

Union Rights of Canadian Teachers

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Introduction

When Canada became a nation in 1867, our forefathers assigned to the newly created federal government those areas which were considered to be of national significance while relegating to the provinces those areas which were of only regional importance. Given the social context of the day, education and labor codes were considered to be of mainly local concern. Thus, they were assigned to the provinces.¹ Each province and territory, therefore, has developed its own education system. Each system, of necessity, includes legislation governing teachers and teaching.

In spite of this separate development - in both time and space - all provinces and territories have strong teacher organisations. Every teacher who teaches in the public school systems in Canada is eligible for membership in their respective organisations. These organisations (with the exception of two in the province of Quebec) are, in turn, members of the Canadian Teachers' Federation (CTF), which in turn is a member of Education International. Membership in the provincial teachers' organisation is compulsory in Alberta, Saskatchewan, Ontario and New Brunswick. Membership is automatic (with some right out allowed) in Manitoba, Quebec, Nova Scotia, Newfoundland and Prince Edward Island and voluntary in the territories. In British Columbia teachers must belong to the College of Teachers which has jurisdiction over certification, discipline and competence. Membership in the British Columbia Teachers' Federation (BCTF), the bargaining agent, is optional. It is available through membership in a local teachers' organisation and over 95 percent of teachers have joined the BCTF.²

With the exception of British Columbia, as noted above, Canadian teacher organisations perform both a union function and a professional association function. Since their inceptions in the early part of this century, these organisations have been concerned with improving the quality of public education and enhancing the status and welfare of teachers. In other words their union and professional roles tend to blend into one another.

As a professional association of teachers, each group sees, as one of its major responsibilities, the duty to set minimum standards of behavior for its members. It supports its members who meet these standards and has the ability to penalise those who do not. Each association works individually as well as collectively (through the Canadian Teachers' Federation) to improve the quality of education in each province. For example, the Manitoba Teachers' Society states as its philosophy that:

The Manitoba Teachers' Society envisions a public education system that provides equal accessibility and equal opportunity for all children, that optimises the potential of all students as individuals and citizens, that fosters lifelong learning and that ensures a safe learning environment respectful of diversity and

human dignity. Teachers, working in partnership with parents, will exercise their rights and responsibilities as professionals.³

Each association offers its members a wide range of professional services which include, but are not limited to, the following:

1. professional publications such as newspapers, magazines and monographs on specific issues;
2. professional development inservice opportunities;
3. liaison with the universities which offer teacher education programs to ensure that the interests of the profession are reflected in the programs and courses offered;
4. liaison with the Department of Education on issues such as standards for professional certification and education finance;
5. special subject councils which offer members conferences and other services in particular areas of teaching specialisation; and
6. public relations services to increase public awareness of education issues.

The effectiveness of this last service is evidenced by the increased level of public support for teachers and education funding which has taken place in the last few years.⁴ This has occurred despite an intensive campaign by provincial governments to 'restructure' education through cuts to funding and so-called accountability initiatives. These campaigns focused much of the blame for the so-called failings of education on the 'poor performance' of teachers, a factor which has yet to be demonstrated.

It is within this professional framework that teacher organisations also perform the duties of a labor union. Each organisation acts as the bargaining agent for its members and has, as its chief sanction against the employer, the right to strike or to collectively withdraw services. In addition, the association usually provides its members with a wide range of collective services including pension plans, health insurance benefits, legal assistance and training for local leaders in union matters.

Teacher union rights are, by and large, similar throughout the country in spite of the fact that they are provided by 13 different legislative bodies through both education laws specific to teachers and general labor laws available to all workers in that province or territory. But, these laws do vary in their detail from province to province. For the purpose of illustration and clarity, this paper will focus discussion on the rights of teachers in the province of Alberta as representative of those generally enjoyed in Canada. Where significant differences exist between or amongst provinces this will be noted.

Legislated Rights - The School Act⁵

Teachers, regardless of where they teach, are under pressure from three institutional interests:

1. the community represented by the elected school board;
2. the state as represented by the minister of education; and
3. the profession itself represented by the teachers' association.⁶

Given these competing interests, teachers, as statutory employees, have sought to ensure that their employment is not subject to capricious local interests nor undue interference. The *School Act*, rather than the collective agreement, is the main source for teachers of employment rights.

