

# EDUCATION IMPROVEMENT ACT

## CHAPTER 3

*Assented to March 15, 2012*

### *Contents*

#### **PART 1 – EDUCATION SERVICES CONTINUATION**

##### **Division 1 – Interpretation**

- 1 Definitions
- 2 Application of *Labour Relations Code*

##### **Division 2 – Continuation of Services**

- 3 Services continued
- 4 Other rights not affected

##### **Division 3 – New Collective Agreement**

- 5 Collective bargaining restored
- 6 Mediation

##### **Division 4 – Offences**

- 7 Offences

#### **PART 2 – EDUCATION STATUTES AMENDMENTS**

- 8 – 23 Amendments
- 24 Retroactive effect
- 25 Sunset provision
- 26 Commencement

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

#### **PART 1 – EDUCATION SERVICES CONTINUATION**

##### **Division 1 – Interpretation**

##### **Definitions**

##### **1** In this Part:

- “BCPSEA” means the British Columbia Public School Employers’ Association;
- “BCTF” means the British Columbia Teachers’ Federation;
- “board of education” has the same meaning as in the *School Act* and includes a francophone education authority as defined in the *School Act*;
- “Code” means the *Labour Relations Code*;
- “cooling-off period” means the period from the coming into force of section 3 until August 31, 2012;

Section 2

---

**“employee”** means an employee who is a member of a bargaining unit represented by the BCTF and is an employee of an employer;

**“employer”** means a board of education and includes the BCPSEA;

**“parties”** means the BCTF and the employers.

**Application of *Labour Relations Code***

- 2** (1) The Code and the regulations made under it apply in respect of a matter to which Division 2 or 3 applies, but if there is a conflict or an inconsistency between Division 2 or 3 and those enactments, Divisions 2 and 3 apply.
- (2) The Labour Relations Board has exclusive jurisdiction to decide a question arising under Division 2 or 3, including any question of a conflict or an inconsistency referred to in subsection (1).

**Division 2 – Continuation of Services****Services continued**

- 3** (1) Despite the Code, immediately after the coming into force of this section and until the end of the cooling-off period,
- (a) an employer must not lock out or declare a lockout of any of its employees and must terminate any lockout,
  - (b) the BCTF and the employees represented by the BCTF must not strike or declare a strike and must terminate any strike,
  - (c) every employee must continue or resume his or her full duties and work schedules of employment with the employer,
  - (d) any declaration, authorization or direction to go on strike given before or after the coming into force of this section becomes invalid,
  - (e) an officer of the BCTF or of a local of the BCTF or a representative of the BCTF or of a local of the BCTF must not in any manner impede or prevent, or attempt to impede or prevent, any person to whom paragraphs (b) or (c) apply from complying with those paragraphs, and
  - (f) an employer or an officer or a representative of an employer must not
    - (i) refuse to permit any person to whom paragraphs (a) to (c) apply to continue or resume the full duties of his or her employment, or
    - (ii) discharge or in any other manner discipline such a person by reason of the person having been locked out or having been on strike before the coming into force of this Act.
- (2) The last collective agreement in force between the parties before the coming into force of this section is extended and is deemed to be in effect for the period from the beginning of the cooling-off period until the first of the following occurs:
- (a) the employers and the BCTF conclude a collective agreement;
  - (b) the end of the cooling-off period.

**Other rights not affected**

- 4** Nothing in this Part affects the right of an employer to suspend, transfer, lay off, discharge or discipline an employee in accordance with the last collective agreement in force between the parties before the coming into force of this section.

**Division 3 – New Collective Agreement****Collective bargaining restored**

- 5** Within 72 hours after the coming into force of this section, the parties must continue or commence to bargain collectively in good faith and must make every reasonable effort to conclude a new collective agreement that is consistent with this Division.

**Mediation**

- 6** (1) The Minister of Education must appoint a mediator to assist the parties in settling the terms and conditions of a new collective agreement in accordance with this section.
- (2) The terms of reference for the mediator are as follows:
- (a) the new collective agreement must be for a term beginning on July 1, 2011 and ending on June 30, 2013;
  - (b) subject to subsection (5), the new collective agreement must not create new costs that would result in a net increase in the total annual cost of the collective agreement from the total annual cost of the last collective agreement in force between the parties before the coming into force of this section;
  - (c) the new collective agreement is to enable high-quality teaching and learning through
    - (i) effective feedback and evaluation of teachers to promote improvement,
    - (ii) alignment of professional development with teaching needs, and
    - (iii) scheduling and selection of teachers suited to student needs;
  - (d) subject to Part 3 of the *Public Education Labour Relations Act*, the new collective agreement is to include additional matters that may be locally negotiated between the BCTF and a board of education if those matters
    - (i) do not affect any other school district, and
    - (ii) would, in the opinion of the mediator, be more effectively negotiated as local matters;
  - (e) for greater certainty, the collective agreement may contain provisions referred to in section 28 (1) (a) and (b) of the *School Act* respecting provisions referred to in section 27 (3) (d) to (j) of that Act.

