

BY ELECTRONIC FILING

March 16, 2021

BC Labour Relations Board
600 - 1066 West Hastings Street
Vancouver, BC V6E 6X1

Attention: Jacque de Aguayo, Chair

Dear Sirs/Madames:

Re: The Federation of Post-Secondary Educators (“FPSE”) and Various Faculty Associations - AND - Post-Secondary Employers’ Association (“PSEA”) and Various Post-Secondary Employers

Reply to PSEA Response to S. 88 Application

We continue to represent FPSE and the unions enumerated in Appendix “A” to the initial s. 88 application filed in this matter, along with the Douglas College Faculty Association and Selkirk Faculty Associations, both of whom filed s. 54 applications and seek to be included in the s. 88 application (together, the “Faculty Associations”).

The purpose of this letter is to provide the reply of the Faculty Associations and FPSE to the submissions filed by PSEA in this matter on February 17, 2021. We note that none of the various Post-Secondary Institutions chose to reply to the application.

SUMMARY

1. In our submission, the aggressive allegations by PSEA against FPSE for its involvement in the application represent a total disregard for the involvement of the various Faculty Associations in the application. Furthermore, PSEA’s mischaracterization of the bargaining reality in this sector is offensive and immaterial to the s. 88 application.
2. In addition to ignoring the several Faculty Associations who are parties to the s. 88 application, PSEA’s submissions demonstrate a shocking lack of understanding and compassion for the obvious detrimental impact the pandemic has had on the members of those Faculty Associations.
3. We did not anticipate that PSEA would argue that the concerns by employees in this sector were “manufactured,” and did not consider it necessary under s. 88 to include individual evidence of the impact of the pandemic and corresponding workplace changes on faculty

members. In response to PSEA's allegations of a lack of evidence, we have attached several statements by members of several Faculty Associations.¹ These statutory declarations also set out the workload issues and dissatisfaction of faculty members raising issues of industrial unrest.

4. As set out in our application, a broad and purposive approach to s. 88 allows the Board to inquire into differences and provide assistance in very difficult. The unusual and pervasive circumstances in this sector arising during the pandemic are well suited to the problem-solving role the Board can play under s. 88. The joint approach proposed by the Faculty Associations and FPSE allow for the potential of a more efficient resolution of the various disputes.

5. In any event, most of the issues raised by PSEA are based on a dispute as to the *remedies* proposed in the application rather than the *merits* of the application.

6. In our submission, the response by PSEA underscores the need for Labour Board intervention under s. 88 in the context of a continuing pandemic. PSEA can raise whatever concerns it has for the remedies sought by FPSE and the Faculty Associations

REPLY SUBMISSIONS

S. 88 – Broad and Purposive Interpretation

7. Throughout their submissions, PSEA argues for a narrow interpretation of s. 88. As set out in our initial application, the appropriate approach is a broad and purposive approach. Unquestionably, the purpose of s. 88 is to allow the Board to assist in the resolution of unusually difficult or pressing labour relations differences in B.C.

8. As we set out in the s. 88 application, the dramatic, sector-wide change to the work environment and workloads of post-secondary educators during the pandemic is exactly the type of matter that fits within the broad wording of s. 88.

9. The issues raised by FPSE and the Faculty Associations are not, as is suggested by PSEA, “unfettered recourse to Section 88 at the mere existence of a dispute.” These are exceptional and dramatic circumstances for everyone. The impact on the workplace is exceptional and widespread. It has never before been experienced before by post-secondary educators or their employers. We hope, as presumably does PSEA, that the exceptional circumstances of the pandemic do not occur again during this lifetime.

10. That the issues raised in the s. 88 application are both novel, extreme and province-wide makes them very difficult to resolve without assistance and begs the coordinated, mediated approach the Board may be able to provide.

¹ Pursuant to Board's COVID-19 modified rules, these statutory declarations are not sworn under oath but have been confirmed as accurate to counsel by the named individuals. We can have these formally sworn/affirmed if required by the Board in this case.

11. Despite the approach taken by PSEA in its response, we note that a s. 88 application does not carry the same potential consequences or require the same litigious adversarial approach as an application under Part 3 or Part 5 of the *Labour Relations Code*. The limited role of the Board permitted under s. 88 is to “inquire into the difference and make recommendations for settlement,” to order arbitration, or to ask the “minister to appoint a special officer”.