Tenure

One of the most significant rights that Alberta teachers have in terms of their relationship with their employer is the right to tenure. Section 80⁷ of the *School Act* provides that a teacher on continuing contract (tenured) can only be dismissed for just cause as defined by law. It further provides the teacher with the right to a hearing before the jurisdiction's board of trustees who are, in fact, the employer. As a member of the Alberta Teachers' Association (ATA) the teacher is entitled to seek representation and advice from the Association in this matter. This special right to tenure provided to teachers is in recognition of the fact that left to free-market forces, teachers with the most experience would likely be the first to be dismissed in times of financial difficulties. The immediate effect of this would be a loss of mature educational leadership within the school community with a detrimental effect on the education of our children.⁸

Transfer

As teachers are employees of a board of trustees, rather than an individual school, the superintendent has the power to transfer teachers from one school within the district to another. This right is only fettered by the requirement under the *School Act* that the board act 'reasonably'.⁹ In some instances the collective agreement has been used to limit this further to include such items as costs for moving or the maximum distance from the current school that the new school can be located. However, other abuses of the requirement to act reasonably, such as a 'constructive dismissal', can be appealed to a judicial body (a board of reference) beyond the school board.

The Board of Reference

Given the large body of common law in this country, any venture to seek a remedy in court for an unjust termination or constructive dismissal was necessarily time-consuming and expensive. Both teachers and their boards sought an alternate type of tribunal with which to arbitrate such disputes. Every province in Canada now has in place a review tribunal known as 'boards of reference' or 'boards of arbitration'. In Alberta, the board of reference is established under the *School Act*.¹⁰ While statutory provisions vary from province to province, all of the tribunals have the power to review the real or constructive dismissal of tenured teachers and to confirm, reject or vary the action of the school board.¹¹ The right to the board of reference is automatic in some provinces such as Alberta but at the discretion of the minister of education in others. It is an individual right that teachers in Alberta have been very vocal in preserving.

In Alberta, a list of individuals, each with a strong labor arbitration background, are jointly agreed upon by the ATA and the Alberta School Boards' Association (ASBA). When a teacher requests an appeal to the board of reference, the registrar, on behalf of the minister, appoints one individual from the list to sit as the board of reference. As with all such tribunals, the laws of natural justice and duty of fairness are requirements on both sides. The board hears the

evidence in the matter before it from both sides and makes a decision. This decision is legally binding on both sides. In other words, it has the force of law. Should either side, upon consideration of the board's decision, decide to appeal, it may do so to the Alberta Court of Appeal. At all times in the process the parties to the dispute are entitled to reach a settlement outside of the board or to withdraw.

The board of reference has existed in Alberta since the mid 1930s. As such it has built up a large body of precedent which defines for teachers and their employers the parameters in which they work with regard to termination. Thus, the board's effectiveness is most apparent in the decrease in the number of cases that appear before it.

The institution of the board of reference is especially applied to the relationships among the teacher, the community, and the school board. It controls the action of the school board upon the teacher and may defend the teacher against decisions by the school board or from community pressures to which the school board has succumbed The effect of the board of reference is to make both the school board and the teacher accountable to a wider and greater authority, namely the authority of the larger society as crystalised in the statutes and precedents of the law.¹²

As members of the ATA, teachers are entitled to the advice and individual assistance from the staff of the association. When the issue is one involving the *School Act*, Member Services staff will provide to the teacher an explanation of her/his rights and will assist in ensuring that these rights are not violated. Where a breach of those rights does occur that affects the teacher's employment, the staff member will provide representation for the member. If there is a legal action resulting from the teacher's employment including an appeal to the board of reference, the member is entitled to the services of an association lawyer at no personal cost.

The Collective Agreement

With the few exceptions noted in the introduction, the teacher associations of each province are the bargaining agent for their members. Given that the issues of tenure and wrongful dismissal are not the subject of collective bargaining, teachers' collective agreements tend not to resemble those of other unions. In general, these agreements set out the terms and conditions of employment. They also, as mandated by the applicable labor relations legislation, must contain provisions for the resolution of disputes arising from the agreement by way of grievance and grievance arbitration.

