



Office of the Secretary - Treasurer

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February 2, 2007

HAND DELIVERED

City Clerk
City Richmond
6911 No. 3 Road
Richmond, B.C.
V6Y 2C1

0155-02

Dear Sir:

At the January 23rd Meeting of Council/Board Liaison, the following recommendation was made and carried.

City Council join with the School Board in its campaign and write a letter to the Ministry of Education noting the adverse effect that the school fees judgment has on health, wellness, and recreation within the Community.

In support of this recommendation, the Committee asks that the Board send BCSTA and district communications on the topic of school fees to the City for information. Attached please find the following letters:

- Letter dated October 18, 2006, from Linda McPhail to the Ministry of Education
- Letter dated November 20, 2006, from Penny Tees, President of BCSTA, to the Ministry of Education
- Letter dated January 19, 2007, from Linda McPhail to the Ministry of Education
- Letter dated January 19, 2007, from Penny Tees, President of BCSTA, to the Ministry of Education

Yours truly,

K. L. Morris,
Secretary Treasurer

cc Trustees
Superintendent of Schools





School District No. 38 (Richmond)

7811 Granville Avenue, Richmond, B.C. V6Y 3E3

Tel: 604-668-6000 Fax: 604-668-6161

October 18, 2006

The Honourable Shirley Bond
Minister of Education
Ministry of Education
PO Box 9045, Stn Prov Govt,
Victoria, BC
V8W 9E2

Dear Minister Bond:

As you know, the recent Supreme Court ruling on school fees and ensuing media interpretation has caused a great deal of confusion and anxiety for staff, students, and parents. While we recognize that interpreting this decision, appreciating its implications, and devising a response that is respectful of the law and the complexity of the underlying issues takes time, we are writing to urge you to respond at the earliest possible date in order to bring some clarity to this situation.

Our preferred solution, of course, would be a funding increase sufficient to replace the revenue lost by completely eliminating fees. However, if this is not possible, then we would appreciate your guidance in understanding what charges continue to be permissible.

An underlying issue is the tension between our desire for equity and our concerns for enrichment. We understand that a free public education is the right of every citizen and that this is an important foundation for a democratic society. We strongly endorse this principle. At the same time, we know that it is not possible for us to provide the rich educational experiences that students desire and deserve without, on some occasions, asking parents to assist by paying a suitable fee. Simply eliminating fees would result in an unacceptable impoverishment of learning experience for many students and in the elimination of valuable learning opportunities.

We take great care to ensure that no student is denied a core learning opportunity because of inability to pay. However, we realize that students and parents are often reluctant to ask for assistance because they find it demeaning to do so. Notwithstanding the imperfections in the current system, it is our belief that through our existing policies and practices we have been able to provide rich learning opportunities to many students who would otherwise not experience them with their families. In a somewhat contradictory way, straight elimination of school fees may very well do harm to the same students that it is intended to protect.

BOARD OF SCHOOL TRUSTEES

Chak Kwong Au Sandra Bourque Andy Hobbs
Linda McPhail Donna Sargent Bobby Singh Grace Tsang

1906 - 2006

Celebrating 100 years of Public Education in Richmond



Bruce Beairst
Superintendent of Schools


Ken Morris
Secretary-Treasurer

There is a long list of specific issues that concern us. What will be the effect on secondary music programs if the school is neither permitted to rent instruments nor to ask students to rent their own? If we are not permitted to ask students for a fee to supplement consumable expenses in a Home Economics course, what effect will reduced supplies have on the learning experience, and the enrolment?

What precisely are the tests that should be applied to an elementary field trip in order to determine whether it is optional and, therefore, a charge may be applied? Questions such as these are, surely, common to all school districts and would, therefore, benefit from the legal and legislative advice that your Ministry can provide.

We appreciate your attempts to give school districts as much autonomy as possible and are not requesting a heavily prescriptive legislated regime. Some ambiguity will inevitably remain. However, we do think it essential for the Ministry to speak on this issue and to provide guidance on common questions such as those above. We would be very interested in participating in a think tank or problem-solving effort related to the school fees conundrum. Perhaps this could be organized in collaboration with the BC School Trustees Association and perhaps it is even a topic that would benefit from the attention of a special task force of partner groups, and perhaps it is even something the Round Table might wish to consider.

Sincerely,



Mrs. Linda McPhail, Chairperson
On Behalf of the Board of School Trustees

cc: Trustees
B. Beirsto, Superintendent of Schools
BCSTA



British Columbia
School Trustees Association

Tel: 604-734-2721 Fax: 604-732-4559 e-mail: bcsta@bcsta.org
4th Floor, 1560 West Broadway, Vancouver, BC V6J 5K9

November 20, 2006

The Honourable Shirley Bond
Minister of Education
PO Box 9052
Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Bond,

At its meeting on October 20th, BCSTA's Board of Directors passed the following motion:

That BCSTA approach the Minister of Education to request that government proceed quickly with measures that will have the effect of protecting education programs and allowing school boards the flexibility to provide a wide selection of course offerings responsive to the needs of their local communities.

This motion arises from the concern that school boards have to ensure that the recent court decision respecting school fees does not erode the array of educational opportunities, nor the quality of programming currently available to students.

Reasonable people can disagree on whether any fees should be charged for programs or activities in the K-12 public schools or the degree to which there is sufficient funding within the system to absorb the loss of existing fees. The plain fact is that if legislation is not enacted and school boards have to comply with the decision as it stands then despite the best efforts of the Boards to re-allocate funding many programs will have to be modified (or worse, eliminated), resulting in substantial numbers of students receiving a lesser quality educational experience than has been available to now. If no legislation is enacted, it is possible that over time, depending on future funding levels, school boards might be able to re-build educational opportunities to current levels, but that will be no consolation to the students who currently benefit but will not do so in the interim. There are further concerns that if the enhanced experiences for students that communities have built with their school boards are driven out of the public education system, no provision for hardship will occur, resulting in further inequities.

BCSTA is developing some proposed changes which would address this dilemma whilst respecting the concept of free public education balanced with enhanced opportunities equitably accessible. We are keen to consult with your officials to explore such options.



Improving student achievement through community engagement

School boards will do their duty and comply with the law; however, when they view an interpretation of the law as being detrimental to the quality of education on offer then they also have a duty to advocate for legislative change to prevent an adverse outcome for students. The recent school fees judgment is such a case.

BCSTA respectfully requests your government to give serious consideration to enacting legislation to meet this challenge.

Sincerely,

A handwritten signature in cursive script that reads "Penny Tees". The signature is written in black ink and is positioned below the word "Sincerely,".

Penny Tees
President

Cc: Deputy Minister Emery Dosdall
School Board Chairs, Superintendents, Secretary-Treasurers



School District No. 38 (Richmond)

7811 Granville Avenue, Richmond, B.C. V6Y 3E3

Tel: 604-668-6000 Fax: 604-668-6161

January 19, 2007

Minister of Education
Ministry of Education
PO Box 9045, Stn Prov Govt,
Victoria, BC
V8W 9E2

Dear Minister Bond:

I was very pleased that your recent response to our letter of October 18, 2006, noted that "consideration is being given to amendments to the School Board Fees Order." In this regard, I would like to report that administrators and teachers in Richmond have worked diligently, with legal counsel, over the course of the Fall to interpret the consequences of the changes to the School Board Fees Order that were ordered by the Supreme Court. We are in the midst of a process of compliance that involves consultation with staff and broad engagement of parents at the school and district level. Many adjustments have been necessary and when the Board formally approves a School Fees Schedule, later in the Spring, we intend to bring our practices into full compliance with our best understanding of the new form of the Order.

