexibility and Choice Act*. We lost not only our bargaining rights but all of our hard-won collective agreement protections with the passing of the *Statutes Amendment Act*.

Reinstatement of bargaining rights, collective agreement language, the conditions guaranteed by that language, and compensation for a decade of harm are necessary components of any BCTF agreement addressing the repercussions of Justice Griffin's decision.

Regarding compensation, the BCTF's May 2011 Representative Assembly passed the following motion:

That the Federation not seek remedies for individuals with respect to the Bills 27/28 ruling.

This decision was taken in acknowledgement of the irreparable harm done to both teachers and students over a decade of worsening conditions. But it was also taken in recognition of the effect of the legislation on the profession itself. The legislation was an act of profound disrespect for teachers, their expertise, their responsibility to articulate professional standards for teaching, and their constitutional right to collectively bargain working conditions.

III. EXAMPLES OF DELETED PROVISIONS

The provisions deleted by the application of Bill 28 went well beyond class size, class composition and staffing levels. Also deleted were many provisions that

² 2011 BCSC 469, The Honourable Madam Justice S. Griffin

guaranteed fair process regarding the allocation of resources and support to teachers and students:

Three examples of class size, class composition, and staffing level articles are included here. As well, there are seven examples of additional language that was stripped in 2002.

Note: The collective agreement deletions were ordered by Arbitrator Rice, August 30, 2002. His award was quashed by Justice Shaw, *2004 BCSC 86*. Arbitrator Rice's award was then legislated into effect by **Bill 19, *Education Services Collective Agreement Amendment Act 2004***.

A. Provincial Language—Class Size, composition, staffing levels

Subject	Signed/Legislated
Memorandum K-3 Primary Class	Legislated 1998
Article D.2—K-3 Class Size (Replaced previous MOA on K-3)	Signed February 2001
Article D.1—Staffing Formula	Legislated 1998

**Memorandum of Agreement
K-3 Primary Class Size**

This Memorandum of Agreement is appended to and will be signed off as part of the Agreement in Committee between the British Columbia Teachers' Federation and the Government of British Columbia entered into on the 17th day of April, 1998.

1. ~~The parties are committed to reducing class size in the primary grades (K to 3) and to providing funding, as defined in paragraph 8 below, to achieve that objective.~~
2. ~~The term of this Memorandum of Agreement shall commence on ratification of the Collective Agreement and conclude on June 30, 2001.~~
3. ~~All current class size and composition provisions in the Previous Collective Agreement shall continue to apply, with the exceptions as noted in paragraphs 4,5, and 7 below.~~
4. ~~a) In year 1 of the Agreement, the Government will provide funding, as defined in paragraph 8 below, to accomplish maximum class sizes, to be in effect by September 30, 1998, as follows:~~

_____ Kindergarten	_____ 20
_____ Grade 1	_____ 25
_____ Grade 2	_____ As per Previous Collective Agreement
_____ Grade 3	_____ As per Previous Collective Agreement

- ~~b) In Year 2 of the Agreement, the Government will provide funding, as defined in paragraph 8 below, to accomplish maximum class sizes, to be in effect by September 30, 1999, as follows:~~

_____ Kindergarten	_____ 20
_____ Grade 1	_____ 23
_____ Grade 2	_____ 23

~~Grade 3 23~~

~~c) In year 3 of the Agreement, the Government will provide funding, as defined in paragraph 8 below, to accomplish maximum class sizes, to be in effect by September 30, 2000, as follows:~~

~~Kindergarten 20~~

~~Grade 1 22~~

~~Grade 2 22~~

~~Grade 3 22~~

- ~~5. Where there is more than one primary grade in any class with primary students, the class size maximum for the lower grade shall apply.~~
- ~~6. Any provisions found in the previous collective Agreement which would allow class size numbers to exceed those found in paragraphs 4 and 5 above and paragraph 7 below, except with respect to Grades 2 and 3 in year 1 of this Memorandum of Agreement, shall not apply.~~
- ~~7. Where there is a combined primary/intermediate class, an average of (a) the maximum class size of the lowest involved primary grade and (b) the maximum class size of the lowest involved intermediate grade will apply.~~
- ~~8. Notwithstanding any of the foregoing, in no event will the financial obligations of Government or school districts resulting from this Agreement exceed the funding being made available by Government, as follows:~~

~~Year 1 (July 1, 1998 to June 30, 1999) \$ 5 million~~

~~Year 2 (July 1, 1999 to June 30, 2000) \$20 million~~

~~Year 3 (July 1, 2000 to June 30, 2001) \$20 million~~

- ~~9. Districts shall utilize the funding provided in paragraph 8 above exclusively for the purposes of hiring additional enrolling K to 3 classroom teachers and will make all reasonable efforts to comply with the class size maximums set out in paragraphs 4 and 5 above.~~
- ~~a) By May 15, 1998, the Ministry of Education will provide to each district, in writing, an estimated funding amount that will be provided to achieve the goals of this memorandum of Agreement, subject to all of the provisions and expectations of this Agreement.~~
- ~~b) By May 30, 1998, School Districts shall provide to the Ministry with copies to the Local, in writing K-3 staffing plan(s) for each school enrolling primary grades, that sets out how the estimated funding referred to in (a) above shall be utilized to staff within the class size maximums in paragraphs 4 and 5 above.~~
- ~~c) In the event a District concludes it will not be able to achieve the required class size maximums with the estimated funds made available to them, the district shall, by no later than may 30 of that year, submit to the Ministry its staffing plan and state therein the reasons why, in the opinion of the district, it is not possible to achieve the~~

~~class size maximums which would otherwise apply. Copies of the staffing plan shall also be provided at the same time to the corresponding local of the BCTF.~~