12. We remain optimistic that, following an inquiry, the Board can assist the PSEA, Post-Secondary Employers, FPSE and the Faculty Associations in progressing towards an expedited resolution of the various pressing issues raised in the various grievances and s. 54 applications filed by the Faculty Associations against their employers.

FPSE Standing – Summary

13. PSEA devotes a significant portion of its submissions to the assertion that FPSE has no standing in this matter. PSEAs submissions in this regard are, at best, disingenuous. The whole standing argument advanced is based on several flawed premises:

- (a) First, PSEA argues on the premise that the Board’s discretion to act pursuant to s. 88 can only be invoked if brought by “trade union or council of trade unions” (PSEA Submissions para 9).
- (b) Second, PSEA asserts FPSE is not really a provincial bargaining agent for the Faculty Associations, despite FPSEs current and historical position as provincial bargaining agent and PSEAs consistent recognition of this role. Indeed, PSEAs only justification for this premise is its assertion that FPSEs status as provincial bargaining agent is “voluntary” on the part of PSEA and the Faculty Associations.
- (c) Third, PSEAs submissions consistently suggest that FPSE is *really* the only party bringing the application, ignoring the fact that the s. 88 application was brought by FPSE *and* the 10 named Faculty Associations, as well as the fact that two additional Faculty Associations asked to be included in the s. 88 proceeding after filing their own s. 54 applications.
- (d) Finally, PSEA degrades its response to the application by making the baseless allegation that FPSE has an ulterior motive for seeking assistance with the dispute between the various parties in these difficult times.

FPSE as Provincial Representative for Faculty Associations

14. PSEA is correct that it is the only *statutory* provincial bargaining agent in the post-secondary education sector. Unlike the K-12 sector, the legislature has not designated a province-wide union to represent all post-secondary educators.

15. Like BCPSEA, PSEA was created by government as a public sector employers’ association for the purposes of ss. 6-7 of the *Public Sector Employers Act*, RSBC 1996, c. 384

and is the mandated bargaining agent for all universities and colleges in BC. The express statutory purposes for the creation of PSEA was to “ensure the coordination of human resource and labour relations policies and practices” and to “improve communication and coordination” among post-secondary employers (*PSEA*, s. 2).

16. Given the creation of a state-backed provincial bargaining agent whose objective is to coordinate labour relations practices for all institutions across the province, it is unsurprising that faculty members sought to level the playing field by creating their own provincial entity, the Federation of Post-Secondary Educators of BC (FPSE).

17. In *Saskatchewan Federation of Labour*, the Supreme Court of Canada emphasized the “fundamental power imbalance” inherent in an employee-employer relationship (see, e.g., para 56). This power imbalance is amplified where the state positions itself as provincial bargaining agent against individual faculty associations for each institution, which number less than 30 members in some cases.

18. Membership in FPSE is voluntary, but each of the Faculty Associations elects to use FPSE as their bargaining agent, in part to match the coordination of the Post-Secondary Employers’ provincial counterpart, PSEA.

19. Until the filing of their aggressive submissions in this matter, PSEA has embraced the opportunity for coordination of various issues and, indeed, bargaining with a provincial representative of faculty members across B.C.

20. PSEA is correct that the provincial template bargaining table is voluntary, but PSEA has always recognised FPSE as having the authority to act on behalf of its locals (including the Faculty Associations party to the s. 88 application) and consistently and regularly bargains or discusses various matters of provincial import and even local import with FPSE in the same manner that BCPSEA will raise issues with BCTF even if they only pertain to a particular School District.

21. PSEA’s acceptance and acknowledgement of the important role that FPSE plays both in coordination of provincial post-secondary faculty issues and in bargaining with PSEA is evident in its public communications. For example, on its website PSEA lists FPSE as a union with whom it bargains and *the* union for sectoral agreements.²

22. The Provincial Government has also expressly recognized the role that FPSE plays as PSEA’s counterpart. For example, in 2015, the BC Government issued a news release with the heading “PSEA reaches tentative template agreement with FPSE faculty.”³

² See <http://www.psea.bc.ca/resources/unions> ; <https://www.psea.bc.ca/collective-bargaining/collective-agreements>.

