LABOUR RELATIONS
and the
COLLEGE and INSTITUTE SECTOR in BC

Resource and Discussion Paper

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INTRODUCTION

Over almost 40 years since British Columbia's first public college was established, labour relations within the post-secondary education system has evolved from local and relatively informal arrangements to a formal one with the unionization of practically all non-administrative employees and to a significant and increasing degree of coordination of collective bargaining by both unions and employers. This labour relations history provides a context that assists in developing an understanding of the sector employers' policy decisions concerning human resource management, in particular labour relations.

The purpose of this paper is to describe the evolution of labour relations within this sector and how it has reflected the development not only of the post-secondary system but also of the province itself. Today the post-secondary system plays an integral role in the educational, social, cultural, and economic life of British Columbia, and as such, is an important dimension of public policy.

1 CREATION OF THE POST-SECONDARY SYSTEM

Up until the early 1960s, British Columbia had only one public university— the University of British Columbia (UBC). In 1963, the University of Victoria was established out of UBC's pre-existing Victoria College, and in 1965, Simon Fraser University was established. The BC Institute of Technology (BCIT) opened in 1964. BC also had a system of publicly funded vocational schools across the province. As well, there were two private post-secondary institutions—Trinity Junior College and Notre Dame University.

In 1962, the recently appointed President of UBC, John B. McDonald, convened a group of faculty to study the province's long-term needs for post-secondary education. The McDonald Committee toured the province and heard submissions from various individuals and groups. The committee's report, *A Report of the Problem of Higher Education in British Columbia*, was issued by the UBC Senate in 1962. The MacDonald Committee found that limited access to post-secondary education was a major public concern in BC. To address this concern, the committee recommended that a number of public two-year colleges be established in various parts of the province with a mandate to deliver academic university-equivalent education as well as career, technical, and occupational training.

As conceived by the McDonald Committee, new colleges in BC were to be community-oriented and offer academic, career, technical, employment-preparation, and other post-secondary courses of study within their own communities. The colleges were to reduce the geographical, economic, social, and cultural barriers to post-secondary education, and to advance what the McDonald Committee termed the "democratization of education." And they were to be self-governed, with each college having its own board, setting its own policies, and being accountable to their local community.

Local school boards played a major role in the creation of the new colleges. Both individual boards and the BC School Trustees' Association (BCSTA) were active in the McDonald Committee hearings. The BCSTA was a school trustee advocacy organization to which school boards voluntarily belonged. Their view was that any new institutions of higher education in BC should be based on, oriented to, and controlled by the local community.

The new colleges recommended by the McDonald Committee were to be comprehensive institutions with a broad curriculum and a wide range of programs. Unlike universities, the colleges were to be teaching institutions focusing on instructing students. The McDonald Committee saw the major responsibilities of

college faculty as being instruction and community service, with no requirement that faculty conduct research.

The provincial government adopted the post-secondary education model proposed by the McDonald Committee. In 1963 and the years following, a series of amendments to the *Public Schools Act* authorized school boards to establish, maintain, and operate colleges and to prescribe their rules of governance. Local autonomy and community orientation and control were central principles in this legislation and in the process by which colleges were established. A college was to be created through a local steering committee drawn from the community, leading to a plebiscite within the school district or group of school districts. The new colleges were to rely substantively on local funding, with 50% of their operating costs funded from local taxation and student tuition, and the remaining 50% provided by the provincial government. The new colleges' governing bodies, called "college councils", were to consist of a majority of members appointed by the school boards within the college's region.

By 1975, 14 new colleges had been established in various parts of the province. The first college, Vancouver City College, was created in 1965 by amalgamating programs at Vancouver Vocational Institute, Vancouver School of Art, and King Edward Centre (Adult Studies), all of which were previously operated by the Vancouver School Board. Selkirk College was established in 1966 after the college region passed a funding by-law and held a regional plebiscite leading to the establishment of a college council.

The other colleges were established after the passing of regional plebiscites: Capilano College and Okanagan College in 1968, Malaspina College and College of New Caledonia in 1969; Douglas College and Cariboo College in 1970; Camosun College in 1971. In 1974 in response to a local school board resolution, Fraser Valley College was established by the provincial government after the provincial government amended the *Public Schools Act* to remove the need for school boards to hold a plebiscite. Four additional institutions were created in 1975 by the provincial government without regional plebiscites: Northwest Community College, Northern Lights College, East Kootenay Community College (now College of the Rockies), and North Island College.

In April, 1971, the provincial government adopted a policy of "melding" the provincially operated and unionized vocational schools with colleges. Vocational schools operated in Burnaby, Kamloops, Kelowna, Nelson, Prince George, Victoria, Nanaimo, and Dawson Creek. Burnaby Vocational School remained a stand-alone institution until 1978 when it was amalgamated with the BC Institute of Technology

(BCIT), but all of the other vocational schools were melded with the recently established colleges in their regions.

Given their legislative framework and the strong orientation to local communities, the colleges established in the 1960s and early 1970s developed into distinctive institutions that were relatively independent of each other and of government.

2 LABOUR RELATIONS PRIOR TO 1977

Through the late 1960s and the early 1970s, college employees remained non-union with the exception of some support staff groups and vocational faculty who had come into the colleges with the pre-existing BC vocational schools.

The *Public Schools Act* provided the basis for the operation and governance of public schools and colleges in the province. While the *Act* addressed certain matters concerning the employment relationship between professional staff and their employers for K-12 public school teachers there were no such provisions specific to the province's colleges. Neither group of employees however had the right to have a union represent them and bargain collectively on their behalf.

Within the individual institutions, faculty were organized in "faculty associations" that were simply professional societies acting under the *Societies Act*. The associations were not certified trade unions. The terms and conditions of faculty employment, including compensation, were set out in institutional policies established by the college or "faculty handbooks" that were agreed upon or informally "negotiated" by the faculty associations with their local college administrations and boards.

Because the colleges were largely autonomous institutions oriented to their local communities and reflecting local institutional cultures, the provisions for faculty working conditions, rights, benefits, salary, and other terms of employment varied considerably from college to college. Faculty handbooks varied considerably in terminology, format, and underlying philosophy. To a great extent, these handbooks—as well as the overall operation of the institutions—reflected the "collegiality" that had been a part of the colleges from their creation. This collegiality was reflected in institutional processes for hiring, performance evaluation, reduction, discipline, budget, curriculum, growth, and other operational matters.

In 1973, the provincial government established the *Colleges' Task Force*, which recommended in 1974 that college faculty be considered employees as defined by the new labour relations statute, the *BC Labour Code*. This would allow college faculty to organize, become certified as trade unions under the *Code* and bargain collectively with their employers. With the enactment of the new labour relations legislation, during the early and mid-1970s most of the faculty associations moved to certify as trade unions under the *Code*. All of these certifications were held locally. A few of these new faculty unions (in all cases still called "faculty associations") included the vocational instructors from the pre-existing BC vocational schools.

Once certified, the new faculty unions bargained their first collective agreements with their employers. Invariably, the pre-existing faculty handbooks—which had been established through a process fundamentally different from collective bargaining under the *Labour Code*—were the basis for the first collective agreements. This perpetuated the wide diversity of terms and conditions of employment, compensation, terminology, and format that had characterized the pre-certification faculty handbooks.

With the exception of the College of New Caledonia and Cariboo College, in those colleges that had melded with pre-existing vocational schools, the vocational instructors remained in separate BC Government Employees' Union (BCGEU) Vocational Instructor bargaining units. Consequently, the terms and conditions of employment and compensation and the terminology and format of collective agreements remained relatively consistent for these BCGEU bargaining units. In those colleges that had not melded with pre-existing vocational institutes, vocational faculty became part of the faculty association bargaining units.

Even after the faculty associations' certification as unions in the early and mid 1970s, there was limited if any province-wide coordination of faculty collective bargaining by either the faculty unions or the institutions. Most of the faculty association unions were members of the College Faculties' Federation (CFF), which was a loosely federated organization formed for professional and economic purposes but with practically no centralized resources or staff. The CFF's support of the faculty unions' collective bargaining was limited largely to sharing information among the faculty unions. Reflecting the origin of the colleges, the faculty unions tended to resist any coordination, standardization, or centralization of bargaining. The CFF's bargaining-related work was done by its Salary and Working Conditions Committee (SWCC), which was among the most important CFF committees, and which carried forward to the its successor organization, the College-Institute Educators' Association (CIEA).

Support for the institutions' collective bargaining was provided by the BC Association of Colleges (BCAC), which was established in 1976 with a mandate parallel to the BC School Trustees' Association. It was a lobbying, coordination, and service organization. One of the objectives of the BCAC was "to regulate in the Province relations between members and their employees, through collective bargaining." From the late 1970s to the mid 1980s, the BCAC employed a Labour Relations consultant who advised boards on labour relations matters and held workshops on labour relations topics for colleges. For the same reasons as for the faculty unions, the institutions had little appetite for coordinating their collective bargaining, and practically no coordination occurred.

By 1977 all of the support staff employees of the colleges were also in certified trade unions. Most of these were locals of Canadian Union of Public Employees (CUPE) or the BCGEU, but a minority of the bargaining units were affiliated with smaller unions, some provincial and some wholly independent. Because of the similar nature and perception of support staff work from college to college, and because most of the support staff units were represented by the same provincial unions, the terms and conditions, compensation, terminology, and format of their collective agreements tended to be more consistent from college to college than was the case with faculty.

Throughout the period from the creation of the first colleges to 1977, when the *Colleges and Provincial Institutes Act* was enacted, both the colleges and their unions were oriented almost exclusively towards local bargaining rather than sector coordination. The post-secondary system was so de-centralized and devolved as to be not so much a "system" as a group of individual institutions involved in post-secondary education.

3 COLLEGES AND PROVINCIAL INSTITUTES ACT, 1977

Until the fall of 1977, the colleges operated under provisions that were an adjunct to the *Public Schools Act*. The *Colleges and Provincial Institutes Act* of 1977 gave the colleges and institutes legislation of their own. Colleges were mandated to serve a local or regional community, while "institutes" were mandated to serve a province-wide community in more narrowly defined program areas. The 1977 *Act* gave each college and institute its own corporate status, thereby ending any direct legal relationship with the school boards, and removing local taxation as a source of institutional funding. The provincial government now funded colleges and a majority of an institution's governing body—now called "boards" instead of "councils"—was to be appointed by government.

The lasting legal effect of the *Colleges and Provincial Institutes Act* was to transform the local and regional orientation of colleges into a provincial system that is an instrument of the provincial government's public policy. From 1973 to the 1977 *Act* and beyond, the provincial government took increasing responsibility for and control of colleges and institutes, and provincial policy became more important than local community interests.

The government increasingly became the primary funding source for both the operating and capital costs of the colleges and institutes, and it took a more direct role in approving and monitoring operating budgets and program approvals.

Throughout this period, the authority of college boards declined, until by 1983, all board members were appointed by the provincial government. In response to lobbying by the provincial faculty unions and student organizations, legislation was passed in the 1990s to add representatives of employee groups to the boards.

The trend towards greater government control of a post-secondary system— rather than a collection of relatively autonomous institutions—was reinforced by the *Colleges and Provincial Institutes Act,* which created three provincial councils: an Academic Council, a Management Advisory Council, and an Occupational Training Council. These councils were placed between the minister responsible for post secondary education and the institutions to coordinate program development and institutional funding for the system as a whole. Provincial governments, regardless of affiliation, increasingly saw the colleges and institute system as a key element of economic and social policy for the province as a whole. Regional and community needs remained important, but were now only part of the overall provincial plan for the BC post-secondary system.

On the basis of the *Colleges and Provincial Institutes Act* and its subsequent amendments, particularly those of 1983, the provincial government further strengthened its control and direction of the college-institute system through the 1980s. These developments were not only a continuation of the government's view of the system as integral to economic and social policy but were also a response to the increasing operating and capital funding demands of the institutions at a time of fiscal restraint for the province. With its 1982 *Integrated Five-Year Planning for the British Columbia College and Institute System*, the Ministry of Education (which at the time was responsible for both the colleges and institutes and the K-12 public education system) introduced a regime of formal system-wide strategic planning that has continued to the present.

The trend towards greater centralization and government control of the college-institute system continued in 1983 with further amendments to the *Act* that removed the school district representatives from college boards so that all board members were now appointed by the government by order-in-council. The 1983 amendments also eliminated the three provincial councils, thereby taking the system back to direct government funding of institutions. The amendments also included provisions that restricted collective bargaining and empowered government to regulate the working conditions and compensation of management personnel.

The *Colleges and Provincial Institutes Act*, unlike the college provisions of the *Public Schools Act*, explicitly addressed personnel and labour relations. It was believed that the inclusion of faculty under the *Labour Code* in the early 1970's was not entirely appropriate given the nature of college faculty positions and the work they performed. The *Act* set out three options for negotiating the terms and conditions of faculty employment namely:

(1) collective bargaining under the *Labour Code*,

(2) a "fair comparison" method based on market comparisons, and

(3) a limited bargaining method with compulsory arbitration.

The latter two methods were to be outside the *Labour Code*. This choice was reinforced by the *Act*'s definition of "professional employee" as "an employee of an institution who provides educational services to students and includes an employee who is a librarian or an administrator"—in other words, all employees except for support staff. The debate among faculty over whether they were **professionals** or **unionists** was still sufficiently recent that the provincial government reasoned that faculty might consider trade unions as being incompatible with their professionalism. However, except at two institutions, faculty chose to remain in or to certify as trade unions under the *Labour Code*.

Through the early 1980s, the sector's faculty unions and institutions continued to conduct relatively de-centralized collective bargaining. Coordination of bargaining and other labour relations matters (for both employers and unions) remained very limited. But the 1977 *Act*, together with their general apprehension of the intentions of the Social Credit government, led faculty unions to develop a system of coordinated bargaining. In contrast, employers chose to remain independent of each another.

4 POLARIZATION IN THE 1980s AND EARLY 1990s

Following its sustained period of growth in the 1970s, the post-secondary system experienced fiscal restraint until the late 1980s.

Against the backdrop of their increasing perception of a need for greater coordination of their collective bargaining and other labour relations activities, the faculty association unions disbanded the College Faculties Federation (CFF) in 1980 and formed the College Institute Educators' Association of BC (CIEA). The CIEA retained a federated structure with certifications held locally, but unlike the CFF, it had significantly greater central resources, including an office and staff. As a result, it was now in a position to act more effectively to coordinate its faculty unions' collective bargaining and to lobby government and the institutions on faculty issues. The CIEA also forged affiliations, both formal and informal, with the BC Teachers' Federation[1], other public sector unions, student unions and federations, and other post-secondary stakeholders whose interests were similar to those of faculty.

The provincial government's actions of 1982-1985—particularly the 3% reduction in the current fiscal year budgets in the summer of 1982 and social legislation in the summer of 1983—led to a series of political responses including collective bargaining strikes and political actions resulting in the polarization of the sector's unions and employers. By this time, all non-administrative personnel were now in certified trade unions.

In response to the faculty unions' perceptions of the government's increasing threat to the economic and professional interests of faculty and to the institutions themselves, CIEA strengthened itself considerably in 1986. A much greater portion (138% more) of faculty members' union dues was transferred from the local faculty union to the CIEA to provide more staff and greater resources in the central office, a legal defense fund for arbitrations and Labour Relations Board (LRB)/court proceedings, and a strike/lockout fund to support collective bargaining. The CIEA also became more aggressive in coordinating collective bargaining and dispute resolution.

In contrast, until the end of the 1980s, the sector's employers did not move to any corresponding vehicle for coordinating collective bargaining and labour relations. The colleges and institutes continued to rely on the BC Association of Colleges

[1]Neither the BCTF nor its constituent locals were recognized as unions under the *Labour Code*.

(BCAC), which by the mid 1980s had eliminated its Labour Relations Consultant staff position. Perceptions that the provincial governments of the late 1970s and 1980s were supportive of the employers and not so of unions led in varying degrees to complacency among the employers about the need to coordinate collective bargaining, so they continued to bargain on a highly independent basis. The increasingly coordinated bargaining by the faculty unions resulted in some institutions bargaining considerable concessions in management rights and a standardization or 'leveling-up' of agreements in the unions' favour.

In 1991, the institutions reformed BCAC as the Advanced Education Council of BC (AECBC), which consisted of the boards and chief executive officers of the institutions. This change gave the institutions a stronger lobbying capacity and enabled some increased coordination of the institutions' labour relations. However, labour relations remained secondary to the AECBC mandate and services, and as a result, they continued to lag behind the faculty unions in their ability to coordinate collective bargaining and other labour relations activities.

By the early 1990s, as a result of the absence over many years of employer bargaining coordination and the desire to act independently in all matters including collective bargaining—from pre-certification faculty handbooks through first collective agreements in the 1970s to subsequent collective agreements through the 1980s and early 1990s—institutions experienced the erosion of management rights and the loss of what they believed was the necessary flexibility to manage the institutions. By 1993, many of the employers believed that they were effectively restrained from managing their institutions in any conventional sense. These limits on management rights related particularly to key areas such as hiring faculty, assigning work, evaluating faculty performance, developing budgets, determining courses and programs to be offered, and even reducing, disciplining, and dismissing faculty.