However, it is our firm conviction that the Ministry of Education also has a role to play in this process. There are some matters that beg for clarification and there are some adverse implications that we believe you should be concerned about and may wish to consider changes to legislation and/or regulations in order to avoid harm.

Such matters are, of course, best addressed through a discussion. We would encourage you, therefore, to work with the BCSTA and other stakeholder groups in order to provide the clarity and direction that we believe is required.

For our part, however, we would like to draw your attention to the following.

- A legal analysis of the School Board Fees Order changes that we have received identifies several areas of confusion and inconsistency with respect to the district's ability to require students to provide their own musical instruments. It recommends that this matter could be improved if the Ministry were to consider a change to the definition of educational resource materials to include musical instruments.
- We have also received a legal analysis which suggests that the School Board Fees Order seems to imply that it is not appropriate to charge a fee for an elementary swimming (or similar) program. If this interpretation persists, elementary swimming programs can be expected to cease and we believe that this is not desired by the community and would not be in the best interests of our students.

BOARD OF SCHOOL TRUSTEES

Chak Kwong Au Sandra Bourque Andy Hobbs
Linda McPhail Donna Sargent Bobby Singh Grace Tsang

1906 - 2006

Celebrating 100 years of Public Education in Richmond

Bruce Beairiso
Superintendent of Schools

Ken Morris
Secretary-Treasurer

- Some might interpret the changes to the School Board Fees Order to imply that apprentices cannot be required to supply their own tools. This is a long-standing and logical expectation based on the fact that the apprentices are purchasing their personal tool set which they will take with them and use as they begin their career. Asking them to acquire this tool set while they are in the early stages of their apprenticeship and still within the public school system is, we believe, appropriate and therefore suggest that provincial regulations be changed to eliminate the possibility of challenge on this point.
- Many field trip experiences include costs for a Teacher-On-Call to replace the staff member(s) required to accompany the students to provide adequate supervision. It is currently not permissible to include TOC costs in charges to students. Particularly at the secondary level, this is liable to make it financially impossible to conduct many valuable field trips. We would request, therefore, that you consider making the necessary changes to permit schools to include TOC charges as a field trip expense.
- A wide range of specialized programs of choice are directly threatened by the changes to the School Board Fees Order. These include, but are not limited to, sports academies and mini-schools of various sorts. If a fee cannot be charged for the additional goods and services provided by districts to students in these enriched programs of choice, then we believe that they will cease. This would be contrary to your government's stated intentions and our district's significant efforts to increase the range of choice for our students.

There are doubtless other concerns that should be considered as well. In the interests of clarity and consistent practice, and in order to protect valuable services to students, we urge you to engage in a dialogue with stakeholders in order to identify changes that may be required to legislation and/or regulations.

These discussions should be held urgently in order that any changes that you deem to be appropriate can be made at the earliest possible date. Schools are currently engaged in program planning and the implications of the School Board Fees Order affect course offerings, staffing, and budgeting decisions that will be made within the next few months. The sooner that concerns and confusions are addressed, the better.

We are in the midst of a process of compliance that involves consultation with staff and broad engagement of parents at the school and district level. We will be holding a "Let's Talk about School Fees" forum on Wednesday, January 24, 2007 at 7 p.m. and plan a follow up evening on March 14, 2007.

Thank you for your attention to these matters. We would be pleased to elaborate upon them and to participate in problem-solving responses.

Sincerely,



Mrs. Linda McPhail, Chairperson
On Behalf of the Board of School Trustees

cc: Trustees
B. Beairsto, Superintendent of Schools
K. Morris, Secretary Treasurer
MLAs
BCSTA - to distribute to all school districts



British Columbia
School Trustees Association

Tel: 604-734-2721 Fax: 604-732-4559 e-mail: bcsta@bcsta.org
4th Floor, 1580 West Broadway, Vancouver, BC V6J 5K9

January 19, 2007

The Honourable Shirley Bond
Minister of Education
PO Box 9052 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Bond,

Re: School Board Fees

As you are aware, school boards, students and parents have been extremely concerned about the wide-ranging implications of the Supreme Court of B.C. decision in *Young v. Minister of Education*. As school boards carefully examined the ruling with their legal counsel, educational staff, and school communities, the effect of the ruling became less clear and the scope of programs affected widened.

I wrote to you last November to request that you consider measures to address the need of school boards to provide a wide selection of courses and activities to address the needs of individual communities. I thank you for your response indicating that your staff was considering all options including the option of amending existing legislation.

BCSTA's Board of Directors met on January 15, 2007 to discuss potential legislative changes. The purpose of this letter is to more specifically identify those changes that the Board of Directors believes are essential.

In consequence, BCSTA respectfully recommends that legislative change (to the School Board Fees Order, School Regulation, or School Act) be made that will:

1. Clarify that locally developed hardship policies are applicable to all curricular activities within educational programs provided by school boards.
2. Restore the legislative provisions that would permit school boards to require students to bring their own musical instrument for their own individual use in an educational program, or to charge fees for rental of instruments.
3. Confirm the exceptions for school supplies and equipment for individual use in an educational program and appropriate personal clothing and safety equipment.



4. Confirm that these exemptions also apply to tools, materials and equipment required to participate in trades programs. We note, however, that BCSTA's preferred position is that these items be fully funded by the Ministry of Education through an addition to the block funding grant, as per AGM 2006 Resolution #19.
5. Permit school boards to collect fees to recover costs of curricular field trips.
6. Permit school boards to recover special costs of providing Board Authority Authorized Courses and integrated programs of choice.
7. Permit school boards to recover special costs associated with providing a course as long as students have other courses within the same subject area that would not require fees.

It is important to note that these requested changes are not predicated on an assumption that the pre-judgment status quo must be restored. Indeed, if these changes were implemented that would not be the case. Rather, the underlying rationale for the changes is to strike a reasonable and acceptable balance between respecting that basic public education must be free to all students and preserving a reasonable and limited capacity to continue to offer educational opportunities of enhanced quality expected and indeed in many cases demanded, by parents and the public.

In this letter, I have not tried to map out the required changes to each element of the legislative framework. BCSTA staff would be pleased to work with your staff or Attorney General staff on technical aspects.

I would be pleased to expand on the rationale for any of these requested changes, or your staff may contact BCSTA General Counsel Judith Clark to further discuss the background to these requests.

Yours truly,

A handwritten signature in cursive script that reads "Penny Tees". The signature is written in black ink and is positioned below the typed name.

Penny Tees
President



School District No. 38
RICHMOND

Memorandum

BRUCE BEAIRSTO, SUPERINTENDENT OF SCHOOLS

7811 Granville Avenue, Richmond, BC V6Y 3E3
Phone 604-668-6081 Fax 604-668-6006

TO Board of School Trustees (Richmond) - PUBLIC
RE *School Fees*

January 11, 2007

The School Board Fees Order (*attached*) has for many years been our guide to permissible school fees. The Board has established its own Policy and Regulations 802.2, *Student Fees*, to ensure compliance with the provincial Order and fair and confidential provision for students who are unable to pay approved fees. Recent events require us to reconsider these long standing practices.

Following is a report on this matter, a description of administrative action being taken in response, and comments on possible Board action.

Legal Framework for Fees

A Supreme Court ruling, *Young vs British Columbia*, of September 29, 2006 (*attached*), changed the foundation for our Student Fees policy. The Court agreed with the petitioner's argument that certain aspects of the School Board Fees Order were inconsistent with Section 82(1) of the School Act and, therefore, beyond the Minister's authority. Consequently, the judge struck the words "Subject to Sections 4 and 5" from Section 3 of the Order so that it now reads:

A board shall not charge fees for goods and services provided by the board to students of school age resident in the school district without which the student could not meet required learning outcomes or assessment requirements of an educational program provided by the board.