³ <https://news.gov.bc.ca/releases/2015FIN0011-000213>

Provincial Template Table

23. To be a party to the template table, an employer and its corresponding faculty association must agree beforehand to participate. Discussions about who is participating occurs between local employers and Faculty Associations, but the coordination and confirmation of participants occurs between the spokesperson for PSEA and the staff rep designated as spokesperson for the FPSE bargaining caucus.

24. The FPSE bargaining caucus consists of a member from each local participating at the template table as well as an FPSE staff rep who acts as spokesperson at the table and a caucus chair or co-chairs who are appointed by the FPSE president. In the last two rounds of provincial bargaining, the co-chairs were Leslie Molnar (College of The Rockies Faculty Association) and Bob Davis (Kwantlen Faculty Association). Lesley Burke-O’Flynn was the spokesperson both rounds. Lucia Salazar (FPSE staff rep) was assigned to assist Lesley in this last round.

25. As co-chair, Leslie Molnar did not also act as representative for CORFA. That position was held by Ben Heyde. The Kwantlen Faculty Association was not a signatory to the template Agreement so Bob Davis was there specifically on behalf of FPSE.

26. All planning and coordination for the template table occurred between Mike Madill at PSEA and Lesley Burke-O’Flynn. There was no point in the template table process where a PSEA representative held direct discussions (or even informal discussions) with a specific Faculty Association. All discussions with PSEA occurred with the appointed provincial representatives. This has become such common and accepted practice that the provincial union representatives at the template table were colloquially referred to as Lesley, Leslie, and Bob, or “LLB” for short, even by PSEA.

27. Currently, the sectoral table for FPSE locals is called the FTT (not MID), which stands for the FPSE Template Table. That is what it has been called since 2010.

28. Given that PSEA has spent the past few decades bargaining, negotiating and coordinating with FPSE as provincial agent for the Faculty Associations, PSEA’s claims that FPSE is a “stranger” to the Faculty Associations’ collective agreements (para 35) is disingenuous, to say the least.

FPSE Standing – Broad Interpretation and Discretion under s. 88

29. PSEA advances an unreasonably narrow interpretation of the term “party” and “person” for the purposes of this *Code*. Such an interpretation would be inconsistent with the plain language of those sections, the use of those terms in other sections of the *Code* and Board jurisprudence.

30. Contrary to the narrow interpretation asserted by the PSEA, the *Code* clearly gives a broad meaning to the term “party,” including anyone “involved in a dispute”. The broad meaning intended by the Legislature is apparent in various sections of the *Code* where the term is narrowed by specific qualifying language for the purposes of those sections. For example:

- (a) In s. 46, a “party to a collective agreement” may require the other party to commence collective bargaining;
- (b) In s. 91, the scope is restricted to a “party to the arbitration”.
- (c) In s.141, an application may be brought by a “party affected by a decision of the board.”

31. In *Government of the Province of British Columbia v. Professional Employees Association*, IRC C162/91 (“PEA”), the Council emphasized a very broad interpretation of “party” as defined in the predecessor to the *Code* (at p. 19):⁴

The term “party” is given a broad definition in Section 1 of the Act, meaning “a person bound by a collective agreement, or involved in a dispute.” Section 108 of the Act refers to “a party affected by the decision or award of an arbitration board”, obviously denoting a broader category of persons than the trade union and employer signatories to the collective agreement. Section 99(1) of the Act, however, employs the phrase “each party to an arbitration”, thus denoting a narrower category of persons, namely, the employer and trade union signatories to a collective agreement under which the arbitration is established. Section 99(2) buttresses this interpretation by referring to the requirement that “each party” pay “1/2” the remuneration and expenses of a single arbitrator or chairman of a board appointed by the minister under Section 95 of the Act.

For a more recent reference to this decision, see Arbitrator Kinzie in *Vancouver Hospital & Health Sciences Centre v. BCNU*, (1998) 72 L.A.C. (4th) 297.