Section 7

---

- (3) The mediator or a person designated by the mediator has the powers of a hearing commission under sections 22 (1) and 23 (a), (b) and (d) of the *Public Inquiry Act*.
- (4) On or before June 30, 2012, the mediator must
  - (a) advise the Minister of Education of matters that have been agreed on by the parties, and
  - (b) make recommendations, consistent with the terms of reference referred to in subsection (2), on any outstanding issues that remain in dispute between the parties.
- (5) A question as to whether the terms and conditions of the new collective agreement or recommendations of the mediator comply with subsection (2) (b) must be determined by the chief executive officer of the Public Sector Employers' Council.

**DIVISION 4 – OFFENCES****Offences**

- 7 (1) An employee, the BCTF or an officer of the BCTF or of a local of the BCTF or a representative of the BCTF or of a local of the BCTF, who contravenes section 3 (1) (b), (c) or (e), as the case may be, commits an offence and is liable to the following:
  - (a) in the case of an employee, a fine amount of not more than \$475 for each day on which the offence occurs;
  - (b) in the case of the BCTF, a fine amount of not less than \$1.3 million for each day on which the offence occurs;
  - (c) in the case of an officer of the BCTF or of a local of the BCTF or a representative of the BCTF or of a local of the BCTF, a fine amount of not less than \$2 500 for each day on which the offence occurs.
- (2) An employer, or an officer or a representative of an employer, who contravenes section 3 (1) (a) or (f), as the case may be, commits an offence and is liable to the following:
  - (a) in the case of an employer other than the BCPSEA, a fine amount of not less than the amount calculated under subsection (3) for each day on which the offence occurs;
  - (b) in the case of the BCPSEA, a fine amount of not less than \$200 000 for each day on which the offence occurs;
  - (c) in the case of an officer or a representative of an employer, a fine amount of not less than \$2 500 for each day on which the offence occurs.
- (3) The amount referred to in subsection (2) (a) is to be calculated by multiplying the employer's final operating grant determined under section 106.3 of the *School Act* for the 2010/2011 school year by 0.03.

- (4) When sentencing a person convicted of an offence under this section, in addition to any punishment the court may impose, the court may
  - (a) order the offender to comply with the provisions of this Part, and
  - (b) order the offender to pay compensation or make restitution to a person specified by the court for the actual loss or damage caused by or arising out of the commission of the offence.
- (5) This section applies in addition to any other penalty, fine or remedy provided by this Part or the Code.

## **PART 2 – EDUCATION STATUTES AMENDMENTS**

### ***Education Services Collective Agreement Act***

**8     *Section 2 (1) (a) (v) of the Education Services Collective Agreement Act, S.B.C. 2002, c. 1, is repealed and the following substituted:***

- (v) effective July 1, 2002,
  - (A) deleting Article D.1 entitled “Staffing Formula – Non-Enrolling/English as a Second Language Teachers”,
  - (B) deleting Article D.2 entitled “K-3 Primary Class Size”,
  - (C) deleting sections D.1, D.2 and D.3 of Appendix 1 of Letter of Understanding No. 1, dated May 31, 1995,
  - (D) in Addendum C to Letter of Understanding No. 1, which addendum is dated April 23, 1997, deleting the heading “Professional Development and Teacher Assistants” and substituting “Professional Development” and deleting the heading “Teacher Assistants:” and the paragraph immediately under that heading,
  - (E) deleting paragraphs 1 to 5 and everything after paragraph 8 of Letter of Understanding No. 3, dated June 4, 1999,
  - (F) deleting Letter of Understanding No. 4, dated June 22, 1999,
  - (G) deleting Letter of Understanding No. 5, dated June 19, 2000, and
  - (H) in respect of an agreement referred to in Column A of the document entitled “Teachers’ Collective Agreement Deletions” tabled in the Legislative Assembly on the date of First Reading of the *Education Services Collective Agreement Amendment Act, 2004*, deleting those words, phrases and provisions, or parts of provisions, as set out in the same row in Column B of that document; .