- ~~Within 10 days of the submission of the report referred to above, a joint committee of no more than 3 representatives of the District and no more than 3 representatives of the Local shall meet to address whether it is possible to resolve any outstanding issues in order to achieve the class size maximums set out in this Agreement.~~
- ~~Where this process fails, either party, within 5 working days, may refer the matter to Vince Ready or another mutually acceptable arbitrator for binding decision. Such decision shall be provided within 10 days of the referral.~~
- ~~d) By June 15, 1998, the Ministry of Education shall communicate to the School District, in writing, the level of funding the District will receive in Year 1 to support increased levels of staffing in the primary grades (K-3).~~
- ~~e) by October 15 in each year of this memorandum of Agreement each district shall submit a K-3 Implementation Plan, detailing the allocation of staffing and the actual k-3 class size for the district, to the Ministry with a copy to the local.~~
- ~~If there is a dispute over the October 15 K-3 Implementation Plan that is not resolved through the grievance procedure, the matter may be referred by either party for expedited arbitration. The expedited arbitration will commence no later than 28 days after the referral of the grievance for expedited arbitration. The arbitrator will be from a list of agreed upon arbitrators, as established by the parties, and will issue a decision no later than 21 days after the conclusion of the hearing.~~
- ~~f) In the event that additional enrollment after September 30 makes it impossible to comply with the maximums set out in paragraphs 4,5 and 7 within the resources made available, then in those circumstances only, the provisions of the previous Collective Agreement shall apply.~~
- 10. ~~The process set out in Paragraph 9 will be implemented on an accelerated schedule, as determined by the Ministry of Education, for Years 2 and 3 of the Agreement.~~
- 11. ~~Where class size or workload maximums/restrictions contained in the Previous Collective Agreement are lower than those in this Memorandum of Agreement, the maximums from the Previous Collective Agreement shall apply.~~
- 12. ~~In the event of non-renewal of this Memorandum of Agreement on Primary Class Size (K-3), class size and composition provisions in the Previous Collective Agreement shall continue to apply.~~

ARTICLE D.2: K-3 PRIMARY CLASS SIZE

The parties are committed to primary class size maximums as defined in D.2.1 through D.2.4 below.

1. ~~All current class size and composition provisions in the Previous Collective Agreement shall continue to apply, with the exceptions as noted in D.2.2.a through D.2.4 below.~~

2. ~~(a) Maximum class sizes are to be in effect by September 30 as follows:~~

~~Kindergarten 20~~

~~Grade 1 22~~

~~Grade 2 22~~

~~Grade 3 22~~

~~(b) Except as provided in D.2.9.h below, the financial obligations of school districts resulting from this article shall not exceed the trust funds made available by Government for this purpose.~~

~~(c) By May 15 of each year, the Ministry of Education will provide to each district, in writing, an estimated funding amount that will be provided to achieve the goals of this article, subject to all the provisions and expectations of this article.~~

~~(d) Districts shall utilize the trust funding provided exclusively for the purposes of hiring K-3 classroom teachers to maintain the primary class size and will make all reasonable efforts to comply with the class size maximums set out in Article D.2.2.a through D.2.4.~~

3. ~~Where there is more than one primary grade in any class with primary students, the class size maximum for the lower grade shall apply.~~

4. ~~Where there is a combined primary/intermediate class, an average of (a) the maximum class size of the lowest involved primary grade and (b) the maximum class size of the lowest involved intermediate grade will apply.~~

5. ~~Any provisions found in the Previous Collective Agreement, which would allow class size numbers to exceed those found in D.2.2.a through D.2.4 above, shall not apply.~~

6. ~~Spring Process – Staffing Plan:~~

~~(a) Prior to May 30 each year, each school district shall hold a meeting with representatives of the local for the purpose of general discussion of staffing plans within that district. The district shall make the local aware of any potential non-compliance with the primary class size maximums and the reasons for that potential non-compliance.~~

~~(b) In the event that the district concludes that it is not able to achieve the primary class size maximums, the district shall, by no later than June 15 of that year, submit its staffing plan to the local, BCTF and BCPSEA and state therein why, in the opinion of the district, it is not possible to achieve the class size maximums which would otherwise apply.~~

~~(c) Between June 16 and September 15, inclusive, the staffing plan may be referred to a joint committee of no more than three representatives of the district and no more than three representatives of the local. Any local believing its board not to be in compliance with respect to meeting the class size maximums, may also call for a meeting of the joint committee. The joint committee shall meet within five working days of such referral and shall address whether or not it is possible to~~

~~resolve any outstanding issues in order to achieve the class size maximums referred to in this article.~~

- ~~(d) When this process fails, either party, within five working days, may refer the matter to a mutually acceptable arbitrator from the agreed-upon list for an expedited arbitration pursuant to D.2.7.c below.~~

~~7. Fall Implementation Plan:~~

- ~~(a) By October 15 in each year, each district shall submit to the local a K-3 Implementation Plan, detailing the allocation of staffing and the actual K-3 class size for the district.~~
- ~~(b) If there is a dispute over the October 15 K-3 Implementation Plan that is not resolved through the grievance procedure, the matter may be referred by either party for expedited arbitration pursuant to D.2.7.c.~~
- ~~(c) The expedited arbitration will commence no later than 28 days after the referral of the grievance for expedited arbitration. The arbitrator will be from a list of agreed-upon arbitrators, as established by the parties, and will issue a decision no later than 21 days after the conclusion of the hearing.~~

~~Note: (Please refer to June 22, 1999 Letter of Understanding No.4 for the list of agreed-to arbitrators).~~

- ~~8. In the event that additional enrollment after September 30 makes it impossible to comply with the maximums set out in D.2.2.a through D.2.4 above, within the resources made available, then in those circumstances only, the provisions of the Previous Collective Agreement shall apply.~~

~~9. Dealing With Special Circumstances:~~

- ~~(a) At any time, the school district or the local may wish to discuss an issue of non-compliance with the K-3 class size provisions at a particular school. Notification shall be provided to the other party, in writing, setting out the issue including: compelling family issues; sibling attendance at the same school; the age of the affected student; distance to be traveled and/or available transportation; safety of the student; physical capabilities of the student; accessibility to special programs and services; anticipated attrition; and time of year.~~
- ~~(b) No more than three (3) representatives from each of the parties shall meet, within five (5) working days of receipt of such notification, to clarify the issue and to make all reasonable efforts to achieve a mutually agreeable resolution including:~~
 - ~~i. provision of additional resources, from any unallocated K-3 trust funds in the district, such that the class size maximums can be achieved or;~~
 - ~~ii. in the event that the district can demonstrate, to the satisfaction of the local, that all trust funds have been allocated, pursuant to D.2.2.d above; provision of additional resources from any K-3 or non-enrolling trust fund surplus held by government such that the class size maximums can be achieved;~~
 - ~~iii. reconfiguration of classes/grades such that the class size maximums can be achieved;~~

- ~~iv. — exceeding the class size maximums where additional support and/or compensation is provided to the teacher(s) affected.~~
 - ~~(c) — Where a mutually agreeable resolution is reached that involves a variation to the class size provisions of the Collective Agreement, that resolution is without prejudice and precedent.~~
 - ~~(d) — Any such variation to the class size provisions of the Collective Agreement shall be made only to the extent required to resolve the issue.~~
 - ~~(e) — Resolutions reached as a result of the process outlined in 9. (a-d) above shall require the approval of the provincial parties.~~
 - ~~(f) — If no resolution is reached within ten (10) working days of the meeting held pursuant to 9.b above, either party may refer the matter to expedited arbitration pursuant to D.2.7.c above.~~
 - ~~(g) — The arbitrator in 9 f. above shall have the authority to make a final decision on the issue.~~
 - ~~(h) — Where the arbitrator determines that it is reasonable, in all of the circumstances, to exceed the class size limits, he/she shall determine what additional support and/or compensation shall be provided to the teacher(s) affected.~~
- ~~10. — Where class size or workload maximums/restrictions contained in the Previous Collective Agreement are lower than those in this article the maximums from the Previous Collective Agreement shall apply.~~

