



2012-2013 BOARD OF DIRECTORS' REPORT

OKANAGAN LABOUR RELATIONS COUNCIL

An overview of the services provided to member districts in the 2012-2013 fiscal year.

**OLRC
9/23/2013**

OLRC 2012-2013 BOARD OF DIRECTORS' REPORT

Governance

At the Annual General Meeting held on October 11, 2012, members of the Council reviewed the Board of Directors' report and financial statements for 2011-2012.

Election of officers was held on February 7, 2013. The election resulted in the following: Trustee G. Comeau of SD 58 (Nicola Similkameen), Chair, and Trustee A. Chell of SD 19 (Revelstoke), Vice-Chair. The Management Committee consists of the Chair, Vice-Chair and Secretary-Treasurer L. Minnabarriet of SD 53 (Okanagan Similkameen) and SD 74 (Gold Trail).

The OLRC 2012-2013 expenditures totalled \$255,400, which was approximately 6% under the budgeted amount. Revenues for 2012-2013 totalled \$296,759, which was 11% above the budgeted amount. The financial statements for 2012-2013 are presented separately from this report.

All Board meetings for the 2012-2013 year were conducted by conference call, except for the meeting on May 30, 2013, which was held in Kelowna in conjunction with Pro-D presentations by Lindsie Thomson of Harris & Co. and Sue Ferguson of BCPSEA. This in-person meeting and Pro-D session was well received by all who attended.

Negotiations

Both teacher and CUPE bargaining have been affected by government changes to BCPSEA. Over the summer the provincial government removed the BCPSEA Board of Directors and appointed Michael Marchbank as an interim public administrator and Peter Cameron as principal negotiator for both teachers and support staff.

Teaching Employees

The Teachers' collective agreement expired on June 30, 2013. The Executive Director was the spokesperson for teacher bargaining in SD 51 (Boundary) and assisted four other districts in developing proposals.

The majority of districts had completed their local teacher collective bargaining by the end of June 2013 which was enabled by the Agreement in Committee reached between the BCTF and BCPSEA during the 2012-13 school year and which set a cut-off date in June for local issues to be sent up to the main table.

Provincial teacher bargaining had commenced in the spring of 2013 but went on hold over the summer due to the Supreme Court case scheduled for September 2013 on whether the governments' remedy to the removal of the right to bargain class size and class composition was appropriate. If the BCTF is successful in this case they will have the view that the original class

size language is effectively reinstated into the collective agreement as the starting place from which to bargain. In either case, appeals of the verdict are likely. Bargaining is expected to resume in October 2013 with the government coming to the table in search of a long term agreement. Peter Cameron will be the spokesperson for these negotiations with a team of Ministry representatives, trustee representatives and BCSPEA technical advisors.

Non-Teaching Employees

During the 2012-13 year the Executive Director worked with member districts to develop bargaining proposals for CUPE bargaining and acted as spokesperson for bargaining at the local tables for the collective agreements expiring June 30, 2012. Good progress was made at most tables on local language issues but the talks stalled in the absence of a clear monetary framework. The six CUPE locals within the OLRC member districts gave strike notice in June 2013. Strike activity was limited to withholding overtime for one day. This limited strike activity was a mechanism to put pressure on the government and boards to move forward with the development of savings plans to enable collective bargaining on the monetary items within the cooperative gains mandate. No local bargaining took place over the summer.

Late in the summer, Peter Cameron, who had been appointed by government and tasked with leading the support staff bargain, and a small team met with the union support staff bargaining committee and determined that without a clear monetary mandate coming from savings plans there could be no further progress in support staff bargaining. Districts were then given the responsibility to commence developing individual savings plans in preparation for a support staff settlement.

