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FILE NO. 2195-018

May 9, 2012

VIA COURIER

British Columbia Labour Relations Board  
Suite 600, Oceanic Plaza  
1066 West Hastings Street  
Vancouver, BC V6E 3X1

**Attention: Allison Matacheskie, Registrar**

Dear Sirs/Mesdames:

**Re: British Columbia Public School Employers' Association on behalf of its members being all Boards of Education as defined in the *School Act*, R.S.B.C. 1996, c. 412 – and – British Columbia Teachers' Federation (Complaint pursuant to sections 133, 134, 136, 137(4) and 139 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 (the "*Code*") of contravention of Part 5 of the *Code*)**

We are counsel for the British Columbia Public School Employers' Association ("BCPSEA"), on behalf of its members being all Boards of Education as defined in the *School Act* (collectively, the "Complainants").

Enclosed please find the Complainants' complaint made pursuant to sections 133, 124, 136, 137(4), and 139 of the *Code* that the British Columbia Teachers' Federation ("BCTF") has contravened Part 5 of the *Code*, including sections 48, 49, 57, 58, 59, and 60 thereof and has contravened section 3 of the *Education Improvement Act*, S.B.C. 2012, c. 3 (the "Complaint").

We are requesting a hearing at the offices of the Board at **9:30am on May 11, 2012** or so soon thereafter as the parties may be heard, and we will inform the Board once service has been perfected.

The enclosed Complaint is intended to deal only with the particular issues set out therein, and does not cover all continuing job action of the BCTF and individual teachers that may contravene Part 5 of the *Code* and/or the *Education Improvement Act*. BCPSEA and its member Boards of Education reserve the right to bring any additional complaints as necessary.

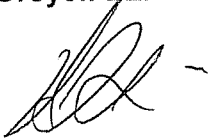
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Yours very truly,

**Roper Greyell LLP**

Per:

A handwritten signature in black ink, appearing to be "DS", followed by a horizontal line.

Delayne M. Sartison, Q.C.

DMS:jrd

Encl.

cc. Clients  
BCTF, Attn. Susan Lambert

IN THE MATTER OF THE LABOUR RELATIONS CODE  
AND THE REGULATIONS THEREUNDER

Before the Labour Relations Board

**COMPLAINT**

British Columbia Public School Employers' Association ("BCPSEA"), on behalf of its members being all Boards of Education as defined in the *School Act*, R.S.B.C. 1996, c. 412 (together referred to as the "Complainants") complain to the Labour Relations Board under Sections 133, 134, 136, 137(4) and 139 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 (the "Code") that the British Columbia Teachers' Federation (the "Union") has contravened the provisions of Part 5 of the *Code*, in particular, sections 48, 49, 57, 58, 59, and 60 thereof and has contravened section 3 of the *Education Improvement Act*, S.B.C. 2012, c. 3 (the "EIA").

The Complainants also apply to the Labour Relations Board for a declaration pursuant to Section 143 of the *Code*.

The Complainants also apply for an interim order in the terms set out herein pursuant to Section 133(5) of the *Code*.

The Complainants also request that the Labour Relations Board file the said decisions or orders in relation to this matter in the Registry of the Supreme Court of British Columbia pursuant to Section 135(1) of the *Code*.

1. (a) The name, address, telephone, and facsimile number of the Complainants are:

British Columbia Public School Employers' Association  
400 – 1333 West Broadway  
Vancouver, B.C. V6H 4C1  
Attention: Karen Jewell

Telephone: (604) 730-0739  
Facsimile: (604) 730-0787

The name, address, telephone and facsimile number of the Complainants' solicitor is:

Roper Greyell LLP  
800-666 Burrard Street  
Vancouver, B.C. V6C 3P3  
Attention: Delayne M. Sartison, Q.C.

Telephone: (604) 806-0922  
Facsimile: (604) 806-0933

The Complainants' address for service is:

Roper Greyell LLP  
800-666 Burrard Street  
Vancouver, B.C. V6C 3P3  
Attention: Delayne M. Sartison, Q.C.

Telephone: (604) 806-0922  
Facsimile: (604) 806-0933

(b) The name, address, telephone and facsimile number of the Respondents, being the parties who it is alleged have violated Part 5 of the Code are:

British Columbia Teachers' Federation  
100 – 550 West 6th Avenue  
Vancouver, B.C. V5Z 4P2  
Attention: Susan Lambert

Telephone: (604) 871-2152  
Facsimile: (604) 871-2290

The Union named in this Complaint is complained against in its own right and, pursuant to Rule 7(2) of the *Labour Relations Board Rules*, as agents for those employees it represents.

