



## **Executive Director's Report to the Board**

**June 21, 2023**

### **Labour Relations Update**

During the second half of the 2022/23 school year the OLRC staff were kept busy assisting districts with early childhood care initiatives, grievances, investigations, compliance with legislative changes and ongoing operational business including strategic planning and budget preparation.

As of May 30, 2023, the overall file count at the OLRC was 486 (238 Teacher & 248 Support Staff). There were 19 active grievances (15 Teacher & 4 Support Staff) at Step 3 or further in the CLASS system with 6 currently referred to arbitration.

### **Grievance and Arbitration**

In February, a favorable settlement was reached in an OLRC district on a teacher grievance where the union was challenging the eligibility requirement for benefits for teachers on term contracts. This grievance was scheduled for arbitration in June but was settled through mediation. The eligibility requirement in that district has been that a teacher needs to be on a term contract of four months or more to be eligible for employer paid extended health and dental benefits; however, this is not specifically expressed in the collective agreement language. The settlement agreement reached through mediation was in the employer's favor, confirming that the teachers' group benefits contract sets the eligibility requirements that teacher must have a contract with the district of at least four months to be enrolled.

On April 28, 2023, the OLRC received an arbitrator's decision on an arbitration regarding a President's Pension Leave Grievance that was heard on February 27, 28 and March 1, 2023. This arbitration arose from both an employer and union grievance on the application of Article 25.2 in the teacher collective agreement, with the parties taking different positions on the interpretation of the language regarding the payment of pension premiums for a teacher on full time leave for the President of the local teachers' association. The arbitrator found that the language of the collective agreement was ambiguous, which then allowed for consideration of past practice and bargaining evidence.

Unfortunately, the past practice evidence was problematic, as the district had been conducting themselves in a manner consistent with the union's interpretation for more than 25 years, and the bargaining evidence was inconclusive, so the arbitrator found in favor of the union. Going forward the school district is responsible for paying for the pension contributions of union officials on full time

release. There are several other school districts with similar grievances that may be impacted by this outcome, depending upon the practice in those districts. CLASS has assigned the same legal counsel to all these files and the experience gained in the initial arbitration will be helpful in determining an appropriate strategy for those districts.

A provincial BCTF grievance relating to TTOC and casual employees' eligibility for paid sick days through the *Employment Standards Act* remains active. CUPE also has a standing in this matter. This provincial grievance will have significance to many of the local grievances which have been filed by the BCTF and CUPE, including one CUPE and two Teacher grievances within the OLRC districts. These grievances relate to the March 2022 amendment of the *Employment Standards Act* (ESA) which removed section 49.1 from the list of ESA provisions subject to the "meet or exceed test", meaning that this section became applicable to unionized employees with a collective agreement who did not have access to five (5) days of paid sick leave during a calendar year. BCPSEA and districts have taken the position that only those employees scheduled to work are entitled to the benefit, to which the union disagrees. The outcome of the arbitration will provide helpful clarity on the administration of this section of the ESA.

In a recent B.C. Court of Appeal decision, the longstanding test for discrimination based on family status under the B.C. Human Rights Code has been broadened. The case, [\*British Columbia \(Human Rights Tribunal\) v. Gibraltar Mines Ltd., 2023 BCCA 168\*](#), involved an employee requesting modifications to her and her husband's work schedules (worked for same employer) in order to be able to care for their child. After the employer declined the schedule change the employee filed a human rights complaint alleging family status discrimination.

The longstanding test for family status discrimination in BC has been set out in *HEABC v Campbell River and North Island Transition Society, 2004 BCCA 260* (the "Campbell River test"). There, the Court indicated that in "the usual case", a prima facie case of family status discrimination is established when a change in a term or condition of employment imposed by an employer results in serious interference with a substantial parental or other family duty or obligation.

In the Gibraltar Mines case the Court reviewed this test in consideration of the employee's entitlement to accommodation for caregiving obligations. The Court clarified that the first part of the test above (a) is not an exhaustive statement and could also be met if an employer elects not to change a term of employment to address an employee's need. School districts should now be aware that a change in an employee's personal circumstances, such as childbirth or gravely ill family member, could require a duty to accommodate more often than before this ruling. An employee would still need to demonstrate that this new personal circumstance is being significantly impacted by their employment.

### Legislative Changes

Bill 22, the *Freedom of Information and Protection of Privacy Amendment Act, 2021*, received royal assent and became law on November 25, 2021. This Bill made substantial amendments to British Columbia's *Freedom of Information and Protection of Privacy Act (FOIPPA)*. Effective February 1, 2023, two additional amendments changed how public bodies address privacy issues in BC and require 1) a public body to give notice of a "privacy breach" to any "affected individual" and to the Office of the Information and Privacy Commissioner of British Columbia (OIPC); and 2) all public bodies to have a Privacy Management Program (PMP).