Apart from a brief period in the early 80s, the institutions by and large allowed the faculty unions to bargain on a 'zero-sum' basis—the bargaining was always about which employee rights and benefits would be enhanced or added and which management rights would be limited.

Support staff bargaining during the 1980s and early 1990s continued essentially as before, with some degree of coordination on the unions' side by virtue of the similarity of support staff work from institution to institution and because most support staff bargaining units belonged to the same provincial unions (primarily CUPE and BCGEU). Similar to their bargaining with faculty, the employers' coordination of bargaining with support staff was minimal. By the early 1990s, however, as a result of the much higher degree of bargaining coordination on the

part of the faculty unions, the support staff unions had become relatively less coordinated than the faculty unions were.

The institutions' collective bargaining with their faculty and support staff unions faced an additional problem in the early 1990's when the provincial government codified through legislation the election of faculty, support staff, and student representatives to the institutions' boards. This placed union executive members on boards and resulted in employees becoming officers of boards. Role confusion resulted as union executive members were challenged to differentiate their labour relations/collective bargaining advocacy role with their role as a member of a corporate board. Further, many of the boards either did not adapt or did not apply conflict of interest provisions. This development had important implications for the institutions' conduct of labour relations.

5 KORBIN COMMISSION, 1992-1993

Commission of Inquiry into the Public Service and Public Sector

In March 1992, the provincial government established the *Commission of Inquiry into the Public Service and Public Sector* with mediator/arbitrator Judi Korbin as Commissioner. The mandate of the Korbin Commission was to:

- examine the human resource practices of the public sector; and
- propose a new framework of human resource management that would allow government to meet the public's demand for services within fiscal limitations.

In its Inquiry, the Commission was guided by the following terms of reference:

- To inquire into and report on ways to enhance the delivery of public services through an independent professional public service, and the personnel and labour relations environment within which operate those bodies created, financed or maintained by the Provincial government for public purposes.

- To review the delivery of personnel and labour relations services relating to the recruitment, hiring and promotion of employees in the public service.

- To review policies and procedures within the public service relating to the contracting for services outside the public service.

- To review current structures and practices for the public service relating to collective bargaining, dispute resolution and exclusion from collective bargaining units under the *Public Service Labour Relations Act* and the *Industrial Relations Act*.
- To recommend the most cost efficient and effective personnel policies and services for the public service and bodies described in Section 1(b).

- To recommend the most appropriate role, if any, for government to:
  - rationalize compensation levels;
  - define collective bargaining structures;
  - standardize employee benefits; and
  - collect, analyze and distribute information concerning the cost of services by employees or through contracts.

Public Sector Employers Act

In July 1993, the *Final Report of the Commission of Inquiry into the Public Service and Public Sector* was released, establishing the basis for legislative initiatives to change the structure of the public sector. Later that month, the *Public Sector Employers Act* was enacted (see Appendix 1 for the text of the *Act*).

The *Public Sector Employers Act* established the Public Sector Employers' Council (PSEC) and employer associations in six public sectors:

- health
- social services
- K–12 public education
- colleges and institutes
- universities
- crown corporations, agencies, and commissions.

In general employer associations have either:

- A broad purpose where the association serves as a sector's lobbyist and spokesperson on all manner of subjects of interest to the sector; or

- A single purpose, where the primary function of the association is to serve as a human resource service agency providing human resource management advice and resources.

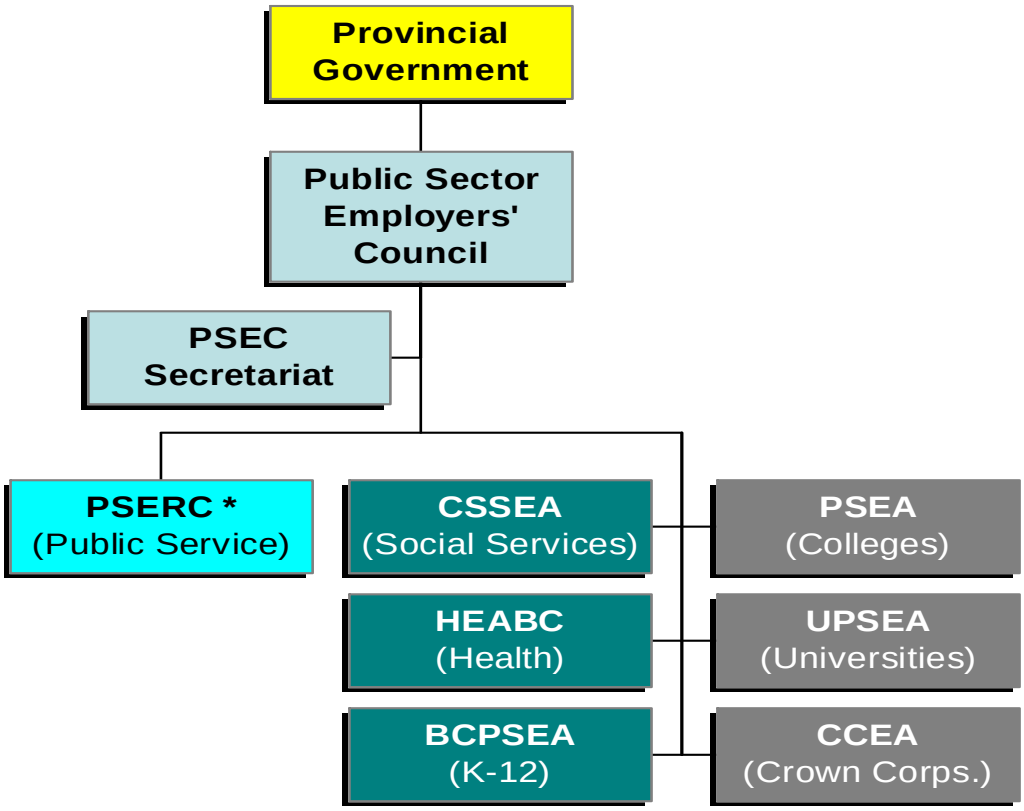
The six employer associations created by the *Act* were single purpose associations whose core responsibility was to coordinate human resource management in the sector with a particular emphasis on labour relations.

The chart of the following page illustrates the relationships between the Provincial Government, Public Sector Employers Council comprised of the chairs of the employer's associations and the cabinet ministers responsible for the delivery of public services and chaired by the minister of finance, the PSEC Secretariat (the staff group established to assist the council) and the employers' associations.

Of these employer associations, accredited bargaining agent status was held by the Community Social Services Employers' Association (CSSEA), the Health Employers' Association of BC (HEABC), and the BC Public School Employers' Association (BCPSEA). The Public Service Employee Relations Commission (PSERC), now the Public Service Agency (PSA), has the authority to bargain on behalf of the provincial

government with the unions representing those employees directly employed by the government.

The University Post Secondary Employers' Association (UPSEA), the Crown Corporations Employers' Association (CCEA) and the Post-Secondary Employers' Association (PSEA) were established as coordinating agencies. PSEA became the accredited bargaining agent for the college and institute sector in 2003.



* The Public Service Employee Relations Commission (PSERC) became the Public Service Agency (PSA) in 2003.

The *Public Sector Employers Act* of 1993 established the mandate for employer associations:

- to coordinate the following with respect to a sector:
  - compensation for employees who are not subject to collective agreements;
  - benefits administration;

  - human resource practices; and
  - collective bargaining objectives; and

- to foster consultation between the association and representatives of employees in the sector, and
- to assist the council [PSEC] in carrying out any objectives and strategic directions established by the council for the employers' association.

The *Act* also required that every public sector employer become and remain a member of the employers' association for that sector.

Commission Process in the College and Institute Sector

In undertaking its review of the college and institute system, the Korbin Commission consulted with a range of participants and, of particular significance, consulted with the AECBC Task Force on Labour Relations and the Council of Chief Executive Officers.

The Commission also convened a leadership conference of all participants in human resource management in the post-secondary sector on February 28 and March 1, 1993. The goal of the conference was to identify the strengths and weaknesses of human resource management in the current system and endeavour to achieve consensus on the changes needed to create a more effective human resource management system.

Five options were established for participants to review:

- Status quo: Each institution would conduct its own bargaining with voluntary coordination and with no direct government involvement.

- Employer coordinating agency: Institutions would be required to belong to an employer coordinating agency with some central authority. Bargaining would continue on the local level with a degree of direct government involvement.

- Two-tier bargaining: Major monetary, productivity and workload issues would be negotiated province-wide, with local issues negotiated at each institution. Direct government involvement with human resource policy issues would be dealt with through the central bargaining group.

- Accredited employer bargaining agent: Institutions would form an accredited bargaining agency under the *Labour Relations Code*, with the potential for

bargaining sector-wide and with other human resource issues to be dealt with at individual institutions.

- Province-wide bargaining and human resource management: Both human resource policy issues and collective bargaining would be dealt with on a centralized basis.

The Commission acknowledged that, while there was no consensus on any option, there was agreement among management to move toward a "much more coordinated model."

Major Commission Findings and Recommendations

Volume 2 of the Korbin Commission Report (June 1993) addressed human resource management, including labour relations in the college-institute sector. The Commission noted that while the sector's unions were moving towards greater coordination, there had been minimal coordination of human resources management by the employers. The Commission also noted that, compared to the provincial government's involvement in the sector through appointment of institutions' boards and control over funding and program approval, the government's role in human resource management was less intrusive than might have been expected.

The Commission reported that all collective bargaining in the sector (for 42 bargaining units at the time) occurred on an institution-by-institution and certification-by-certification basis and was conducted on the employers' side in various ways. The Commission concluded that this arrangement resulted in considerable duplication and overlap within the college-institute system, which created an unnecessary drain on resources and added to the administrative cost of human resource management. The Commission observed that all human resource matters were conducted on an individual institutional basis with little, if any, coordination on the management side.

In its review, the Commission identified a number of concerns relating to human resource management in the college and institute sector:

- Any approach to solving the serious problems of access and capacity would require significant cooperation between government, unions, and college management on issues of productivity, workload, class size, teaching methodology, and instructional support, and that lack of coordination and communication under the current system inhibited sectoral discussions on these kinds of issues and made comprehensive solutions difficult to achieve.

- While the level of independence in the sector had allowed the development of a unique program profile for each institution reflecting the community in which each institution functioned, and had allowed institutions to define emerging community needs and to respond quickly, that same independence had shortcomings in that human resource management occurred independently, resulting in much duplication and overlap and allowing little, if any, integration of information or planning on a system-wide basis.

- The most acute example of lack of coordination occurred in collective bargaining, where there was little opportunity for management at other institutions, or for government, to influence the decisions of any one institution. Consequently, individual institutions made bargaining decisions with little or no regard to the potential implications those decisions may have had on other institutions or the sector in general. This lack of coordination by the institutions contrasted with the increasingly coordinated focus that the sector's unions had brought to their bargaining, which enabled them to obtain gains made by other unions at different institutions.

- Such human resource issues as executive and management compensation, pay and employment equity, personal and sexual harassment policies, and training and career development were treated inconsistently and on an ad hoc basis among the institutions. The Commission pointed to the example that, while the institutions were all part of one provincial system, there was no overall labour adjustment policy and job security, such as it was, existed only at the level of the individual institution.

  This situation discouraged employee cooperation when government or institutions decided to change the allocation of program offerings between institutions. The result was that, when a program was closed at one institution and opened at another institution, the staff of the former program would be displaced while new staff would be hired for the latter program, with actual movement of existing staff being negotiated only on an ad hoc basis. The Commission was convinced that the general coordination of human resource matters throughout the sector would greatly improve the efficiency and effectiveness of the current system.

- The Commission regarded as an inherent flaw in the sector's collective bargaining system the fact that, while the vast majority of the institutions' funding came from the provincial government, there was no effective structural mechanism to allow government to influence bargaining outcomes that might

affect both its longer term funding obligations and student access to post-secondary programs.

- The institutions had little, if any, coordination with the rest of the broad public sector, and in particular, with the K-12 public education sector and the universities. While compensation levels in the K-12 public education sector had in recent years defined the targets for faculty unions in the college-institute system, and while the then recent development of the university colleges made comparison to the compensation of university faculty inevitable, there was no coordination or communication between employers in the overall education sector.

- The Commission found some feeling in the college-institute system and in the Ministry of Advanced Education that, if conditions for its creation existed, a two-tier bargaining system would be an optimum model. Under such a system, the important financial, productivity, workload, and other access issues would be dealt with in a province-wide master agreement, while local bargaining would address local issues.

  The Commission did note, however, such a move would be difficult given the fragmentation of management at the time and given the absence of comprehensive data on the potential cost-impact of moving to either a two-tier or a provincial system of bargaining.

- The lack of data for all human resource matters within the sector had been identified by the government, management, and unions as one of the major impediments to any coordinated approach.

- For the college and institute system to achieve efficiency, effectiveness, and accountability in human resource matters, the Commission determined that the following changes were required:

  – much greater coordination and use of common resources on all human resource matters, including collective bargaining, among the 20 colleges and institutes,
  – a structure to provide appropriate direction and influence from government to this sector, and
  – greater communication between the sector and the rest of the public sector.

The Commission made the following specific recommendations for an employers' association for the college-institute system:

- That the government implement the section of the *Public Sector Employers Act* creating an employers' association for the college and institute sector; and that all colleges and institutes belong to the sectoral employers' association created by the *Public Sector Employers Act* for all the purposes established under the *Act*. (Recommendation F.9)

- That the board of the employers' association for colleges and institutes consist of representatives of the colleges and institutes and representatives from the Ministry of Advanced Education, Training and Technology and the Ministry of Finance and Corporate Relations/Treasury Board Secretariat. (Recommendation F.10)

- That a senior representative of the employers' association for colleges and institutes represent the sector on the Public Sector Employers' Council. (Recommendation F. 11)

Development of an Employer Association Model

The Commission began work with the AECBC Task Force on Labour Relations and with the provincial government on development of a new employers' association for the college and institute sector as described in these recommendations.

The conclusions of the AECBC Task Force on Labour Relations, which were submitted to Commissioner Korbin in August, 1993, set out the sector's summary view of the major purposes of the proposed PSEA and also some preliminary policy and procedure statements describing the functioning of the PSEA. These were set out in a 1993 document titled *Operation of the PSEA*. Extracts from this document are set out below:

1. *This proposed human resource management model is the closest alternative to maintaining the status quo bargaining process within institutions. It is the model that will permit the necessary coordination while at the same time retain the local autonomy sought by many institutions.*

2. *Each College and Institute would continue to:*

    - *remain the certified employer;*
    - *retain the right to negotiate all issues; and,*

- *ratify its own settlements and sign its own collective agreements.*

In many respects, the actual bargaining process would not change.

3. *Under this model, institutions agree to participate in setting the system-wide fiscal mandate and then respect it.*

   While the exact process for developing the fiscal mandate has yet to be determined, it would involve at least the following:

   - *Institutions, through the [Public Sector Employers'] Council, would prepare the overall fiscal negotiating mandate.*
   - *This mandate would be reviewed in the context of the overall public sector framework.*
   - *Institutions would be required to table with the Council their overall negotiating mandates and identify how the costs relate to the established fiscal mandate.*
   - *Institutions, through the Council, may voluntarily expand the system mandate beyond areas covered by the fiscal framework.*

4. *Each Board will adopt the coordinated mandate prior to negotiations. Each institution's negotiating team is accountable to that institution's Board.*

5. *This human resource management model would include the following:*

   a) *Coordinating regular and timely information sharing and monitoring collective bargaining developments to ensure that the established mandates are being respected.*

   b) *Ensuring that each bargaining team has full information on the issues brought to its table and has complete knowledge of what is happening at other bargaining tables. Knowledge on how the situations at other institutions differ from the realities of their own institution and what trade-offs were involved in achieving other settlements will strengthen a negotiating team's ability to stay within the mandate and resist whipsaw tactics.*

   c) *Developing a credible and sophisticated database in support of institutional collective bargaining. This coordination would require close liaison with the Ministry of Labour and the Labour Relations Board.*

   d) *Developing a common costing model to be used by all institutions for the costing of settlements.*

e) Coordination of compensation and benefits for union and exempt employees.

f) Performing a continuous environmental scan in order to alert institutions to possible issues that may arise.

g) Coordinating post secondary system responses and policy development on key issues that relate to human resource management, e.g. Employment Standards Legislation, Pay Equity, Employment Equity, Labour Code Amendments, Freedom of Information Legislation, Benefits Administration, Human Rights issues, etc.

h) Arranging policy discussions with other public sector organizations and, likely, an overall public sector coordinating council.

i) Consulting with employee groups on matters of mutual interest.