2. The specific declarations and orders sought by the Complainants are as follows:
- (a) The Labour Relations Board declares that the Union, its officers, members, employees and agents, have acted contrary to and contravened Part 5 of the *Code* and, in particular, Sections 57, 58, 59 and 60 thereof, and have contravened paragraphs 3(1)(b), (c), and (e) of the *EIA* in that it has declared or authorized an illegal strike;
  - (b) The Labour Relations Board orders that the Union, its officers, members, employees and agents, and all persons having knowledge of this Order, shall refrain from declaring, authorizing, or participating in a strike against the Complainants, which includes refraining from declaring, authorizing, or participating, in combination or in concert or in accordance with a common understanding, in a cessation of work, a refusal to work or to continue to work, a slowdown or other act or omission that is designed to or does restrict or limit production or services at the Complainants, including a withdrawal of the performance of all duties and activities that occur outside of instructional hours or that are otherwise alleged by the Union to be "voluntary" or "extra-curricular", which duties and activities include, but are not limited to:
    - (i) Completion of certain reports as requested by administrators, such as ESL reports, ELL reports, resource teacher reports, school based team submissions, interim reports, 'I' reports for failing students, district based student assessments, student articulation reports, IB essays, scholarship selection information, and awards nominations;
    - (ii) Completion of certain reports or provision of certain information requested by students and/or parents, such as scholarship or award references or recommendations and private school references;
    - (iii) Completion of administrative duties related to report cards, such as putting report cards into envelopes, photocopying report cards for placement into student files, and distributing report cards to students;

- (iv) Attendance at and/or participation in certain meetings, including, but not limited to school based team meetings, safety meetings, student services meetings, and some staff meetings;
- (v) Attendance at parent-teacher interviews and meet the teacher activities;
- (vi) Attendance at certain field trips and student performances, including some field trips and performances with curricular components and student marks attached;
- (vii) Attendance at certain student activities that are scheduled over recess and/or lunch;
- (viii) Participation in meetings with administrative officers;
- (ix) Communication with administrative officers;
- (x) Participation in school district and school committees;
- (xi) Performance of department head, teacher-in-charge, or head teacher duties;
- (xii) Performance of after-hours training sessions that teachers are paid to conduct;
- (xiii) Collection of money from students or participation in fund raising;
- (xiv) Attendance at or participation in certain student award and/or graduation ceremonies;
- (xv) Attendance at or participation in certain student artistic, dramatic, or musical performances;
- (xvi) Participation in the coaching, instruction, or supervision of student teams, clubs, groups, or organizations;
- (xvii) Participation in student tutorials, homework clubs, and individual help sessions;

(xviii) Participation in student transition activities, kindergarten orientation, Ready, Set, Learn, and other orientation activities; and

(xix) Participation in department, school, and district planning activities for the next school year

(collectively, the "Work").


- (c) The Labour Relations Board orders, pursuant to section 133(5) of the *Code* that the Union, its officers, members, employees, and agents, and all persons having knowledge of this Order, shall immediately refrain from declaring, authorizing, or participating in a strike against the Complainants, which includes refraining from declaring, authorizing, or participating, in combination or in concert or in accordance with a common understanding, in a cessation of work, a refusal to work or to continue to work, a slowdown or other act or omission that is designed to or does restrict or limit production or services at the Complainants, including refusing to perform the Work until a final decision is reached by the Board in respect of the Complainants' application now before it, or until otherwise ordered by the Board.
3. The Board orders the Union to immediately inform its membership, and specifically those directly affected members, of the contents of this Order and to immediately rescind any and all directions or advice to members to refuse to perform the Work.
  4. The Board orders the Union to provide its membership with copies of this Order forthwith.
  5. Such further and other Order as the Board may deem appropriate in the circumstances.
  6. The Complainants request, pursuant to Section 135(1) of the *Code*, that the Board file a copy of any decision or Order it may make in this matter in the Vancouver Registry of the Supreme Court of British Columbia.

7. The provisions of the *Code* or other law upon which this Complaint is based are:

Sections 2 and 3 of the *EIA* and Sections 48, 49, 57, 58, 59, 60, 133, 134, 135(1), 136, 137(4), 139 and 143 and all other relevant provisions of the *Code* and the *Labour Relations Board Rules*, together with such other authorities and materials as counsel for the Complainants may advise.