Bargaining in Alberta is done at the local jurisdiction level as it is in Manitoba, Ontario and the Yukon. Newfoundland, Prince Edward Island and Nova Scotia now bargain provincially while the other provinces and the Northwest Territories have a combination of provincial and local bargaining. In the latter category, local bargaining is restricted to non-monetary items.

The collective agreements in Alberta generally address the following issues:

- Salary scale
- Salaries and allowances for designated positions (e.g. principal)

- Experience increments
- Time allocated for administration and supervision
- Teacher assignments
- Leaves of Absence (e.g. maternity, educational)
- Group insurances
- Grievance procedures

As noted above, bargaining is done at the local level although the Association is the bargaining agent for all teachers. As such it provides both training and advice to local negotiating committees on the objectives, process, tactics and organisation of bargaining. Where local bargaining fails, a representative of the bargaining agent, an ATA staff member, is appointed to conduct further negotiations under the provincial Labour Relations Code. Should strike action become necessary, the Association provides financial and legal support, as well as support in communications and public relations. However, this support is premised on the understanding that teachers have bargained in good faith with objectives that are consistent with those of the ATA.

The staff of the Teacher Welfare program area provide individual advice and assistance to members in a number of areas. These include issues arising from the Labour Relations Code, the Employment Standards Code or the salary and sick leave provisions of the collective agreement. Individual advice and assistance is also provided in the areas of maternity benefits, employment insurance benefits, grievances and sick leave and disability benefits.

Additionally, Teacher Welfare is responsible for the provision of an assortment of financial services to teachers. By federal statute, all Canadians are entitled to basic universal health services. However, in cooperation with ASBA, the ATA administers the Alberta School Employee Benefit Plan (ASEBP) which provides life insurance, extended health insurance (e.g. dental, prescriptions) and extended disability benefits. ASEBP operates as a non-profit insurance company under the relevant legislation. For teachers covered by ASEBP or by other insurance carriers, the Association provides assistance in appealing decisions by the insurer, which includes legal assistance when necessary. This area also monitors the jointly operated Alberta Teachers' Retirement Fund (ATRF).

There is one significant issue that tends to separate teachers from other groups covered by collective agreements. The position of shop steward does not exist except in those provinces where the government has split the teachers' professional association into two bodies, the union on one hand and the professional association on the other. In these provinces, the union acts as a true union and the collective agreements and shop steward position reflect that reality. This is the situation in British Columbia, Ontario and Quebec.

In the rest of the country, each school has a representative appointed to represent the staff at the local council meetings. The school representative is also the conduit through which information flows between teachers and the local and between teachers and the provincial body. Teachers with concerns about the collective agreement contact the local executive directly for assistance if the issue is grievable. Where other issues arise they are directed to contact the provincial association as outlined above.

Emerging Issues

The Decline of Support for Union Rights

The infringement of union rights in Canada is not confined to teachers. Such infringements began in Alberta in 1977 with the *Public Service Employee Act* which banned strikes by public employees. That was quickly followed by the Canadian government and other provinces interfering in the basic bargaining rights of public sector employees. As well, the Canadian Teachers' Federation noted earlier this year that 'inaction by provincial governments in the face of flagrant anti-union discrimination by private companies particularly in the retail sector has further affected these rights'.¹³

Teachers, as employees of local school boards, have been included in the government anti-union agenda. Under the guise of cutbacks to reduce government deficit, legislation has been introduced to curtail legal collective bargaining. Allan Bacon, president of the Canadian Teachers' Federation, has stated that:

Delegates from our provincial and territorial teacher organisations across Canada attending our Annual General Meeting recently arrived with similar stories: Quebec's Bill 102, Ontario's Bill 48, British Columbia's Bill 31, Nova Scotia's Bill 160, Manitoba's Bill 22, to name a few, all had the same objective - to impose on teachers, not through the collective bargaining process, but by legislation, such things as wage freezes, wage rollbacks, unpaid 'vacations', forced settlements and other concessions.¹⁴

Interestingly, five years after massive educational funding cutbacks, wage rollbacks and thousands of teachers leaving the profession, or being denied entry, the Alberta government has acknowledged substantial financial surpluses in the past two to three years. It appears the ATA's contention, that the government's deficit crisis was artificially created to allow the government to impose its neoconservative agenda of downsizing the public sector onto school boards and teachers, has been confirmed.