The introduction to the *AECBC Task Force Report* to Commissioner Korbin clearly states that PSEA was to be based on voluntary coordination:

> *By way of definition, given that the term 'coordinate' is used in the Korbin report to contrast with centralized control and authority, PSEA will only work if the individual members voluntarily agree to operate within the guidelines established by PSEA. Under the College and Institute Act and the Labour Code, members of PSEA will continue to be the employer and remain accountable as such.*

In summary, the themes of the sector's approach to the creation of an employers' association, as stated in the AECBC Task Force Report to Commissioner Korbin, were:

- maintenance of the sector's status quo bargaining process
- coordination of labour relations but only to the extent minimally necessary
- voluntary compliance
- retention of local institutional autonomy in labour relations
- continuation of local employer accreditation as the bargaining agent
- recognition of a system-wide fiscal mandate
- cooperation in data collection, research, and information-sharing concerning human resources and labour relations

The model of employer association recommended and adopted by the sector was a decentralized one relative to the three employer associations accredited as bargaining agents that were created as a result of the Korbin Commission's recommendations. This reflected the institutions' continuing belief that they were more oriented to their

own local needs and cultures than to a provincial system with identifiable commonalities. In some ways, this belief and the resulting model of employers' association chosen by the institutions were in conflict with both the government's increasing centralization and control of the system during the later 1970s and the 1980s and with the unions' increasing coordination of their bargaining and labour relations through the same period.

The conclusions of the AECBC Task Force on Labour Relations were the basis of the 1994 creation of PSEA as a multi-employer association with mandatory membership built on a voluntary coordination and information-sharing service model.

The AECBC Task Force did consider whether the new employer association should become part of the AECBC, but it decided that the AECBC should not become involved in labour relations. This decision reflected the history of the AECBC and its predecessor BCAC as organizations that did not regard the support or coordination of the employers' labour relations as an important part of their organizational mandate.

6 CREATION OF THE POST SECONDARY EMPLOYERS' ASSOCIATION (PSEA), 1994

The Korbin Commission resulted in considerable change in the post-secondary sector's human resources management, and in particular, its labour relations. However, as a result of the sector's preferences, the degree of change was not as great as in other parts of the BC public sector.

The *Public Sector Employers' Act* was enacted in 1993 created PSEA, which commenced operations in January, 1994, and was incorporated in May, 1994. The PSEA *Constitution and Bylaws* were developed and approved by the Minister of Skills, Training, and Labour in accordance with the provisions of the *Public Sector Employers' Act*. The mandate established in the bylaws was:

- *To coordinate the following amongst its Members:*
  - *Compensation for employees who are not subject to collective agreements;*
  - *Benefits administration;*
  - *Human resource practices; and*
  - *Collective bargaining objectives;*

- *To assist the Public Sector Employers' Council established under the Public Sector Employers' Act in carrying out any objectives and strategic directions established by the Council;*

- *To act as bargaining agent for those of the Members, if any, for which*
  - *It is the accredited bargaining agent under the Labour Relations Code, or*
  - *It is named the bargaining agent by the Minister of Skills, Training, and Labour in a direction made by the Minister under section 11 of the Public Sector Employers' Act; and*

- *To foster consultation between:*
  - *The Association and representatives of the employees of its Members;*
  - *It's Members.*

This constitution and bylaws provided for the maximum institutional independence of action and the minimum employer association authority possible under the Korbin Commission recommendations for the establishment of employer associations.

While PSEA was enabled by its constitution and bylaws to act as the accredited bargaining agent should it be asked or directed to do so, no such request or direction occurred.

7 PSEA ROLE PRIOR TO ACCREDITATION, 1994-2003

During its first decade, PSEA operated as an organization that coordinated the employers' collective bargaining and other labour relations activities on an essentially voluntary basis. The role of PSEA like all employer associations under the PSEC model is to balance the interests of government as articulated by PSEC for compensation matters and the ministry responsible for post secondary education for post secondary public policy matters with those of colleges and institutes as employers.

PSEA operated within the fiscal mandates and public policy but as a coordinating agency—it lacked the structural authority to ensure that employers complied with those mandates and policy directions. By and large, PSEA and its member institutions did bargain within government mandates, but there were cases where mandates were not adhered to. These cases were a concern to government and called into question the efficacy of an employers association with only a coordination role.

PSEA's primary organizational means of coordinating the post-secondary employers' bargaining and labour relations during the 1994-2003 period were:

- System Steering Committee or SSC (as of 2000, re-named the Employers' Bargaining Conference or EBC)
- Committee for Collective Bargaining Objectives and Issues or CCBOI (as of the late 1990s, re-named the Mandate Subcommittee or MSC)
- PSEA Secretariat

The CEOs of the colleges and institutes as a group and the Employee Benefits Advisory Committee (EBAC) also played an ad hoc role in the coordination of bargaining. The SSC, and subsequently the EBC, consisted of the senior human resources/labour relations administrator for each of the member institutions of PSEA, plus representatives of PSEC and the line ministry responsible at the time for the post-secondary system. This group has met regularly and frequently to prepare for, plan, and coordinate collective bargaining and to share information and develop strategy on a broad range of labour relations issues. The employers' common table bargaining teams have been supported and directed by the SSC/EBC.

CCBOI, and subsequently MSC, consisted of five representatives of PSEA member institutions plus representatives of PSEC and the line ministry responsible at the

time for post-secondary education. This committee has been responsible for the approval of individual employers' bargaining mandate and requests for variance to the mandate.

Since 1995, all bargaining in the sector (whether two-tier or exclusively local bargaining) has been governed by monetary mandates set by the provincial government and administered through PSEC. Since 1998, these monetary mandates have been part of the broader bargaining mandates set out in sectoral plans that have been developed by PSEA subject to approval by PSEC. These mandates have applied to all institutions' bargaining, regardless of the form of that bargaining. The employers' bargaining mandate in 1995 consisted of:

- outer limits on total compensation increases
- other compensation-related matters (for example, adherence to a common salary grid)
- limits on bargaining provisions that set new levels or higher standards for the sector
- public policy and legislation of government
- process requirements for accountability of bargaining, including mandate approval

Mandate Sub-Committee of PSEA had the authority to grant institutions, on a case-by-case basis, a variance from one or more of the mandate elements.

The PSEA Secretariat managed the sector's coordination of bargaining and other labour relations matters and provided support to both common table and local bargaining by the employers.

PSEA's model of coordination of the employers' labour relations has rested on the willingness of the individual institutions to accept and become involved with the model—for example, to submit mandate requests for approval prior to reaching settlements, to bargain within a sectoral plan developed collectively by the sector, to respect government mandates, and to report and cost bargaining settlements accurately and promptly.

In 2002 the sectoral advocacy association, the Advanced Education Council of BC, was disbanded. AECBC was created in 1991 as the successor organization to the BC Association of Colleges (BCAC). Whereas BCAC was an organization of institution boards, AECBC consisted of not only the boards but also the Council of CEOs. AECBC was essentially an advocacy council for the colleges, university colleges, institutes, and agency in the post-secondary sector. AECBC also provided a forum for discussions of mutual interest and assisted with support and development of

boards and institutional leaders. AECBC was disbanded by the institutions in part as a result of increasing factionalism and conflicting interests among individual institutions and types of institutions in the sector.

The institutions chose not to replace AECBC, thereby depriving themselves and the sector as a whole of a vehicle for lobbying, coordination, and information-sharing on matters other than human resources management in general or labour relations (for example, funding, institutional mandates, public policy, and legislation). While AECBC played little or no role with respect to labour relations, the demise of the Council has resulted in some institutions looking to PSEA to address their non-labour relations needs. Because PSEA was a single purpose multi-employer organization whose mandate is established by the *Public Sector Employers Act*, the general advocacy and information sharing roles were outside the mandate of the association.

Collective bargaining in the college and institute sector occurs in a multi-employer environment with each employer affected by the actions of others. The cohesiveness and commonality of interest among employers that is essential to achieve labour relations objectives individually and collectively was further eroded through the 1994-2003 period by the increasing differentiation and separation of member institutions into three subgroups—colleges, university colleges and institutes- each with their own committees and organization. Further division has occurred along the lines of institution size and geographical location. Increasingly, many institutions have identified more with their like institutions within the sector than with the sector as a whole. This fragmentation of the sector represents a considerable challenge to achieve labour relations objectives of the sector, of individual institutions, and of government.

8 FACULTY COLLECTIVE BARGAINING, 1994-2003

Within two years of starting operation, PSEA represented most of the employers at the sector's first common table in 1995-1996. Throughout the late 1980s and the early 1990s, the unions in the sector—particularly the faculty unions through their provincial groups, CIEA and BCGEU—had practised increasingly greater coordination of bargaining and had lobbied government and the institutions for a more centralized bargaining model. These developments came to a head in the summer and fall of 1995, shortly after the federal government had announced large cuts in the transfer payments for post-secondary education. That summer, eight of CIEA's local unions passed strike votes and planned coordinated job action to resolve the impasse in the bargaining with their local employers. These unions formed a Coordinated Bargaining Council (CBC) within CIEA with the goal of taking a unified and common approach on the key issues of salary, benefits, workload, professional development, and the treatment of temporary/non-regular employees.

Against this backdrop, representatives of the PSEC Secretariat and the Ministry of Education, Skills, and Training strongly urged the sector's employers to adopt a more coordinated approach to bargaining to address the severe fiscal constraints facing the system as well as other system issues. As a result, the sector's first common table was established to conduct "Multi-Institutional Discussions" (MID). The CIEA Coordinated Bargaining Council was expanded to include local BCGEU vocational instructor unions as well as other CIEA local unions: the resulting Joint Union Council (JUC) represented 16 CIEA locals and 6 BCGEU locals at the common table. The 18 institutions that bargained at this common table were represented by an employers' bargaining team acting with the support of PSEA.

When the parties failed to reach agreement at the common table, a facilitator, James Dorsey QC, became involved in May, 1996, at the initiative of government. Mr. Dorsey eventually provided the parties with recommendations for an MID framework agreement. Although many employers were opposed to the recommended agreement, the Dorsey recommendations were subsequently ratified by all the institutions and unions in the sector.

The *1996 MID Framework Agreement* ran through March 31, 1998, and was the first common agreement in the sector. It contained a number of sector-wide initiatives and projects such as the Contract Training and Marketing Society, the system-wide registry of laid-off employees and job postings, the Labour Adjustment Fund, the Labour Relations Database (later the Human Resource Database or HRDB), system benefits administration, and a common salary scale. Although not a party to the

collective bargaining, the provincial government—in the form of PSEC and the Ministry of Education, Skills, and Training—became more involved in the bargaining, and all of the sector-wide initiatives listed above were enabled by government's commitment to provide the necessary funding. The most significant element in the agreement was the introduction for the first time to the sector of a common salary grid for faculty. This initiative was proposed by the unions and in effect imposed by government, and all employers ratified the framework agreement that included the common grid.

Like all subsequent common agreements for both faculty and support staff, the *1996 MID Framework Agreement* involved a common table as part of two-tier bargaining, with certain issues bargained at the common table and all other issues bargained at local second-tier tables. For all parties involved in common table bargaining, the collective agreement for each set of parties has been subject to a single ratification vote on each side and has consisted of the common provisions and the local provisions as a single collective agreement.

In 1998, the faculty unions, represented at the provincial level by CIEA and BCGEU, proposed another common table to bargain the renewal of the *1996 MID Framework Agreement*. PSEC and the Ministry of Advanced Education, Training, and Technology strongly supported this approach. The sector's employers agreed to continue the two-tier bargaining structure, but only on the condition that the common table's scope be explicitly defined and limited. After lengthy discussions, the unions' Provincial Bargaining Council and the employers' Bargaining Committee in late February, 1998, agreed on a Protocol Agreement that included the scope of the common table. As at the 1995-1996 common table, the sector's institutions and their local unions bargained at the common table only if they chose to: in 1998, 16 institutions did so, as did 15 CIEA locals and 5 BCGEU locals. The bargaining continued through to late October, when a settlement was reached on terms that had been approved by the CEOs of the common table employers prior to the settlement. The settlement was ratified by all the employers and unions that had bargained at the 1998 common table as well as by one additional college and both its CIEA and BCGEU unions.

The term of the *1998 Common Agreement* was April 1, 1998, to March 31, 2001. This agreement built upon the *1996 MID Framework Agreement*, and it retained the sector-wide initiatives and most of the other provisions of that earlier agreement. The substantive additional elements in the *1998 Common Agreement* pertained to harassment, leaves including union and parental leave, health and welfare benefits, and employee security and regularization. "Regularization" in this context means the process by which non-regular employees' appointment status is converted to a

regular appointment that provides continuing employment and the full salary and other benefits and rights provided by the collective agreement (pro-rata as applicable for faculty employed on less than a full-time basis). Regularized appointments can, subject to notice and severance pay, be terminated for various reasons as specified in the collective agreement. On the employment security/regularization issue, the agreement had provisions that constituted a framework enabling the local parties' negotiation of the issue. The salary increases for the *1998 Common Agreement* were 0% in the first year, 0% in the second year, and 2% in the third and final year.

Following the 1998 common table settlement, as following the 1996 MID settlement, the employers' local second-tier bargaining proceeded to conclusion without impasse.

In 2001, the faculty unions again pressed for common table bargaining, this time with a much broader scope, and PSEC and the Ministry of Advanced Education again strongly supported a common table. As in 1998, some of the employers were not enthusiastic to participate in a common table, in part on the traditional grounds of the individual institutions' autonomy and distinctive needs and in part on the basis of their perceptions concerning the origin of and how/why certain provisions—employee security and regularization—of the *1998 Common Agreement* were agreed upon. The employers did agree to bargain once again at a common table but on condition that the bargaining scope of the common table be limited to fiscal matters and to certain other system issues addressed in the *1998 Common Agreement*, with the balance of the 1998 agreement being rolled over. After extended discussions, the unions' Provincial Bargaining Council and the employers' Bargaining Committee agreed in early February, 2001, on a protocol agreement that limited the scope of the common table as the employers had proposed. This time 14 institutions and 18 unions (13 CIEA and 5 BCGEU) chose to bargain at the common table. At the end of March, 2001, the unions and the employers reached a settlement, which was subsequently ratified by the local parties to the 18 collective agreements that include the *2001 Common Agreement*.

The term of the *2001 Faculty Common Agreement* was April 1, 2001, to March 31, 2004. The agreement was a rollover of the *1998 Common Agreement* but with some substantive additions to compensation—namely in salary including labour market adjustment, supplemental employee benefit for maternity and parental leave, employer-paid disability leave, and small allocations for the local second-tier bargaining of compensation other than salary and benefits.

For the 2004 faculty bargaining, nine employers (bargaining with a total of eleven unions) again committed to bargaining at a common table, which was called a multi-institutional discussion (MID) table as it had been in 1995-1996.

Throughout its existence, the common table for faculty bargaining—as for support staff bargaining—has been voluntary. Each employer has made its own decision as to whether or not to participate, and ratification of the common table settlement (along with the provisions bargained at the local second-tier table) has been decided by each institution. An employer—or a union for that matter—has been able to participate in a common or MID table only if the other party to its collective agreement has also decided to participate.

Through the 1995-1996, 1998, and 2001 iterations of the faculty common table, a significant degree of standardization has been brought to faculty collective agreements—principally in salary and health and welfare benefits and in sector-wide initiatives and projects, but also in employee rights provisions relating to harassment, employer/union relations, copyright and intellectual property, employee security and regularization, and leaves.

Since 1998 and increasingly so, many of the sector's employers negotiated faculty agreements locally with their unions. While permitted under the PSEA bylaws and sectoral plan in place at the time, some of this local-only bargaining resulted in breaches of mandate and of the mandate approval process itself.

Through the three faculty common tables, the provincial government, through PSEC, has reduced its direct intervention in the bargaining from a very strong presence at the 1995-1996 common table to a minimal oversight of the 2001 common table. For the 2004 faculty bargaining, government's position is that it is entirely up to the employers as to whether or not they wish to bargain at a common table.

However, government has for a number of years adopted as a matter of public policy the employers' maintenance of the common salary grid for faculty, not only for common agreement employers but also for all the other employers in the sector.

The sector's employers themselves—in their sectoral plans of 1998, 2001, and 2004—have chosen to maintain the common grid as a sectoral strategy for faculty bargaining. The most recent confirmation of this position in 2004 resulted from decisions made by a series of workshops attended by CEOs on faculty bargaining through November 2003.

Throughout 1994 and 2003 the sector's faculty unions have continued their trend towards greater coordination of their bargaining and dispute resolution with the employers. Today, of the sector's 26 faculty unions, all but two, the BCIT Faculty and Staff Association and the Okanagan University College Faculty Association, are members of either CIEA (as of 2004 became the Federation of Post Secondary Educators, or FPSE) or the BCGEU, and those two provincial unions are well resourced in terms of both staff and funding.

A central challenge for collective bargaining in the college and institute sector, particularly with respect to faculty, is the legacy resulting from the institutions' collegiality construct carried over from the early years of the college system. While acting more and more like traditional trade unions, the sector's faculty unions continue to advocate for the preservation of their notion that the post-secondary institutions are collegial in nature and that collective agreements should reflect that collegiality and make it contractual across a broad range of institutional operations. With few exceptions a form of rigidity with traditional labour-management decision making constructs and norms has emerged which is at odds with a true collegial system. Many of the limitations imposed by the collective agreement on the institutions' ability to effectively manage can be traced to this contradiction.