32. A recent decision by the Board in *James Bay Health and Positive Living Society of British Columbia*, BCLRB B12/2019, interpreting the words “party to the arbitration” in Section 99(1)(a) of the Code is also helpful and is consistent with the Council’s decision in *PEA*:

90 The Board’s authority to review arbitration awards is set out in Section 99 of the Code, which provides:

99(1) On application by a party affected by the decision or award of an arbitration board, the board may set aside the award, remit the matters referred to it back to the arbitration board, stay the proceedings before the arbitration board or substitute the decision or award of the board for the decision or award of the arbitration board, on the ground that

- (a) a party to the arbitration has been or is likely to be denied a fair hearing, or
 - (b) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Code or another Act dealing with labour relations.
- (2) An application to the board under subsection (1) must be made in accordance with the regulations.

...

⁴ Although the Code has undergone amendments since the 1991 PEA decision, the definition of “party” has not.

92 While a “party affected” may apply for review of an award under Section 99(1)(a), the fair hearing requirement in Section 99(1)(a) applies only to a “party to the arbitration”. Consequently, it is the bargaining agent (here, HEABC) that is owed a fair hearing, not an individual employee or a member of an accredited employer organization. The law on this point was summarized recently by the Board in *Casavant and BCGEU, Re...* at paragraphs 25-26... [emphasis in the original].

33. In that case, a member employer of HEABC filed for review of an arbitration award under both Section 99(1)(a) and Section 99(1)(b) of the Code. As noted above, the Board found that the member employer could not complain of an unfair hearing, but made clear that a member employer could complain that a decision was inconsistent with the Code.

34. Again, contrary to the narrow interpretation advanced by PSEA, “person” is also broadly defined in s. 1 and used broadly throughout the *Code*. PSEA asserts (at para 9) that “person” is “clearly intended to apply to those who sign collective agreements under the Code, or are bound by them.” This argument ignores basic principles of statutory interpretation.

35. The use of the term “includes” does not denote an exclusive list, or the Legislature would have used the term “means” as it does for many definitions in s. 1. This is apparent on a review of many of the sections of the *Code* intended to include persons who are not unions, employers or “those bound by a collective agreement” (e.g., ss. 5, 6, 31, 32, 52, etc.).

36. When read together with the definitions of “party”, “person” and “dispute” in s. 1 of the *Code*, s. 88 plainly allows anyone “involved” in a “difference or apprehended difference between an employer or group of employers, and one or more of his or her or their employees or a trade union” to bring a s. 88 application.

37. Given FPSE’s consistent involvement in all of the various differences arising between the Faculty Associations and their employers, it cannot seriously be contended that FPSE is not *involved* in those differences.

PSEA Conspiracy Theories

38. Unfortunately, PSEA does not limit its submissions to arguments on statutory interpretation or factual disputes. The PSEA devotes several pages of its response to an absurd and baseless allegation that there is a secret motive by FPSE in bringing an “illegal” s.88 application to “pervert the purposes of the Code” so that it can “expand its role” as provincial advocate and agent for the various Faculty Associations.

39. To use the phrases of counsel for PSEA, the *audacity* of PSEA to make such allegations without foundation is, indeed, *breathtaking*.

40. In any event, it would seem that PSEA’s concerns are less with the application itself, but with the mechanisms sought to resolve the various disputes by way of provincial discussions. Such concerns can be addressed through the s. 88 inquiry process but do not render the application itself “illegal” or undermine the meaningful labour relations purposes of a broad

inquiry by the Board into the issues raised in the application on its merits.

FPSE Standing Irrelevant to the Merits of the Application

41. There are 13 Faculty Associations who have sought the Board's assistance by way of s. 88 in resolving unprecedented province-wide employment issues caused by the response by extraordinary employment changes enacted by various Post-Secondary Employers during the pandemic.

42. PSEA's attack on FPSE can have no bearing on the standing of the Faculty Associations to bring a joint s. 88 application and seek assistance on a coordinated provincial basis, particularly given the legislature's requirement that PSEA coordinate post-secondary education issues provincially.

43. Thus, even if the Board were to declare that FPSE did not have legal standing to be a party to the application, the 13 Faculty Associations would continue to seek the assistance of the Board under s. 88 and would continue to choose to have FPSE representatives involved in those discussions.

44. In any event, given that the Board can inquire into any dispute under s. 88 *on its own motion*, the legal status of FPSE and its standing to coordinate a joint application of the various Faculty Associations would seem to have little bearing on the process if the Board considers the requested inquiry serves the purposes of the *Code*.