ARTICLE D.1: ~~STAFFING FORMULA – NON-ENROLLING/ENGLISH AS A SECOND LANGUAGE TEACHERS~~

~~1. — The Government will provide funding in order to decrease the ratios of non-enrolling teachers to students. Notwithstanding the ratios established in this article, in no event will the financial obligations to Government or School Districts resulting from this article exceed the funding being made available by Government, in each year of the Agreement, as follows:~~

~~Year 1 (July 1, 1998 to June 30, 1999) — \$20 million~~

~~Year 2 (July 1, 1999 to June 30, 2000) — \$5 million~~

~~Year 3 (July 1, 2000 to June 30, 2001) — \$5 million~~

~~2. — Districts shall utilize the funding outlined above, exclusively for the purposes of hiring additional non-enrolling teachers and will make all reasonable efforts to comply with the non-enrolling staffing ratios agreed by the Parties, which are estimated to be achievable within the allocation of funding and are described below.~~

~~3. — Non-enrolling staffing ratios~~

~~i. Employee staffing ratios in each category shall not decrease below the number reported in the 1997/98 Ministry form 1530, and as shown in Appendix A attached.~~

ii. ~~Teacher Librarians~~

~~Effective July 1, 1998, teacher librarians shall be provided on a minimum pro-rated basis of teacher librarians to students in the ratio shown in Appendix A attached.~~

~~Effective July 1, 1999, teacher librarians shall be provided on a minimum pro-rated basis of at least one teacher librarian to seven hundred and two (702) students as shown in the tables in paragraph 5 and Appendix A attached.~~

iii. ~~Counsellors~~

~~Effective July 1, 1998, counsellors shall be provided on a minimum pro-rated basis of at least one counsellor to six hundred and ninety-three (693) students as shown in the tables in the tables in paragraph 5 and Appendix A attached.~~

iv. ~~Learning Assistance Teachers~~

~~Effective July 1, 1998, learning assistance teachers shall be provided on a minimum pro-rated basis of learning assistance teachers to students in the ratio shown in Appendix A attached.~~

~~Effective July 1, 2000, learning assistance teachers shall be provided on a minimum pro-rated basis of at least one learning assistance teacher to five hundred and four (504) students as shown in the tables in paragraph 5 and Appendix A attached.~~

v. ~~Special Education Resource Teachers~~

~~Special education resource teachers shall be defined as those teachers assigned to programs 1.16, 1.17 and 1.18 by School Districts on Ministry form 1530, September 1997.~~

~~Effective July 1, 1998, special education resource teachers shall be provided on a minimum pro-rated basis of at least one special education resource teacher to three hundred forty-two (342) students as shown in the tables in paragraph 5 and Appendix A attached.~~

4. ~~Support for ESL Students~~

~~i. ESL students shall be defined pursuant to the definition used for reporting to the Ministry in the 1996 form 1701, "those students whose English language performance is sufficiently different from standard English to prevent them from reaching their potential".~~

~~ii. Effective July 1, 1998, teachers specifically assigned to providing instruction to ESL students shall be provided on a minimum pro-rated basis of at least one (1) ESL teacher to seventy four (74) identified students as shown in the tables in paragraph 5 and Appendix A attached. Staffing ratios shall not decrease below the number reflected in the 1997/98 Ministry form 1530 and as shown in Appendix A attached.~~

5. ~~The following tables summarize the annual expenditure and the estimated ratio for each category of non-enrolling teachers and English as a Second Language teachers.~~

B. SD 36 Surrey—Class Size, composition, staffing levels

ARTICLE 22 CLASS SIZE

22.10—OBJECTIVE

To provide class sizes that are conducive to effective learning situations, the class size guidelines provided herein will become effective July 1, 1991.

*22.20—CLASS SIZE GUIDELINES

*22.21 **Initial Class Size:** Subject to Article 22.32 staffing plans for the commencement of the school year shall be based upon the levels indicated in Article 22.22.

*22.22a Where possible to do so, classes will be established by the first week of October. Maximum enrollment in regular classes, subject to Article 22.22b – 22.22d, shall be:

*22.221a Primary 1 (Kindergarten)	20 students
*22.222a Primary Split/Multi-age (Grades 1-3)	23 students
*22.223a Primary 2-4 (Grades 1-3)	25 students
*22.224a Primary 4/Intermediate 1 (Grade 3/4 split)	26 students
*22.225a Intermediate Split/Multi-age (Grades 4-7)	26 students
*22.226a Intermediate 1-4 (Grades 4-7)	29 students
*22.227a Secondary English Class	25 students
*22.228a H.E. Labs & I.E. Shops	24 students
*22.229a Secondary Class (Grades 8-12)	30 students

Note: The application of provisions 22.22b to 22.22d, inclusive, is subject to sufficient government target funding and, in any event, the application of these provisions will be consistent with that provided for in the legislated Memorandum of Agreement for K-3 Primary Class Size entered into on April 17, 1998. Notwithstanding any of the foregoing, in no event will the financial obligation to Government or school districts resulting from this Agreement exceed the funding being made available by Government

*22.22b Where possible to do so, classes will be established by the first week of October. Maximum enrollment in regular classes for 1998-1999 shall be:

*22.221b Primary 1 (Kindergarten)	20 students
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*22.222b Primary Split/Multi-age (Grades 1-3)	23
students	
*22.223b Primary 2-4 (Grades 1-3)	25
students	
*22.224b Primary 4/Intermediate 1 (Grade 3/4 split)	26
students	
*22.22c Where possible to do so, classes will be established by the first week of October. Maximum enrollment in regular classes for 1999-2000 shall be:	
*22.221c Primary 1 (Kindergarten)	20 students
*22.222c Primary Split/Multi-age (Grades 1-3)	23
students	
*22.223c Primary 2-4 (Grades 1-3)	23
students	
*22.224c Primary 4/Intermediate 1 (Grade 3/4 split)	26
students	
*22.22d Where possible to do so, classes will be established by the first week of October. Maximum enrollment in regular classes for 2000-2001 shall be:	
*22.221d Primary 1 (Kindergarten)	20 students
*22.222d Primary Split/Multi-age (Grades 1-3)22
students	
*22.223d Primary 2-4 (Grades 1-3)22
students	
*22.224d Primary 4/Intermediate 1 (Grade 3/4 split)25
students	
*22.23 Special Education Classes	
The district will employ a number of teachers for special classes which as of September 30 of each school year is no less than:	
*22.231 Educable Mentally Handicapped (EMH) or Secondary Multi-category	1 FTE per
(TMH & EMH)	12 students
*22.232 Educational Continuance Program or Elementary Multi-category (TMH & EMH) or Primary Language or	1 FTE per
Regular Alternate	10 students
*22.233 Princess Margaret	1 FTE per