The judge then made some illustrative comments about correct interpretation of the School Board Fees Order as it pertains to field trips and music programs in particular, but specifically declined to comment on individual school district practices and did not provide any more detailed guide to the consequences of his actions.

The Ministry originally indicated that it would neither appeal the ruling nor make any changes to legislation or to its regulations, but simply charged districts with compliance. It has provided no assistance in interpreting the judgment or understanding its implications, although it recently replied to the Board's inquiries by saying that changes to the provincial School Board Fees Order are being considered. We do not know what those might be.

This has left confusion in many areas, which are discussed in detail below. One overriding and important area of confusion is that Section 82(2.1) of the School Act states that "the board must provide free of charge to that student ... educational resource materials necessary to participate in the educational program" but Section 82 (3) indicates that "a board may charge fees for goods and services provided by the board." The definition of the terms "educational resource materials" and "goods and services" are provided in the School Regulation (BC Regulation 265/89) as follows.

"educational resource materials" means

- (a) ...
- (b) materials and equipment necessary to meet the learning outcomes or assessment requirements of an educational program provided by a board but does not include
- (c) paper, writing tools, calculators other than graphical calculators student planners, exercise books, computers used for distributed learning, computer storage media and other school supplies and equipment for a student's individual use,
- (d) appropriate personal clothing for school activities such as gym strip, footwear, outerwear and personal safety equipment;

"goods and services" includes, but is not limited to,

- (a) materials and equipment of a nature, or of a quality or quantity, beyond that which is necessary to meet the required learning outcomes or assessment requirements of an educational program provided by a board,
- (b) paper, writing tools, calculators other than graphical calculators, student planners, exercise books, computer storage media and other school supplies and equipment for a student's individual use,
- (c) the provision of a musical instrument for a student's individual use, and
- (d) the payment of expenses in respect of field trips or special events including expenses for transportation, accommodation, meals, entrance fees and equipment rentals

The School Board Fees Order summarizes the implications of these definitions by noting (in a section that was not changed by the recent ruling) that:

A board may charge fees to school age students ... for

- (a) materials used in goods that are intended for the student to take home for personal use or as a gift;
- (b) the purchase of paper, writing tools, calculators, student planners, exercise books, computer diskettes and other school supplies and equipment for a student's personal use; and
- (c) the rental of a musical instrument for a student's personal use.

Implications

It is not immediately obvious how the recent Supreme Court ruling has changed the meaning of the School Board Fees Order and thus what change is required of school districts.

It seems clear that the following fees are no longer permitted.

- general course fees
- charges for resources essential to achieve PLOs in a course
- charges for mandatory or essential field trips

It seems clear that the following continue to be permissible, although that may well be challenged in the future. All of these, except textbook deposits, are optional activities or services that may be declined.

- bulk purchase of individual school supplies and resale to students at cost
- extracurricular and athletic fees
- student activity fees (e.g., planners, year books, grad)
- refundable deposits for textbooks or other materials
- AP and IB exam fees
- optional purchases (e.g., workbooks, completed projects)

There is no requirement to refund fees collected prior to the Supreme Court ruling even if district practice has changed since that ruling. No timeline for implementation of the required changes has been provided to us.

That leaves a lot of grey zone. The following comments on the key remaining issues related to fees are based on discussions amongst superintendents in the Metro area and the legal analysis provided by BCSTA, but also include recommendations specific to Richmond.

Significant Issues

The district's approach to fees questions that fall in the grey zone should be based on principled pragmatism. Its actions must derive from an honest intention to uphold the law and abide by Ministry regulations while preserving the benefits of enriched learning opportunities for students. Where there continues to be ambiguity a process of consultation and deliberation should be established to develop local policies that are consistent with the law and supported by the community. Thoughtfulness is more important than speed. A reasonable deadline for full compliance with the revised provincial Regulation would be the 2007/08 school year.

Semestered Schools

Our four semestered schools (Burnett, London, McNair, and Steveston) face a unique set of questions this year. In some cases, fees for the entire year were collected prior to the ruling and according to previous understandings. Other semestered schools will soon be requesting second semester fees. Equity between schools in these two situations and the fact that school organization and staffing was established on the reasonable good-faith assumption that fees could be charged as in the past suggest that one might continue to charge fees for the second semester this year according to the previous rules while district discussions are continuing. Moreover, making changes midway through the school year that affected course offerings, staffing and budgets might be seen as an undue hardship on staff and students. On the other hand, we now know the new rules and logic suggests we must abide by the Court ruling to the best of our ability.

There was no implementation date or timeline provided by the Court. Common sense suggests that it would take time for districts to adjust their practices to comply, particularly since the ruling was made after most schools had collected fees for the year. This has always been the expectation when provincial regulations change. Moreover, there is a need to accurately inform and involve parents in a discussion of this issue.

Making a change mid-year for semestered schools would not only be disruptive for them but consistency would require change for linear schools as well even though fees have already been collected. The confusion, financial and program disruption, and potential for unfairness would be significant.

Therefore, it is recommended that semestered schools proceed according to the existing policy structure in the district while we work with staff and parents to understand and comply with the revised provincial School Board Fees Order.

The public reporting on this issue has raised its profile and inaccurately portrayed the ruling as eliminating fees. Consequently, some schools are experiencing increased rates of non-payment. The district will have to work with schools to monitor and ameliorate the impact on school budgets.

Field Trips

Judith Clark, in consultation with Wendy Harris, has provided a backgrounder and detailed legal analysis (*attached*). Generally, field trips may be treated as optional and a fee applied to cover costs (excluding TOC costs). The possibility of a "donation" is also considered in her analysis.

Elementary skating and swimming field trips may be considered optional if (a) they are a one-time enrichment activity or (b) there is a no-cost alternative provided that addresses the same PLOs. It is very difficult to provide such a credible alternative and, thus, unless the district is able to provide the necessary funding, elementary skating and swimming programs will have to be discontinued. This is a topic that requires careful attention and discussion with parents in order to determine our future practices. While those discussions proceed, it is recommended that elementary schools continue with their past practice of charging a fee in order that these programs may continue, as it is assumed our parent community would wish them to be.

Programs or courses that have numerous field trip activities as a central feature cannot treat them as optional and, therefore, charge a fee. Judith Clark comments:

It appears that some BAA courses and programs of choice are designed on the basis that field trips are an integral component of the course and parents therefore give general field trip consent when the student is enrolled in the course. Although it is clearly understood by parents and students that they have other options available to meet required learning outcomes, because they do not have other choices within the specific course, these must be considered "mandatory" field trips.

The option of requesting a donation is considered in the analysis by Judith Clark. However, this approach depends on a high degree of compliance and is not likely to be viable in the long term. Thus, programs and courses of this type would have to be funded by the school or not offered unless there is enabling legislative or regulatory change. In all likelihood, they could not be sustained financially.

Various legislative changes that would assist schools are discussed in the analysis. It is highly desirable that the Ministry implement these, or equivalent, changes in order to bring clarity and consistency to the issue of field trip fees.

Programs that feature a large number of field trips will probably not be able to continue unless the district funds them fully or the Ministry makes legislative or regulatory changes to allow these programs of choice to charge a fee. District funding is unlikely to be possible. This, therefore, places many secondary programs at risk. This issue requires urgent consultation with parents and advocacy with the Ministry. Over the next several months, students applying for such programs should be advised of the fee issues and the possibility that traditional aspects of these programs will have to be discontinued.