Mischaracterization by PSEA of Board Jurisprudence re Industrial Unrest

45. PSEA makes two arguments as to the interpretation of "industrial unrest" for the purposes of s. 88. First, it argues that s.88 should only be utilized by the Board in "extremely limited circumstances" of industrial unrest.

46. PSEA relies on three cases for this proposition, which are examples of the Board utilizing s. 88 to assist with a dispute where there were risks of industrial unrest. Importantly, PSEA cites no cases where the Board found that s. 88 should only be used in "extremely limited circumstances or that a s. 88 application was "inappropriate" because of a lack of actual work stoppages or wildcat strikes.

47. This, we submit, is because of the broad wording of s. 88 and the important role the Board can play in resolving labour disputes in a wide variety of contexts. For the Board to wait for wildcat strikes before inquiring into a difference identified by Unions as requiring assistance would be contrary to its duties under s. 2, including its duties to:

- (d) [encourage] cooperative participation between employers and trade unions in resolving workplace issues;

- (e) [promote] conditions favourable to the orderly, constructive and expeditious settlement of disputes;
- (g) [ensure] that the public interest is protected during labour disputes; and
- (h) [encourage] the use of mediation as a dispute resolution mechanism.

48. This is consistent with the jurisprudence cited by PSEA. For example, in *British Columbia Hydro and Power Authority and International Brotherhood of Electrical Workers, Local 258* (February 22, 1978), BCLRB Letter Decision (Peck) [*BC Hydro*], relied upon by PSEA, the Board chose to intervene and recommend immediate action by the parties primarily because of a finding of *potential* industrial unrest, finding that the existing circumstance “could cause industrial unrest.”

49. It is not clear why PSEA emphasizes the caution by the LRB in *BC Hydro* against “manufactured disputes” (para 72) other than to suggest the issues raised in the instant s. 88 application are “manufactured”. We note that the context of that comment was with respect to a particular provision of that Collective Agreement and not with respect to the s. 88 inquiry, as is evident from the following (pp. 4-5):

The Panel now directs the attention of the parties to the language contained in Article 30 of their collective agreement, which is a matter of long standing commitment. We refer, in particular, to the penultimate paragraph which reads:

"Where any tradesman deems it unsafe for him to undertake work alone, or where safety regulations requiring additional help, it shall be his duty to notify his headquarters or, if this be impossible, summon such help as is required. If any question arises as to the judgment used, the matter shall be referred to the Safety Practices Committee for determination."

There are certain principles clearly incorporated in the foregoing, and these should guide both managers and employees in respect of line crew practices pending a "determination" by the Committee. We will not presume to spell these out, however it is plain that if a workman needs help, and asks for it he is to receive it, and if any question arises in the process, that shall be dealt with subsequently, by the Committee. However, if the "need" is contrived, it would constitute an abuse of this critically important section of the agreement, which must be interpreted in terms of its spirit and intent if it is to be truly effective.

To sum up, it is the recommendation of this Panel that the matter at issue be referred to the joint Safety Practices Committee of the employer and the Union at the earliest possible date for determination in line with the responsibility of that Committee as it is described in Article 30 of the collective agreement between the parties. In the interim, the parties should re-enforce the commitment which is found in the language of Article 30, in particular the penultimate paragraph thereof, and instruct all concerned to abide by the spirit and intent of that section of their collective agreement which has prevailed for so many years.

50. The second argument PSEA makes in its efforts to narrow the definition of “industrial unrest” is to assert that the phrase has a different meaning under s. 88 than it has been given by the Board in the various cases cited by the FPSE and the Faculty Associations in their application (see PSEA Submissions, para 74).

51. Of course, industrial unrest only has a single broad meaning for the purposes of all matters before the Board. In our submission, as is set out in the decisions we cited in the application, industrial unrest can encompass a wide range of things, from general strikes to employee dissatisfaction and discord.

52. Again, in our submission, to require actual job action or work stoppages by faculty members before the Board inquires into a difference under s. 88 would be to implement an overly narrow interpretation that would undermine this section's important purpose.