~~Alternate 9 students~~

~~*22.234 Severe Learning Disabled Alternate or
Social Development or 1 FTE per
Trainable Mentally Handicapped (TMH) 8 students~~

~~*22.235 Multi-category (Including TMH/
Autistic/Severe Profound) 1 FTE per
or Multi-handicapped 7 students~~

~~*22.236 Multi-category (Including Autistic,
Dependent, Severe Profound) 1 FTE per
..... 6 students~~

~~*22.24 **Resource and Tutorial Rooms**~~

~~*22.241 The district will employ a number of teachers for Special Education Resource
and Tutorial Rooms which as of September 30 of each school year is no
less than:~~

~~*22.2411 Multi-category (EMH & SLD)
Resource Room or
Multi-category (TMH & EMH)
Secondary Resource Room or
Physically Handicapped 1 FTE per
Resource Room 12 students~~

~~*22.2412 Severe Learning Disabled 1 FTE per
(SLD) Resource Room 12 students + 0.5 Teachers' Assistant~~

~~*22.2413 Multi-category (EMH & SLD)
Tutorial or
Multi-category (TMH & EMH)
Elementary Tutorial or
Severe Learning Disabled 1 FTE per
(SLD) Tutorial 10 students~~

~~*22.2414 Career Education for Learning 1 FTE per
Disabled (SLD) 14 junior secondary students &
15 senior secondary students~~

~~*22.242 Each Resource Room (other than SLD in Article 22.2412, above) will receive
teacher assistant support.~~

~~*22.243 A student who falls within one of the above groups and is also physically
handicapped shall be counted as falling within the applicable group
listed above.~~

~~*22.25 **Integration of Students With Special Needs:** In accordance with Article 23.22 an
administrative officer shall make reasonable efforts to ensure that unreasonable
numbers of E.M.H., S.L.D., and Severe Behaviour students are not placed in any one
"regular" class, and in any event:~~

~~*22.251 Not more than two (2) low incidence students with special needs (See Article 2.60) will be enrolled in a "regular" class.~~

~~*22.252 Not more than one (1) high incidence (Severe Behaviour) student with special needs will be enrolled in a "regular" class.~~

~~*22.253 When a high incidence (Severe Behaviour) student with special needs is enrolled in a "regular" class, only one (1) low incidence special education student may be enrolled in that class.~~

~~*22.254 When low incidence and/or high incidence (Severe Behaviour) students with special needs are enrolled in a "regular" class, that class will be smaller than the guidelines and the flexibility factor in Article 22.30 will not apply.~~

~~*22.26 Home education students attending school will be included in the student count of each class in which the home education student is enrolled.~~

~~*22.30 FLEXIBILITY FACTOR~~

~~*22.31 When additional students enrol after the first week in October the guidelines may be exceeded by up to:~~

~~*22.311 Two (2) students in primary classes (including K), except as the the K-3 Primary Class Size Provincial Memorandum of Agreement of April 28, 1998 impacts on Primary class size flexibility factors. (i.e. NO FLEX in Article 22.22 b-d where Ministry funding exists)~~

~~*22.312 Three (3) students in intermediate classes.~~

~~*22.313 A Primary 4/Intermediate/ (Grade 3/4 split) may not exceed the guidelines.~~

~~*22.32 At any time during the school year the guidelines may be exceeded by up to three (3) students in a secondary class but in such event the total teaching load of any secondary teacher thus affected shall not exceed the sum of the guidelines for the classes taught by that teacher during the year.~~

~~*22.40 SAFETY FACTOR~~

~~Where safety is a factor, the number of students in a laboratory, shop or other specialized classroom shall not exceed the number for which the facilities were designed and in no case shall the number of students exceed the class size limits in Article 22.22 a, b, c, d.~~

~~*22.50 OTHER FACTORS~~

~~In the case of dual, gradual or phased entry, the class size limits shall be honoured at both entry points.~~

~~22.60 CLASS SIZE -ADULT EDUCATION~~

~~22.61 The Board shall establish class sizes according to the following:~~

ABE (if attendance required)	25
HSC	30
HSC (secondary English)	29
ESL Beginners	21

ESL Intermediate/Advanced	25
Literacy Beginners	21
Literacy Intermediate	25
Tutorial (drop-in)	1:75 enrolled
Computer Assisted Labs	1:75 enrolled

~~22.62~~ The guidelines shall be in force no later than two weeks following the first scheduled class for regular classroom programs and no later than two weeks following notification to the administrative officer by the adult education teacher for continuous intake programs.

~~22.63~~ The number of students in a laboratory, shop or other specialized classroom shall not exceed the number for which the facilities were designed or equipped or which can be safely accommodated.

~~22.64~~ The guidelines may be exceeded in regular classroom programs with the agreement of the instructor subject to any terms agreed upon by the adult education teacher, the Association and the Board.

~~22.65~~ Whenever a tutorial or computer assisted laboratory class exceeds 24 students in attendance another adult education teacher shall be called, or other resources shall be provided for that day, as requested by the adult education teacher.

~~*22.70~~ **NON-ENROLLING EMPLOYEES**

~~*22.71~~ The case load/work load of non-enrolling employees will not increase above those in effect as of September 1990. (See also: Letter of Understanding, Appendix A)

~~*22.72~~ The Government will provide funding in order to decrease the ratios of non-enrolling teachers to students. Notwithstanding the ratios established in this article, in no event will the financial obligations to Government or School Districts resulting from this article exceed the funding being made available by Government, in each year of the Agreement, as follows:

Year 1 (July 1, 1998 to June 30, 1999)	\$20 million
Year 2 (July 1, 1999 to June 30, 2000)	\$5 million
Year 3 (July 1, 2000 to June 30, 2001)	\$5 million

~~*22.73~~ Districts shall utilize the funding outlined above, exclusively for the purposes of hiring additional non-enrolling teachers and will make all reasonable efforts to comply with the non-enrolling staffing ratios agreed by the Parties, which are estimated to be achievable within the allocation of funding and are described below.