Consumable Resources

A course fee may not be charged to cover the cost of consumable resources (e.g., shops, home economics, art, science). However, students may be asked to provide their own materials or be charged for materials the school provides for optional enhanced activities and projects that go beyond what is required to fulfill the PLOs for the course. Students may also be charged for the materials in a project if they wish to take it with them at the end of the course. This is clear from Sections 52 and 54 of Justice Johnston's judgment.

[52] ... school boards are entitled to charge fees only for materials used that are surplus to what would be necessary for the student to meet the expected outcomes in a course requiring consumption of materials.

[54] ... if a student enrolls in a course such as woodworking, home economics or art, as part of his or her educational program leading to graduation, the school board must provide, free of charge, the materials necessary for successful completion of the course. If at the end of the class the student wishes to purchase the work he or she has completed, that is a different matter, and the purchase may be negotiated.

In a woodwork course, for example, all necessary materials required to complete activities sufficient to meet the PLOs must be provided free of charge. If students wish to use superior materials or undertake a more ambitious project they may supply their own materials or the school may sell the materials to them. However, this approach should not be exploited by providing a basic no-cost alternative that is intentionally unappealing or obviously intended to incline students towards a self-funded project. Students must be provided with meaningful learning activities sufficient to meet the required learning outcomes in all courses without cost. Even with the basic no-cost alternative, students may be charged for the cost of materials if they wish to take the project home at the end of the course.

A similar approach (basic and enriched projects) could be taken in a textiles course, but it is hard to imagine how it could be applied to Home Economics. In this case, however, students could be given the option of consuming what they have produced, in which case they could be charged for the cost of the materials. This decision might be made on a full year basis to avoid collection of small amounts of money on a class-by-class basis. However, to avoid stigmatizing those who are unable to pay, it may be necessary to allow all students to consume the food produced, including those who were fully able to pay but chose not to do so.

Similarly, in Fine Arts courses students may be charged for enriched projects and for any project they wish to keep so long as a genuine no-cost alternative is available to complete the PLOs for the course in a reasonable way.

In all cases, the time and effort required to collect fees from students on an individual class or project basis should be considered, as well as the problems that can arise from handling cash. It may be that in some cases the practical complexities make it unreasonable to charge fees, in which case the school will have to cover those costs.

Music Programs

Judith Clark, in consultation with Wendy Harris, has provided a backgrounder and detailed legal analysis. The situation is somewhat different in elementary and secondary schools.

In elementary, all students must be given instruction and resources required to meet the Fine Arts PLOs for Music. However, since our elementary Band program is optional and is provided additionally (during the school day but with supernumerary itinerant teachers), Judith Clark's analysis suggests that it may be legitimate to require students to provide their own instruments (so long as hardship provisions are in place to allow those genuinely unable to afford to provide an instrument to participate). Band can then be assessed and included on the report card. Students not participating in Band must also be able to satisfy the PLOs for Music and their achievement in Fine Arts must be assessed and reported as well. If this interpretation were successfully challenged, it would probably mean that the district could no longer afford to provide elementary Band.

In secondary, students who choose a Music option that requires an instrument must be able to participate and to practice outside of class using an instrument provided by the school. However, this instrument may be shared with others. The pool of shared instruments available to students who choose not to provide their own instrument must be reasonable, but may include a limited choice of instrument options for students. In anticipation of most students continuing to prefer to provide their own instrument, the pool of shared instruments may not be too large and many schools may have nearly enough already on hand. An equitable way will have to be found of providing funds to ensure that this is true in all secondary schools.

The Ministry should be asked to make changes to the School Board Fees Order as proposed by Judith Clark in order to prevent the possibility of legal challenge to the response proposed above and to protect music programs from limitation or cancellation as a result of the cost implications of the Supreme Court ruling.

Apprenticeship Programs

The issue here is the potential for the Supreme Court ruling to require schools to provide tools for students in apprenticeship programs. On the other hand, since they are intended for personal use and the student will retain them upon graduation, common sense would indicate that their purchase is the student's obligation. No change is suggested in our current practice of requiring students to provide their own tools. A change to the School Board Fees Order to make this clear and avoid any potential challenge would be helpful.

Sports Academies

Sports Academies and other programs of choice that include a fee to cover coaching or activities that are part of the program are directly threatened by the Supreme Court ruling since these fees appear to be clearly improper. Districts are unlikely to be either willing or able to cover the costs of Academies. Unless there is action by the Ministry to make these fees admissible, Academies are liable to be terminated. This topic is the next one for which Judith Clark will prepare a legal analysis. That analysis will include recommendations for legislative or regulatory change to preserve Academies. Because Choice is a government priority, it is recommended that we assume a solution will be found to this problem and take no action at present.

Mini-Schools

Mini-Schools and enrichment programs that charge a fee to cover field trips and extracurricular activities that are an essential feature of the program can no longer charge a fee to cover these expenses. (See Judith Clark's analysis of field trip fees.) The possibility of requesting a donation from parents or fundraising to replace the fee are theoretically possible but unlikely to be successful, particularly in the long term. Therefore, such programs are in essentially the same position as Academies and will require legislative or regulatory change to permit them to continue in their present form. Students enrolling in such programs for September should be alerted to the fees issue and the potential for it to change the activities the program has traditionally offered, and they and their parents involved in further discussion of the matter.

District Action Required

- Semestered schools will request school fees according to current district policy.
- A long term, district-wide practice for appropriate recovery of the cost of consumable resources that go beyond basic requirements to satisfy provincial curriculum requirements must be established in time to permit budgeting for 2007/08 at the school and district level.
- The Student Fees Policy (802.2) must be revised in light of the Supreme Court ruling through a process of consultation with staff and parents that builds understanding and support.
- District funding for schools must be reviewed and revised in light of the Supreme Court ruling and consequent costs.
- Field trip procedures must be revised in light of the analysis provided by Judith Clark.
- Elementary swimming and skating programs must be further discussed to develop a district strategy that is supported by parents and fiscally sustainable. The City should be involved in this discussion.
- A program of instruction must be provided for students who choose not to participate in elementary Band.
- Secondary schools must provide an appropriate pool of musical instruments for loan to students and establish policies to address hygiene, borrowing, and other related issues.
- Schools should inform staff, students, and parents about the reasoning behind and the implications of the Supreme Court ruling and involve staff, students, and parents in developing local responses that are consistent with provincial regulations and district policy while preserving as much as possible of the program enrichment that fees have previously supported.
- School Fees will be a topic of discussion for secondary students at TABLE 38.
- The Superintendent will prepare a letter to all parents by early February that reports on the process of compliance with changes to the School Board Fees Order and the projected implications.
- The Ministry should be asked to take steps to make it possible to charge a fee for elementary swimming (and similar) programs.
- The Ministry should be asked to make revisions to the School Board Fees Order as recommended by Judith Clark in order to protect music programs.
- The Ministry should be asked to make revisions to the School Board Fees Order to protect apprenticeship programs.
- The Ministry should be asked to make revisions to the School Board Fees Order to protect Sports Academies and other programs of choice.
- The Ministry should be asked to make TOC charges for field trips possible.

Recommendations for Board Action

For the most part, the required responses are administrative and do not require Board authority or initiation. Of course, the budget process will include discussion of those implications. Trustees will also be interested in the Let's Talk evening described below and will want to participate in discussions with parents and stakeholders whenever possible. This might be facilitated by a referral to Education Committee or Personnel & Finance Committee.