In 1994, the Alberta provincial government removed from public school boards the right to collect their own taxes. The issue of the province underfunding school districts and the rights of boards and teachers to collectively bargain was severely tested this past spring in Calgary, Alberta. The Calgary Public School Board is the largest in Alberta, and the second largest in Canada, with approximately 5,300 teachers. Since 1980, their collective agreement has contained a maximum pupil-teacher ratio (PTR) clause. The board, because of chronic and severe underfunding, felt it could not balance its budget, which is a legal requirement, unless teachers agreed to remove the PTR and replace it with a maximum class size clause. The effect of this would have been the release of a further 300 teachers, leaving the board with the same number of teachers they had employed in the mid 1980s, but with 16,000 more students. The teachers refused to give up a clause that they had fought to achieve in a strike in the early 1980s which lasted for 42 school days. Teachers believed that the increased class sizes that would result would be detrimental to maintaining the high quality of education in Alberta. Both the board and the teachers agreed that the primary issue was the inadequate financial resources from the provincial government, rather than incompetence or overspending on the part of the board.

As directed by the labor legislation of Alberta, the teachers served strike notice and the board prepared to shut down its schools. The afternoon before the scheduled midnight strike date, the minister of labour, at the request of the minister of education, ordered a Disputes Inquiry Board (DIB), a rarely used provision of labor legislation. Due to the time line requirements in this process, it effectively meant that the school year would end before the teachers would be in a strike position again. Needless to say, teachers were outraged and others were indignant at the interference of the minister with the labor process. Teachers and parents questioned the last minute timing. Massive confusion was created. Hardship was placed on parents and schools alike, but both the school board and teachers agreed to cooperate with the DIB.

The report of the DIB placed the blame for the problem squarely on the shoulders of the provincial government. It stated that the board had been very diligent in its budgeting and that the removal of the pupil-teacher ratio (PTR) clause from the collective agreement would be deleterious to the education of children.¹⁵ In a shocking move, the minister of education publicly advised the board not to accept the DIB proposal before either the teachers or the board had time to consider the report. The teachers voted to accept the DIB's recommendations, which also included a salary rise spread over three years. Although the board did hesitate and postponed its decision, in the end it defied the minister and voted to accept. This is but one example of the Alberta provincial government's willingness to interfere directly in collective bargaining in an arbitrary and, some would say, high-handed manner.

Bill 20 (School Amendment Act, 1999)

In early 1999, a lawyer representing ASBA and an in-house school board lawyer, were instrumental in having Bill 20 come to the legislature. This bill would have brought drastic changes to the Alberta *School Act*. There were many far reaching implications including free speech issues for teachers and students and, most significantly, the wiping out of boards of references which is an individual right teachers in Alberta have been very vocal in preserving. The Association quickly mobilised. Within two weeks, strong protests, through the Association's local structure, local presidents and individual teachers, against Bill 20, to members of the legislative assembly and local communities against Bill 20 were successful. The bill was withdrawn and the minister replaced.

Demographics are Encroaching on and Impacting Unions

In Canada, teachers as a group retire earlier than individuals in other occupations. The age at which teachers may begin to draw pensions in Alberta is age 55. In some provinces the age is higher, but 55 is not unusual. Currently, more than 23 percent of the teachers in Alberta are over the age of 50. Demographic studies indicate that we can expect that the number of children entering school will continue to increase until about 2010. Presently there are not sufficient teachers to provide service to schools if those teachers eligible for retirement decide to do so. Current enrolments in university teacher training programs suggest that there will be too few teachers graduating to fill the projected staffing needs of school jurisdictions. There are as well, an increasing number of teachers who leave teaching, citing the unrelenting workload and level of remuneration as reasons.