~~*22.74~~ **NON-ENROLLING STAFFING RATIOS**

i. Employee staffing ratios in each category shall not decrease below the number reported in the 1997/98 Ministry form 1530, as follows:

ii. **Teacher Librarians**

Effective July 1, 1998, teacher librarians shall be provided on a minimum pro-rated basis of teacher librarians to students in the ratio 1:649.

~~Effective July 1, 1999, teacher librarians shall be provided on a minimum pro-rated basis of at least one teacher librarian to 649 students.~~

~~iii. — **Counsellors**~~

~~Effective July 1, 1998, counsellors shall be provided on a minimum pro-rated basis of at least one counsellor to 628 students.~~

~~iv. — **Learning Assistance Teachers**~~

~~Effective July 1, 1998, learning assistance teachers shall be provided on a minimum pro-rated basis of learning assistance teachers to students in the ratio 1:565.~~

~~Effective July 1, 2000, learning assistance teachers shall be provided on a minimum pro-rated basis of at least one learning assistance teacher to 504 students.~~

~~v. — **Special Education Resource Teachers**~~

~~Special education resource teachers shall be defined as those teachers assigned to programs 1.16, 1.17 and 1.18 by School Districts on Ministry form 1530, September 1997.~~

~~Effective July 1, 1998, special education resource teachers shall be provided on a minimum pro-rated basis of at least one special education resource teacher to 218 students.~~

~~*22.75 — **Support for ESL Students**~~

~~i. — ESL students shall be defined pursuant to the definition used for reporting to the Ministry in the 1996 form 1701, "those students whose English language performance is sufficiently different from standard English to prevent them from reaching their potential".~~

~~ii. Effective July 1, 1998, teachers specifically assigned to providing instruction to ESL students shall be provided on a minimum pro-rated basis of at least one (1) ESL teacher to 74 identified students. Staffing ratios shall not decrease below the number (1:60.6) reflected in the 1997/98 Ministry form 1530.~~

~~*22.80 — **EXCEEDING CLASS SIZE MAXIMA**~~

~~Classes may exceed these limits in the following circumstances:~~

~~*22.81 — For educational purposes, in Band, Choir, P.E. or other specialized classes where the teacher has so requested, or~~

~~*22.82 — Where the member(s) of a school staff, after consultation with the Association, who is(are) affected by a class size situation choose to exceed the guidelines for educationally sound reasons.~~

~~*22.90~~ **EXTERNAL CONSTRAINTS**

~~The provisions of this Article shall be in place save and except where external financial constraints are imposed upon the Board, in which case the guidelines may be exceeded, as required, in whole or in part.~~

**ARTICLE 23
INTEGRATION**

~~*23.10~~ **INTEGRATION SUPPORT**

~~Integration Support Teachers will be employed by the Board to assist with and facilitate integration.~~

~~*23.20~~ **INTEGRATION PLACEMENT**

~~When the integration of students with special needs is planned:~~

~~*23.21 The teacher in whose class the student is to be integrated and the school-based team shall be consulted and involved in the placement decisions.~~

~~*23.22 Class composition, physical space, supply and equipment requirements shall be major considerations.~~

~~*23.23 Accessibility, safety procedures, medical needs and support service requirements, relative to the severity of the student's disability, will all be taken into consideration.~~

~~*23.24 Program implementation will be in accordance with the **School Act** and, as such, a joint responsibility between the integration support teacher or school-based special education teacher and the integrating teacher.~~

~~*23.30~~ **REFERRALS**

~~*23.31 Referrals to the school-based team may be made by the student's parents or guardians, the student (if appropriate), teachers of the student, an administrative officer of the school, the Student Support Center or appropriate external agencies.~~

~~*23.32 Further referral to a district level placement review meeting may be made by the school-based team. (See Article 18)~~

~~*23.40~~ **RELEASE TIME**

~~*23.41 As determined by the Director of Instruction - Student Support Center or designate and in consultation with the school's Principal, release time for teachers of students with special needs:~~

~~*23.411 Will be granted to develop an individual educational plan (IEP) for students with special needs in the "Low Incidence" category and in the Severe Behavior "High Incidence" category.~~

~~*23.412 May be granted to develop an individual education plan for students with special needs in the "High Incidence" SLD and EMH categories.~~

~~*23.42 As determined by the Director of Instruction – Student Support Center or designate and in consultation with the school's principal, teachers of students with special needs may be granted release time required to:~~

~~*23.421 Where practicable, visit students with special needs in the student's environment.~~

~~*23.422 Receive integration and/or special education in-service, both prior to integration, and on an ongoing basis.~~

~~*23.423 Consult with other staff and resource persons regarding student needs, program planning, and to evaluate program effectiveness.~~

APPENDIX A LETTER OF UNDERSTANDING

The Board and the Association agree that the intent of Article 22.60, when it was negotiated, is as follows:

~~***COUNSELLORS:** 1 FTE **Counsellor** or portion thereof for every 965 elementary school students (head count) based on the district's mid-year student projections.~~

~~1 FTE **Counsellor** in each secondary school for every 380 secondary school students (head count) based on the district's mid-year student projections.~~

~~***ESL:** A district-wide average **ESL** student FTE teacher ratio of 41.2:1 applied as per the June 15, 1992 memorandum of agreement between the parties.~~

~~***HEARING IMPAIRED:** 1 FTE **Teacher of the Hearing Impaired** or proportion thereof for every 28 hearing impaired students based on the projected enrollment of hearing impaired students in the district.~~

~~***HOSPITAL/HOMEBOUND:** The full-time case load for a **Teacher of the Hospital/Homebound** will not exceed 10 students on a weekly basis inclusive of other related duties.~~

~~***INTEGRATION SUPPORT:** 1 FTE **Integration Support teacher** or proportion thereof for every 15 students on the case load of integration support teachers as of September 30.~~

~~***LEARNING ASSISTANCE:** 1 FTE **Learning Assistance Teacher** or portion thereof in each school for every 410 elementary school students (primary 2 – Grade 7 regular, ESL, Gifted, and First Nations Students in regular classes) based on the district's mid-year student projections.~~

~~1 FTE **Learning Assistance Teacher** or portion thereof in each school for every 550 Grade 8-10 secondary school students (regular, ESL, Gifted, and First Nations and Career Preparation students in regular classes) based on the district's mid-year student projections.~~

~~1 FTE **Learning Assistance Teacher** or portion thereof in each school for every 1000 Grade 11-12 secondary school students (regular, ESL, Gifted, and First Nations and Career Preparation students in regular classes) based on the district's mid-year student projections.~~