The two required actions that directly involve the Board are revision of the Fees Policy and advocacy with the Ministry of Education.

Recommendations for revisions to the Fees Policy will be brought to the Board at the first Regular (Public) Board Meeting in April subsequent to consultations with staff and parents that will begin immediately.

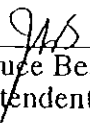
Advocacy with the Ministry has been undertaken by the BCSTA and is continuing. Judith Clark has participated in discussions with Metro superintendents over the past several months and has been instrumental in providing legal guidance. She, in consultation with Wendy Harris, is the source of suggestions for possible changes to the School Act and/or the School Board Fees Order. The Board may choose to add its support to BCSTA advocacy or it may choose to write to the Ministry separately.

Let's Talk

In consultation with the RDPA, a Let's Talk evening is planned for Wednesday, January 24, at Palmer Secondary School beginning at 7:00 p.m. Depending on the feedback received at that meeting, additional district or school conversations will be supported. A second Let's Talk evening is planned for Wednesday, March 14, at which time feedback from school discussions will be received and a draft revision to Policy and Regulations 802.2 (Student Fees) will be introduced.

This report is being distributed to all Principals, SCC Chairs, PAC Chairs, and stakeholder groups with the recommendation that they discuss it within their own contexts and bring feedback to the Let's Talk evening. Comments or questions may also be directed to the Office of the Superintendent of Schools.

Recommended changes to Policy and Regulations 802.2 (Student Fees) will be brought to the first Regular (Public) Board Meeting in April, 2007, along with budgetary recommendations necessary to accommodate changes in school fees for the 2007/08 school year.



J. A. Bruce Beairsto
Superintendent of Schools

JABB:dg

Attachments:

- *School Board Fees Order*
- *Supreme Court Judgment*
- *District Policy and Regulations 802.2 (Student Fees)*
- *BCSTA Legal Analysis of Field Trip Fee Issues*
- *BCSTA Legal Analysis of Music Program Issues*
- *BCSTA Fees Letter to the Ministry*
- *Board Letter to the Ministry*
- *Ministry Response to Board Letter*

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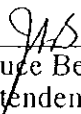
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SCHOOL BOARD FEES ORDER

Authority: *School Act*, sections 82 and 168 (2) (j)

Ministerial Order 125/90 (M125/90).....	Effective June 6, 1990
Amended by M109/91.....	Effective May 22, 1991
Amended by M525/95.....	Effective October 30, 1995
Amended by M292/97.....	Effective August 1, 1997
Amended by M321/04.....	Effective September 1, 2004
Orders of the Minister of Education	

Fees under section 3 of the School Regulation

1. Where a child is registered with a school under section 13 (1) (a) or (b) of the *School Act*, the board having jurisdiction over the school shall ensure the services and materials referred to in section 3 (1) of B.C. Reg. 265/89, the School Regulation, are offered to that child, free of charge.

Fees for school age graduate students

2. No board of a school district shall charge fees for

- (a) instruction in an educational program; or
- (b) educational resource materials necessary to participate in the educational program

where a student, who is of school age and is resident in the district, takes the educational program after successfully completing the general requirements for graduation set out in Ministerial Order 205/95, the Graduation Requirements Order, or Ministerial Order 302/04, the Graduation Program Order.

[en. M109/91; am. M525/95, am M321/04]

Fees for school age students

3. Subject to sections 4 and 5, a board shall not charge fees for goods and services provided by the board to students of school age resident in the school district without which the student could not meet required learning outcomes or assessment requirements of an educational program provided by the board.

[en. M292/97]

4. A board may charge fees to school age students resident in the school district for

- (a) materials used in goods that are intended for the student to take home for personal use or as a gift;
- (b) the purchase of paper, writing tools, calculators, student planners, exercise books, computer diskettes and other school supplies and equipment for a student's personal use; and
- (c) the rental of a musical instrument for a student's personal use.

[en. M292/97]

5. A board shall not charge fees in respect of field trips or special events except for expenses, including transportation, accommodation, meals, entrance fees and equipment rental.

[en. M292/97]

SCHOOL BOARD FEES ORDER

6. A board must not charge fees for goods and services under sections 4 and 5 except where the board has established policies and procedures to facilitate participation in activities by school age students resident in the school district who would otherwise be excluded due to financial hardship.

[en. M292/97]

7. Nothing in this Order prevents a board from requiring a student to provide appropriate personal clothing for school activities, such as, gym strip, footwear, outerwear, and personal safety equipment and musical instruments or permitting a student to bring appropriate materials, supplies and equipment for their personal use at school.

[en. M292/97]

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Young v. British Columbia (Minister of Education)*,
2006 BCSC 1415

Date: 20060929
Docket: 06/2866
Registry: Victoria

Between:

John Young

Petitioner

And:

Minister of Education and Attorney General for British Columbia

Respondents

Before: The Honourable Mr. Justice Johnston

Reasons for Judgment

Counsel for the Petitioner:

W.A. Pearce, Q.C.

Counsel for the Respondents:

D. Roberts

Date and Place of Trial/Hearing:

20060821-20060822
Victoria, B.C.

[1] The petitioner seeks declaratory relief affecting fees chargeable by school boards to students.

[2] The petitioner claims that school boards around British Columbia are charging students fees for things like the wood needed for projects in woodworking classes, or for rental of instruments that students need for school music classes, or for school field trips. The petitioner says the boards are doing this because they understand that they are authorized to do so by School Board Fees Order 125/90. This Order has been made by the Minister of Education exercising power conferred by s. 168(2)(j) of the *School Act*, R.S.B.C. 1996, c. 412. The petitioner says that School Board Fees Order 125/90, when read literally, appears to permit schools and school boards to charge the fees to which the petitioner objects. The petitioner says these fees are unlawful because they are contrary to s. 82(1) of the *School Act*. For this reason, the petitioner argues that certain portions of School Board Fees Order 125/90 are beyond the powers of the Minister of Education to make, and should be struck down.

[3] The first declaration sought is that ss. 3, 4(a), 4(c), 5 and 6 of the School Board Fees Order

125/90, made by the Minister of Education pursuant to s. 168(2)(j) of the *School Act*, are beyond the power of the Minister of Education to make.

[4] In the alternative, the petitioner asks the court to strike the words "subject to sections 4 and 5" from s. 3 of the School Board Fees Order 125/90 as beyond the power of the Minister of Education.

[5] In the further alternative, the petitioner seeks a declaration that the School Board Fees Order 125/90 does not empower a school board to charge fees for materials or equipment which are necessary to meet learning outcomes or assessment requirements of an educational program provided by a board and, further, that the School Board Fees Order 125/90 does not empower a school board to charge for expenses of a field trip which constitutes instruction in an educational program.

[6] The respondents object that much of the affidavit evidence tendered by the petitioner, as well as exhibits to the affidavits, are inadmissible.

[7] As to the merits of the petition, the respondents argue that, when read properly, the portions of the School Board Fees Order challenged in this proceeding are proper, and, insofar as the regulations and fees order are concerned, the regulations are within the powers delegated to the Lieutenant Governor in Council, and the School Board Fees Order is made within the power delegated by the *School Act* to the Minister of Education.

ADMISSIBILITY OF EVIDENCE

[8] The petitioner swears in his affidavit that school boards are charging fees for things that the *School Act* requires to be free of charge. His assertions are supported by documents exhibited to the affidavit, and two supporting affidavits from others. The documents relied on are schedules of fees charged by 13 school districts. These were provided to the petitioner by those districts in response to requests made under s. 5 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165. The respondents challenge the admissibility of most of the assertions in the body of the affidavit, as well as the fee schedules exhibited to it.

