

NEGOTIATION REPRESENTATION

What BC Principals and Vice-Principals
are seeking in their
Employment Relationships

Principals and Vice-Principals should have fair and reasonable influence over the terms and conditions of their employment.

If you agree with that statement, there is no need to read any further: you can move on to the next article. If you disagree, or want to better understand the employment relationship history for school leaders in BC, and how the Canadian courts now interpret this approach, then I encourage you to read on.

Let's first look at both the history of employment for Principals and Vice-Principals in this province, and what courts across the country say about fair and reasonable expectations for employee groups. In 1987, Principals and Vice-Principals were members of the BC Teachers' Federation (BCTF), and had employment protections members of a provincial union. That same year, the Social Credit government of the day passed the *Teaching Profession Act* that chose to exclude Principals and Vice-Principals from being unionized employees by defining them as school administrators, and not teachers. At the same time, an amendment to Section 20 (2) of the School Act removed the ability of Principals and Vice-Principals to bargain as a collective, and all

Principals and Vice-Principals were required to enter into individual personal services contracts with their employers. Thirty-five years later, that amendment still exists in the School Act; the amendment stands out as questionably defensible from a constitutional perspective, when viewed alongside the many contemporary court rulings related to the Charter of Rights and Freedoms.

With that singular act of legislation in 1987, an entirely new and untried employment relationship model was introduced, and – in the 35 years following that critical exclusion – Principals and Vice-Principals have continually struggled to influence their terms and conditions of employment. When the apparatus for collective negotiation was removed in 1987, the government neglected to replace it with a tool or mechanism that would mandate fairness and equity in the working lives of Principals and Vice-Principals. In those 35 years, all aspects of the employment relationship have been under the direction of Boards of Education whose composition can change with each municipal election, along with the district's superintendent as the designate of each Board in BC's sixty school districts.

We do not take issue with the Labour Relations Board legislation that states that worksite managers cannot organize as a union under the Labour Code. What must be considered is the definition of the term 'manager'. In the scope of their responsibility for running a school, Principals and Vice-Principals have the same responsibility as any CEO. However,

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alongside that, they have very little inherent authority to carry out that work. In Canada, the benchmark for a being a manager is having the ability to hire and fire employees, and to determine a budget. Principals and Vice-Principals do not have the ability to hire, to fire, or to set their own budgets. And while it is true that Principals and Vice-Principals do the comprehensive background and investigative work related to these HR practices, ultimately the power to make decisions about employment rests with each district.

Managers are not expected to perform the same tasks as the employees that they manage. Yet 65% of BCPVPA members teach; in some instances, Elementary Vice-Principals teach 100% of the time. There is an interesting opposing scenario where BCTF members can take on acting Vice-Principalships, essentially performing all of the duties of a Vice-Principal, while remaining a member of the BCTF. Readers who have persisted: are you feeling confused? *Then we are on the right path!*

Since 2014, the BCPVPA has advocated on behalf of our 2,600 members for a provincial negotiation framework that would establish some common terms and conditions in the contracts of Principals and Vice-Principals, and provide the right to collective negotiation as a means to redress the inequities and variances in the employment relationships of BC school leaders.

Critics of the BCPVPA's approach to establishing

reasonable standards of employment contend that Principals and Vice-Principals are managers, and not entitled to bargaining rights like those of unionized employees. When viewed through the lens of the Canadian Charter of Rights and Freedoms, it is clear that the BCPVPA's advocacy is not about unionization, salary, and benefits; it is about the troubling infringement upon the Charter Rights – Section 2(d) the Freedom to Associate – of BC workers who are Principals and Vice-Principals.

If you have read to this point, and are a BCPVPA member, you are currently exercising your Charter Right to be a member of – or, to 'associate' with – the BCPVPA. Recently, Canadian courts have determined that the right to associate on its own is not enough; there must be a demonstrable action that comes along with the freedom to associate, and for Canadian courts that is the right to negotiate as a collective.

From the perspective of the courts, the game changed in 2007 with the landmark *Health Services* by the Supreme Court of Canada. In *Health Services*, the majority of the Supreme Court of Canada defined "collective bargaining" as "the right of employees to associate in a process of collective action to achieve meaningful workplace goals." You will note that the Supreme Court did not speak specifically to unionization, but more about the collective approach to negotiating in order to achieve meaningful workplace goals. In this, the Supreme Court ruling clearly aligns with the goals expressed during the BCPVPA's seven years of advocacy.

"...Collective bargaining is not simply an instrument for pursuing external ends, whether these be mundane monetary gains or the erection of a private rule of law to protect the dignity of the worker in the face of managerial authority. Rather, collective bargaining is intrinsically valuable as an experience in self-government. It is the mode in which employees

2022

Chapter applies for judicial review.

2021

The Labour Relations Board dismisses the Chapter application in May 2021, and denies leave for reconsideration in November 2021.