In some respects, the employers themselves have enabled this reduction of management rights by attempting to reconcile the desire for collegiality with the operational implications of collective bargaining. It is a labour relations truism that once a provision is in a collective agreement, it is practically impossible to remove it.

9 SUPPORT STAFF COLLECTIVE BARGAINING, 1994-2003

Common table bargaining has also occurred for support staff collective agreements in the sector, but it has never become as much a part of the landscape as it has for faculty bargaining. Only one Support Staff Common Agreement has been ratified, and it applied to only 11 of the sector's 19 support staff collective agreements.

In 1995-1996, the sector's employers and the provincial unions representing those employers' support staff employees (BCGEU, CUPE, Pulp & Paper Workers of Canada (PPWC), Office & Technical Employees Union (OTEU), and CIEA) engaged in common table discussions towards a framework agreement. As for the faculty common table bargaining earlier that year, arbitrator/mediator James Dorsey QC became involved as facilitator at the initiative of government representatives. In July, 1996, Mr. Dorsey issued his recommendations for a framework agreement and set November 30, 1996, as the date by which those recommendations should be ratified. By November 30th no employer or union had ratified the document, and so all support staff collective agreements were then bargained exclusively locally as they had been in the past.

In May, 1999, the sector again attempted the common table/two-tier approach for support staff bargaining. Eleven employers and their support staff unions (all either CUPE or BCGEU) bargained and reached a settlement in 2000 that was subsequently ratified by all of the participating employers and unions.

The term of the 2000 *Support Staff Common Agreement* was April 1, 1998, to June 30, 2002. Its main elements were some system initiatives that mirror the faculty common agreement such as the Labour Adjustment Fund, Human Resources Database, System-wide Electronic Registry, and system benefits administration. Unlike the faculty common agreement, the *Support Staff Common Agreement* did not provide for a common wage scale for support staff. In 2002, the employers chose not to negotiate at a support staff common table for renewal of the *Support Staff Common Agreement* that expired on June 30, 2002. Eleven employers were party to the expiring agreement.

Through the 1994-2003 period, the support staff unions have moved to a somewhat greater degree of coordination of bargaining through the BCGEU/CUPE body called the Colleges and Institutes Support Staff Bargaining Association (CISSBA), which was established for the purpose of managing the unions' bargaining at support staff common tables. At present, 16 of the sector's 19 support staff unions are either CUPE or BCGEU (8 each). Only three support staff unions (two PPWC and one

Office & Professional Employees International Union (OPEIU), formerly OTEU, are not members of these two large provincial unions. Support staff employees at two of the sector's institutions are included in the same bargaining unit as faculty. This concentration of most support staff employees in CUPE and BCGEU has enabled an increasing coordination of bargaining and dispute resolution by the support staff unions. (see Appendix 2 for a list of the sector's employers and their respective unions)

10 PSEA REVIEW OF BARGAINING STRUCTURE, 2000-2003

In 2000 and following, PSEA and its member institutions re-visited the issue of sector bargaining structure, which had last been addressed at the time of the Korbin Commission and the creation of PSEA in 1993-1994.

In 2000, the PSEA executive commissioned a study of the sector's experience with two-tiered and local bargaining, and it contracted with consultant and former Deputy Minister of Education R. J. Carter for that purpose. The purposes of the Carter study were:

- To evaluate the performance of the Common Agreement bargaining process since 1995 with respect to the ability of the institutions and the college-institute sector as a whole to meet the goals of [the Ministry's 1996] "*Charting a New Course*" and the institutions' mission statements; and

- To evaluate the extent to which the Common Agreement bargaining process met the employers' bargaining objectives and the government's public policy objectives.

Specific areas identified for assessment were:

- The bargaining and operational efficiencies,
- The efficacy of decision-making during bargaining,
- The effectiveness of communication between PSEA and the sector,
- The effect on the learning environment and the role of institutions, and
- The ability to budget more realistically from a sector, Ministry, and PSEC perspective.

Mr. Carter conducted an evaluation of the sector's common table bargaining in 1995-1996 and 1998, including a survey of and interviews with the institutions' CEOs and human resource administrators. Mr. Carter's report, *The Progress and Results of Two-tier Bargaining, and Local Bargaining*, was delivered to PSEA in the fall of 2000. The conclusions of that report were:

- Budgeting, allocation of resources, and bargaining must be brought into harmony.

- The application of two-tiered bargaining needs to be reviewed, particularly with respect to what is properly bargained at common tables and what is properly bargained locally.

- The PSEA Steering Committee for the employers' bargaining should include both CEOs and HR administrators, with each institution's lead person on the Committee being its CEO.

- The CEO of each institution should be present at three critical phases of the bargaining process—namely (1) the planning for the bargaining objectives and the mandate, (2) the approval of the final mandate, and (3) any discussion that would take bargaining outside the mandate.

- The lead bargainer for PSEA must have a clear mandate and also knowledge of each institution's specific concerns and sensitive areas.

- Employers should be prepared to look at all possibilities, including work stoppages, if they are to bargain effectively.

- The rationalization of budgeting, funding, and bargaining could be achieved by (1) government indicating a percentage lift for all institutions, (2) the Steering Committee, in consultation with the institutions' administrations and boards, setting the amount to be bargained at the common table for wages and defined benefits, and (3) local institutions bargaining the remainder of the funds, if any, at local tables.

- The different interests of the colleges, the institutes, and the university colleges are a problem. Academic study leave, titles, and recruitment and retention seem to vary by these sub-sectors.

- The decision-making process needs to work for all institutions.

PSEA took no specific actions on the basis of the *Carter Report*.

In the Fall of 2001, at the initiation of the PSEA Employers' Bargaining Conference (EBC) a position paper on sector bargaining structure was prepared. The paper was to address the prospect of the accreditation of the sector, which PSEA understood that government was considering at that time. The EBC's intent was to demonstrate that the then-current bargaining structure (without sector accreditation) was appropriate for the sector and was working. The position paper was intended for adoption by the PSEA board and then for presentation to government. However,

the PSEA executive decided on October 2, 2001, not to forward the paper to the Ministry and took no further action at that time.

In late 2001 and early 2002, draft changes to the PSEA bylaws were drafted in response to concerns expressed by PSEC officials regarding sectoral organization and discipline in bargaining. The PSEA Executive discussed the recommended changes on February 14, 2002, and decided that the changes should not be recommended to the PSEA Board at that time.

The February 14, 2002 Executive meeting, however, directed the PSEA to develop a briefing paper, rather than recommendations, on sector bargaining structure for the executive's review and for eventual discussion by the PSEA Board.

The context for PSEA review of the sector's bargaining structure in the spring of 2002 included the recent faculty common table bargaining (2001, 1998, and 1995-1996), the institutions' various perceptions of that common table bargaining, the continuation of a single common salary grid for faculty, the winding down of the AECBC, and movement towards devolution of all post-secondary structures around the institutional groupings of colleges, university colleges, and institutes. Also, the sector was facing the bargaining of most of the 19 support staff agreements in 2002 and all 26 of the faculty agreements in 2004.

The resulting documents were the *Briefing Paper: Bargaining Structure for PSEA Sector* and *Questions for Board Discussion of Sector Bargaining Structure* (both dated March 8, 2002). These were reviewed and approved by the PSEA executive, and were then provided to and discussed by the PSEA board on March 14, 2002. That discussion did not substantively address the questions asked, but did result in the board mandating a bargaining workshop for all CEOs later that spring (subsequently referred to as *CEOs Workshops*). The first *CEOs Workshop* occurred on May 2-3, 2002, and subsequent *CEOs Workshops* were held on March 12, 2003, June 18, 2003, and November 25, 2003.

By direction of the June 18, 2003, *CEOs Workshop*, PSEA, between July and October, 2003, conducted a survey on sector bargaining structure in preparation for the 2004 faculty bargaining. The report of this survey's results was sent to the institutions in early October, 2003, and was subsequently discussed by the EBC on November 24, 2003, but no recommendations were made. There was insufficient time at the November 25, 2003 *CEOs Workshop* to discuss the survey report. However, the survey results did inform the employers' preparation for the 2004 faculty bargaining, including the common table.

The *CEOs Workshops* themselves focused primarily on the content of rather than the bargaining structure for the sector's upcoming 2004 faculty bargaining. The CEOs established three task forces. Those on Evaluations/Leaves and Regularization resulted in no sectoral action by the *CEOs Workshops*. The *Task Force on Salary Grids* developed a salary model of a default common grid with variant grid options to address labour market applications. The final *CEOs Workshop* on November 25, 2003, decided not to adopt the proposed salary model at that time. In the end, the *CEOs Workshops* made no decisions and took no action on sector bargaining structure.

11 *PUBLIC EDUCATION FLEXIBILITY AND CHOICE ACT, 2002*

In January 2002, the *Public Education Flexibility and Choice Act* was enacted with the stated purpose to *put students first by focusing education resources on core services* and to *increase flexibility for colleges and school districts….to ensure proper management of tax dollars, facilities, and resources.* The part of the *Act* dealing with the post-secondary sector, the government stated, was to improve student access, create additional student spaces, increase choice and availability of courses, graduate more students to revitalize economic growth, and facilitate more timely program completion for students. To these ends, the *Act* gave the employers the right, notwithstanding current or future provisions of faculty collective agreements, to:

- establish the size of its classes, the number of students who may be enrolled in or assigned to a class, and the total number of students who may be assigned to a faculty member in a semester, term, or academic year
- assign faculty members to instruct courses using distributed learning
- determine its hours of operation and the number and duration of terms or semesters during which instruction is offered to students
- allocate professional development time and vacation time to facilitate its organization of instruction
- provide support for faculty members, including, but not limited to, teaching assistants, senior students, contractors and support staff members

This legislation gave the sector's employers broader discretion on these issues, regardless of the various provisions that may have been negotiated into their faculty collective agreements.

12 PSEA ACCREDITATION AS BARGAINING AGENT, 2003-2004

As of the Fall of 2003, the post-secondary sector consisted of 22 institutions with a total of 45 faculty and support staff unions accounting for approximately 11,103 employee FTEs in bargaining units. Of these, 6,395 FTEs were faculty and 4,708 FTEs were support staff.

Of the 22 institutions the following changes were announced by the provincial government reducing the number of institutions to 20:

- Open Learning Agency - scheduled to close during 2004-05
- The University College of the Cariboo - scheduled to become Thompson Rivers University
- The Okanagan University College - scheduled to be replaced by Okanagan College with UBC assuming the university operations.

Of the sector's 45 unions, 26 are faculty unions (including 2 that also include support staff) and 19 are support staff unions. All of the union certifications are held locally except for the BCGEU's 15 certifications (7 faculty and 8 support staff). The institutional changes discussed in the preceding paragraph will result in a net reduction of 4 unions (2 faculty and 2 support staff).

Through the Fall of 2003, each of the sector's employers had the authority to bargain collectively with their locally certified trade unions, and PSEA was responsible for the employers' voluntary coordination of their bargaining.

On February 4, 2004, an order-in-council of the provincial government made PSEA the accredited bargaining agent for the Association's 22 member institutions. This change moved PSEA from being a coordinating organization to being the bargaining agent for the BC post-secondary sector.

This change was initiated by the Minister of Finance in a November 21, 2003, letter to PSEA's president requesting that PSEA amend its *Constitution and Bylaws* to make the association the accredited bargaining agent for the post-secondary education sector. Pursuant to Section 8.1(2) of the *Public Sector Employers Act*, PSEA was requested to make the changes to the *Constitution and Bylaws* within 60 days of the Minister's letter (by January 21, 2004).

In response to the request by the Minister, on January 15, 2004, the board passed the following motion: "That if the Minister of Finance chooses to change local accreditations to PSEA, the Board of Directors of PSEA recommends that it be done so by legislative means."

At the same meeting, the PSEA board also passed a motion giving 60 days' notice that the *Constitution and Bylaws* of PSEA be further amended by Special Resolution.

On February 4, 2004, the provincial government passed *Order-in-Council 114* that made PSEA the accredited bargaining agent for the post-secondary sector. The order-in-council replaced Section 2c of the PSEA *Constitution*'s statement of the association's purposes.

The old section 2(c) stated:

> *To act as bargaining agent for those members, if any, for which*
>
> *i) it is the accredited bargaining agent under the Labour Relations Code, or*
> *ii) it is named the bargaining agent by the Minster of Skills, Training & Labour in a direction made by the Minister under section 11 of the Public Sector Employers' Act"*
>
> *The new Sections 2c, 2d, 2e, and 2f were as follows:*
>
> *(c) To bargain collectively on behalf of its members and to bind its members to collective agreements;*
>
> *(d) To co-ordinate collective bargaining and to establish policies for the content, administration and interpretation of collective agreements;*
>
> *(e) To advise on grievances and to represent a member in any arbitration or other matter or proceeding which is of interest or concern to the Society or any member;*
>
> *(f) To negotiate on behalf of its members with representatives of employees;*

Section 2d remained unamended but became Section 2g. The old Section 2(d) stated:

> *To foster consultation between:*
>
> *i) The Association and representatives of the employees of it Members;*
> *ii) Its members*

The Order-in-Council also made extensive changes to the PSEA Bylaws that corresponded to the changes in the *Constitution* referenced above. Specifically, the bylaw changes appointed PSEA as the sole and exclusive bargaining agent for each

of PSEA's member institutions and set out the requirements for the negotiation of collective agreements and the resolution of disputes concerning collective agreements. The bylaw changes enabled PSEA's delegation of bargaining authority and the authority to negotiate issue dispute resolution subject to specified requirements including PSEA approval and execution of all settlements.

On March 17, 2004, the board passed a Special Resolution, which had the effect of strengthening the bylaws to enable PSEA to properly carry out its mandate as the employers' bargaining agent. The Minister of Finance subsequently approved the changes.

13 THIRD PARTY REVIEW OF PSEA, 2004

Background to the Third Party Review

Following the decision to change the status of PSEA from a coordinating employer association to an accredited bargaining agent, a Third Party Review was commissioned in December 2003. Peter Cameron, a labour relations and organizational development consultant, was appointed to conduct the review and prepare a final report for both PSEA and PSEC. An Interim Executive Director, Hugh Finlayson of the BC Public School Employers' Association was appointed to assist with the transition measures and initiatives adopted. The terms of reference established for the review in part provided:

> *Concurrent with PSEA's accreditation as the bargaining agent for employers in the post-secondary education sector, PSEA's organizational structure will be reviewed in order to determine whether changes to that structure would enhance PSEA's new role.*
>
> *The Third Party Reviewer will:*
>
> *Work collaboratively with a steering committee of PSEA, employers in the post-secondary education sector, the Ministry of Advanced Education and the Public Sector Employers' Council Secretariat in conducting a review of PSEA's organizational structure;*
>
> *Review PSEA's new role as the accredited bargaining agent in the post-secondary education sector, and in particular, review PSEA's functions, capacities, strategic abilities, staffing and management structure;*
>
> *Consider the interests and goals of government in directing accreditation of PSEA;*
>
> *Consider the unique interests of the different types of employers in the sector (university colleges, community colleges, and institutes); and*
>
> *Provide a report to the Chief Executive Officer of the Public Sector Employers' Council Secretariat and the Chair of PSEA describing the review process, the reviewer's conclusions regarding PSEA's organizational structure and, if appropriate, recommendations regarding changes to PSEA's organizational structure.*
>
> *Any recommendations should reflect the implications of accreditation. The report should review and comment on the applicability of recommendations contained in the Korbin Report relating to the post-secondary education sector.*

> *In particular, the reviewer will be expected to work in a collaborative and cooperative fashion with the Steering Committee in producing the report, and such sub-committees as the Steering Committee deems necessary. The Steering Committee will consist of the Executive Committee of the PSEA Board of Directors and one representative from the University College sub-sector (if such a representative does not already sit on the Executive Committee).*

In March, 2004, the terms of reference for the review were expanded with the release of the *Supplementary Terms of Reference* which provided:

> *The Third Party Reviewer will also:*
>
> *Review the current governance structure of the PSEA, including:*
>
> > *fiduciary and core responsibilities of the Board of Directors; roles and responsibilities of the directors as members of the board; and issues which are specific to the PSEA board regarding responsibility, accountability and functioning;*
>
> *Review the collective bargaining structures for support staff and faculty bargaining, including:*
>
> > *an overview of the strengths and weaknesses of the past collective bargaining experience of PSEA and its members, lessons to be learned from that history; and the opportunities and challenges of accreditation.*
>
> *Include in his report to the Chief Executive Officer of the Public Sector Employers' Council Secretariat and the Chair of PSEA recommendations reflecting the implications of accreditation with respect to the PSEA governance structure, the roles and responsibilities of the Board, and other governance issues identified by the review; and recommendations with respect to the bargaining structure and the PSEA's resources and processes related to bargaining.*

The preamble to the December terms of reference provided the background and context for the review:

> *The Post Secondary Employers' Association ("PSEA") is an employers' association created under the Public Sector Employers Act. The purposes of the employers' association are the following:*
>
> > *to foster consultation between the association and representatives of employees in the sector;*

> *to assist the Public Sector Employers' Council in carrying out any objectives and strategic directions established by the Council for the employers' association; and to coordinate the following with respect to the sector:*
>
> *(a) compensation for employees who are not subject to collective agreements;*
> *(b) benefit administration;*
> *(c) human resource practices; and*
> *(d) collective bargaining objectives.*
>
> *In furtherance of these purposes, the Minister of Finance has directed PSEA to amend its Constitution and Bylaws in order to formally designate PSEA as the accredited bargaining agent for the post-secondary education sector. The process of amending PSEA's Constitution and Bylaws is expected to be completed by the end of January 2004. Accreditation will support PSEA and employers in the sector in their relations with unions and excluded employees and ensure accountability in labour relations matters in the post-secondary education sector. Accreditation is also seen to be in the best interests of the public at large.*

The key question for the review was to determine the optimal structure, from the perspective of both the employers and government, for collective bargaining in the sector.