8. Attached to and forming part of this Complaint is Appendix "A" detailing the facts and circumstances upon which the Complainants intend to rely.
9. Pursuant to Rule 27(1)(a) of the *Labour Relations Board Rules*, a copy of this Complaint including Appendix "A" and a copy of Rule 27 is being served upon the Union and all other interested parties, including the employees via the Union as agent for the employees pursuant to Labour Relations Board Rule 7(2), and such service will be verified with the Board.

DATED at the City of Vancouver, in the Province of British Columbia this 9<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
Delayne M. Sartison, Q.C.  
Roper Greyell LLP  
COUNSEL FOR THE COMPLAINANTS

THIS COMPLAINT IS FILED BY Delayne M. Sartison, Q.C., of the firm of Roper Greyell, LLP, 800 - 666 Burrard Street, Vancouver, British Columbia, V6C 3P3, Telephone: (604) 806-0922 Fax: (604) 806-0933



## APPENDIX "A"

### OUTLINE OF THE FACTS AND CIRCUMSTANCES UPON WHICH THE APPLICANT INTENDS TO RELY

1. The *Public Education Labour Relations Act*, R.S.B.C. 1996, c. 382 provides that BCPSEA is the accredited bargaining agent for all Boards of Education as defined in the *British Columbia School Act*, R.S.B.C. 1996, c. 412 (the "Employers") and the Union is the exclusive bargaining agent for teachers employed by the Employers.
2. The Employers operate public schools for each of the Province's 60 School Districts and all employ teachers.
3. The Complainants are party to a collective agreement with the Union that expired June 30, 2011, but is presently in force during a "cooling-off period" to August 31, 2012 pursuant to section 3 of the *EIA*.
4. Section 3 of the *EIA* expressly precludes strike or lock-out action during the cooling-off period. Section 3(1)(c) required teachers to "continue or resume his or her full duties and work schedules of employment with the employer".
5. Prior to the enactment of section 3 of the *EIA*, the Union and its members engaged in a legal, partial strike called Phase 1 from the commencement of the 2011-2012 school year interrupted only by three days of lawful full withdrawal of services on March 5-7, 2012.
6. This earlier strike action was subject to the terms of essential services orders issued by the Board. In particular, Board Decision No. B132/2011 addressed the duties that teachers need not perform as well as certain duties that must continue during Phase 1.
7. The Board also issued several decisions and Orders pursuant to Decision No. B132/2011, including an October 5, 2011 Order relating to SBT meetings (the "SBT Order") a November 1, 2011 decision regarding field trips, indexed as Decision No. B193/2011 (the "Field Trip Decision").
8. After the coming into force of section 3 of the *EIA* on March 17, 2012, a Union plan for response to the *EIA* was approved at its AGM on March 17-20, 2012 and then communicated to members through the Union's locals.
9. The purpose of the Union's plan to oppose the *EIA* was to create pressure on the government to repeal the *EIA* and to make gains in the collective bargaining process (Attachment "A").
10. On April 17-19, 2012, the membership of the Union voted to approve the Union's plan for response to the *EIA*. Following that vote and following an April 20, 2012 decision of the Board, the executive committee of the Union amended the plan (the "Action Plan") (Attachment "B").

11. The Action Plan sets out that teachers will do the following:
  - a. teach;
  - b. not participate in any BC Ministry of Education initiatives;
  - c. minimally participate in meetings with AOs [administrative officers];
  - d. refrain from all extra-curricular/voluntary activities;
  - e. launch a public campaign (including advertising, public meetings, and print materials to educate about the impact of Bill 22, and mobilize opposition to it around the province;
  - f. hold a province-wide vote of members to support a full withdrawal of services commencing on a date as determined by the Executive Committee;
  - g. undertake other actions decided by the membership in each local, such as holding weekly union meetings or not participating in district committees;
  - h. work local-by-local, and as a collective, to motivate the membership to prepare for the May 2013 provincial election to bring in a new government that will repeal Bill 22.
12. In respect of point (d) above, the Union's Executive Committee adopted the following definition:

Extra-curricular/voluntary activities are those activities that occur and/or are organized by teachers outside of class time.