[9] The challenge to the evidence sworn in the affidavit is based partly on the argumentative nature of much of the petitioner's affidavit, partly on the relevance of what was sworn, and partly on the basis that much of at least the petitioner's affidavit is his opinion on matters in issue.

[10] I reserved decision on these objections until all of the argument had been made, and indicated that I would rule on the admissibility of the petitioner's affidavit in these reasons. After reviewing the affidavits and exhibits, I have concluded that there is substantial merit in the respondents' objections.

[11] I rule that paragraphs 1, 2 and 3 of the petitioner's affidavit are statements of fact within his knowledge and are admissible.

[12] Paragraph 4, as a statement of the reason the petitioner is bringing these proceedings, I find admissible although it is not, truly speaking, evidence.

[13] Paragraphs 5, 6, 7, 12, 13, 15, 18, 19, 20, 21, 25, 26, 27, 31, 32, 33, 35, 36 and 37 of the petitioner's affidavit sworn June 21, 2006 are inadmissible as advocacy by the petitioner, or his opinion, or both.

[14] Paragraph 8 is admissible except for the petitioner's description of the feelings of the people named.

[15] Paragraph 9 is inadmissible as argument, except for the last two sentences which are statements of fact and admissible.

[16] The first two sentences of paragraph 10 are admissible as a statement of the petitioner's observations or experiences as a Victoria school trustee. The balance of the paragraph is inadmissible as hearsay, irrelevant (the hopes and expectations of the petitioner), or argumentative.

[17] The first sentence of paragraph 11 is admissible. The balance is inadmissible as argument.

[18] Paragraph 14 is inadmissible except for the second and third sentences which are statements of the petitioner's observations as a school trustee. The balance is thinly disguised hearsay or, in the case of the first sentence, argument.

] From paragraph 16, I accept as admissible the second sentence, as based on Mr. Young's experience in Victoria. The first sentence is inadmissible as argument, and the rest of the paragraph inadmissible as it seems to be a broad conclusion or summary without the basis having been revealed.

[20] The first sentence of paragraph 17 is admissible as it is based on the petitioner's experiences as a school trustee. The balance is inadmissible because it is argument.

[21] Paragraphs 22 and 23 are admissible.

[22] I rule the first three sentences of paragraph 24 admissible as a summary of the contents of documentary exhibits that I find are admissible for reasons that will follow. The balance is argument and inadmissible.

[23] I admit paragraphs 28, 29 (except for the last sentence where an inadmissible assumption is stated), and 30 of the affidavit as a summary of the documentary evidence and the deponent's survey of the documentary evidence.

[24] I accept as admissible the first two sentences of paragraph 34 as a statement of the petitioner's personal history.

[25] With respect to the documents exhibited to the petitioner's affidavit, I accept as admissible the responses of the school boards who provided copies of their schedules of fees charged pursuant to the School Board Fees Order. These documents, it seems to me, are admissible for two reasons: because school boards are required to publish these fee schedules by s. 82(6) of the *School Act* as they are public books or documents admissible under s. 29(1) of the *Evidence Act*, R.S.B.C. 1996, c. 124; and they are the records of a corporation admissible under s. 28 of the *Evidence Act* (s. 65(1) of the *School Act*; constitutes the trustees of each school district as a corporation).

[26] The respondents argue that these documents are irrelevant because they are not probative of whether the impugned portions of the School Board Fees Order are within the power of the Minister of Education to make. The issue framed by the petition is whether the impugned portions of the School Board Fees Order are within the Minister's power to make, not how various school boards are interpreting or applying them. The respondents argue that, while the documentary exhibits show the practices of 13 school boards, they say nothing about the power of the Minister to make the School Board Fees Order, nor do they assist in its interpretation. As well, the respondents point out that only 14 boards replied, out of 60 school districts in the province. The petitioner has exhibited fee schedules for 13 of the boards that replied because the fourteenth, School District #92 (Nisga'a), replied that it does not charge fees or deposits.

[27] I find that there is some relevance in evidence of how school boards are interpreting and applying the impugned portions of the School Board Fees Order. The relevance is that, if school boards are charging for things the Minister did not intend to be authorized by the School Board Fees Order, and are publishing those charges as required, one might reasonably expect the Minister to point out to the offending school boards the error of their ways. The absence of such a correction by the Minister might be construed as approbation by the Minister of the interpretation by the school boards of the impugned portions of the School Board Fees Order. That in turn might lend support for the interpretation of ambiguous language. The clarity of the various fee schedules as well as the relatively small sample goes to the weight that might be attached to the fee schedules.

[28] The affidavits of Mr. Gaipman and Mr. Conrod are admitted insofar as they describe matters in the knowledge of each – that is, what are the practices of the school board for which they work – Greater Victoria School District. Where Mr. Gaipman purports to describe the practices of other school boards, his evidence is inadmissible as hearsay.

[29] I have ruled much of the affidavit evidence inadmissible as hearsay. In each case I have concluded that the petitioner has not shown the necessity of receiving the evidence as hearsay. As well, there has been no real attempt to demonstrate the reliability of such evidence, beyond vague assertions that, for example, either Mr. Young or Mr. Gaipman know that what they assert is true based on their long experience. If that is meant to suggest that the knowledge has come to each through a process of osmosis, it does little to demonstrate that the source of the knowledge is sufficiently reliable to be safely admitted. Otherwise, there has been no attempt to assert that either has been informed of the facts asserted by a named person, whose reliability can be weighed by me, nor has the source of the asserted facts been sufficiently identified that the reliability of the deponent's assertion of the facts can be evaluated.

ANALYSIS

[30] The analysis of the legal issues must bear in mind that school boards are not parties to this petition, they have had no opportunity to put forward evidence they feel might be relevant to the issues, and no school board has had the opportunity to make submissions on the issues. Although the basis of the petitioner's arguments is that school boards are charging for things they ought not to charge for, this is advanced only as a basis to attack the School Board Fees Order, and the power of the Minister to make it. The petitioner does not seek any relief against any school board.

[31] The fee schedules that have been admitted into evidence show that some schools and school boards are charging students fees for such things as: musical instruments, supplies for woodworking courses, field trips, supplies for cooking and sewing courses, and the like. The petitioner argues that the School Board Fees Order appears to permit these charges. He says that the classes or courses to which the fees attach are part of students' graduation requirements, in that successful completion will add to the credits required to graduate. The petitioner says that fact alone makes the charging of fees contrary to s. 82 of the *School Act*. To the extent that these fees appear to be authorized by portions of the School Board Fees Order, the petitioner argues that those portions are beyond the power of the Minister to make.

[32] In construing the legislative framework integral to these issues, I accept that subordinate legislation, whether by regulation or ministerial order, is not permitted to contradict or derogate from the statute or regulation from which it derives its authority. If authority for that proposition is needed, it can be found in *Belanger v. Canada* (1916), 54 S.C.R. 265 at 276. If subordinate legislation, whether in a regulation or, as in this case the School Board Fees Order, is ambiguous, it should be read so as to be consistent with superior legislation (*Belanger, supra*, at 280; s. 41 of the *Interpretation Act*, R.S.B.C. 1996, c. 238).

[33] I start with s. 82(1) of the *School Act*. It requires a school board to provide free of charge to every student of school age resident in British Columbia who is enrolled in an educational program in a school operated by the board:

- 82 (1) (a) instruction in an educational program sufficient to meet general requirements for graduation, ...
and
(c) educational resource materials necessary to participate in the educational program.

[34] Some of the words and phrases used in the statute are defined in the statute, some are defined by regulation.