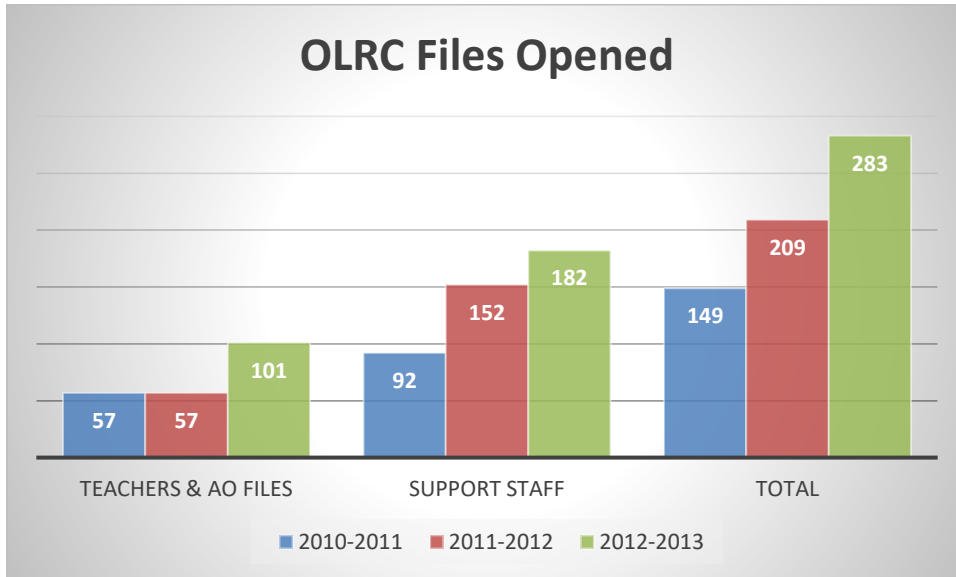
The Executive Director participated in the support staff provincial bargaining table throughout the process, except for the summer. Alan Chell, Vice Chair of the OLRC and former chair of BCPSEA, was at the table from the summer onwards. A final strenuous bargaining session commencing on September 16 resulted in a Framework Agreement on September 18, 2013. The unions took a strong stance on no concessions and as a result settled for a deal with a 3.5% end lift vs. the potential of a 4% wage increase with 0.5% of wages from contributions coming from within the collective agreement. As in past rounds, the Framework Agreement will have to be ratified locally, and by BCPSEA, and a date was set for completion of local bargaining to access the framework. The date set this round was December 20, 2013. The term of the CUPE collective agreements is July 1, 2012 to June 30, 2014.

The OLRC is working with districts and CUPE to set dates to conclude bargaining, the first of which is October 8, 2013 in SD 74. With the Framework Agreement now agreed to provincially, it is anticipated that there will be no further strike action by CUPE.

Labour Relations

There was no slowdown in issues requiring OLRC input for either the teachers or support staff in the 2012-2013 year. Since the 2010-2011 year there has been steady increase in volume of activity at the OLRC (see summary chart below).

During the 2012-2013 year there were two hundred and eighty-three (283) files opened which included one hundred and one (101) incidents involving teacher or administrative officer issues and one hundred and eighty-two (182) incidents involving support staff. This is a 35% increase in files over last year. These files involve issues such as contract interpretation, performance management, attendance management, investigations, discipline, grievances, workforce planning, human rights, employment law and the general application of management rights.



Grievances and Arbitrations

Most grievances that the OLRC was involved with have all resolved prior to traditional arbitration at this point.

Following are some of the grievances where the OLRC provided support to districts:

Teachers

- A grievance was filed regarding the appropriate rate of pay for a TTOC working a Transitional Preparation Day for a Long Term Assignment. The district had a clear past practice and interpretation and denied the grievance. It has not been pursued past Step 3 at this point.
- Two grievances were filed in a district regarding interpretation of qualifications. One grievance involved a decision not to hire a certain teacher and the second involved the awarding of a posting to one teacher over another. The grievances were denied and abandoned and then similar grievances were filed after the 2013 spring staffing process which have not yet been resolved.

- A teacher on a graduated return to work grieved when the district would not return her to her original classroom on two non-consecutive days but rather wanted her to return to work as a District TTOC to reduce disruption to the classroom. The RTW in her regular classroom was connected to her successful attendance in the District TTOC RTW. The grievance was successfully resolved.
- A provincial matters grievance was filed by the union on behalf of a teacher alleging that a district is in violation of the ESA by refusing to allow the teacher to return to work at the conclusion of her 52 weeks of maternity leave rather than at a school break and is citing a 2005 arbitration case between Greater Victoria Teachers Association and the Victoria School District heard by arbitrator Colin Taylor. The grievance was resolved in favour of the grievor. This part of the collective agreement has not been updated since the statutory leave extended to 52 weeks but needs to be read to include it.

Non-Teachers

- A relief bus driver was suspended for five days for letting a special needs student out at the wrong house. The Union grieved the suspension and it has been referred to arbitration but no dates have yet been set.
- An education assistant was terminated after an investigation into allegations she used physical force with a special needs student and where the employee was not truthful in the investigation. The union grieved, the grievor demonstrated remorse, told the truth and the parties arrived at an agreement that the employee would be suspended for the balance of the school year (over 2 months) and be issued with Letters of Suspension and Direction. She was also to participate in Non-Violent Crisis Intervention Training, Popard Autism Training and to meet with the District Principal of Special Services. In addition she was to connect with the confidential services of the Employee and Family Assistance Program over the summer period and follow through on recommended training or counselling. The employee was given a position at another school for the 2013-2014 school year.
- An employee grieved because he was not awarded a custodian-in-charge position as the District felt he did not possess “excellent communication skills” given the grievor’s disciplinary history that included a suspension for inappropriate treatment of co-workers. The Union has not advanced this grievance further.
- An employee grieved because he was not called for summer work. The district did not receive an e-mail from the employee advising that he was available for summer work. The grievance was not advanced.