(Attachment "C")
13. The Union and its members have refused to perform a number of duties and activities on the basis that those duties and activities fall within the definition of "extra-curricular/voluntary" adopted by the Union's Executive Committee (examples of local refusals set out in Attachment "D"). The duties and activities that the Union and its members have refused to perform are regularly and ordinarily performed by teachers in their capacity as teachers employed by the School Boards.
14. Certain of the duties and activities withdrawn by the Union and its members are regularly performed by teachers at those teachers' option. In particular, most of the following aspects of the Work are performed by teachers who specifically choose to do so:
  - a. Attendance at field trips and student performances without a curricular or co-curricular component outside of instructional hours;
  - b. Attendance at student activities that are scheduled over recess and/or lunch without a curricular or co-curricular component;

- c. Attendance at or participation in student award and/or graduation ceremonies outside of instructional hours;
- d. Attendance at or participation in student artistic, dramatic, or musical performances without a curricular or co-curricular component outside of instructional hours; and
- e. Participation in the coaching, instruction, or supervision of student teams, clubs, groups, or organizations without a curricular or co-curricular component outside of instructional hours

(collectively, the "Optional Duties").

- 15. Although individual teachers choose whether to perform the Optional Duties from time to time, the Optional Duties are regularly and normally performed by teachers who so choose in their capacity as employees of the School Boards.
- 16. The BCTF's Action Plan has removed from teachers their option to individually choose whether to perform Optional Duties and has instead compelled them to participate in a concerted refusal to perform Optional Duties.
- 17. Further, the concerted withdrawal of the Optional Duties by the Union and its members has negatively impacted upon the ability of School Boards to offer educational services to students.
- 18. The concerted withdrawal of the Optional Duties by the Union and its members has resulted or will result in School Boards not being able to offer the services and activities associated with the Optional Duties. School Boards cannot offer the services and activities associated with the Optional Duties without the participation of teachers. In particular, School Boards require teachers' knowledge of such things as the student participants, activity, school expectations, and resources in order to offer the services and activities.
- 19. There may also be individual instances where the performance of some or all of the types of duties listed at pph. 14 above are not in fact optional, but rather form a required part of the job of a particular teacher. For example, there may be certain teachers who are required to attend and participate in student award and/or graduation ceremonies. There may also be certain sports or other academics where teacher participation in the coaching, instruction, or supervision of such student activities is required.
- 20. Further, pursuant to section 4(1)(b) of the *School Regulation*, B.C. Reg. 265/89, teachers may be required to attend such activities in order to provide such assistance as the Board or principal considers necessary for the supervision of students on school premises and at school functions, whenever and wherever held.

21. The remainder of the Work withdrawn by the Union and its members on the basis that they are "extra-curricular" are duties and activities that are regularly and normally performed by teachers and are required of teachers, regardless of whether they are performed during instructional hours (the "Required Duties"). The Required Duties are not performed by teachers at their individual option, but are required to be performed by all teachers if so instructed or directed.
22. Performance of certain of the Required Duties is expressly contemplated by section 4 of the *School Regulation*:
  - (1) The duties of a teacher include the following:
    - (a) providing teaching and other educational services, including advice and instructional assistance, to the students assigned to the teachers, as required or as assigned by the board or the minister;
    - (b) providing such assistance as the board or principal considers necessary for the supervision of students on school premises and at school functions, whenever and wherever held;
    - ...
    - (d) assisting to provide programs to promote students' intellectual development, human and social development and career development;
    - ...
    - (j) regularly providing the parents or guardians of a student with reports in respect of the student's school progress as required by the minister or the board;
    - (k) attending all meetings or conferences called by the principal or superintendent of schools for the district to discuss matters the principal or superintendent of schools considers necessary unless excused from attending the meeting or conference by the principal or superintendent of schools.
23. The concerted withdrawal of the Required Duties by the Union and its members has negatively impacted upon the ability of School Boards to offer educational services to students.
24. There is considerable overlap between the withdrawn Required Duties and the duties that the Union and its members were permitted to withdraw during Phase 1 pursuant to Decision No. B132/2011.