[35] "Educational program" is defined in the statute to mean:

... an organized set of learning activities that, in the opinion of

(a) the board, in the case of learning activities provided by the board,

...

is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;

[36] This phrase, defined in the same way by the then current version of the *School Act*, was held by Drake J. to be limited so as to require free instruction leading to graduation in *McDonald v. Greater Victoria District No. 61*, [1997] B.C.J. No. 1007 (S.C.) (QL).

[37] The expanded phrase "instruction in an educational program" has been defined by the *School Regulation*, B.C. Reg. 265/89, passed pursuant to the *School Act*, to mean:

... the communication of information or knowledge to students, who are in attendance and under supervision, sufficient to meet the learning outcomes or assessment requirements of an educational program provided by a board;

[38] The Lieutenant Governor in Council has the power to define terms used in the statute conferred by s. 175(2)(f) of the *School Act*:

175 (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

...

(f) defining any expression that is used but not defined in this Act; ...

[39] Without the benefit of the interpretation of the phrase "educational program" by Drake J. in *McDonald*, some difficulty might arise from the dissimilarities in the usage of the phrase in the two definitions. They are dissimilar because the definition of "educational program" in the statute speaks to realization of a student's potential, and the acquisition of skills and attitudes that would benefit society, whereas the definition of "instruction in an educational program" set out in the regulation has a more narrow focus, dealing as it does with the conveyance of the knowledge or learning necessary for a student to pass examinations or fulfill course requirements established by a school board.

[40] Drake J. resolved the potential difficulty by arriving at an interpretation of the phrase "educational program", as defined in the statute, which predicted quite accurately the definition subsequently put forward in the regulation, in a way that resolved potential inconsistency.

[41] In my view the definition of the phrase "instruction in an educational program", although originating in subordinate regulation, is not inconsistent when the definition of "educational program" is read into the opening portion of s. 82 as follows:

82 (1) A board must provide free of charge to every student of school age resident in British Columbia and enrolled in ... *an organized set of learning activities that, in the opinion of, ... (a) the board, ... is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy ...*

in a school operated by the board, [my emphasis]

This can then be logically followed by inserting the expanded definition of "instruction in an educational program" from the regulations into subsection (a) of s. 82(1) as follows:

82 (1) (a) *the communication of information or knowledge to students, who are in attendance and under supervision, sufficient to meet the learning outcomes or assessment requirements of an educational program*

provided by a board; ... sufficient to meet the general requirements for graduation, ... [my emphasis]

[42] It seems to me that taking the more general definition of "educational program" from the statute, and following it with the more specific "instruction in an educational program", which is aimed at achieving successful graduation of the student, provides a logically coherent and internally consistent interpretation of s. 82(1). Such an interpretation would also be consistent with the decision of Drake J. in *McDonald*, and with the response of government to that decision, in the form of regulations creating the definitions set out above.

[43] Section 82 (1)(c) requires a school board to provide free of charge to every student of school age resident in British Columbia and enrolled in an educational program in a school operated by the board "... educational resource materials necessary to participate in the educational program."

[44] That, too, is mandatory.

[45] In *McDonald* Drake J. held that the phrase "educational resource materials", which at that time was not defined in either statute or regulation, included goods which are "... consumed in the course of instruction in educational programs ...", such as wood used in carpentry courses, food in cooking courses, and materials used in the teaching of science and arts courses. He held that those goods must be provided free of charge because they were used in the teaching of educational programs leading to graduation.

[46] This phrase has been defined by regulation since the decision in *McDonald*. B.C. Reg. 265/89, s. 1(2) provides:

"educational resource materials" means

- (a) information, represented or stored in a variety of media and formats, that is used for instruction in an educational program including, without limitation, the materials referred to in section 3 of Ministerial Order 333/99, the Educational Program Guide Order, and
- (b) materials and equipment necessary to meet the learning outcomes or assessment requirements of an educational program provided by a board

but does not include

- (c) paper, writing tools, calculators other than graphical calculators, student planners, exercise books, computer diskettes and other school supplies and equipment for a student's individual use, and
- (d) appropriate personal clothing for school activities such as gym strip, footwear, outerwear and personal safety equipment;

[47] The items listed in subsection (c) are, with some variation, repeated in s. 4(b) of the School Board Fees Order. The petitioner specifically does not challenge the exclusion of the items listed there or in subsection (c), above.

[48] The balance of the definition of "educational resource materials" in School Regulation 265/89, s. 1(2), is consistent with both the decision in *McDonald* and the requirement of s. 82(1). When the definition (bearing in mind the exceptions, above) is read into s. 82(1)(c), it requires a school board to supply, free of charge, any materials or equipment necessary for a student to complete the educational programs leading to graduation.

[49] School boards are entitled to charge some fees. For example, s. 82(3) of the *School Act* provides:

Subject to subsections (1) and (2.1) and to the orders of the minister, a board may charge fees for goods and services provided by the board.

The phrase "goods and services" is defined in the *School Regulation* to include:

- (a) materials and equipment of a nature, or of a quality or quantity, beyond that which is necessary to meet the required learning outcomes or assessment requirements of an educational program provided by a board,
- (b) [not in issue]
- (c) the provision of a musical instrument for a student's individual use, and
- (d) the payment of expenses in respect of field trips or special events including expenses for transportation, accommodation, meals, entrance fees and equipment rentals;

[50] The School Board Fees Order, in those portions to which objection is taken, reads as follows:

Fees for school age students

3. Subject to sections 4 and 5, a board shall not charge fees for goods and services provided by the board to students of school age resident in the school district without which the student could not meet required learning outcomes or assessment requirements of an educational program provided by the board.
4. A board may charge fees to school age students resident in the school district for
 - (a) materials used in goods that are intended for the student to take home for personal use or as a gift;
 - (b) ... [not challenged by petitioner]
 - (c) the rental of a musical instrument for a student's personal use.
5. A board shall not charge fees in respect of field trips or special events except for expenses, including transportation, accommodation, meals, entrance fees and equipment rental.
6. A board must not charge fees for goods and services under sections 4 and 5 except where the board has established policies and procedures to facilitate participation in activities by school age students resident in the school district who would otherwise be excluded due to financial hardship.

[51] The petitioner argues that s. 3 above cannot be subject to ss. 4 and 5 because that would be inconsistent with s. 82(1) of the Act. I agree. Section 82(3), which permits fees to be charged for some goods and services, is subject to s. 82(1). If the phrase "subject to sections 4 and 5" is intended to enable a school board to charge fees for materials that are necessary to enable a student to participate in a course leading to graduation, it offends s. 82(1) in my view.

[52] I do not read ss. 3, 4 (a) and (c) of the School Board Fees Order in that way. In my view, they say, and are intended to say, that school boards are entitled to charge fees only for materials used that are surplus to what would be necessary for the student to meet the expected outcomes in a course requiring consumption of materials. Similarly, they are intended to say that school boards may only charge fees for use of a musical instrument beyond that which would reasonably be required for a student in a music course that is part of the educational program leading to graduation.

[53] So, for example, if a student enrolls in a music course, and requires, for successful completion of that course, a musical instrument for class and home practice, s. 82(1) of the Act does not permit a school board to charge rental fees for this instrument. The combination of s. 3, with or without the abundant and impermissible opening phrase, and s. 4(c) does not change or purport to change what appears to me to be a clear interpretation of these portions of the School Board Fees Order.