The review noted that across the broad public sector, local bargaining was now the exception rather than the rule. However, it was very important to PSEA that government not impose broad-based bargaining by way of creating multi-employer bargaining units by statute. Cameron concluded that the implicit message given by government with this choice of options seemed to be that PSEA could deal effectively with labour relations challenges, provided it had the requisite authority through accreditation. The question he said that the review must address is "what does 'dealing effectively' mean?" Is it business as before, plus PSEA ratification or should it mean something more fundamental?

The review addressed PSEA's history of a negative view of multi-employer, broad-based bargaining. Yet in that negative view there was found conditional support for the concept. One of those conditions included maintaining the employers' ability to bargain some matters at a local table. The discussion of bargaining structure in the review assumes that the form of multi-employer bargaining in the sector (if any) should permit a separate track of negotiations.

Five key reasons for the skepticism of broad-based, multi-employer bargaining were addressed:

1. Unions have long been supportive of broad-based bargaining interpreting it to best promote their interests; but employers have tended to conclude that it would not promote theirs.

2. Nostalgia for the collegiality of faculty relations before the development of a union culture; broad-based bargaining would further entrench that culture.

3. Unhappiness with the results of broad-based bargaining; a feeling that the same results would not have occurred if local bargaining had continued.

4. The scope of the past broad-based bargaining may have been illogical and too narrow to address some of the restrictions on management rights that employers felt needed to be addressed.

5. Common table bargaining was seen as compromising the autonomy of the institutions, promoting 'one size fits all' bargaining outcomes.

Those concerns were analyzed by the review, and each addressed in its own right:

1. The unions may have preferred broad-based bargaining for a variety of reasons, not simply for bargaining advantage. Other unions have been just as successful in local bargaining by using sequencing and targeting to whipsaw employers.

2. The cultural shift of professional employees embracing unionism will not be reversed by a return to local bargaining.

3. It is not self-evident that the same results would have been avoided with local bargaining.

4. The restricted scope may flow from pessimism based on experience with common table bargaining during the 'leveling up' period.

5. The key question related to autonomy is whether or not labour relations outcomes affect the educational autonomy of the institution. There are some bargaining issues that fall into that category and for those issues, local bargaining is more appropriate.

The concern for the maintenance of local autonomy by institutions was discussed in detail. It was observed that not every provision in a common agreement need apply to every employer. The assertions by those advocating local bargaining that "autonomy is essential if we are to have quality education in our communities" and

"one size does not fit all," while legitimate, Cameron concluded, need more specificity to be meaningful in a discussion of sectoral labour relations Cameron concluded.

Institutional autonomy was defined as the ability of an institution to direct its own affairs, subject to sectoral cooperation in those areas that are in the collective interest of most or all of the sector's institutions. The PSEC model was identified as maintaining this balance, recognizing the capacity and need of individual employers to act in their own interest, as well as the necessity for coordination where an employer's actions could affect the options available to others.

The review did note, however, that multi-employer bargaining is more amenable to direct government involvement at the table than purely local bargaining. The caveat was that given the history in BC since 1993 in the post-secondary and other sectors, government should be particularly careful to avoid interventions that could undermine or destroy the credibility of the PSEC model.

After addressing each of the perceived shortcomings of broad-based bargaining, the review highlighted a number of considerations that might favour it:

- Even with accreditation, it is substantially easier at a single, multi-institutional table to ensure that mandates are maintained and that seemingly benign non-mandate issues are evaluated for their potential impact on all employers.

- It is possible in multi-institutional bargaining to avoid the union strategy of focusing resources (for example, target strike pay) on one employer, or a few employers, in order to establish a precedent. Indeed, it permits the employers to do a little 'targeting' of their own to seek changes, for example, to egregious provisions that affect a minority of employers.

- It is a fact that bargaining will be highly coordinated on the union side, regardless of any decision by the employers. Unions are therefore in an excellent position to execute whipsawing strategies against employers bargaining locally, despite the employers' best efforts at coordinated local bargaining. Therefore, ironically, employers have more potential control of their individual fates in common bargaining than in local negotiations.

The experience of the Community Social Services Employers' Association (CSSEA) in 2002-2003 was described as being instructive for PSEA. Like PSEA, CSSEA had past experience with government intervention in its bargaining, and it also had a very

diverse membership. CSSEA members, therefore, had good reason to be skeptical of the common table bargaining format.

Prior to the 2002-2003 negotiations in the social services sector, government created multi-employer bargaining units pursuant to the *Community Services Labour Relations Act* enacted May 2003. In spite of the employers' previous skepticism, they were able to develop and execute an effective strategy within the common table format. This strategy included a defined and specific role for government, and the government did not intervene to circumvent the employer bargaining committee. The employers were able to negotiate contract provisions that permit much greater management flexibility, permitting them greater opportunity to pursue their individual service mandates in the way they best see fit. The CSSEA common table also successfully 'bargained out' many of the so-called superior benefits that had burdened individual employers for years.

It was noted that this was all accomplished in a bargaining year when the employers needed—and were able to achieve—substantial monetary concessions. It was not accomplished easily, and it required a degree of employer unity that, at the start of bargaining, most employers believed was impossible. This included giving their bargaining committee a lockout mandate for the first time ever in the sector. As a result of this experience and the re-organization of CSSEA, employers in the sector now recognize that these employer gains would have been impossible in local bargaining.

The Form of Multi-Employer Bargaining

The review determined that there are two assumptions that must hold in developing a form of multi-employer bargaining:

- There are matters the majority of PSEA members want to resolve locally; and
- The majority would be prepared, at least under some conditions, to negotiate other matters on a multi-employer basis.

Yet, even if those assumptions do hold, the review highlighted other issues to be addressed. It was noted that PSEA had grappled with a number of these issues, sometimes successfully, but some issues need to be re-thought in the context of accreditation:

What criteria should be used to distinguish the local matters from multi-institutional ones?

"There are issues that are intrinsically local and those that are intrinsically multi-institutional, in the sense that the expertise and motivation to resolve the issue are located primarily at one level or the other, and the consequences of its resolution (or non-resolution) are likely to affect only one employer or many employers. Intrinsically local issues are those non-compensation matters where the specific situation at an institution requires a resolution that the local parties are best able to craft, and where the optimal outcome will promote the ability of the institution to fulfill its unique educational mandate. Compensation issues are necessarily multi-institutional because they have a high probability of affecting all employers in the group."

Should there be more than one multi-institutional table?

"Applying the principles of Labour Relations Board jurisprudence on "appropriate bargaining units," it is clear that the Board would not issue a separate certification to cover, for example, only the faculty teaching third and fourth year courses at a university college. Collective agreements often cover a range of various types of work. In the case of the post secondary sector, the nature of faculty work within institutions and across the sector represents a relatively narrow range compared to the range of jobs covered by agreements in some other sectors.

"Applying the reasoning of the Labour Board's jurisprudence for single employers to the employers in the post secondary sector, employers should not bargain separately or be in a separate bargaining group where their major points of distinction would not justify a separate bargaining unit within a single institution."

"It may be that employers in the sector will collectively see some wisdom in separate tables that is not apparent to me. And on occasion there may be tactical reasons to prefer different groupings. For these reasons, my recommendations will not preclude separate tables where that seems appropriate to employers in the sector."

What responsibility does one employer have towards fellow employers—even in local bargaining—not to agree to something that will make life more difficult for other employers?

"It is clear that an employer retains the responsibility not to agree in local bargaining to something that will make life more difficult for other employers in the sector. PSEA remains the accredited bargaining agent for local bargaining as well as multi-

institutional bargaining, which means that it must also ratify the outcome of local negotiations. PSEA should offer strategic leadership even in local bargaining, because very few issues are totally without any impact on other employers in the sector."

How are matters resolved if impasse is reached at the local table, the multi-institutional table, or both? (Is there one right to strike/lockout for the entire multi-institutional group, or one right at each institution, or a right for the group and also at each institution?)

"The current MID format for concluding negotiations seems to have worked reasonably well to date. A potential problem is that employers could be subject to two levels of strike activity. In the case of a bargaining breakdown at the MID level, the unions could seek a strike mandate and exercise it on a multi-employer basis. If that resulted in a resolution of the common table matters, each local union that was unsuccessful in achieving resolution of its local issues could seek a strike mandate and go on strike at the local level. Many sectors (for example, the public service) have lived with such ambiguities for many years, and managed to muddle through. For that reason, I am not making any recommendation to change the approach to dispute resolution in case of impasse."

The review found that the reasons why two-tiered bargaining (multi-institutional and local) was appropriate for faculty bargaining also apply generally to support staff bargaining:

- It may be easier to move to common provisions in support staff bargaining, because there isn't the same degree of diversity in the nature of the work, current collective agreement provisions, or even in agreement format.

- The relative similarity of agreements and circumstances means that it is easier—compared to faculty bargaining—for PSEA particularly now with accreditation to coordinate bargaining to ensure that mandates are observed, and to understand the impact of non-mandate matters on other employers.

Options for Accredited Employers Associations in the BC Public Sector

The review identified five potential models for employers' associations provided for under the *Public Sector Employers Act*:

Model	Accreditation	Bargaining Units	Role of Association
1	Non-accredited	Not multi-employer	Coordination only
2	**Accredited**	**Not multi-employer**	**Coordination and ratification**
3	**Accredited**	**Voluntary multi-employer**	**Bargaining and ratification**
4	**Accredited**	**Structured multi-employer**	**Bargaining and ratification**
5	Accredited	Statutory multi-employer	Bargaining and ratification

Model 1 – The non-accredited employers' association is the model PSEA members are familiar with from the organization's past. Due to the November 2003 mandated bylaw changes, however, this model is no longer an option.

Model 2 – The minimum role for an accredited employers' association is model 2: coordinating employer bargaining, delegating the actual bargaining to individual employers or groups of employers, and ratifying the result (assuming the result is consistent with sectoral mandates). In the BC public sector, this model is currently in place only for support staff bargaining in the K-12 public education sector.

Model 3 – This model represents a larger role for the employers' association, where it acts as bargaining agent (although, because employer participation is voluntary, the result may end up as a combination of models 3 and 2). Unlike the past PSEA experience with somewhat similar appearing multi-institution discussions, the employers' association retains the right and responsibility to ratify the results of negotiations. Model 3 does not preclude two-tier bargaining.

Model 4 – This model contemplates that the employers' association will generally act as bargaining agent for the members or groups of members, rather than delegating bargaining rights to individual employers. The difference from model 3 is that participation in multi-employer bargaining is not completely up to each individual institution. This model contemplates a process by which members collectively determine the composition of employer bargaining groups. An individual institution wishing not to participate would need to justify its non-participation in accordance with that process. The advantage of 4 versus 5 is that the former allows more

flexibility and member control. Like Model 3, it is compatible with two-tier bargaining.

Model 5 – In model 5, the government establishes multi-employer bargaining units by legislation, generally after a consultation process. Although to date government has not chosen to legislate multi-employer bargaining units in the post-secondary sector, it is the most common model for accredited employers' associations in the other sectors. Model 5 is used in health (HEABC and five bargaining units), K-12 public education (BCPSEA and the provincial teacher bargaining unit), and social services (CSSEA and three bargaining units).

The review identified options 2, 3, or 4 (or some variant) as being available to PSEA. Options 1 and 5 are not available under PSEA's new organization. In addressing the concerns of PSEA with multi-employer bargaining, the review stated that the model adopted must support a cohesive collective bargaining stance and associated strategies in order to achieve positive bargaining outcomes for the sector. At the same time, the model must enable different labour relations solutions where these are required to be responsive to differences between institutions.

The review recognized that the choice of model is not entirely up to the employers. Although the unions have expressed strong support for common table bargaining that support is not universal and the degree of support can change over time. If employers opt for a form of common table bargaining, they may have to deal with situations where the faculty union does not want to be represented at the table. In British Columbia, the Labour Relations Board does not consider it to be a fair practice to bargain to impasse a multi-employer bargaining structure. However, there are various tactics available to deal with that issue if the need arises. The critical point for multi-employer bargaining is the point of critical mass. If the participating parties constitute a critical mass in terms of employees, full-time equivalents (FTEs), and numbers of institutions, problems with non-participants are manageable.

Labour Relations Recommendations

The review concluded that the advantages of properly structured, two-tiered multi-employer bargaining outweigh the disadvantages. Also, that the employers in the sector can organize themselves for effective and strategic multi-employer bargaining only if the decision as to whether to participate or not is made collectively, rather than by each institution without regard to the collective interests of employers in the sector.

The review recommended the following:

- That PSEA adopt a two-tiered version of model 4 above for faculty collective bargaining, by way of a policy adopted at the annual general meeting. The policy would establish a single common table for faculty collective bargaining, including all institutions, as the structural starting point. The policy would include a mechanism for establishing other tables or one-off bargaining, where exceptional circumstances indicate that this would be appropriate. The mechanism for establishing another table or one-off bargaining would be a majority vote of the PSEA board.

- That PSEA adopt model 4 for support staff collective bargaining, with similar provisions as those recommended for the structure of faculty bargaining.

- That PSEA consider again the advisability of including issues related to workload quantity in the matters to be negotiated at the faculty common table.

- Subject to tactical considerations, the employers consider bringing to the faculty common table those issues that significantly and inappropriately constrain management rights at one or more institutions.

- That the EBC and MSC each be subcommittees of the PSEA board, chaired by a director. The subcommittees should have the ability to add other non-board participants.

- That the common table bargaining committees continue, as in the past, to be small. Members of the committees should be chosen in accordance with criteria adopted by the board, and be appointed by a committee composed of the board chair, the CEO, and a director selected by the board. The committee's power of appointment should include the power to add or remove members of the committee.

- That ratification decisions for multi-institutional tentative agreements be by modified weighted voting (for participating employers only, using the formula recommended below under governance).

The review found it to be important that PSEA develop a culture where (to borrow terminology from the unions) "an injury to one is an injury to all," to maximize the potential for multi-employer bargaining to resolve in the employers' favour, 'superior benefit' issues and restrictions on management rights that may be more severe for one employer than others. The promotion of the culture depends on changes in the governance model as well as a conscious effort of the employer participants in the bargaining process.

Observations on Governance

The review defined governance to be the way in which an organization makes its important decisions, determines who is responsible for carrying them out, and the organization's system of accountability. An organization's governance model includes its function, its structure, and its practices. The formal elements of the model—its constitution, bylaws and policies—define how it is supposed to function, and to a considerable degree, they shape the manner in which it does function. But informal elements, such as habits, accepted practices, and a shared view of its own history (accurate or otherwise) are often as important as the formal ones in determining an organization's governance behavior.

Some unique aspects, relative to other employers' associations, about the structure of the PSEA were identified. The PSEA governance structure was one area of focus, including the "fiduciary and core responsibilities of the Board of Directors" and the "accountability and functioning" of the board. *Fiduciary*, as an adjective, means (*Shorter Oxford*) "acting as a trustee," which involves a relationship of accountability the Cameron observed and posed what he believed to be the real question in the current structure. "Accountability to whom?"

The review acknowledged that the PSEC model contemplates the co-existence of two primary accountabilities for employers' associations. The very name "employers' association" implies accountability to the employers in the sector, which in itself requires balancing the interests of individual members with their collective interests. Then there is the accountability of the association to the Public Sector Employers' Council, which, while a hybrid creature, has by its statutory composition, a governmental majority. (This accountability to PSEC is set out in section 6 of the *Public Sector Employers' Act*, which requires employers' associations "to assist the council [PSEC] in carrying out any objectives and strategic directions established by the council for the employers' association".) Cameron noted that there is an inherent tension in dual accountability, and the employers, employers' association, and PSEC must continually seek the appropriate balance.

The review of PSEA governance led to the conclusion that the formal structure and the informal elements of the governance model combine in PSEA to produce an over-emphasis on accountability to individual employers at the expense of accountability to the sector (and to PSEC). As a result, the organization has difficulty in acting strategically in the collective interests of its members, and its coordinating role (and its mode of accountability to PSEC) often seems to be limited to monitoring compliance with the PSEC fiscal mandate.