- A grievance was filed by the union alleging that a CEA did not receive an additional 15 minutes from LIF funds. The District denied the grievance because the employee was already working 6.75 hours per day as a CEA – 30 minutes/day more than a “bell to bell” schedule. Part of this time was working in the cafeteria at the school which was not specifically to support special education students. The grievance was resolved by the District agreeing to review the LIF funds and allocate money to the employee if there was unspent money in the budget and stating that they would be looking at the structure of the position going forward.
- A bus driver grieved for reimbursement for additional hours incurred during an out-of-town trip. The District conducted a review of all overnight trips and payment was made for additional time where necessary. The grievance was resolved.
- The union filed a grievance alleging the District violated the terms of a Letter of Understanding regarding assignment processes for a mail van, wheelchair bus and special needs run. The grievance was resolved by the District agreeing to post sign-up sheets for the mail van and wheelchair bus.
- A CEA applied for a posting and was denied due to the fact that she was in a school-based posting supporting a student at greater than 70% time. The Union grieved based on the employee’s seniority. The grievance is in abeyance at this time based on the outcome of bargaining.
- A grievance was filed when a District posted a gender specific position for a CEA. The outcome was that the District must establish a bona fide occupational requirement for a gender specific posting each time that it does so based on the needs of the individual students in the class. This specific position and prior posting had been previously grieved by the Union in the same District. In addition, this issue is occurring in other OLRC Districts.
- A grievance was filed when an internal employee was not selected for a payroll position because she did not meet the necessary qualifications. The union arbitrated the decision through written submissions. The district was successful in its case and the decision to hire an outside candidate was upheld.

Investigations and Discipline

Over the past year the OLRC supported districts in thirty-six (36) investigations to pursue complaints from parents, students, co-workers or district staff which, if proven to be true, could result in a disciplinary outcome. During the investigations facts, motivation and knowledge of

expectations are clarified. The outcome to the individual employee is based on all of the information on the current incident, their current ability and motivation, a review of their past performance, the standards in the work place and the application of legal principles. At the end of an investigation it is often the case that the facts are quite different than they first appear. This shows how important it is to conduct a thorough investigation prior to determining what, if any, discipline is appropriate.

In an effort to change behavior and hold employees accountable it is also important to be very clear about the standards and expectations that are required. Formalizing these into letters of direction is often an appropriate step in creating the desired behavior change and setting the stage for future disciplinary consequences if there is no improvement. In cases where the investigation shows that standards are known and there has been willful misconduct, disciplinary action is the appropriate response.

The following are a sample of the issues brought to the OLRC in the past year:

Teachers

- A teacher was investigated for being absent without leave on June 28, 2013. Based on the findings the day was treated as an unpaid leave of absence and a Letter of Discipline was issued.
- A teacher was investigated for leaving school without notifying administration and taking a student with him. He was also being evaluated for failing to provide cover outlines and information on how students would be evaluated. A Letter of Direction was issued and the teacher subsequently went on medical leave.
- After a letter of complaint from a parent, a teacher was investigated for her treatment of the parent's daughter as well as for being late to class and talking on a cell phone in class. There were no findings to support discipline.
- A teacher accused the principal of harassment. The investigation determined that there was no breach of Article E.2(a) regarding abuse of authority.
- A teacher was investigated after a parent contacted the school about a class her daughter was in and complained about the teacher's treatment of her daughter. A Letter of Direction was issued.
- A teacher was investigated after a parent contacted the district about her daughter's mark in a course. There had been no feedback until the daughter failed the course and received a low mark in another class. When the parent spoke to the teachers they advised that work had not been handed in. The parent felt the teachers' attitudes were rude and disrespectful. A Letter of Direction was issued.

- A teacher was investigated for her behaviour towards student and parents. A Letter of Direction was issued.
- A teacher was investigated for inappropriate behaviour with students including being friends with them on social network sites and texting and other online communications. A Letter of Direction was issued.