In previous decades, when Alberta required more teachers, boards were able to recruit them from eastern Canada. However, all indications are that the impending teacher shortage in Alberta is already being felt in eastern Canada and in the United States too. It is also projected to be the case in other traditional areas from which Alberta teachers have been recruited, namely the United Kingdom and Australia.¹⁶

While we recognise the hardships that this may cause it can only serve as good news for improving employment opportunities and protecting and strengthening the rights of teachers in collective agreements. In a strictly business sense, the law of supply and demand will prevail. Teachers will go where the working conditions are most favorable and employers will have to respond to that reality. Shortages are already being felt in Alberta in rural areas and in the mathematics, physics and chemistry subject areas.

Shortages are also evident in administrative positions. Too many experienced principals are retiring. Many teachers with the potential to fill an administrative position are choosing to reconsider and remain teaching. Many administrative positions are being filled by teachers with very little teaching experience and little or no administrative or personnel training. As a result, jurisdictions are developing individual inservice training programs for new administrators which are of varying quality. The ATA is very active in providing professional development programs to administrators.

Illness and Disability Issues

The situation described above has resulted in additional concerns arising from the simple fact that the teaching population is aging. First, as the teaching population ages, there is an increase in age-related illnesses. Secondly, the greatly intensified work load of teachers and the stresses created by the accountability movement have increased the number of teachers off work because of stress-related illness. These two factors work together to create an increase in the number of days lost to sick leave by teachers and the number of teachers on long-term disability. For example, in 1987, Canadian teachers averaged 3.4 days lost due to illness while full-time employees in other sectors as a whole lost 6.4 days to illness, 3 full days more than teachers. Yet, by 1997, this had changed dramatically. Teachers now lost an average of 5.8 days per year to illness, an increase of 2.2 days while other workers lost 6.2 days to illness, a decrease of 0.2 days.¹⁷ Employing boards are beginning to realise that there is a limit to the work that teachers can do before the cost of the disability claims overrides any cost savings realised by cutting staff. Additionally, those factors which are harder to quantify - lower morale, changes in teaching style, disruptions to children when teachers are away ill - are affecting the quality of the school life for students, teachers and parents.

Part-Time Teachers

The Alberta *School Act* allows boards to alter the amount of time a part-time teacher teaches under the terms of a part-time contract. The teaching assignment under such contracts can vary anywhere from 0.1 to 0.95 full-time equivalent with adjustments made at the beginning of the school year or term. A teacher's only recourse is to accept the change or resign if they are unhappy with the change. Teachers on such contracts experience difficulty obtaining mortgages or loans because of

the precarious nature of their income. Family financial security is constantly threatened. Part-time teachers are often the last to be consulted in terms of school assignment and as a consequence are more likely to end up teaching an odd assortment of subjects and grade levels, which increase both their work load and their stress. It is evident that school boards are anxious to offer teachers part-time contracts rather than full-time since part-time teachers offer flexibility when fine tuning staff allocations.

Given the lack of protection in the *School Act* against the exploitation of part-time teachers, the ATA is working with locals to provide more protections through the collective agreement. Clauses are being negotiated to ensure that such working conditions as preparation time are given to part-time teachers on a pro rata basis compared to full-time teachers, as well as altering requirements for part-time teachers regarding attendance at staff meetings and professional development activities at a time when they would not normally be working. It is hoped collective bargaining may limit the change in teaching assignment to no more than 0.1 FTE from year to year. In addition, it is hoped that part-time teachers may be given first right of refusal when a full-time position becomes available prior to new teachers being offered the position.

The 1990s has seen a marked increase in the number of teachers holding part-time contracts in the province. Conventional wisdom has held that these teachers desire to work less than full-time because of family commitments. In reality, up to 94 percent of teachers on such contracts would happily accept full-time contracts were they offered. Of even greater concern is the fact that 95 percent of these teachers are women. The magnitude of that figure raises serious concerns about human rights in the work place for female teachers.

Feminisation of Teaching

In 1978, the gender balance of teachers in Alberta was 45 percent male and 55 percent female. By 1998, the balance had changed to 67 percent female, a level last seen in 1963. The Association estimates that currently 75 percent of students enrolled in bachelor of education programs in the province are female. This appears to be a national trend. Consequently, the teacher groups are working to ensure that family issues such as maternity leave provisions and leave for family emergency provisions are maintained and enhanced in collective agreements. This is in keeping with the needs of a predominately female teaching profession and the societal issues of dealing with many single-parent family units which are lacking a male or father figure.