Health Impacts

53. Finally, it is necessary to respond to PSEA's offensive trivialization of the health impacts of the pandemic on post-secondary educators across the province. The PSEA submissions read as if the PSEA were somehow oblivious to the provincial emergency that British Columbians have been suffering through a for the past year.

54. It is very concerning to FPSE and the Faculty Associations that PSEA would dismiss the mental health impact of the pandemic and the corresponding workplace disruption and stress. Indeed, it is alarming that the party tasked with coordinating human resource and labour relations policies and practices for public sector post-secondary employers would fail to recognize the health impact associated with the dramatic changes to the workplace, compounded by the general anxiety and burnout experienced by *everyone* during this pandemic.

55. At paragraph 105 of the PSEA submissions, PSEA is critical of the lack of evidence included in the application of a "mental health crisis" and dismissive of the Faculty Associations' concerns that educators will not be able to handle for much longer the increased workload, emotional stress of supporting students, and the mental and physical toll of working from home:

Contrary to the bald allegations made in the Application, there is no evidence to support FPSE's claims of mental health crisis among faculty. The institutions are not seeing any unusual level of absences, leave requests, claims or benefits usage which would support anything close to a "crisis." Indeed, many institutions are seeing a reduction in EFAP and STD leave usage, and some a substantial reduction in the number of WorkSafeBC claims, during the pandemic.

56. First, to be clear, the application did not use the term crisis to describe the circumstances underlying the application, nor is that the threshold of harm that must be inflicted upon post-secondary educators for the ongoing impact of the pandemic to warrant an urgent response and justify assistance from the Board.

57. However, in our submission, the word "crisis" is appropriate to describe the circumstances, including concerns that faculty members across the Province are, like many workers in many industries, reaching a breaking point as the workplace disruption and workload increases continue.

58. Any compassionate human alive today knows that the population is suffering from general anxiety and burnout from the isolation, dysregulation, government restrictions and

existential threat posed by the pandemic. Our Provincial Health Officer, Dr. Bonnie Henry, acknowledges this on a daily or weekly basis.

59. In July 2020, Canada's largest mental health teaching hospital, the Centre for Addiction and Mental Health issued an evidence-based policy paper, which it summarized as follows:⁵

The COVID-19 pandemic is an unprecedented global health, social and economic crisis. Over the past several months, governments around the world have responded with a series of measures to protect citizens' physical and financial health. Some, including our federal and provincial governments in Canada, have also recognized the toll that the pandemic is taking on peoples' mental health and have made additional resources and supports available. As we move through the initial COVID-19 crisis and adjust to the next normal, it is imperative that we continue to focus on mental health. A recent poll found that 7 out of 10 Ontarians believe that there will be a 'serious mental health crisis' as a result of the pandemic. Their concerns are warranted - previous public health and economic crises were associated with serious and prolonged negative impacts on individual and collective mental health - but not entirely accurate. Canada was already in the midst of a mental health crisis prior to COVID-19. The pandemic has both magnified and added to this crisis and highlighted how crucial mental health promotion and care are to our overall well-being...

60. We expect most British Columbians would view the toll of the pandemic on them in July 2020 as significantly less than it has been during the recent dark days of winter and total social lockdown.

61. This baseline anxiety, stress and depression makes everything harder. As reported by the Harvard Business Review, pre-existing chronic stress in the workplace been significantly amplified during the pandemic.⁶ In that article, the authors identified the three steps required for "empathetic leadership" as:

acknowledging and overcoming any personal biases and privileges you might have; actively listening to your people; and taking action.

62. The response of PSEA to the concerns Faculty Associations have raised about their members suggests a complete failure to engage in any of these steps. This again underscores the need for assistance from the Board to improve communication and understanding between the parties before the Post-Secondary Institutions *are* overwhelmed by a "mental health crisis."

63. On a s. 88 application, in our submission, the scope of evidence required depends on the discretion of the Board. Unlike some applications to the Board, the nature of s. 88 does not require strict proof of the concerns raised by the applicants. It is natural to expect that a complete change from in-person to online education, including technological adjustments, isolation, lack of access to resources, increased student demands, increased student mental health issues and

⁵ CAMH, "Mental Health in Canada: Covid-19 and Beyond," <https://www.camh.ca/-/media/files/pdfs---public-policy-submissions/covid-and-mh-policy-paper-pdf.pdf>

⁶ "Beyond Burned Out", Harvard Business Review, February 10, 2021. Online: <https://hbr.org/2021/02/beyond-burned-out>

increased workload would compound the baseline mental health impact of the pandemic to the point of burn-out.