Non-Teachers

- An employee was issued a ten-day suspension after admitting to using sick time to work for his personal playground installation business.
- An investigation was conducted after an employee complained that a custodian was using the school vacuum and supplies off premises and after hours and being returned in poor condition. After investigation it was determined that the issue was with the employee making the complaint. A Letter of Direction was issued to the complainant.
- A custodian was investigated for making inappropriate comments about a co-worker. Letters of Direction and Discipline were issued to the custodian and another employee who spread the rumours.
- A bus driver was investigated due to allegations of students hair pulling and throwing containers on his bus. A Letter of Direction was issued.
- A bus driver was investigated after stopping the bus to speak to a student and placing the student in his seat causing the student to bump his head. A Letter of Direction was issued.
- A bus driver was investigated after sliding off the road in winter conditions, getting the bus stuck and damage to a fence while trying to free the bus. A Letter of Direction was issued.
- A bus driver was investigated for his interaction with the teacher and students after a field trip. A Letter of Direction was issued.
- A custodian was investigated for culpable attendance issues. Letters of Discipline and Direction were issued.
- An education assistant was investigated after taking a grade 5 student to a non-school function. A Letter of Direction was issued.

- An education assistant was investigated for using physical force with a special needs student. The employee was initially terminated but was subsequently reinstated with a 2+month suspension. (The details of the grievance are set out above.)
- An employee was investigated for making negative remarks during a staff meeting. A Letter of Direction was issued.
- A custodian was investigate for not cleaning properly and failing to check in and out and for theft of time. The investigation resulted in the termination of the employee.

Other Issues

Job Descriptions

Creation and revision of job descriptions is an ongoing, fluid process for most districts. The OLRC provides assistance to districts in revising and creating job descriptions. Accurate and current job descriptions with clear qualifications are important for many things including recruitment, posting, job evaluation, bumping, and medical accommodations. In addition to ongoing work, during this past year the OLRC assisted a non-OLRC district with drafting and revising job descriptions.

Medical Issues

The OLRC has also worked with most districts on managing medical absences and ensuring appropriate documentation and follow up is obtained for those absences including second level medical certificates.

Respectful Workplace Policy

With the passing of Bill 14 and the changes this has brought to the management of health and safety there has also been overlap into labour relations in the area of harassment and bullying. The OLRC developed a draft Respectful Workplace policy and guidelines for districts to review with their boards as a way to be proactive about our management responsibilities.

OLRC Role and Services

In November 2012 the Executive Director visited SD 73 (Kamloops/Thompson) to meet with the senior leadership and provide an overview of the services offered by the OLRC. While the district decided not to become a member of the OLRC good relationships were formed and the district did ask the Executive Director to investigate a complaint of harassment against a principal. The OLRC accepted the consulting offer as it was felt to be a learning opportunity for the Executive Director.

OLRC Strategic Plan

A draft survey was developed by the Executive Director and forwarded to the Strategic Planning Committee during the summer for feedback. It was anticipated that the Survey would be completed and sent to all OLRC member districts early fall, but in view of the current discussions

around the BCPSEA restructuring and the CUPE bargaining deadline, this may not occur until later in the year.

The OLRC was also requested to provide a written submission to the government's shared services team who are looking at developing and making recommendations about shared legal/labour relations services. This was done.

Support Staff Education and Adjustment Committee (SSEAC) Membership

The Executive Director was asked by BCPSEA to be a member of this Committee and agreed to do so. Very few meetings have been held at this point but there is a substantial amount of work for the committee to do that is within the current support staff Framework Agreement.

Provincial Benefits Buying Group

The Executive Director also participated in a meeting as a member of the Provincial Benefits Buying Group sub-committee, along with Lynda Minnabarriet and several others, who were developing a Request for Proposal for the provincial benefits plan.

CAPSLE

The Executive Director is assisting with the planning of the CAPSLE Conference to be held in Kelowna, British Columbia in 2015. CAPSLE is the Canadian Association for the Practical Study of Law in Education. The conference combines lawyers, teacher unions, HR personnel and others in an annual discussion about what is happening in education law in Canada.

In-Service

During the 2012-13 year the OLRC hosted presenters from two law firms to talk about the challenges of dealing with medical information as it pertains to managing employee's absences. Both presentations were well received and highlighted this area as one where there is a collective need for support going forward.

BCPSEA Symposium

The Executive Director has been asked to participate in a presentation on support staff bargaining at the BCPSEA Symposium on October 24, 2013. Fellow presenters will be Renzo Del Negro of BCPSEA and Loris Pante of School District 36 (Surrey).

Respectfully submitted to the Okanagan Labour Relations Council Board of Directors.

TS/dk