The OLRC hosted a pro-d presentation on this subject on March 3, 2023, in conjunction with its in-person Board meeting in Kelowna. Suzanne Kennedy of Harris & Company specializes in privacy and was invited to be the presenter. Suzanne provided OLRC board members, staff and guests from other local school districts with education on how these new amendments will impact their districts. As follow up to the session, Suzanne distributed helpful resources to session attendees that will hopefully assist districts with meeting these new requirements.

The OLRC staff attended a private training session with Suzanne Kennedy in May regarding the OLRC's privacy legislation requirements under the provincial Personal Information Protection Act (PIPA) and under Part 3 of FOIPPA (collection, protection, and retention of personal information by public bodies) due to being a service provider to school districts. The Executive Director is currently conducting a review of the OLRC's privacy management practices and will bring forward any recommended amendments in the upcoming fiscal year.

The *Accessible BC Act* is another area of legislation that OLRC staff have been busy assisting districts with. The [Accessible British Columbia Act](#) came into effect in September 2022, subsequent to an extensive consultation process lead by an advisory committee within the Provincial Government. The Act provides a framework to identify, remove, and prevent barriers to accessibility in the province and requires school districts to develop an accessibility plan by **September 1, 2023**. Accessibility conversations had previously been focused on forms of physical disabilities, however, hidden disabilities such as anxiety, depression and ADHD now require accessibility consideration. The Act requires school districts to take a three-step approach which includes 1) establishing a working committee, 2) developing an accessibility plan; and 3) creating or modifying a mechanism for gathering feedback.

The Workplace Health Specialist hosted an OLRC district meeting via Zoom on May 4 to provide information about the requirements of the *Accessible British Columbia Act* and allow districts to share information on their progress. Many districts expressed interest in a collaborative approach, so the OLRC created a shared file for member districts to upload and share information on their progress in creating their accessibility plans and additional provincial support resources through BC CAISE were identified. BCPSEA has also provided general information to districts about the obligations of the Act and reminds districts to conduct a more in-depth review of how the Teacher or Support Staff collective agreements may impact the requirements of this Act.

### **BCPSEA Contract**

The Executive Director continues to work with BCPSEA in providing liaison services to member school districts by participating in scheduled weekly meetings and ongoing communication with BCPSEA, new employee mentoring and acting as a member on the Support Staff Education Committee (SSEC) and Provincial Job Evaluation Steering Committee. The Executive Director will be joining a new committee flowing from the teacher collective agreement with the purpose of reviewing the trial local bargaining process put in place this round.

The Executive Director attended the BCPSEA in-person Thompson-Okanagan regional meeting in Kelowna on March 8 and then co-presented a one and a half day training session on investigating employee misconduct with Debbie Craig from BCPSEA. Several attendees were from OLRC districts.

### **Teacher**

The wage increases negotiated for the second year of the current teacher and support staff collective agreements included a cost-of-living adjustment (COLA) provision. The negotiated increase for July 1, 2023, was a minimum of 5.5% and a maximum of 6.75% depending upon the annualized average of BC Consumer Price Index (CPI) over twelve months starting on March 1, 2022 (COLA). This COLA provision was confirmed by the government in April, establishing the July 1, 2023 increase as 6.75%.

The 2023 Teacher salary grids have now been sent to all school districts with amendments to the provincial allowances for mileage and the remote recruitment and retention allowance. Article B.10.1 Mileage was amended to increase the mileage amount to \$0.64 per kilometer and LOU 5 Remote Recruitment & Retention Allowance was revised and increased to \$2,947.

The melding of the 2019 local collective agreements is still underway with anticipation that all agreements be completed by June 30, 2023. At present 26 out of the 60 agreements are complete and 31 in the final review. The provincial collective agreement was distributed to districts in March 2023.

### **Support Staff**

The OLRC has continued to assist districts prepare for various childcare initiatives, including Seamless Day/Just B4 programs as well as new childcare centers. Preparatory work has included drafting job descriptions, performing compensation market research, job evaluation forecasting and negotiating and supporting new Letters of Understanding. The Executive Director has recently worked with SD 22 on a second early learning LOU for several new Early Child Educator positions which are required for various new early learning programs. SD 10 has continued to be busy with the new Nakusp Early Learning and Child Care Center, which is planned to have a variety of programs available to provide care for children from 0-12 years of age. This LOU in SD 10 was concluded in November 2022, and has allowed the district to move forward in hiring union staff for the Center.

In the current Provincial Framework Agreement BCPSEA took on the responsibility to create the new collective agreements for districts and locals. They are continuing to work on completion of local collective agreements and are planning to have them all done by the end of the school year.

### **Exempt Staff**

Following the Ministry of Finance's approval of the proposed exempt salary grids, districts received updated salary grids for Principals and Vice Principals along with exempt staff salary ranges. Districts also submitted exempt staff salary increase plans to BCPSEA for approval and those increases were funded by the Ministry to a prescribed level and were retroactive to July 1, 2022.