***Education Services Collective Agreement Amendment Act, 2004***

- 9**     ***Section 5 of the Education Services Collective Agreement Amendment Act, 2004, S.B.C. 2004, c. 16, is repealed.***

***Public Education Labour Relations Act***

- 10**    ***Section 7 of the Public Education Labour Relations Act, R.S.B.C. 1996, c. 382, is amended by adding the following subsection:***

(4.1) In addition to the matters referred to in subsection (3), matters referred to in section 28 (1) (a) and (b) of the *School Act* respecting provisions referred to in section 27 (3) (d) to (j) of that Act are deemed to be Provincial matters.

- 11**    ***Section 7 is amended***

***(a) in subsection (4) by adding the following paragraph:***

(b) workload, including, without limitation, class size restrictions, and , ***and***

***(b) in subsection (4.1) by striking out “provisions referred to in section 27 (3) (d) to (j) of that Act” and substituting “workload, including, without limitation, class size restrictions.”.***

***School Act***

- 12**    ***Section 11.4 (2) of the School Act, R.S.B.C. 1996, c. 412, is repealed and the following substituted:***

(2) In adjudicating an appeal under subsection (1), an adjudicator must not make a decision that would result in a board being in breach of section 76.1 (2.1) or (2.4).

- 13**    ***Section 27 is repealed and the following substituted:***

**Terms and conditions of teachers' employment  
and restricted scope of bargaining**

- 27**    (1) Despite any agreement to the contrary, the terms and conditions of a contract of employment between a board and a teacher are
- (a) the provisions of this Act and the regulations,
  - (b) the terms and conditions, not inconsistent with this Act and the regulations, of a teachers' collective agreement, and
  - (c) the terms and conditions, not inconsistent with paragraphs (a) and (b), agreed between the board and the teacher.
- (2) A provision of an agreement referred to in subsection (1) (b) excluding or purporting to exclude the provisions of this Act or the regulations is void.

- (3) There must not be included in a teachers' collective agreement any provision
- (a) regulating the selection and appointment of teachers under this Act, the courses of study, the program of studies or the professional methods and techniques employed by a teacher,
  - (b) restricting or regulating the assignment by a board of teaching duties to principals, vice principals or directors of instruction,
  - (c) limiting a board's power to employ persons other than teachers to assist teachers in the carrying out of their responsibilities under this Act,
  - (d) restricting or regulating a board's power to establish class size and class composition,
  - (e) establishing or imposing class size limits, requirements respecting average class sizes, or methods for determining class size limits or average class sizes,
  - (f) restricting or regulating a board's power to assign a student to a class, course or program,
  - (g) restricting or regulating a board's power to determine staffing levels or ratios or the number of teachers or other staff employed by the board,
  - (h) establishing minimum numbers of teachers or other staff,
  - (i) restricting or regulating a board's power to determine the number of students assigned to a teacher, or
  - (j) establishing maximum or minimum case loads, staffing loads or teaching loads.
- (4) Subsection (3) does not prevent a teachers' collective agreement from containing a provision respecting hiring preferences for teachers who have previously been employed by the board.
- (5) A provision of a teachers' collective agreement that conflicts or is inconsistent with subsection (3) is void to the extent of the conflict or inconsistency.
- (6) A provision of a teachers' collective agreement that
- (a) requires the employers' association to negotiate with the Provincial union, as defined in the *Public Education Labour Relations Act*, to replace provisions of the agreement that are void as a result of subsection (5), or
  - (b) authorizes or requires the Labour Relations Board, an arbitrator or any person to replace, amend or modify provisions of the agreement that are void as a result of subsection (5),
- is void to the extent that the provision relates to a matter described in subsection (3).
- (7) Subsection (3) (d) to (j) is repealed on June 30, 2013.
-

**14 Section 76.1 is amended**

**(a) by repealing subsection (1),**

**(b) in subsection (2) by striking out “Despite subsection (1), a board” and substituting “A board”,**

**(c) by repealing subsections (2.1) to (2.4) and substituting the following:**

(2.1) Subject to subsection (2.4), a board must ensure that the class size of any class for any of grades 4 to 12 in any school in its school district does not exceed 30 students unless

(a) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, or

(b) the class is in a prescribed category of classes.

(2.2) A board must provide additional compensation, as prescribed, to a teacher of a class that, under subsection (2.1) (a), exceeds 30 students.

(2.3) Subsection (2.2) does not apply with respect to a teacher in a prescribed category of teachers.

(2.4) A board must ensure that the class size of a class in a prescribed category of classes does not exceed the prescribed number of students. , **and**

**(d) by repealing subsections (3) to (5).**

**15 Sections 76.2 to 76.7 are repealed.****16 Section 76.8 is amended by striking out “sections 76.1 to 76.6.” and substituting “section 76.1.”****17 Section 78.1 is repealed.****18 The following section is added:****Learning improvement fund**

**115.2** (1) In this section, “**learning improvement fund**” means an appropriation provided by the Legislature for the purpose of this section.