The following recommendations were made with respect to PSEA governance:

- That the annual general meeting consist of two delegates from each institution—the CEO (or, where the CEO is unable to attend, a designate) and the senior HR/LR person (or where the senior HR/LR person is unable to attend, a designate).

- That a system of partially weighted voting be used for bylaw amendments, election of board members, and other key issues the association may define. The recommended weights are based on unionized FTEs:

  - Under 100
    one vote

  - 101 to 300
    two votes

  - 301 to 600
    three votes

  - 601 to 1000
    four votes

  - 1001 to 1500
    five votes

  - 1501 plus
    six votes

- Except where expressly provided otherwise, an institution's votes are to be cast by the CEO (or designate).

- That the board consist of, and be elected as follows (in the following order, except that the first three directors can be elected simultaneously if done in caucuses). No delegate is eligible if there is already a director from that institution.
  - 1 director to be elected by and from the colleges
  - 1 director to be elected by and from the university colleges
  - 1 director to be elected by and from the institutes
  - 3 directors to be elected by the annual general meeting generally
  - 2 directors to be elected by and from the HR/LR delegates present (by

weighted vote, where the HR/LR person exercises the vote)[2]
  - 3 directors appointed by the provincial government at any time

- That the CEO (formerly called the Executive Director) be a member of the board without voting rights.

- That the board seeks to operate as a policy board or an amalgam of a policy board and a results-oriented board, with any adaptations of the model necessary for the specific circumstances of PSEA.

Observations and Recommendations on Operations

The review made the following observations and recommendations with respect to PSEA operations:

- Clarify and confirm the association's mandate and its relationship with the accountabilities established by the *PSEC Core Mandate and Accountability Framework*.

- Develop and implement a client service model that is supportive of employers' in the post-secondary sector and recognized as such.

- Identify internal efficiencies and shared service opportunities with other employers' associations who have developed the capacity and expertise in a service area. The resources do not presently exist to replicate the operating models of the other three accredited employers' associations, nor would it be efficient to do so.

- Develop and implement a business planning and budgeting cycle with the emphasis on service delivery and operating efficiency.

- Develop and implement an organizational structure that supports the service model and is consistent with the obligations established by the *PSEC Core Mandate and Accountability Framework*.

[2] This recommendation was modified following a September 3, 2004 Executive Committee meeting such that the senior Human Resource practitioners on the Board of Directors have voice but no vote.

14 Implementation of the Third Party Review Recommendations

At a Special General Meeting held on December 1, 2004, the PSEA Bylaws were approved as amended (Appendix 3) and a new Board of Directors was elected:

- A representative from the College Sector – Dale Dorn, President, Vancouver Community College
- A representative from the Institute Sector – Tony Knowles, President, BCIT
- A representative from the University College Sector – Skip Bassford, President, University College of the Fraser Valley
- 3 members-at-large
    - Liz Ashton, President, Camosun College
    - Nick Rubidge, President, College of the Rockies
    - Marian Exmann, Associate Vice-President, Human Resources, Douglas College
- 2 representatives of the provincial government
    - Bob de Faye – Deputy Minister & CEO, PSEC
    - Heather Brazier – Director of Finance, Post-Secondary Sector, Ministry of Advanced Education
- The Chair and the Vice-Chair were chosen from the above:
    - Dale Dorn, Chair
    - Skip Bassford, Vice-Chair
- The Chair and the Vice-Chair of the Standing Committee on Human Resource Practices (SCHRP) are also members with voice but no vote:
    - Liz McKinlay, Chair – Associate Vice-President, Human Resources, Kwantlen University College
    - Ken Jillings, Vice-Chair – Director of Human Resources, Langara College

In response to the Third Party Review recommendations and through consultation with member employers, a service plan was developed as the basis for a business plan for the Association. The PSEA Service Plan was adopted September 28, 2004.

On January 24, 2005, the Board passed the following motion:

MOTION that the PSEA obtain the services of an organizational/management consultant with no prior association with PSEA to undertake a review and provide recommendations concerning the organizational structure, association

management/leadership and associated resources required to advance the PSEA Service Plan adopted (September 28, 2004).

Terms of Reference

- Review the current structure and resources of PSEA

- Consult with the Board of Directors, member institutions both at the senior leadership level and the human resource/labour relations practitioner level, PSEA staff and as deemed necessary external agencies/organizations concerning the operation and organization of PSEA as a mulit-employer association with the mandate established by the Public Sector Employers Act.

- Make recommendations concerning the organization of staff resources and the alignment of these resources with the PSEA Service Plan; identify shared service opportunities with other employer associations within the PSEC model

- Make recommendations on the nature and structure of the senior leadership position(s) of the Association

These recommendations should reflect the implications to the association of the designation as the accredited bargaining agent, potential changes to collective bargaining structures in the sector and the principles articulated in the PSEA Service Plan.

15. CONCLUSION

Collective bargaining in the college and institute sector occurs in a multi-employer environment with each employer affected by the actions of others. Further there are regulatory, provincial and external structures and influences outside the control of individual employers. Employers in the post secondary sector continue to grapple with the notion of community of interest where collective bargaining and general labour relations is concerned.

Government through the establishment and support of the PSEC model that governs all of the public sector continues to send the message that human resource management, and in particular labour relations, requires not only coordination but also a form of centralized management and resources if sectoral and individual employer objectives are to be achieved.

The central question that employers must come to terms with is:

How best do we achieve our labour relations, and in particular collective bargaining objectives in an environment where:

- *the nature of the work and the skills of employees are comparable,*
- *the employers, while different, possess many of the same characteristics and structures, and where*
- *there are provincial, regulatory and other structures and influences outside the control of individual employers?*

APPENDIX 1

PUBLIC SECTOR EMPLOYERS ACT

[RSBC 1996] CHAPTER 384

Contents

Part 1 — Introductory Provisions

Definitions

1 In this Act:

"contract of employment" means a policy or contract, whether written or oral, express or implied, with respect to or containing terms of employment between a public sector employer and an employee or a class of employee;

"council" means the Public Sector Employers' Council continued under section 3;

"employers' association" means an employers' association established under section 6;

"employment compensation standard" means a standard established under section 14.2 or 14.3 (5);

"employment termination" includes the expiry, cessation, change or renewal of a contract of employment;

"employment termination standard" means a standard established under section 14.4;

"minister", other than in Part 3, Division 2, means the minister who is the chair of Treasury Board;

"public sector employee" means a person employed by, or appointed to an office with, a public sector employer, but does not include a justice or a person appointed as a justice;

"public sector employer" means

(a) the government,

(b) a corporation or an unincorporated board, commission, council, bureau, authority or similar body that has

(i) on its board of management or board of directors, 50% or more of members who are appointed by an Act, a minister or the Lieutenant Governor in Council, or

(ii) employees appointed under the *Public Service Act,*

and that is designated in the regulations,

(c) a board of school trustees as defined in the *School Act* or a francophone education authority as defined in that Act,

(d) a university as defined in the *University Act* and the University of Northern British Columbia,

(d.1) Royal Roads University continued under the *Royal Roads University Act,*

(d.2) [Repealed 2002-35-12.]

(e) an institution as defined in the *College and Institute Act* or the British Columbia Institute of Technology or the Open Learning Agency,

(f) a hospital as defined in the *Hospital Act* or an employer that is designated in the regulations as a health care employer, and

(g) an employer that is designated in the regulations as a social services employer;

"public service sector" means the government and the employees of the government;

"sector" means all the employers referred to in a paragraph of the definition of "public sector employer" and the employees of those employers.

Purposes of Act

2 The purposes of this Act are

(a) to ensure the coordination of human resource and labour relations policies and practices among public sector employers, and

(b) to improve communication and coordination between public sector employers and representatives of public sector employees.

Part 2 — Public Sector Employers' Council

Public Sector Employers' Council

3 (1) The Public Sector Employers' Council is continued.

(2) The council consists of the minister and the following members appointed by the Lieutenant Governor in Council:

(a) not more than 7 persons each of whom is either a member of the Executive Council or a deputy minister;

(b) a person nominated by each of the employers' associations established under Part 3;

(c) the agency head appointed under the *Public Service Act;*

(3) The minister is the chair of the council.

(4) The chair may authorize another member of the Executive Council to act as chair of the council during his or her absence from a meeting of the council.

(5) A member of the Executive Council other than the minister may authorize a deputy minister or other employee of the government to represent the member of the Executive Council at a meeting of the council.

(6) If an employers' association fails to nominate a person for the purpose of subsection (2) (b), the Lieutenant Governor in Council may appoint a person to represent the employers' association on the council.

(7) A representative of the Union of British Columbia Municipalities may attend meetings of the council as an observer.

Functions of the council

4 (1) The functions of the council are

(a) to set and coordinate strategic directions in human resource management and labour relations,

(b) to advise the government on human resource issues with respect to the public sector, and

(c) to provide a forum to enable public sector employers to plan solutions to human resource issues,

consistent with cost efficient and effective delivery of services in the public sector.

(2) In addition, it is a function of the council to enable representatives of public sector employees to consult with public sector employers on policy issues that directly affect the employees.

Council access to employment information

4.1 A public sector employer must provide, without charge, to the council copies of contracts of employment and other information that the council requests for the purpose of monitoring compliance with employment compensation standards and employment termination standards.

Section Repealed

4.2 [Repealed 2002-64-2.]

Employees of the council

5 (1) The council may employ a chief executive officer and other officers and employees it considers necessary for the purposes of this Act, and may determine their duties, conditions of employment and remuneration.

(2) The council may retain consultants, experts and specialists and set the remuneration of the persons retained and the terms and conditions of the retainers.

(3) and (4) [Repealed 1999-44-97.]

Part 3 — Public Sector Employers' Associations

Division 1 — Formation of Employers' Associations

Public Sector Employers' Associations

6 (1) An employers' association must be established for each sector other than the public service sector.

(2) The purposes of an employers' association are to coordinate the following with respect to a sector:

(a) compensation for employees who are not subject to collective agreements;

(b) benefit administration;

(c) human resource practices;

(d) collective bargaining objectives.

(3) In addition, it is a purpose of an employers' association

(a) to foster consultation between the association and representatives of employees in that sector, and

(b) to assist the council in carrying out any objectives and strategic directions established by the council for the employers' association.

(4) Every public sector employer referred to in paragraphs (b) to (g) of the definition of "public sector employer" must become and remain a member of the employers' association for the sector that applies to that employer.

Requirements

7 (1) Every employers' association must do the following:

(a) make provision for the representation of the government on the board of directors of the association;

(b) make provision to levy fees and assessments from its members for the purposes referred to in section 6;

(c) have a properly constituted board of directors and bylaws or rules considered necessary by the minister for the administration and management of the employers' association;

(c.1) comply with any strategic direction that is set by the council in the exercise of its functions under section 4 and that is of general application or applies specifically to that association;

(c.2) with respect to persons who are employed by the association and who are not subject to a collective agreement, comply

(i) as if it were a public sector employer, with any employment compensation standard or employment termination standard that is of general application, or

(ii) with any employment compensation standard that the minister may establish, under section 14.3, specifically for those persons or that association;

(c.3) provide, without charge, to the council copies of

(i) contracts of employment relating to persons who are employed by the association and who are not subject to a collective agreement, and

(ii) other information that the council requests for the purpose of monitoring compliance with paragraph (c.2);

(d) comply with any further conditions prescribed by the Lieutenant Governor in Council.

(2) If authorized to do so by its bylaws or rules, an employers' association may levy additional fees or assessments for the provision of other services for its members.

(3) An employers' association may bargain collectively on behalf of its members if authorized to do so under section 43 of the *Labour Relations Code,* section 12 of this Act or any other enactment.

(4) Despite any other Act, the constitution and bylaws or rules of the employers' association are not effective until approved by the minister.

(5) Despite the *Society Act,* an employers' association must not exercise any of the borrowing powers conferred by the *Society Act* without the prior approval of the minister.

Section Repealed

8 [Repealed 2002-48-62.]

Minister may require that bylaws and constitution be revised

8.1 (1) Despite the *Society Act*, the minister may request an employers' association to

(a) amend or repeal an existing bylaw or rule or make a new bylaw or rule, or

(b) amend or repeal a provision of its constitution or make a new provision of its constitution.

(2) If an employers' association does not comply with the minister's request under subsection (1) within 60 days after the date of the request, the Lieutenant Governor in Council, in accordance with the request, may

(a) amend or repeal the existing bylaw or rule or make the new bylaw or rule, or

(b) amend or repeal the existing provision of the constitution or make the new provision of the constitution.

(3) A bylaw or rule may not be made, amended or repealed under subsection (2) (a) unless notice of the proposed bylaw, rule, amendment or repeal is given to the employers' association

(a) at least 30 days before the bylaw, rule, amendment or repeal comes into force, or

(b) within a period shorter than that set out in paragraph (a) that the minister considers appropriate in the circumstances.

(4) A provision of the constitution of an employers' association may not be made, amended or repealed under subsection (2) (b) unless notice of the proposed provision, amendment or repeal is given to the employers' association

(a) at least 30 days before the provision, amendment or repeal comes into force, or

(b) within a period shorter than that set out in paragraph (a) that the minister considers appropriate in the circumstances.

Application of the *Society Act* to employers' associations

9 (1) Sections 7 (1), 24 (1) and 31 of the *Society Act* do not apply to an employers' association.

(2) A member of an employers' association has the votes and may vote in the manner set out in the association's bylaws.

(3) The government may appoint to the board of directors of an employers' association the number of directors provided for in the bylaws of the association and the members of the association may, in accordance with those bylaws, nominate, elect or appoint the remaining directors.

(4) A director of an employers' association may be removed from office, and another director may be elected or appointed to serve during the balance of the term, in the manner provided for in the association's bylaws.

(5) A reference in the *Society Act* to a special resolution is, when read in relation to an employers' association established under this Act, to be read as a reference to

(a) a special resolution as defined in the association's bylaws, or

(b) if those bylaws do not define a special resolution, a special resolution as defined in the *Society Act.*

(6) If there is a conflict between a provision of this Act and a provision of the *Society Act,* the provision of this Act prevails.

Appointment of public administrator

9.1 (1) The Lieutenant Governor in Council may appoint a public administrator to discharge the powers, duties and functions of a board of directors of an employers' association if the Lieutenant Governor in Council considers this necessary in the public interest.

(2) On appointment of a public administrator, the members of the board of directors cease to hold office unless otherwise ordered by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may specify

(a) the powers, duties and responsibilities of a public administrator appointed under this section,

(b) the terms and conditions for management of the property and affairs of the employers' association by a public administrator, or

(c) how the employers' association will operate after the termination of the appointment of a public administrator.

Division 2 — Collective Bargaining

Definitions

10 In this Division:

"board" means the Labour Relations Board under the Code;

"Code" means the *Labour Relations Code;*

"minister" means the minister charged with the administration of this Division;

"organization" means an organization formed under section 13.

Accreditation for collective bargaining

11 (1) An employers' association or 2 or more members of an employers' association may apply to the board for accreditation under section 43 of the Code.

(2) In addition to its other purposes under this Act, an employers' association that is accredited under the Code has the purpose of acting as bargaining agent for the members of the employers' association that are named in the accreditation.

Direction by minister

12 (1) Subject to subsection (2), the minister may, on application of 2 or more employers that are members of an employers' association or on his or her own motion and after the investigation considered necessary or advisable, direct the board to consider whether in a particular case an employers' association or any group of employers in an employers' association would be an appropriate bargaining agent for the employers in a sector or a part of a sector.

(2) The minister must not make a direction under this section unless

(a) an employers' association or any employers that are members of an employers' association have at any time before or after the commencement of this Act made an application for accreditation under section 43 of the Code or any predecessor to that section, and

(b) the minister considers that the direction is necessary to secure and maintain industrial peace and promote conditions favourable to settlement of disputes.

(3) If a direction is made under subsection (1), the board must determine whether the employers' association or any group of employers in the employers' association is appropriate for collective bargaining for the employers in the sector or part of the sector and must make any other examination of records, inquiry or findings including the holding of hearings it considers necessary to determine the matter.

(4) The board must make its determination under subsection (1) within the time period specified by the minister.

(5) After a determination under subsection (3) and if the board considers it necessary or advisable, the board may recommend to the minister that the

employers' association or any group of employers in the employers' association should be the bargaining agent for all or any of the employers in the sector.

(6) When the minister receives a recommendation from the board, the minister may direct that the employers' association or any group of employers in the employers' association has exclusive authority to bargain collectively for the employers who are named by the minister and to bind those employers by collective agreement.

(7) The board may modify or cancel an accreditation under section 43 of the Code to reflect a direction under subsection (6).

(8) The minister may cancel or modify a direction under subsection (6).

Collective bargaining by part of employers' association

13 (1) If the minister makes a direction under section 12 with respect to a group of employers in an employers' association, the employers in that group must form an organization for the purpose of allowing them to participate in collective bargaining as if they were named in an accreditation under section 43 of the Code.

(2) In addition, it is a purpose of an organization to assist the employers' association in carrying out any objectives and strategic directions established by the employers' association for the organization.

(3) An organization must establish a constitution and bylaws or rules that are satisfactory to the minister to enable the organization to participate in collective bargaining.