~~***LIBRARY:** 1 FTE **Teacher Librarian** or portion thereof in each elementary school for every 500 elementary school students (head count) based on the district's mid-year student projections.~~

~~1 FTE **Teacher Librarian** in each secondary school.~~

~~***SCHOOL PSYCHOLOGISTS:** 1 FTE **School Psychologist** or portion thereof for every 3410 students (head count) based on the district's mid-year student projections.~~

~~***SPEECH LANGUAGE PATHOLOGISTS:** 1 FTE **Speech Language Pathologist** for each full group of 2319 students (head count) in the district as of September 30.~~

~~***VISITING:** The full-time case load for a **Visiting Teacher** will not exceed 12 students except in the case of the Emergency Receiving Home where the visiting teacher, part-time or otherwise, will have a case load of no more than 12 students at one time.~~

~~The district's present practice with regard to the rounding of entitlements shall continue.~~

~~Article 22.60 does not apply to Work and Learn Centres and is subject to Article 22.80.~~

C. SD 39 Vancouver—Class composition

Integration of Special Needs Students

5. ~~(a) Where, if very exceptional circumstances exist, a school administrator desires to place four (4) special needs students in a class, the matter shall be discussed with the Staff Committee prior to seeking the consent of the teacher involved to the placement of these students. The purpose of this consultation shall be to determine whether there is any reasonable alternative to the proposed placement, and to discuss ways in which any possible safety concerns arising from the placement of these students may be ameliorated. The parties agree that in courses such as Tech Studies and Home Economics particular safety concerns exist which must be addressed when considering the placement of more than two (2) special needs students.~~

~~(b) If, after consultation, the Staff Committee is unable to reach agreement on a reasonable alternative, four (4) special needs students may be placed in a single class in very exceptional circumstances, subject always to the right of the teacher to grieve such placements. In these circumstances, the normal class size limit applicable to that class (as defined in Article 9.B.1 to 10 inclusive) will be reduced by three (3) students for the four special needs students.~~

~~(c) It is agreed that a class in which four (4) special needs students are placed is not subject to the application of Article 9.C.1; however, the remaining classes of the teacher are subject to 9.C.1 in the terms described below in paragraphs 8 to 10 inclusive.~~

6. ~~In no circumstances shall more than four (4) special needs students be placed in a class unless the following provisions are met:~~

~~(a) the Staff Committee must first be consulted in accordance with the process described in paragraph 5(a) above;~~

~~(b) if after consultation the Staff Committee is unable to reach agreement on a reasonable alternative, the placement can only be made with the agreement of the teacher involved, and prior to agreement being sought the teacher must be permitted the opportunity to consult with the Staff Committee;~~

~~(c) there must be very exceptional circumstances;~~

~~(d) the normal class size limit applicable to that class will be reduced by one student for each special needs student; for purposes of greater clarity, a class in which 5 special needs students are enrolled will have a reduction of 5 from the normal class size (as defined in Article 9.B.1 to 10 inclusive); and~~

~~(e) the class will not be subject to the application of Article 9.C.1~~

INCLUSION OF SPECIAL NEEDS STUDENTS
(As a Result of Agreement Between VTF & VSB — Spring 1999)

# of Sp. Needs Students	Reduction	Conditions
1	1	(a) averaging is allowed under 9.C.1.
2	1	(a) averaging is allowed under 9.C.1
3	2	(a) with agreement of teacher OR (b) after consultation with Staff Committee under very exceptional circumstances (not subject to averaging under 9.C.1.)
4	3	(a) with agreement of teacher in Modified, Single-Sex P.E., Band, Choir OR (b) in very exceptional circumstances, discussed with Staff Committee prior to: <ul style="list-style-type: none"> • consent of teacher or • placement if no alternative (not subject to averaging under 9.C.1.)
5+	5+ (1 for 1)	(a) with agreement of teacher in Modified, Single-Sex P.E., Band, Choir OR (b) the Staff Committee must first be consulted only under very exceptional circumstances, (not subject to averaging under 9.C.1) and if there is no reasonable alternative, the teacher must be in agreement (may consult with the Staff Committee prior to agreement)

~~*** If administrators plan to invoke averaging in accordance with 9.C.1., they shall, after giving the teacher the opportunity to accept averaging, consult with the Staff Committee to explore the existence of any reasonable alternatives to exceeding the limits. Each specific instance will be the subject of such consultation.~~

~~*** The purpose of discussion or consultation with the Staff Committee is to determine whether there is any reasonable alternative to the proposed placement, and to discuss ways in which any possible safety concerns arising from the placement of these students may be ameliorated. Additional staffing may be one of a number of reasonable alternatives suggested by Staff Committee.~~

D. 47 Powell River—Class composition

ARTICLE 64: ~~EDUCATION OF SPECIAL NEEDS STUDENTS (P)~~

~~64.1—The purpose of this article is to outline the process which will facilitate a quality educational program for all students by providing the most appropriate placement in the school and the most equitable use of available resources to support the students and the teacher to whom the students are assigned. This article will apply to the school-based classroom placement of and provision of resources for special needs students who, in the judgment of the teacher and the school-based team, require additional support.~~

~~64.2—Each school shall have a school-based team for the purposes of recommending classroom placements, assisting in identifying different strengths and skills of school staff for meeting student needs, helping classroom teachers address specific learning difficulties in classrooms, allocating available school-based resources for individual students, and applying for additional district discretionary resources to meet the needs of special needs students.~~

~~64.3—The school-based team shall be comprised of a school Administrative Officer, a classroom teacher and one or more school-based support personnel. The school-based team will be augmented by the involved teacher(s) while the student's case is being considered and, as applicable, the involved student, school district personnel or community agency personnel. Parents shall be informed of and have the right to attend proceedings of school-based teams where their child's educational program is under consideration.~~

~~—To the extent that it is practical, the school-based team shall be advised before the beginning of the school year of any special needs students to be registered in school. Before enrolling such students in a classroom, the school-based team shall convene a meeting which includes classroom teachers who may receive the student or who may be significantly affected by the placement. The school-based team will consider the student's scholastic history,~~

~~64.4—pertinent assessment data, and any other information which contributes to an understanding of the student's learning needs. The school-based team will consider class sizes in the school, class composition(s), existing support systems within the school, and qualifications of the teacher(s) who may potentially receive the student.~~

~~64.5—Where appropriate, a provisional classroom placement may be made to prevent undue delay in enrolling a special needs student in school.~~

~~—This provisional placement will allow time for any necessary placement and/or planning meetings. Such meetings will occur as soon as possible.~~