25. In particular, during the Phase 1 strike, the Union and its members were permitted to withdraw the following activities and duties and which activities and duties the Union and its members are continuing to withdraw despite the end of its legal strike (at pph. 6):

- Participate in meetings or interviews with parents/guardians and/or district teaching staff outside of instructional time, or during instructional time unless coverage is provided.
- Participate in meet the teacher activities outside of instructional time, or during instructional time unless coverage is provided.
- ...
- Complete and submit student referral forms outside of instructional time.
- Attend staff meetings.
- Attend staff committee meetings.
- Attend any meeting called by School District management.
- Participate in any standing or ad hoc District committees.
- Attend school based meetings called by an Administrative Officer, unless the meetings are related to an emergency.
- Provide Administrative Officers with any routine printed, written or electronic communications.
- Accept any printed, written or electronic communication from an Administrative Officer, unless it relates to an emergency.
- Participate in the preparation or organization of assemblies outside of instructional time, or during instruction time unless coverage is provided.
- ...
- Provide coverage for a teacher who is absent, except for a Teacher On Call hired specifically for that purpose (consistent with principles in B421/2001 and B444/2001).
- ...
- Collect money from students or participate in fund raising.
- ...
- Assist the Administrative Officer in administrative tasks like building

timetables or computer organization.

...

- Distribute School District or administrative letters, newsletters, memos or announcements to students, unless it is health and safety related.

...

- Perform department head/position of responsibility duties except during allocated time in the timetable.

(collectively, the "Phase 1 Duties")

26. The Required Duties currently withdrawn by the Union and its members are more expansive than the Phase 1 Duties that the Union and its members were permitted to withdraw during the Union's legal strike.
27. BCPSEA has advised the Union that it is of the view that the concerted authorization and withdrawal of the Work constitutes a strike contrary to Part 5 of the *Code* and section 3 of the *EIA* and sought the Union's assurance that it would not organize, encourage, or promote any such illegal activities (Attachment "E"). The Union did not rescind its authorization or direction to its members in response to that communication. Instead, the Union confirmed its advice to its members (Attachment "F").
28. BCPSEA says that the concerted authorization and withdrawal of the Required Duties and/or the Optional Duties by the Union and its members constitutes a strike within the meaning of section 1 of the *Code*, which strike is contrary to Part 5 of the *Code* and section 3 of the *EIA*, and which activity will continue absent the Board's issuance of the declaration and orders sought.
29. The Union has communicated information to its members regarding the authorization and withdrawal of the Required Duties and the Optional Duties as being the continuation of the Union's "job action" or other similar language denoting a strike (Attachment "G").
30. The Union has required teachers' participation in the concerted withdrawal of the Required Duties and the Optional Duties through threat of discipline including fines. The Union has advised its members that such discipline would be pursuant to the provisions of its Members' Guide relating to strikes and lockouts, rather than pursuant to provisions relating to "collective strategies" (Attachment "H").

## NOTICE

TO: THE RESPONDENT UNION AND RESPONDENT EMPLOYEES

AND TO: THEIR SOLICITORS

TAKE NOTICE that Rule 27 of the British Columbia Labour Relations Board Rules provides as follows:

27. (1) A complaint under Section 133 or an application under Section 143 of the *Code* alleging that a provision of Part 5 of the *Code* has been or will be contravened shall comply with Rules 2(2) and 2(3) in particular, and shall
- (a) state the date, time and location that the applicant wishes to appear before the board to apply for the order it seeks, which shall be at least twenty-four (24) hours after a copy of the complaint and a copy of this Rule have been served upon the Respondent Unions and any other interested party; and
  - (b) where a hearing is requested earlier than is provided in paragraph (a), state that an expedited hearing of the complaint is requested and the reasons for the request, specifying the nature of any harm anticipated or resulting from the violations complained of.
- (2) A hearing of the complaint shall be held at the board's Vancouver office and at the date and time at which the applicant have notice under sub-rule (1)(a) unless, at the request of any party, or by the board on its own motion, another date, time or location is designated by the board.
- (3) When the board designates a date, time or location other than the date, time and location of which the applicant has given notice, the board shall notify or cause to be notified all interested parties.
- (4) For purposes of notice under sub-rules (1) or (3), notice to a trade union or employers' organization is deemed to be notice to those persons against whom the complaint is made and it has authority to act as bargaining agent.
- (5) A Respondent Union or other party proposing to contest a complaint under this Rule shall, where required by the board, before commencement of any hearing into the complaint, file a reply with the board in accordance with Rule 4(2) and deliver a copy to the complainant and any other interested party.
- (6) For the purposes of this Rule, a complaint includes a complaint alleging a violation of Section 68 of the *Code*, an application for a declaratory opinion under Section 70 of the *Code*, and an application for permission to picket under Section 65(4)(a) or (b) of the *Code*.