64. However, in light of the skepticism expressed in the submissions filed by PSEA, we have included with this reply several statutory declarations setting out the experiences of faculty members across the Province. These experiences include the following:

(a) Leda Rheume, from Douglas College, states:

4. When Douglas made the decision to finish the Winter 2020 semester online, I had to scramble to learn how to complete the term online. I spent double or triple the amount of time to complete ordinary tasks.
5. I have to perform more ongoing work to teach online than face-to-face. For example:
 - a. I cannot hand out a worksheet and ask students to complete it and then work with a partner to go through the answers. I need to take a screen shot of the page in the e-text, upload it to One Note, set it as a background photo and create text boxes where they can insert their answers. Every task has multiple steps to get it online.
 - b. I would normally print out final grade sheets and distribute them to students on the last day of classes, but with online teaching, I had to print (using up valuable toner on our home printer), scan, and upload each sheet, and then ensure that it was being sent to the correct student.
 - c. 'In-class' essays, where I could normally ensure students were truly doing their own work, simply became a timed writing exercise with me 'dropping in' to watch keyboard strokes (or see nothing) as they worked online.
6. My ability to develop rapport with students online is painful and slow. The same can be said for developing a strong learning community. In a classroom, when students work in groups, I can see which groups are on task and I can listen to what is happening at several different tables. I can determine when it might be advisable to intervene and clarify something. I cannot do that online. I can only listen in and support one group at a time.
20. Since I started teaching online in January 2021, I have a constant stiff neck because of staring fixedly at the screen.
21. I have also dealt with overwhelming helplessness and anxiety as I try and teach online. It is not just first day jitters; it is almost every class jitters.
22. I have not asked for anything from management because I do not think my needs and issues are any different than those of all the other instructors, many who have more to deal with (for example, childcare, eldercare, back issues).
23. I am also reluctant to talk to management about my needs as the union was ignored in the first months of the pandemic.

(b) Elizabeth Russell, from North Island College, states:

8. In March and April, NIC instructors had to pivot to online learning due to COVID-19. I continued to work over 10 hours and 6 days a week during this period as that is what was required to get the online material ready for students. Like many instructors, I did not expect to be working extra long hours in March.

9. The demands of online teaching added three extra hours or more of work per day, and I also worked at least one but sometimes both weekend days. This was due to the quick pivot to online platforms, which involved the following:

a. I had to redesign my classes and redo my assignments.

b. I had to create new online resources as the material and examples I used were based on live demos not digital material.

c. I had to spend more time explaining hands on tasks to individual students that were confused by the projects.

d. I had to support more students in general due to anxiety and/or DALs accommodations.

e. I had to spend time learning the new platforms while adding more material to my BlackBoard Learn site.

* * *

15. In order to prepare for my Fall and Winter workload, I had to work 6 days a week. I was working 10 or more hours per day.

16. I did not have time to take vacation or professional development as I had to learn new online learning technology and new online pedagogy strategies. I also had to make videos of demonstrations and produce all new online content.

17. NIC college stated in a WorkSafe Report that instructors are only required to work 6 hours 5 days a week. If I only worked 6 hours and 5 days a week, I would not have my courses available for students to view. In my department it took an average of 150 hours to prep one online Art or Art History class. Some classes took longer.

18. In July 2020, I was doing a series of art demonstrations. This involved mixing paint and painting, then filming the demonstrations for one of my fall classes. I was in a great deal of pain after creating these videos. I experienced back pain, headaches, and dizzy spells. My back locked up. This pain lasted for about a week.

* * *

23. In October 2020, after the marking period, I started to get back issues and pain in my neck and other parts of my body. I experienced painful headaches and dizzy spells. My Toggle Report for hours worked was 82:49 hours per week at that stage due to the extra demands of marking, prepping, and teaching.

24. On November 2, 2020, I had to stop working despite my desire to be teaching and supporting my students. I was in a lot of pain. I spent time getting medical treatments, doing specific exercises, and following advice from specialists. My doctor reduced me to a 50% workload.