In 1978, while administration was still heavily male, many boards had in place policies and programs to ensure that more women viewed administration as a career goal. With the current trends to a significantly female population of teachers, there is a greater sensitivity to the need that have both teacher association staff and school district administration teams reflect the gender balance of the teaching force.

Human Rights Issues

Human rights legislation goes back to the Canadian Charter of Rights and Freedoms which came out of the Trudeau government of 30 years ago. Human rights arguments and decisions are only now being defined by courts out of this legislation. Teacher issues arising from the charter centre around maternity benefits, sick leave, sexual orientation, rights for the disabled, duty to

accommodate and marital status. Various aspects of harassment, both personal and sexual, are being viewed and treated as a form of discrimination separate from sexual assault which is a matter for the criminal courts. Most frequent incidents of harassment stem from the growing issue of dealing with the concerns of unreasonable parents.

Differentiated Staffing

Maintaining both class size and the number and variety of courses offered at any individual school has been accomplished in some jurisdictions through differentiated staffing. Paraprofessionals and aides have been hired to do the work of teachers in some jurisdictions. This is clearly contrary to the *School Act* which defines the teaching role.¹⁸ Teachers strongly opposed this trend in that it is part of a systematic effort to deprofessionalise teaching by allowing individuals lacking the requisite pedagogical and academic university education to assume teaching functions. It is also seen as detrimental to students who are not being taught by those with expert knowledge, not only in subject matter, but in the nature and needs of the individual learner, and the ability to translate that into a strong educational program.

The ATA, for example, has filed grievances on this misuse of paraprofessionals. In each case the Association has prevailed. In several instances the board had hired a person with a valid teaching certificate as an aide and then expected them to perform the functions of a teacher for the much lower salary of an aide. As this is not a local phenomenon, and is being reviewed and addressed in other provinces, all teachers' associations are working to limit this movement and to ensure that the high standard for teacher education is maintained.

The Future Look of Teaching

All across Canada a new 'look' for teachers is being promoted by government and theorists. This is the view of the socially conservative, 'reformed' educator who places survival in the marketplace as the basis for common purpose. In this view of teaching, pragmatism and self-interest replace professional judgment and professional ethics in the decision-making process. Teachers are expected to make an appropriate contribution to the competitiveness of their organisation. In return, they will see an increase in their professional valuing.

The focus of government and of the public is on what can easily be measured, placing enormous pressures on teachers to teach to narrow objectives. This has become the focus of teaching and the measure of success. This is a world where efficiency is asserted over ethics, collegial relations are replaced by internal competition and new forms of commitment, based on corporate culture and survivalism, replace professional judgment and ethics. Classroom practice then becomes based on responses to changing external demands rather than professionally considered, educationally sound practice.

Conclusion

Trends in Teachers Rights in Canada

Given current conditions, teachers in Canada will likely need to be most vigilant in protecting the rights they have from erosion:

- teacher organisations will continue to expand on charter rights and human rights issues for teachers;
- litigation and liability issues will expand;
- a continuation of the creation of School Councils and support for parents as the child's primary teacher. An effort to define and balance those aspects of school and schooling will be necessary as the problem now is defining where parental involvement is positive and where it is obstructionist;
- teacher organisations in Alberta, Canada, and other countries will continue to address teacher shortages. In areas where there are not yet shortages, they are imminent. One possibility is to recycle retired teachers;
- teachers entering the profession are older. Consideration must be given to what this means for pension and benefit plans; and
- educational malpractice suits. In 1998, one was filed in Canada. In 1999, there were six.

Issues pertaining to human rights, human dignity, reasonableness, fairness, populism, the role of pressure groups, parent rights vs. teacher rights vs. student rights and site-based decision making will continue to be explored.

The greatest threat to the rights of teachers in Canada is not strictly the threat to the collective agreement/union rights but to their rights as professionals. More and more, teachers strive to limit the erosion of professional rights through the collective agreement. While many teachers regret this trend to unionisation they also recognise the current necessity. Time will only tell what the future of teachers rights in Canada will look like.

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