(4) If, in the opinion of the minister, an organization is unable or unlikely to establish a constitution and bylaws or rules that are satisfactory to the minister, the minister may recommend that the rules for the organization be prescribed by the Lieutenant Governor in Council.

(5) When the constitution and bylaws or rules of an organization are prescribed, they apply to the organization as if they were established and approved under subsection (3).

(6) An organization may levy fees or assessments from the employers in the organization for the purpose of participating in collective bargaining.

Application of *Labour Relations Code*

14 (1) Sections 12 and 13 apply despite sections 43 and 44 of the Code.

(2) The provisions of the Code respecting multi-employer bargaining other than sections 43 and 44 of the Code apply to an employers' association or organization that receives its authority to bargain collectively under section 13.

Part 3.1 — Exempt Employee Compensation

Division 1 — Definitions

Definitions

14.1 In this Part:

"compensation" includes all remuneration provided to an employee by a public sector employer for service with the employer, whether in the form of money or other benefit;

"effective date" means the date on which the *Public Sector Employers Amendment Act, 2002* receives first reading in the Legislative Assembly;

"employee" means a public sector employee who is excluded from membership in a bargaining unit.

Division 2 — Employment Compensation Standards

Vacation leave and sick leave standards

14.2 (1) Except as provided under subsection (2), an employee is not entitled to

(a) bank, accumulate or carry forward to subsequent employment years any unused vacation leave benefits attributable to any previous employment year, or

(b) be paid out for unused vacation leave for an employment year.

(2) An employee who has unused vacation days for an employment year may, to the extent that the contract of employment allows the carrying forward of unused vacation days,

(a) be paid out for the unused vacation days in the form of a lump sum cash payment in the employment year immediately following the employment year for which the unused vacation leave is attributable,

(b) carry forward the unused vacation days and use them for vacation leave in the employment year immediately following the employment year for which the unused vacation leave is attributable, or

(c) in the employment year immediately following the employment year for which the unused vacation leave is attributable, in part, be paid out under paragraph (a) and, in part, carry forward unused vacation days and use them for vacation leave under paragraph (b).

(3) In respect of sick leave benefits that allow an employee to bank, accumulate or carry forward unused sick days for an employment year, the employee is not entitled to be paid out for any unused sick day in the form of

(a) additional vacation leave, or

(b) a cash payment or any other benefit, other than sick leave.

(4) Subsections (1) to (3) do not apply in relation to an employee's vacation leave benefits or sick leave benefits banked or accumulated on or before December 31, 2002.

(5) The provisions of this section

(a) are deemed to be employment compensation standards for the purposes of this Act, and

(b) are deemed to be included in employees' contracts of employment that are in force on January 1, 2003 or are commenced, changed or renewed on or after that date.

(6) Effective January 1, 2003, any provision of a contract of employment referred to in subsection (5) (b) that conflicts or is inconsistent with an employment compensation standard established by this section is void to the extent of the conflict or inconsistency.

Other compensation standards

14.3 (1) The minister may direct an employers' association or a public sector employer to prepare

(a) one or more compensation plans respecting compensation that will be provided to

(i) employees in the sector or within the employ of the public sector employer, or

(ii) persons employed by the employers' association and who are not subject to a collective agreement, and

(b) a report in respect of each compensation plan required under paragraph (a) describing, in accordance with the minister's directions,

(i) the methodology used in devising the plan, and

(ii) how the employers' association or public sector employer intends to implement and monitor the compensation plan.

(2) The minister may do one or more of the following for the purposes of a direction issued under subsection (1):

(a) make the direction specific to one or more employees or persons referred to in subsection (1) (a) and, for this purpose, may specify a position or an occupation or categories of positions or occupations;

(b) prescribe information that must be included in a compensation plan;

(c) without limiting paragraph (b), require that the employers' association or public sector employer include in the plan

(i) a detailed description of the nature, amount and range of compensation that will be provided to the employees or persons in respect of whom the plan applies, and

(ii) any other information the minister considers appropriate;

(d) prescribe information that must be included in a report referred to in subsection (1) (b);

(e) without limiting paragraph (d), require that the employers' association or public sector employer include in the report

(i) comparisons of actual compensation provided to persons employed in the same or a similar sector, position or occupation,

whether those persons are employed in the public sector or the private sector, as considered appropriate by the minister, and

(ii) any other information the minister considers appropriate;

(f) specify the form and manner in which a compensation plan and the report in respect of it are to be prepared and submitted for review by the minister.

(3) The minister may issue different directions under subsection (1) for different employers' associations, public sector employers, public sector employees or persons referred to in paragraph (a) of that subsection.

(4) If directed to prepare a compensation plan and report under this section, the employers' association or public sector employer in respect of whom the direction is issued must, in accordance with the minister's direction,

(a) prepare the plan and report, and

(b) submit them for review by the minister.

(5) If, following a review of a compensation plan, the plan is approved by the minister, that compensation plan is adopted as an employment compensation standard on that approval.

(6) On the minister issuing a direction to an employers' association or a public sector employer under subsection (1), no increase in compensation may be provided to employees or persons in positions or occupations in respect of which the direction is issued unless

(a) a compensation plan in respect of those employees or persons is approved by the minister and the increase in compensation is consistent with the applicable employment compensation standard resulting from the operation of subsection (5),

(b) the increase in compensation was agreed to before the date on which the minister issues the direction and the increase in compensation is consistent with the applicable employment compensation standard, if any, that was in force and effect before the issuance of the direction,

(c) the increase is the result of a change in an employee's or person's position within a range of positions that was established for the sector, employee or person before the issuance of the direction, or

(d) the increase is within a range of compensation that was established for the employee's or person's position before the issuance of the direction.

Division 3 — Employment Termination Standards

Employment termination standards

14.4 (1) The Lieutenant Governor in Council may, by regulation, establish employment termination standards for an employee.

(2) In making regulations under subsection (1), the Lieutenant Governor in Council may do one or more of the following:

(a) delegate a matter to the council, the Treasury Board, an employers' association, a public sector employer or the minister;

(b) confer a discretion on the council, the Treasury Board, an employers' association, a public sector employer or the minister;

(c) establish different standards for different public sector employers or public sector employees;

(d) specify positions or occupations or categories of positions or occupations for the purpose of paragraph (c).

(3) If the Lieutenant Governor in Council establishes an employment termination standard by regulation under subsection (1), effective on the date on which the regulation comes into force,

(a) the standard is deemed to be included in all applicable contracts of employment that are commenced, changed or renewed on or after that date, and

(b) any provision of an applicable contract of employment referred to in paragraph (a) that conflicts or is inconsistent with the standard is void to the extent of the conflict or inconsistency.

(4) The Employment Termination Standards regulation (B.C. Reg. 379/97) made under this Act before the commencement of this section continues, as amended by this section, and is deemed to have been made under this section.

(5) On the effective date,

(a) the Employment Termination Standards regulation (B.C. Reg. 379/97) is deemed to have been amended as set out in the Schedule to the *Public Sector Employers Amendment Act, 2002*,

(b) the employment termination standards set out in that regulation are deemed to be included in all applicable contracts of employment that are in force on the effective date or are commenced, changed or renewed on or after that date, and

(c) any provision of an applicable contract of employment referred to in paragraph (b) that conflicts or is inconsistent with any of those standards is void to the extent of the conflict or inconsistency.

(6) Subsection (5) is retroactive to the extent necessary to give it force and effect on and after the effective date.

(7) The amendment to section 5 (2) of the Employment Termination Standards regulation (B.C. Reg. 379/97) made under this section does not apply in relation to an employee with whom a contract of employment was entered into before the effective date and which contract of employment is for a definite term unless that contract of employment is changed or renewed on or after the effective date.

Division 4 — Compensation Information

Definition and application

14.5 (1) In this Division, **"senior employee"** means an employee who

(a) earns a base salary above a prescribed amount, and

(b) is not employed in a prescribed position or occupation or category of positions or occupations that may be excluded from the application of this Division.

(2) For the purpose of the definition of "senior employee", the Lieutenant Governor in Council may make regulations

(a) prescribing an amount for the purpose of paragraph (a) of that definition, and

(b) prescribing positions or occupations or categories of positions or occupations for the purpose of paragraph (b) of that definition.

(3) This Division applies to a senior employee's contract of employment that is in force on the effective date or entered into on or after that date.

Compensation information to be specified and provided

14.6 (1) For each senior employee, a public sector employer must provide for the chief executive officer of the council a report specifying all the terms and conditions of employment relating to the senior employee's compensation.

(2) If any change is made to the terms and conditions of employment relating to a senior employee's compensation, the public sector employer must provide for the chief executive officer of the council a revised report specifying each change made to those terms and conditions.

(3) The terms and conditions referred to in subsection (1) and any changes to them must be specified and provided in a form and in a manner acceptable to the chief executive officer of the council.

Filing of contracts of employment and compensation information

14.7 (1) A public sector employer must file with the chief executive officer of the council a report required to be provided in relation to a senior employee under section 14.6 together with a copy of the written contract of employment, if any, for the senior employee

(a) within 15 days after the contract of employment is entered into, and

(b) within 15 days of any change to a term or condition of the senior employee's contract of employment that relates to compensation.

(2) In the case of a contract of employment entered into before this section comes into force, the public sector employer must file the report and copy described in subsection (1) with the chief executive officer of the council before March 31, 2003.

(3) A public sector employer must provide the chief executive officer of the council with any information the chief executive officer of the council may require to be satisfied that a copy of a written contract of employment is a true copy or that the report described in subsection (1) or (2) includes complete and accurate information regarding the terms and conditions of employment.

(4) If a public sector employer fails to comply with subsection (1), (2) or (3), the minister may declare all or part of the contract of employment to be void and

on that declaration the contract of employment or part of it, as the case may be, is deemed to be void.

Contracts of employment are public documents

14.8 (1) A provision of a contract of employment that all or part of the contract is to remain confidential is void.

(2) Each senior employee's contract of employment is deemed to include a provision that the contract is a public document and the public sector employer must make the contract, together with any report filed with the chief executive officer of the council in relation to it, available for public inspection in accordance with this section.

(3) A public sector employer must make available for public inspection during normal business hours information in contracts of employment and reports referred to in subsection (2) that would otherwise be available to an applicant making a request under the Freedom of Information and Protection of Privacy Act.

Division 5 — Tribunal Exclusions

Members of tribunals

14.9 (1) This Part does not apply to

(a) a coroner under the *Coroners Act*,

(b) the fire commissioner under the *Fire Services Act*,

(c) an arbitrator under the *Residential Tenancy Act*,

(d) a governor or director of the Workers' Compensation Board under the *Workers Compensation Act*, or

(e) a person who is a member of a tribunal designated in the Schedule, when the person is acting in his or her capacity as a member of the tribunal.

(2) The Lieutenant Governor in Council may, by regulation, add a tribunal to the Schedule.

Part 4 — General

Power to make regulations

15 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) designating employers for the purposes of the definition of "public sector employer";

(b) respecting the information that must be provided to the council to enable it to carry on its purposes under section 4;

(c) prescribing conditions for the purposes of section 7 (1);

(d) prescribing the constitution and bylaws or rules of an employers' association or an organization formed under section 13.

Compliance with Part 3.1

15.1 (1) If, after the effective date of Part 3.1, a person accepts money or receives a benefit from a public sector employer that exceeds the amount or benefit permitted by that Part or by a regulation under that Part, the excess money or cost to the employer of the benefit is a debt that is payable to the government by the person who receives the amount or benefit.

(2) Subsection (1) does not apply if the public sector employer referred to in that subsection recovers the excess money or cost within

(a) the year after the date on which the person accepts the money or receives the benefit that exceeds the amount or benefit permitted by Part 3.1 or by a regulation under that Part, or

(b) a longer period specified by the minister.

Transitional — regulations

16 (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable for the purpose of more effectively bringing into operation this Act and to obviate any transitional difficulties encountered in so doing.

(2) Without limiting subsection (1), the regulations may for a period the Lieutenant Governor in Council specifies, suspend the operation of a provision of an enactment if that provision would impede the effective operation of this Act.

(3) Unless earlier repealed, a regulation under subsection (1) or (2) is repealed one year after it is enacted.

Schedule

Designated Tribunals

(section 14.9)

Appeal Board (*Motion Picture Act*)

Appeal Division (*Workers Compensation Act*)

BC Benefits Appeal Board

British Columbia Farm Industry Review Board (*Natural Products Marketing (BC) Act*)

British Columbia Securities Commission

British Columbia Utilities Commission

Board of Parole (*Parole Act*)

Building Code Appeal Board (*Local Government Act*)

Commercial Appeals Commission

Community Care Facility Appeal Board

Employment and Assistance Appeal Tribunal (*Employment and Assistance Act*)

Employment Standards Tribunal

Environmental Appeal Board

Expropriation Compensation Board

Farm Practices Board

Financial Institutions Commission

Forest Appeals Commission

Forest Practices Board

Health Care and Care Facility Review Board

Health Care Practitioners Special Committee for Audit (*Medicare Protection Act*)

Hospital Appeal Board (*Hospital Act*)

Human Rights Tribunal

Labour Relations Board

Land Reserve Commission

Mediation and Arbitration Board (*Petroleum and Natural Gas Act*)

Medical Review Panel (*Workers Compensation Act*)

Medical Services Commission (*Medicare Protection Act*)

Motor Carrier Commission

Private Post-Secondary Education Commission

Property Assessment Appeal Board

Property Assessment Review Panels

Provincial Agricultural Land Commission

Review Board (*Criminal Code*)

Review Panel (*Mental Health Act*)

Workers' Compensation Review Board

APPENDIX 2

COLLEGE AND INSTITUTES AS AT SEPTEMBER, 2004

Institution	Faculty & Vocational Unions	FTEs	Support Staff Union	FTEs
BCIT	BCITFA/BCGEU	828.95/287.54	BCGEU	521.20
Camosun College	FPSE/BCGEU	367.49/49.07	CUPE	342.00
Capilano College	FPSE	351.31	OPEIU	201.79
College of New Caledonia	FPSE	223.51	PPWC	179.00
College of the Rockies	FPSE	134.63	CUPE	74.40
Douglas College	FPSE	437.00	BCGEU	298.00
Emily Carr Institute of Art & Design	FPSE	42.00	CUPE	68.00
Institute of Indigenous Government	Decertified		Decertified	
Justice Institute of British Columbia	Decertified		BCGEU	111.22
Kwantlen University College	FPSE	551.14	BCGEU	349.00
Langara College	FPSE	334.39	CUPE	210.00
Malaspina University-College	FPSE/BCGEU	298.00/147.00	CUPE	214.00
Nicola Valley Institute of Technology	FPSE	29.00	FPSE	9.00

Institution	Faculty & Vocational Unions	FTEs	Support Staff Union	FTEs
North Island College	FPSE	165.00	CUPE	110.00
Northern Lights College	BCGEU	118.00	BCGEU	93.06
Northwest Community College	FPSE/CUPE/ BCGEU	38.00 FPSE & CUPE – 68.00 BCGEU	BCGEU	93.55
Okanagan University College	OUCFA/BCGEU	299.05/114.55	BCGEU	346.00
Open Learning Agency	FPSE	55.43	BCGEU	401.00
Selkirk College	FPSE/BCGEU	127.00/85.00	PPWC	91.00
University College of the Cariboo (to be re-named Thompson Rivers University)	FPSE	467.62	CUPE	221.00
University College of the Fraser Valley	FPSE	316.00	FPSE	275.00
Vancouver Community College	FPSE	512.08	CUPE	315.62