(c) Mark Curry, from Vancouver Community College, states:

11. I completely agreed with the cessation of in-person classes and was willing to reconfigure my courses to support distant learning. I was offered insufficient support to make these extensive changes and ultimately abandoned VCC-supported resources and am now completely independent of VCC learning systems.

15. I am still modifying my courses to suit remote delivery and I would say that the labour associated with converting courses has doubled my usual workweek. I have not been compensated in any way for this additional work.

* * *

24. I live alone and the greatest impact to me has been the adaptation to solitary life. The lack of human contact was quite significant.

25. I have been constantly balancing the risk associated with COVID-19 and still feel that I cannot risk social interactions. I have spent, and continue to spend, considerable effort identifying potential risks associated with isolation and developing mitigation strategies.

26. I have also spent considerable effort in empathizing and offering constructive advice to students struggling under similar and other stresses associated with the pandemic.

27. I did not request support from management to address the health issues arising out of the changes due to the COVID-19 pandemic because I felt that there was no effort to support our health or expenses.

28. I have not taken a vacation since March 2020.

(d) Heidi Tiedemann Darroch, from Camosun College, states:

6. During the spring/summer term of 2020, my teaching assignment consisted of:

a. Three sections of one course, with one section taught on an accelerated May/June schedule and the two others taught from May to August); and,

b. One section of a different course, taught in July/August.

7. To create and teach these courses, I worked 6-7 days a week for the six-week period from mid-April to late May, including a pre-contract unpaid week.

8. I then worked six days a week until the middle of August when 3 of my 4 courses ended.

9. I simply could not complete all of the work necessary to create new online courses, teach them, and support students (many of whom were in crisis) in less time than this.

* * *

14. I enrolled in the College's course in online teaching, but this added an addition 5-9 hours of course work per week for the five-week period in which it was taught.

15. Spring/summer 2020 was the most challenging teaching term I have experienced at any of the four colleges and universities where I have taught.

(e) Joanna Fraser, from North Island College, states:

8. I found the Spring semester to be extremely challenging and time consuming due to teaching a heavy fourth year theory course that I had not taught before, as well as due to learning new technology, compressing it, and operationalizing it.

9. Between teaching the research course and planning for fall courses I had difficulty managing my workload in the spring.

* * *

39. I get frustrated when the work it takes to convert a course to online delivery is minimized. It takes a lot of work to deliver the compressed curriculum in a relevant way.

* * *

42. There were also many conversations over the summer about plans for the fall workload. I was overwhelmed with the course load I was being asked to teach in the fall. Other faculty were also overwhelmed and we were all spending a lot of time debriefing each other and supporting each other to deal with what was expected of us from the administration.

43. One week into the winter term, I found I was not coping well. I was easily triggered. I was diagnosed with mental health issues and went on sick leave. I am presently undergoing a graduated return to work.

65. In our submission, the foregoing illustrates the unsurprising impact on employees of a dramatic workplace change in response to COVID-19 risks. The attached statutory declarations set out a small sample of the evidence of the widespread issues facing post-secondary educators and illustrate the need for urgent action.

Appendices for Each Post-Secondary Institution

66. PSEA included various appendices in its submissions with specific responses and facts asserted for each public post-secondary employer included in this application as a respondent. We have attached appendices to these Reply Submissions in which we respond to the PSEA assertions set out in those appendices.

67. For ease of reference, we have followed the same lettered appendices for each institution. Since we have largely responded to the issues raised in Appendices A and B in our submissions, we have not included a response to those issues in the appendices attached to this letter.

CONCLUSION

68. Contrary to the assertions by PSEA, we submit that it is appropriate for the Board to conduct an inquiry into the differences between the parties in this matter. The Board has always played an important problem-solving role in major labour relations disputes discretion and a broad and purposive to s. 88 would be consistent with that role.

69. Although FPSE and the Faculty Associations are very concerned by the tone and nature of the submissions filed by PSEA in this matter, they remain hopeful that the Board will be able to assist the parties in resolving the urgent and significant labour relations issues raised in the s. 88 application.

Yours truly,

VICTORY SQUARE LAW OFFICE LLP

per:



Steven Rogers
Law Corporation

SR
cc: Client