(2) In addition to any other grants payable under this Act, the minister, in each fiscal year, must provide grants from the learning improvement fund to boards for the purpose of enabling the boards to address learning improvement issues.

(3) Before making the first grant under subsection (2) in any fiscal year, the minister must notify each board of the amount of the grant the minister estimates will be provided to the board.



- (4) Before making an estimate referred to in subsection (3), the minister must consider the following:
  - (a) total student enrollment in each district;
  - (b) the number of students in each district who are diagnosed with special needs;
  - (c) the location of schools, communities and services in each district.
- (5) Despite subsection (2), the minister may refuse to provide a grant to a board in a fiscal year if the minister considers that
  - (a) the board has not complied with a regulation made under section 168.01, or
  - (b) the spending plan, if any, required by a regulation made under section 168.01 is not in the public interest.
- (6) A board that receives a grant from the minister under subsection (2) must use the grant in accordance with the regulations.

**19    *Section 115.2 (3) is repealed and the following substituted:***

- (3) Before making the first grant under subsection (2) in any fiscal year, the minister must
  - (a) consult with the British Columbia Teachers' Federation respecting the allocation among boards of grants from the learning improvement fund, and
  - (b) notify each board of the amount of the grant the minister estimates will be provided to the board.

**20    *Section 166.44 (1) is amended***

- (a) *in paragraph (c) by striking out "subject to paragraph (c.1),"* **and**
- (b) *by repealing paragraph (c.1).*

**21    *The following section is added:***

**Minister's regulations**

- 168.01** The minister may make regulations respecting the provision of grants under section 115.2, including, without limitation, regulations respecting
- (a) consultations a board must ensure are carried out before requesting a grant,
  - (b) a spending plan a board must submit on request for a grant, and
  - (c) uses to which a board must expend grants received.

**22    *Section 168.01 is repealed and the following substituted:***

**Minister's regulations**

**168.01** The minister may make regulations as follows:

- (a) prescribing categories of classes for the purposes of section 76.1 (2.1) (b) and (2.4);
- (b) respecting compensation to be provided under section 76.1 (2.2), including, without limitation, regulations
  - (i) prescribing categories of teachers for the purposes of section 76.1 (2.3), and
  - (ii) respecting
    - (A) the timing of the provision of compensation,
    - (B) the amount of compensation, and
    - (C) the form of compensation, including a form other than money;
- (c) prescribing class size limits of fewer than 30 students for the purposes of section 76.1 (2.4);
- (d) requiring boards to prepare, submit to the minister and make publicly available, in the form and manner specified by the minister, reports respecting class size for each school district and each school within the district;
- (e) defining terms used in section 76.1 of the Act for the purposes of that section or of a regulation under paragraphs (a), (b) or (c) of this section;
- (f) respecting the provision of grants under section 115.2, including, without limitation, regulations respecting
  - (i) consultations a board must ensure are carried out before requesting a grant,
  - (ii) a spending plan a board must submit on request for a grant, and
  - (iii) uses to which a board must expend grants received.

**23** *Section 172 (1) is amended*

*(a) in paragraph (c) by striking out “subject to paragraph (c.1),” and*

*(b) by repealing paragraph (c.1).*

**Retroactive effect**

- 24** Despite any decision of a court to the contrary made before or after the coming into force of this section, words, phrases, provisions and parts of provisions deleted, under section 8, from a collective agreement between the British Columbia Teachers' Federation and the British Columbia Public School Employers' Association must not for any purpose, including any suit or arbitration commenced or continued before or after the coming into force of this section, be considered part of that collective agreement on or after July 1, 2002.

**Sunset provision**

- 25** Part 1 may be repealed by regulation of the Lieutenant Governor in Council.

**Commencement**

- 26** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 <b>Provisions of Act</b>	Column 2 <b>Commencement</b>
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 6	March 17, 2012
3	Section 7	By regulation of the Lieutenant Governor in Council
4	Sections 8 to 10	April 14, 2012
5	Section 11	July 1, 2013
6	Section 12	July 1, 2012
7	Section 13	April 14, 2012
8	Sections 14 to 16	July 1, 2012
9	Sections 17 and 18	April 14, 2012
10	Section 19	By regulation of the Lieutenant Governor in Council
11	Section 20	July 1, 2012
12	Section 21	April 14, 2012
13	Sections 22 and 23	July 1, 2012
14	Section 24	April 14, 2012