In addition to the salary grid review, BCPSEA also coordinated a review of benefits in February 2023 to ensure that benefits for exempt and management staff are, where possible, equivalent to the benefits available to bargaining unit employees. BCPSEA and PSEC Secretariat encouraged districts to implement benefit improvements to paid maternity leave, paying one hundred percent (100%) of their current salary for the first week of the leave; and when the employee is in receipt of Employment Insurance (EI) maternity benefits, the difference between the amount of EI maternity benefits received by the employee and one hundred percent (100%) of their current salary, for a further fifteen (15) weeks. Districts were also encouraged to review and improve extended health benefits for chiropractic, massage therapy, physiotherapy, acupuncture as necessary and ensure the definition of psychology services includes counsellors and social workers.

Following confirmation of the increases to unionized wages for the second year of the collective agreement, BCPSEA has been working with PSEC to confirm the exempt compensation mandate for 2023. The announcement on the 2023 exempt compensation mandate was communicated to representatives of the BCASBO conference on May 26 and a bulletin was distributed from Chris Beneteau of BCPSEA on May 29 confirming the salary grid for exempt staff effective July 1, 2023, and the Regional Salary Model effective July 1, 2023. Both grids were aged 6.75% in alignment with bargaining unit salary increases for year two (2) of the Shared Recovery Mandate. Salary increase instructions were also provided stipulating that increases should be performance based, between 6.75% and 10%, and require approval from BCPSEA no later than November 15, 2023.

## General Update

### Strategic Plan

The OLRC staff continued to meet established goals and timelines identified in the 2020-2023 Strategic Plan and 2022/23 annual Operational Plan.

2022/23 is the final year of the current three (3) year OLRC Strategic Plan and the proposed new three (3) year plan developed by the Executive Director and Management Committee will be presented to the OLRC Board for approval at the June 21, 2023 meeting. The new plan includes updated Values, a more detailed list of services provided by the OLRC as well as the addition of a new goal area titled “Sectoral Relationships” to capture the importance of the OLRC’s relationships with key stakeholders.

### Workplace Health

The new Workplace Health Specialist (WHS) got to work quickly on March 1, 2023, in her role, attending the BCPSEA Regional update meeting and getting up to speed on what is happening in the sector. Introductory contact was made with all ORLC Districts during the first few weeks of employment. Current disability management files were reviewed, assessed and guidance provided to the applicable districts. Many files were related to medical accommodations; however, several medical notes and certificates were assessed for sufficiency of information. The WHS researched district requirements for the new Accessible BC Act providing a summary for all districts and co-hosting an information session with the Executive Director at the beginning of May. The WSH will continue to assist districts with this

new requirement over the summer so that they will comply with the legislated implementation date of September 1, 2023.

### **Job Evaluation**

The OLRC Executive Assistance continued to provide direct assistance to SD 10, 22, SD 51 and SD 53 with their CUPE support staff job evaluation plans, including job description creation and interim wage rate setting. Both SD 10 and SD 22 have been busy planning and implementing early learning programs and job evaluation assistance has been provided regarding this new initiative. The Executive Assistant also acted as the facilitator of a virtual job evaluation meeting in SD 10 as they work to establish a well-functioning job evaluation committee.

### **OLRC Budget**

In June 2022, the OLRC Board approved the 2022/23 annual budget with no increase to membership fees, which was possible given an increase in revenue negotiated for the BCPSEA contract. During the year we remained largely on budget and will be ending the year with a slight surplus given savings from the Workplace Health position remaining vacant for four months. However, it is important to note that if it were not for these significant savings, the salary budget would have required use of surplus to cover larger than budgeted salary increases for staff. When the budget was set for the 2022-2023 year at our June 13, 2022 Board meeting the PSEC exempt compensation mandate had not yet been confirmed and bargaining was still underway. The 2022/23 budget that was passed included an estimated 2% increase to the salary budget. This was to be confirmed once the PSEC exempt salary mandate was released and then it would be effective July 1, 2022. The PSEC mandate was not confirmed until January 2023 and when it was, the range of available exempt salary increases was between 5-10%. The Management Committee approved staff salary increases for the OLRC within this range.

The proposed budget for 2023/24 year is attached to this report. The budget includes a recommended increase in membership fees of 8% which is inclusive of a projected 6.75% salary increase effective July 1, 2023. The budget also includes an increase in revenue from the BCPSEA liaison service fees of 6.75% per our contract with BCPSEA.

The proposed increase of 8% is not sufficient to balance the budget in the current year without using surplus, which is not a sustainable approach. However, we have historically tried to avoid large one-year increases in membership fees, so the recommendation from the Management Committee is that the necessary increases should be spread over a two-year period. To achieve this, a balanced budget projection for 2024/25 has also been included for the Board's review. The 2023/24 budget has been reviewed and is being recommended by the OLRC Management Committee.