~~—Additional resources may be provided to the school during the provisional placement. This provisional placement shall not exceed fifteen (15) instructional days.~~

- ~~64.6 Before classroom enrollment of the student is completed, the school-based team shall initiate planning of the student's educational program and advise the teacher(s) to whom the student is assigned of school-based, district, and other resources and/or support services available.~~
- ~~64.7 Where the student is identified as a student with special needs in accordance with Ministry of Education funding categories, an I.E.P. shall be initiated and reviewed by the school-based team. A "case manager" will be designated in consultation with the school-based team to establish and co-ordinate an I.E.P. team whose duty will be to develop, monitor and review the I.E.P. Support services will be made available to articulate the I.E.P. The classroom teacher shall not be solely responsible for development of an I.E.P. except with the consent of that teacher.~~
- ~~64.8 On the recommendation of the school-based team and with the approval of the appropriate district Administrative Officer, teachers shall receive in-service training to assist with the educational programming of students with special needs and the Board shall pay fees and expenses incurred by the teacher.~~
- ~~64.9 Upon request by the classroom teacher, Administrative Officer or case manager, the school-based team shall provide advice, assess the level of support being provided to the student and teacher(s) and the placement of the student, and recommend the allocation of existing school-based resources or additional resources available for special needs students.~~
- ~~64.10 The educational program of each special needs student shall be reviewed annually by the school-based team, appropriate service personnel and where practical, the subsequent year's classroom teacher(s). The review will consider program needs for the following year.~~
- ~~64.11 Appropriately trained persons shall be responsible to administer medication, perform medical procedures or attend to physical needs. The Board shall establish and implement policy, regulations and procedures for the administration of medication and for addressing other medical needs.~~
- ~~64.12 The school Administrative Officer in consultation with the school-based team will make every attempt to ensure that special needs children are distributed equitably among the classrooms of the school.~~
- ~~64.13 Where, in order to meet the needs of special needs students, the school-based team requires additional resources in addition to those available through the school, the school district, or the community, it may apply for discretionary resource funding.~~
- ~~64.14 For the purposes of 64.15 students to be integrated will be identified as:~~
- ~~a. High Incidence (1.17),~~
 - ~~b. Low Incidence (1.18),~~

~~c. Dependent Handicapped (1.19) as described in the Ministry of Education guidelines.~~

~~64.15 To ensure that all students receive adequate attention, no more than two students as identified in 64.14 shall be integrated at the same time in a regular classroom.~~

E. 39 Vancouver—Process for designating a student with special needs

G. ~~Referral and Recommendations Regarding Special Students~~

- ~~1. If after consultation/involvement with school and/or District specialist staff, the teacher determines that there are students in his/her class who significantly affect classroom management, routines or instruction (including students with disruptive hyperactive, or inappropriate social behaviour, with communication or language disorder or with emotionally disturbed tendencies), he/she may refer such students to the School-Based Team for consideration.~~
- ~~2. The School-Based Team together with the classroom teacher, shall meet to consider the referral.~~
- ~~3. The School-Based Team will make recommendations to the appropriate Associate Superintendent as to how to handle the situation. Such recommendations may include but not be limited to:
 - ~~(a) Adjustment to the student's program.~~
 - ~~(b) Further assessment.~~
 - ~~(c) Alternate placement.~~
 - ~~(d) Consideration of alternate teaching strategies.~~
 - ~~(e) Release time for the enrolling teacher and other school-based personnel as may be required to facilitate ongoing assessment and consultation.~~
 - ~~(f) other assistance as agreed to by the enrolling teacher.~~~~
- ~~4. If additional teacher assistant time is required to carry out the recommendations made in Clause 3. above, the Superintendent or designate shall, within two (2) weeks of receiving the recommendations, inform the School-Based Team of the actions to be taken regarding its recommendations.~~
- ~~5. If the Superintendent, or designate, decides that alternate placement is required, then the School-Based Team shall be informed immediately.~~

F. 39 Vancouver—Budget allocation for inner city schools

- ~~H. Inner City Schools~~
- ~~1. The budget allocation for Inner City Schools for the duration of the Collective Agreement will be maintained at a minimum of the 1992-1993 level.~~
- ~~2. It is recognized by both parties that the staffing needs of Inner City Schools will vary from school to school. At the Union's request, the base staffing of an Inner City School will be reviewed by the Inner City Schools Project Advisory Committee and the Committee may make recommendations to the Superintendent or designate.~~
- ~~3. If secondary schools are designated by the Board as Inner City Schools, the Board will consult with the Union respecting the appropriate base staffing for such schools.~~
- ~~4. If additional funding for Inner City Schools is provided by the Ministry, the Board will consult with the Union through the Inner City Schools Project Advisory Committee before determining the allocation of resources.~~

G. 68 Nanaimo—Process for inclusion of students with special needs into regular classrooms

~~20.2 — SUPPORT SERVICES - EXCEPTIONAL STUDENTS (P)~~

~~20.2.1 The Board and the Association recognize the requirements of the School Act that all school age students, including those with exceptional needs, are entitled to an education. The parties further recognize that in order to ensure the success of all students, it is preferable to provide the necessary resources and support prior to the placement in regular classes in neighbourhood schools of students with exceptional needs. That being so, and subject to Article 20.2.1.1, the Board agrees that prior to registering a student with exceptional needs, it shall:~~

- ~~a) — consult, using a school-based team format [the teacher(s), parents, Administrative Officer(s), the student, where applicable, and other appropriate resource personnel] to consider relevant educational and medical information in developing the Individualized Education Program;~~
- ~~b) — develop and implement an in-service plan that increases the teacher's and staff's expertise in meeting the needs of the student, and allow release time for appropriate in-service;~~
- ~~c) — provide appropriate teacher aide time as determined through consultation with the school based team;~~
- ~~d) — provide, whenever possible, appropriate facilities and equipment.~~

~~20.2.1.1 — It is recognized that unforeseen circumstances may result in an exceptional student either arriving or being identified as exceptional, without there being time to accomplish the foregoing prior to the student's registration as a person with exceptional needs. In such circumstances, the exceptional student may nevertheless be registered as such, and the matters enumerated in a) — d) of Article 20.2.1 will occur as promptly as possible thereafter.~~

~~20.2.2 Normally, no more than two (2) students with exceptional needs shall be registered into any regular class at the same time. A third student who arrives and/or is identified as being an exceptional student shall not be denied entry or removed from the class pending an alternate placement being found by the Board by the earliest reasonable time. In the interim, the Board shall provide appropriate additional support resources.~~

~~20.2.3 — DEFINITION~~

~~— Exceptional students are those with any of the following identified special needs:~~