APPENDIX 3

Summary of Changes to the
PSEA Constitution and Bylaws
November, 2004

Constitution	
OLD BYLAWS	**PROPOSED REVISIONS TO BYLAWS**
	1.1 (d) added: "Chief Executive Officer" or "CEO" means the person employed pursuant to Bylaw 9.5 (except where the context indicates that the term refers to the chief executive officers of a member)
	1.1 (j) deleted: Executive Director means the chief operating officer of the Association employed pursuant to Bylaw 10.5
	1.1 (r) reference to proxy voting deleted
1.1(v) "Secretary" means the Executive Director of the Association or any other person appointed by the Directors to execute the responsibilities of the office of the Secretary as set out in Bylaw 10.6	1.1(v) "Secretary" means the Chief Executive Officer or any other person appointed by him/her to execute the responsibilities of the secretary as set out in Bylaw 9.8
1.1(y)(i) a resolution passed in a general meeting by a majority of not less than 66% of the votes of the Members of the Association who, being entitled to do so, vote in person or by proxy	1.1(y)(i) a resolution passed in a general meeting by a majority of not less than 66% of the votes as determined in accordance with these bylaws
1.1(y)(i)(a) notice of not less than 60 days, forwarded to the Director, Chairperson and CEO of the Member	1.1(y)(i)(a)notice of not less than 60 days, forwarded to the CEO of the association and each member
	1.1(y)(ii) deleted reference to proxy voting
1.1 (aa) "Vice-President" means the Vice-President of the Board elected by and from the Board of Directors	1.1 (aa) "Vice-President" means the Vice-President of the Board elected at the annual general meeting
2.2 The Government may appoint not more than 4 persons as Directors….	2.2 The Government may not appoint not more than 2 persons as Directors…
	2.5 Deleted – Each member, other than Government, shall be entitled to appoint a Director of the Association who shall

	vote on behalf of the Member and up to two (2) alternates for a Director to take the place of the Director if the Director is unable to attend a general meeting of the Association or a meeting of the Directors of the Association. The Director and the alternates so designated shall be a governor or senior executive employee of the……..
3.5 Under exceptional circumstances and consistent with the notice provisions for special resolution the directors may make such special assessments from time to time as the Directors determine are necessary provided that such special assessments are approved by not less than 75% of the Directors. Special assessments shall be apportioned consistent with Bylaw 3.1.	3.5 Under exceptional circumstances and consistent with the notice provisions for special resolution the directors may make such special assessments from time to time as the Directors determine are necessary provided that such special assessments are approved by not less than 66% of the Members present at a general meeting. Special assessments shall be apportioned consistent with Bylaw 3.1.
	3.8 Last sentence deleted – "If a subset of the members of the Association becomes accredited for the purposes of bargaining, the direct costs to deliver those services shall be borne by the accredited members
	4.4(a)(ii) added – notice of a general meeting shall be given to the "Chief Executive Officer" and
4.7 Each member shall have one (1) vote. The votes of the members may be cast to determine the following:	4.7 Each Member institution is entitled to send two delegates to a general meeting, who shall be the Member's chief executive officer (or designate where the chief executive officer is unable to attend) and the senior human resource and labour relations officer (or his/her designate where he/she is unable to attend). The government is entitled to send its two directors to a general meeting. Except where specifically provided otherwise in these Bylaws, each member institution shall have one (1) vote which shall be cast by the Member's chief executive officer (or her/his

	designate). Each government director shall have one vote, whether or not weighted voting applies. The votes of the Members may be cast to determine the following:
	4.7(a) was deleted: and any other Offices the Directors may establish
	4.7(e) was deleted – Nomination of the Association's representative to the Public Sector Employers' Council
	4.10 added: Weighted voting applies to proposed amendments to the constitution, proposed amendments to the bylaws, and elections of the President and the Vice President. Weighted voting is based on the Members' unionized FTEs in the latest version of the association's Human Resource Database, rounded up to the next whole FTE. Weights are as follows: 100 or less: one vote 101 to 300 two votes 301 to 600 three votes 601-1000 four votes 1001 to 1500 five votes 1501 and over six votes
Old 4.10, 4.11 and 4.12	New 4.11, 4.12, 4.13
5.3 Except as provided in the Society Act and these Bylaws, a quorum shall be one or more persons present who collectively comprise or represent by proxy 51% of all Members of the Association	5.3 deleted "or represent by proxy"
5.4(b) If, at a meeting adjourned under Bylaws 5.4(a), a quorum is not present within 30 minutes from the time appointed for the meeting, the members present or represented by proxy, shall constitute a quorum	5.4(b) deleted "or represented by proxy"
5.9 Subject to the provisions of the Society Act, every motion or question submitted to a general meeting shall be decided by a show of hands unless	5.9 Subject to the provisions of the Society Act, every motion or question submitted to a general meeting, excluding the election of Directors, the President

(before or on the declaration of the result of the show of hands) a poll is directed by the President or demanded by any two (2) Members entitled to vote who are present in person or by proxy.	and the Vice President shall be decided by a show of hands (before or on the declaration of the result of the show of hands) a poll is directed by the President or demanded by any two (2) Members entitled to vote.
5.10 Every ballot cast upon a poll and every proxy appointment a proxy holder who casts a ballot upon a poll shall be retained……	5.10 Deleted reference to Proxy - Every ballot cast upon a poll, shall be retained…….
	Part 6 – deleted Votes by Proxy
Part 7 Directors becomes Part 6	
7.1 and 7.2 renumbered to 6.1 and 6.2	
7.3 The number of Directors of the Association shall be equal to the number of Members plus up to four (4) additional Directors appointed by the Government	6.3 The number of Directors of the Association shall be 10, including the two Directors appointed by the government and the two Directors referenced in bylaws 6.5. In addition to the 10 Directors, the Chief Executive Officer is an ex-officio member of the Board of Directors with voice but no vote.
	6.4 Added: Directors, other than those appointed by government and the Directors referenced in bylaw 6.5 shall be elected by weighted voting at the annual general meeting as follows: a. one Director elected by and from college Members, b. one Director elected by and from university college Members, c. one Director elected by and from institute Members, and d. three Directors elected by and from all the Members however, no delegate is eligible for election as a Director if there is already a Director from his/her institution
	6.5 Added: The chair and vice chair of the Standing Committee on Human Resource and Labour Relations Practices (designated under bylaw 8.8) shall be Directors with voice but no vote.
	7.4 Deleted – The Government shall be

	entitled to appoint up to four (4) representatives of the Government as Directors
7.5 A person may be a Director or alternate of a Director only if that person: a. is a governor or executive employee of a Member, or a Director appointed by the Government; b. has been duly appointed by the Member; and c. is willing to devote the time necessary to fully discharge his or her responsibilities to the Association	6.6 A person may be a Director only if that person: a. is a governor or senior level employee of a Member, or a person appointed by the Government and b. is willing to devote the time necessary to fully discharge his or her responsibilities to the Association
	7.6 Deleted – Each Director shall serve at the pleasure of the appointing Member until a replacement is appointed by the Member
7.7 Where a vacancy occurs among Directors appointed under Bylaw 7.4, the Government may appoint a replacement.	6.9 Where a vacancy occurs amongst the elected Directors that would result in a vacancy of more than four months, the Members shall elect, in a manner to be determined by the Board of Directors, another Director to fill the vacancy.
7.8 renumbered to 6.7	
7.9 renumbered to 6.8	
Part 8 renumbered to Part 7	
8.3 The quorum necessary for the transaction of the business at a meeting of the Directors shall be 51% of the total number of Directors of the Association	7.3 The quorum necessary for the transaction of the business at a meeting of the Directors shall be five voting Directors
8.4 – Questions arising at any meeting of the Directors shall be decided by a majority of 66% of the votes cast.	7.4 – Questions arising at any meeting of Directors shall be decided by a majority of the votes cast.
8.8 Notice of a meeting of the Board shall be given to each Director at least 7 days before the time fixed for the meeting and shall specify the place, day and time of the meeting and the general nature of the business to be transacted at that meeting. Such notice will be given in writing, personally or by delivery through the post or by letter, telegram,	7.8 Deleted last sentence

telex, telecopier, courier or facsimile or any other method of transmitting legibly recorded messages in common use. When written notice of a meeting is given to a Director, it shall also be addressed to the Chief Executive Officer of the Member at the registered address for distribution	
8.11 A resolution consented to in writing, whether by document, electronic mail, telegram, telex, telecopier, facsimile or any method of transmitting legibly recorded messages or other means, by all of the Directors for the time being in office without their meeting together shall be subject to ratification of such resolution at the next regular meeting of the Board where the Directors are physically present, as valid and effectual as if it had been passed at a meeting of the Directors duly called and held, shall be deemed to relate back to any date stated therein to be the effective date thereof and shall be filed in the minute book of the Association accordingly. Any such resolution may consist of one or several documents each duly signed by one or more Directors which together shall be deemed to constitute one resolution in writing.	7.11 Deleted: for the time being in office without their meeting together shall be subject to ratification of such resolution at the next regular meeting of the Board where the Directors are physically present
	8.13 Deleted – "each member shall be entitled up to two (2) additional individuals as additional resources to advise its Director….."
8.14 renumbered to 7.13	Deleted 8.14(b)iii – bar the Member's Director from participation in any one or more committees
Part 9 renumbered to Part 8	
9.1 – the Directors may by resolution establish: a. an Executive Committee, whose members shall be the officers of the	8.1 The Directors may by resolution establish: a. an Executive Committee, whose members shall be the President, a

Board, a Director appointed by the Government, and such other members as determined by the Board	Director appointed by the Government, the Chief Executive Officer, and such other members as determined by the Board
9.7 – reference to Bylaw 9.1	8.7 – reference to Bylaw 9.1 changed to Bylaws 8.1 and 8.8
	8.8 (a) and (b) added: a. The Board shall establish and maintain the Standing Committee on Human Resource practices. The purpose of the committee is to work in collaboration with PSEA staff to provide the Board with information, insight and policy recommendations on matters within the mandate of the association as established by the Public Sector Employers' Act. b. Each Member shall designate annually a senior human resource or labour relations practitioner to act as its representative on the committee. Annually, the committee members shall designate, from amongst themselves, the chair and vice chair of the committee.
Part 10 renumbered to Part 9	
10.1 The offices of President and Vice-President are open to any of the directors. The nominations for President and Vice-President may be made by any Director at the annual general meeting at which time the election by ballot vote shall be held. The term of the office of the President and Vice-President shall expire on the date of the next annual general meeting following the election of the President and Vice-President. Incumbents of the office of President and Vice-President are eligible to stand for nomination and election for a new term of office.	9.1 The offices of President and Vice-President are open to any of the Directors. Subsequent to the election of Directors at the annual general meeting, delegates shall nominate and elect from amongst the Directors the President and the Vice President (in that order). The term of the office of the President and Vice-President shall expire on the date of the next annual general meeting following the election of the President and Vice-President. Incumbents of the office of President and Vice-President are eligible to stand for nomination and election for a new term of office.
10.5 The Board shall employ a person as Executive Director of the Association at such salary and upon such terms and conditions of employment as the Board	9.5 Executive Director is replaced with Chief Executive Officer

shall determine. The Executive Director shall:	
10.5 (a) be the chief operating officer of the Association and, ex officio, the Secretary and a member of all committees established by the Board. The Executive Director shall receive notice of and attend all general meetings, and may attend meetings of the Board and committees established by the Board subject to a decision by the majority of Directors at a meeting of the Board to exclude the Executive Director from attendance at such Board of committee meeting, but shall not have the right to vote on Association matters	9.5 (a) be the chief operating officer of the Association and the CEO or her/his designate shall be, the secretary and a member of all committees established by the Board. The CEO shall attend all general meetings, and may attend meetings of the Board and of committees established by the Board, subject to a decision by the majority of Directors to exclude her/him in order to discuss matters such as the CEO's compensation or performance. The CEO shall not have the right to vote on Association matters.
10.6 (c) becomes 9.6 (d)	9.6 (c) Added: serving upon appointment as the Association's representative to the Public Sector Employers' Council
10.6(c) – Executive Director	9.6 (d) replaced with Chief Executive Officer
10.8 – The Office of the Secretary shall	9.8 – The secretary shall
10.8(a) through (g) verb tense change	9.8(a) through 9.8(f) – i.e. the word "processing" changed to "process"
	10.8(e) deleted – having custody of the common seal of the Association
10.8 In the absence of the Secretary from a meeting, the Directors shall appoint another person to act as secretary at that meeting	Deleted
Part 11 through 17 renumbered to Part 10 through Part 16 respectively	
Schedule 1 – S.1.1 a – to negotiate and, if ratified by the Association under sections S1.13 to S1.18, to conclude and execute all collective agreements involving any union that is the certified bargaining agent for any employee of the member.	Schedule 1 – S1.1 a to negotiate and, if ratified and approved in accordance with sections S1.10 to S1.16 of this Schedule, to conclude and executive all collective agreements involving any union that is the certified bargaining agent for any employee of the member.
S1.2(d) where directed in writing by the Association to do so, the member shall lock out its employees at the time	S1.2(d) where directed in writing by the Association to lock out some or all of its employees, the member shall do so at the

specified by the Association, and shall not employ or continue to employ any member or permit-holder of a trade union representing its employees, until such time as the member is directed in writing by the Association to cease locking out its employees	time specified by the Association, and shall not employ or continue to employ them until such time as the member is directed in writing by the Association to cease locking out those employees.
S1.9(c) delegating to a group of members the negotiation of a Sectoral issue; Provided that, for purposes of this Schedule, the term "delegate" means that the member or group of members to whom the negotiation of an issue is delegated must at all times throughout such negotiations act in accordance with the wishes of the Association, including taking such steps as are necessary to ensure that the negotiating mandate of the member or group of members is approved by the Association, that any proposal made by the member or group of members is within the negotiating mandate approved by the Association, that any tentative agreement or settlement is within the negotiating mandate approved by the Association, and that any tentative agreement of settlement is expressly stated to be subject to ratification by the Association pursuant to section S1.13 to S1.18 of this Schedule.	S1.9(c) delegating to a group of members the negotiation of a Sectoral issue; Provided that, for purposes of this Schedule, the term "delegate" means that the member or group of members to whom the negotiation of an issue is delegated must at all times throughout such negotiations act in accordance with the wishes of the Association, including taking such steps as are necessary to ensure that the negotiating mandate of the member or group of members is approved by the Association, that any proposal made by the member or group of members is within the negotiating mandate approved by the Association, that any tentative agreement or settlement is within the negotiating mandate approved by the Association, and that any tentative agreement of settlement is expressly stated to be subject to ratification, executive and approval pursuant to section S1.10 to S1.16 of this Schedule.
S1.10 An agreement arising out of a negotiation referred to in section S1.9 is neither effective nor binding on the Association nor any of its members unless first ratified pursuant to section S1.13 to S1.18 and then approved and executed by the Association.	S1.10 An agreement arising out of a negotiation referred to in section S1.9 is neither effective nor binding on the Association nor any of its members unless first ratified pursuant to Section S1.11 to S1.16 by the member or members that will be bound by it, and then approved and executed by the Directors of the Association.

S. 1.11 to S1.18 deleted	and replaced with S1.11 to S1.19
1.11 In resolving any dispute arising out of the interpretation, administration or alleged violation of any collective agreement, the Association may take whatever action it considers most suitable in the circumstances, including a. delegating to a Member the negotiation of a local issue dispute settlement; b. delegating to a group of Members the negotiation of a component issue dispute settlement, and c. referring the dispute to grievance procedure, arbitration, a mediator or labour relations officer, the Labour Relations Board, any court of competent jurisdiction, or to any other authority provided by law or established by the Association to intervene in the dispute. S1.12 Any resolution arising out of any negotiations conducted under section S1.11(a) or S1.11(b) shall be approved and executed by the Association. S1.13The Association shall communicate th S1.14The approval or rejection of a propos S1.15 Each Member entitled to vote on	S1.11 The Association shall communicate the terms of a proposed collective agreement to the Members that, if the agreement is ratified, approved and executed as set out in this Bylaw, shall be bound by it. S1.12 The ratification of a proposed collective agreement shall be determined by a mail ballot of the Member or Members that, if the agreement is ratified, approved and executed as set out in this Bylaw, shall be bound by it, and such Member or Members shall be the only members entitled to vote S1.13 Each Member entitled to vote on the proposed collective agreement shall have the vote it is entitled to under Bylaw 4.10. S1.14 In a vote pursuant to S1.12, a proposed collective agreement shall be deemed to be ratified if approved by the majority of weighted votes cast by the Members voting on the agreement, and, if ratified, approved and executed as set out in this Bylaw, shall be binding on all Members affected by the agreement. S1.15 The ballot shall be given to all Members at their registered address either by delivery, telecopy, or double registered mail and, if by mail, the ballot shall be deemed to be received

the proposed collective agreement shall have the vote it is entitled to under Bylaw 4.7 S1.16 A proposed collective agreement shall be deemed to be approved (i) if approved by the majority of total votes cast by the Members voting on the agreement, and (ii) if the total of the base operating grant of those Members which approve the agreement is equal to more than 50% of the aggregate base operating grant of all Members voting on the agreement, and, if approved, shall be binding on all Members affected by the agreement. S1.17 The ballot shall be given to all Members at their registered address either by delivery, telecopy, or double registered mail and, if by mail, the ballot shall be deemed to be received on the 7th day after the date of mailing.	on the 7th day after the date of mailing. S1.16 In order to be counted, a ballot must be received at the head office of the Association not later than 5:00 p.m. local time in Vancouver on the 15th day after the date of delivery, telecopy or deemed receipt by the Member, or within such shorter period as may be determined from time to time by the Directors. S1.17 As soon as practicable after a vote pursuant to S1.14 is counted, if the vote is in favour of ratification of the proposed collective agreement, the Directors of the Association must meet to consider whether to approve and execute the proposed collective agreement. The Directors must inform the Member or Members, and the trade union affected, as to whether the proposed collective agreement is approved. S1.18 In resolving any dispute arising out of the interpretation, administration or alleged violation of any collective agreement, the Association may take whatever action it considers most suitable in the circumstances, including: a. delegating to a Member the negotiation of a local issue dispute settlement b. delegating to a group of Members the negotiation of a component issue dispute

	settlement, and c. referring the dispute to grievance procedure, arbitration, a mediator or labour relations officer, the Labour Relations Board, any court of competent jurisdiction, or to any other authority provided by law or established by the Association to intervene in the dispute. S1.19 A resolution arising out of any negotiations conducted under section S1.18 shall be approved by the Directors of the Association to the extent required by policies established by the Directors from time to time.

References and Resources

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