2020

BCPSEA confirms that all negotiations with BCPVPA members will remain at the local level.
BCPVPA consults with a labour law firm. One Chapter applies for certification.

2019

BCPSEA issues an AGM resolution that commits to non-binding discussions with BCPVPA to establish a structure and process for discussion. One meeting takes place.

2018-2020

BCPVPA meets with education sector stakeholders including BCPSEA and the Ministry of Education, BCSSA, BCASBO.

2018

BCPVPA members representing all 60 districts vote 97% in favour of proceeding with advocacy for negotiation representation.

2014

The BCPVPA begins to work towards advocacy for negotiation representation for BC Principals and Vice-Principals.

1988

The BCPVPA is created as a non-profit professional association representing school and district-based school leaders.

1987

BC's Social Credit government tables Bills 19 and 20. Principals and Vice-Principals are expelled from the teacher bargaining unit as a result of Bill 19 and are no longer protected under the Labour Code.

1919

BC Teachers Federation (BCTF) is incorporated as a society.

Vice-Principals and Principals in BC are members of the BCTF, with accompanying employment protections.

participate in setting the terms and conditions of employment, rather than simply accepting what their employer chooses to give them ..."

Supreme Court of Canada decision in Health Services & Support Facilities Subsector Bargaining Assn v. British Columbia (2007, SCC 27, p. 33)

While the employment relationships of Principals and Vice-Principals were not under examination in this decision, the Supreme Court opinion on the dignity conferred under a collective process speaks volumes about the failings of the current personal services contract model that is, in a word, vulnerable.

The right to collectively negotiate has been upheld in a number of Supreme Court cases. In the *Mounted Police Association of Ontario v. Canada*, the Supreme Court, in referencing the RCMP's ability to negotiate as a collective, stated:

"[Freedom of association] stands as an independent right with independent content, essential to the development and maintenance of vibrant civil society upon which our democracy rests."

Mounted Police Association of Ontario v. Canada (Attorney General) (2015, para. 49)

With the Supreme Court of Canada clearly upholding the fundamental freedoms of employee groups in health care and policing, and evoking the bedrock of democracy, just what is the impediment for Principals and Vice-Principals to be represented as a collective, both by the BCPVPA as the provincial association, and by our members' regional chapters? We must return to Section 20 (2) of the School Act, passed 35 years ago in 1987. Modern case law is clear that Section 121 'interferes' with Section 2(d) of the Canadian Charter of Rights and Freedoms, and infringes on the rights of Principals

and Vice-Principals. It is also clear that the Supreme Court does not make the distinction that collective bargaining is only reserved for unionized employees. While the Court does not refer to a specific labour relations model, it guarantees a "right to a general process of collective bargaining, not to a particular model of labour relations, nor to a specific bargaining method." The ability to negotiate as a collective can be established outside of BC's Labour Code that is reserved for unionized employees. What the Charter guarantees is a *right* to a process, not necessarily an outcome, and a process is what we are seeking. All other Principals and Vice-Principals in Canada – whether unionized employees or not – have the ability to negotiate as a collective. In every other province or territory, Freedom of Association is upheld.

MANAGERS ARE NOT EXPECTED TO PERFORM THE SAME TASKS AS THE EMPLOYEES THAT THEY MANAGE. YET 65% OF BCPVPA MEMBERS TEACH; IN SOME INSTANCES, ELEMENTARY VICE-PRINCIPALS TEACH 100% OF THE TIME.

For seven long years, the BCPVPA has advocated with government and within BC's education sector that the negotiating model for Principals and Vice-Principals must be Charter compliant in order to be fair and equitable. The BCPVPA, in representing its members, is pushing the system to change; not unexpectedly, the system continues to push back. The current employment relationship is built on a decision made in 1987, for political reasons of that time. 1987 was the year that Windows 2.0 and the first Nike Air Max model were released; the year when Hooked on Phonics hit the market, Red Bull

gave us wings, and Miss Vickie's came through in the crunch. We believe that a 2022 solution – reflective of the complex and important role our members play in BC's successful education sector, and the value that they have proven to the system during the years of the pandemic – is long overdue.

In this seven-year journey, we have heard from some critics that this is just a bid for unionization. We have been openly adamant from the start that we don't believe that unionization is required in the establishment of a Charter compliant mechanism for provincial negotiations. The model that we hope for is one that recognizes and protects the dignity of

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Principals and Vice-Principals as stated so clearly by the Supreme Court of Canada when referencing the case of *Wallace v. United Grain Growers (1997)* in the Court's *Health Services* decision:

“The right to bargain collectively with an employer enhances the human dignity, liberty, and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work.”

If you have read to the end of this article, thank you. But the end of the article is not the end of the narrative. We hope that you will stick with this story as we continue to write it.