- ~~a) — personal care~~
- ~~b) — individualized programming~~
- ~~c) — supervision~~

~~as provided by Function 3 special program guidelines, or as identified by the school based team and the Office of Student Support Services (Assistant Superintendent – Special Programs).~~

~~20.2.4~~ ~~EMERGENCY PROVISIONS~~

~~Clear administrative procedures shall be established for the carrying out of fire and earthquake drills that expedite the evacuation and care of handicapped children.~~

H. 43 Coquitlam—Development of an IEP

D2.4—Mainstreaming/Integration

e. ~~Program Planning:~~

~~Prior to or upon arrival of a student with special needs, a school-based team meeting will be scheduled. Persons attending shall include but not be limited to the classroom teacher, the resource teacher and counsellor.~~

i. ~~A teacher enrolling a student(s) in the following categories shall receive up to two (2) days release time to review or assist in developing a student's IEP:~~

~~a) dependent handicapped~~

~~b) moderately mentally handicapped~~

~~c) severely handicapped~~

~~d) autistic~~

~~e) severe behavior: which is defined for the purposes of this article as requiring services of the District itinerant team.~~

ii. ~~Responsibility for the development and coordination of the Student's Individual Education Plan rests with the school-based support teacher, who will work collaboratively with the classroom teacher(s).~~

iii. ~~The school-based support teacher has responsibility for the provision of modified materials or adapted curriculum which may be required by the classroom teacher(s).~~

iv. ~~At the request of the classroom teacher, the school-based team will ordinarily meet within ten (10) teaching days to review the program for a student with special needs.~~

v. ~~Students new to the district or school may be placed in classes on a short term basis until provisions of this agreement are able to be completed.~~

f. ~~Class Composition:~~

~~i. No more than three (3) special needs students shall be integrated at the same time in a regular classroom.~~

~~ii. Classes with three (3) special need students shall have their class size maximum reduced by two (2).~~

I. 39 Vancouver—Provision of counselling, psychological and speech/language services to ESL students in their first language

1993 January 31
LETTER OF UNDERSTANDING
Mr. A. Crawford, Co-President
Mrs. E. Smith, Co-President
Vancouver Teachers' Federation
2915 Commercial Drive
Vancouver, B.C.
V5N 4C8

Dear Sir/Madam:

Re: Provision of Specialized Services in Students' First Language

The Board recognizes the importance of providing E.S.L. students with counselling, psychological and speech/language pathology services in their first language. To that end, when such positions are filled, the Board will endeavour to recruit appropriately certificated Counsellors, School Psychologists and Speech/Language Pathologists in order to provide such service in as wide a range of languages as possible.

Sincerely,

V.K. Bowser
Director of Employee Relations

J. 57 Prince George—Support to beginning teachers

ARTICLE 53. BEGINNING TEACHERS - P

- 53.1 Beginning teachers shall be provided with assistance to help them in their adjustment to teaching.
- 53.2 A beginning teacher is defined as a teacher who has never held a teaching assignment since attainment of a teaching certificate.
- 53.3 The specific assistance shall include, but not be limited to:
- 53.3.1 Up to two (2) release days (pro-rated for part-time) to be used at the discretion of the beginning teacher during the first ten (10) months of his/her employment for planning, mentoring, classroom observation, or professional development activities.
- 53.3.2 This provision would also be available to a beginning teacher on a limited duration assignment of four (4) months or greater. If the beginning teacher's initial assignment is from one (1) month to three (3) months in duration, one (1) release day will be provided for the purposes listed above. The scheduling and use of the release time is to be in consultation with the Principal.
- ~~53.3.3 Careful consideration of the teaching assignment, taking into account class composition and size, courses assigned, number of preparations (for secondary teachers).~~

K. 37 Delta—Equitable Workload

E3.2 Assignment within the school shall be based on consideration of the following factors: seniority, qualifications, training, experience, equitable distribution of workload, and personal preference of the teacher, and shall not be used for disciplinary purposes.

IV. SUMMARY

The right to collectively bargain working and learning conditions and hours of work is a fundamental right in a democratic society. As Justice Griffin stated in para. 301:

The historical evolution of collective bargaining as a protected right recognizes that there is a psychological benefit to workers to be able to collectively bargain over their working conditions, a benefit that goes beyond the economic benefits they might obtain. As held in *Health Services* at para. 86, recognition of the right to collectively bargain as part of the freedom to associate “reaffirms the values of dignity, personal autonomy, equality and democracy that are inherent in the *Charter*.”

In para. 295, Justice Griffin’s decision confirmed our right to bargain working conditions:

I conclude that the legislation purging the collective agreement of these matters, and prohibiting future collective bargaining over these matters, interfered with the teachers’ ability to come together to collectively pursue goals, and significantly undermined the teachers’ S. 2 (d) Charter guarantee of freedom of association.

In her recent ruling, Justice Griffin restated that the government was in violation of the *Charter of Rights and Freedoms* in enacting Bills 28 and the *Statutes Amendment Act*.

[381] I conclude:

- a) In enacting ss. 8, 9 and 15 of PEFCA, and s. 5 of the Amendment Act, the government infringed teachers’ freedom of association guaranteed by s. 2 (d) of the Charter.
- b) This infringement was not a reasonable limit demonstrably justified in a free and democratic society under s. 1 of the Charter.

[382] I declare ss. 8 and 15 of PEFCA and s. 5 of the Amendment Act to be unconstitutional and invalid.

[383] Section 9 of PEFCA is no longer in force. The teachers’ have reserved their right to argue any additional remedies and they may seek a further hearing in this regard.

The unconstitutional legislation prohibited teachers’ Charter right to bargaining working conditions, class size limits, and guarantees of support for students with special needs, with disastrous consequences for teaching and learning conditions in classrooms across the province.

We hold that the most effective way to ensure that the needs of all students are met is through full-scope collective bargaining where teachers are free to address working and learning conditions.

We propose the following resolution to address the repercussions arising from the ruling:

1. The right to bargain collective agreement provisions previously prohibited by the unconstitutional legislation be restored immediately.
2. The legislation ruled unconstitutional be repealed immediately.
3. The collective agreement provisions deleted by the unconstitutional legislations be deemed in full force and effect upon repeal of the legislation.
4. The government fully fund the return of lost teaching positions needed to comply with the provisions in 3, above.
5. Compensation to address effects of a decade during which teachers were deprived of their Charter rights. If the parties are unable to agree upon compensation, they will submit the dispute to a mutually agreeable arbitrator who shall issue a binding decision.

We invite your response to this proposal. In closing, please note that at the conclusion of our discussions any agreement will be subject to ratification by the membership of the BCTF.