[54] In the same way, if a student enrolls in a course such as woodworking, home economics or art, as part of his or her educational program leading to graduation, the school board must provide, free

of charge, the materials necessary for successful completion of the course. If at the end of the class the student wishes to purchase the work he or she has completed, that is a different matter, and the purchase may be negotiated. If, however, the school or the teacher wishes the student to take the completed project home, in order to avoid the cost of disposal falling on the school, the student may not be charged a fee.

[55] The petitioner argues that s. 5 of the School Board Fees Order, dealing with field trips, is beyond the power of the Minister to order. Whether that is so must depend on the nature and purpose of the field trip. Although field trips can be classified as "instruction in an educational program" because they are part of "an organized set of learning activities" and constitute the "communication of information or knowledge to students", a school board is only obliged to provide instruction free of charge that is "sufficient to meet the general requirements for graduation". As Drake J. said in *McDonald* at para. 9:

... there has to be some limit to an educational program: in my opinion, that limit is reached where a School Board provides instruction leading to graduation under s. 100(1)(a) [now s. 82(1)(a)]. Other learning activities, though certainly contributing to the education of a student, must be considered as optional and outside the essential curriculum.

[56] If a field trip is necessary, in the sense that a student will have more difficulty successfully completing the course that gives rise to the field trip, or if a student's attendance on the field trip is mandatory, then it must be free of charge to the student. If, on the other hand, the field trip is an enhancement on the class or course, not necessary for its successful completion, and attendance is optional, the school may attempt to recover expenses from the students who choose to attend.

[57] The difficulty with s. 5 of the School Board Fees Order as presently worded is that this is not made clear. I think it becomes clearer if the words "subject to sections 4 and 5" are removed from s. 3.

[58] To the extent that the petitioner's claims are based on an interpretation of the fee schedules he has received from some school districts that would suggest the school districts are charging fees for materials or instruments contrary to this plain meaning of the statute, regulations and ministerial order, I am not able to agree.

[59] I have looked at the fee schedules exhibited to the petitioner's affidavit. While there are some portions of some of the fee schedules that are open to interpretation that would not comply with the Act, I am not prepared to resolve ambiguity in the various fee schedules so as to conclude that the boards involved are charging impermissible fees.

[60] No school boards are parties to this action. I will not infer that any of them are acting contrary to law, even inadvertently. Any suggestion that any school board is charging fees not permitted by the Act should be explored in an action supported by admissible evidence, and with the necessary parties before the court.

[61] As I agree that the phrase "subject to sections 4 and 5" is unenforceable as contrary to the plain wording of the statute, the section is to be read as if that phrase does not appear. That should resolve any potential ambiguity arising out of s. 5 of the School Board Fees Order.

[62] In summary, a school board is not permitted to charge students fees for any materials, or for musical instruments, that are required for students to successfully complete a course leading to graduation. Similarly, any portion of a course that occurs outside the classroom or school, and which the teacher considers necessary for "... the communication of information or knowledge to students ... sufficient to meet the learning outcomes or assessment requirements of an educational program provided by a board;" must be free to the student. Field trips, or other extracurricular outings or events, not considered by the teacher or the school to be so necessary, should be purely voluntary and a school board may charge fees. As some fees can be properly charged under ss. 4 and 5, the provisions of s. 3 are not only permissible as within the authority of the Minister to order, but to be commended.

[63] I dismiss the application to declare ss. 3, 4(a), (c), 5 and 6 *ultra vires* and of no force and

effect.

[64] I declare that s. 3 shall be read as if the introductory phrase "Subject to sections 4 and 5" does not appear in it.

[65] The petitioner seeks two declarations in the alternative to his other claims: first, that school boards may not charge for "materials and equipment which are necessary to meet the learning outcomes or assessment requirements of an educational program provided by a board"; and, second, a declaration that "a board may not charge for expenses of a field trip which constitutes instruction in an educational program".

[66] These claims trouble me because they ask the court to decide what may or may not be done by school boards when they have not been parties to the action, were not before the court, and have had no opportunity in this proceeding to lead evidence or to make submissions. To obtain such declaratory relief, the petitioner should have joined in this petition the school boards he complains about, and given them an opportunity to respond. I do not think it either wise or proper to go any further than I have already gone in these reasons.

[67] The alternate relief claimed in paragraphs (i) and (ii) in the petition is dismissed.

[68] Costs may be spoken to if necessary.

"R.T.C. Johnston, J."
The Honourable Mr. Justice R.T.C. Johnston



802.2

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Policy 802.2

Student Fees

1. Section 82 of the School Act states that:

- “(1) A board must provide free of charge to every student of school age resident in its school district and enrolled in an educational program in a school,
- (a) instruction in an educational program sufficient to meet the general requirements for graduation set out in the orders of the minister,
- (b) instruction in an educational program after the student has met the general requirements for graduation, and
- (c) educational resource materials necessary to participate in the educational program.”

2. The Board of School Trustees will endeavour to provide a wide range of educational opportunities for all students, including many enriching activities. The Board may levy fees for goods and services in accordance with Ministerial Order 125/90, as amended. These goods and services are for materials, supplies, equipment and musical Instruments intended for a student's personal use and for field trips and special events.

3. The Board will ensure that a schedule of charges is published prior to the beginning of the school year and is available to students and their parents/legal guardians. The schedule of charges refer to those fees which are known, in advance, and are necessary to the student's participation in a school's/program's activities.

4. To ensure that fees do not become a barrier to student participation in Ministry mandated educational programs, schools will facilitate fair and confidential procedures which will allow participation in activities by students who would otherwise be excluded due to financial hardship.

Adopted: 05 March 1990

Board Adoption of Revisions: 21 February 2000

References

1. School Act, Section 82, 168
2. Ministerial Order, M125/90, as amended
3. Order in Council No. 0923, July 31, 1997
4. Regulation 265/89, as amended, Section 1(2)
5. Distance Education Policy/Regulation 602.10
6. Challenge Policy/Regulation 606.1

Cross References

- 602.10-Distance Education Courses
- 606.1-Challenge

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802.2-R

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Policy 802.2-R

Student Fees

The purpose of this regulation is to clarify the fees that may be charged by schools and to provide a process to ensure that students are not excluded from participation in school activities due to financial hardship.

I. Fees for Materials Taken Home, Supplies and Equipment for Personal Use and Rental of Instruments

1. Subject to Section 4 and 5 of the Ministerial Order 125/90 as amended, the Board will not charge fees for goods and services without which the student could not meet required learning outcomes or assessment requirements of an educational program provided by the Board.
2. Students will not be required to pay fees for basic materials for projects necessary to meet course requirements (e.g. in woodwork, cooking, textiles). Students who choose projects with material costs that exceed the basic material must have the permission of their teacher and parents. Such project materials may be supplied by the student or purchased from the school.
3. In accordance with Ministerial Order 125/90, as amended, the Board may charge fees to students for:
 - a) materials used in goods that are intended for the student to take home for personal use or as a gift (e.g. material used for projects in Technology Education, Textiles or Art);
 - b) the purchase of paper, writing tools, calculator, student planners, exercise books, computer diskettes, and other supplies and equipment for a student's personal use (e.g. where school offers these supplies for sale to students and students do not bring their own supplies to school);
 - c) the rental or purchase of a musical instrument for a student's personal use.

NOTE: Secondary schools will provide a class set of graphical calculators for students' use in Application of Math 12 and Principles of Math 12.

4. In accordance with Ministerial Order 125/90, as amended, the Board expects that students will attend school with:
 - a) appropriate personal clothing for school activities (e.g. gym strip, footwear, outerwear, aprons);
 - b) personal safety equipment (e.g. safety boots and gloves);
 - c) musical instrument where the student is enrolled in a band or strings program;
 - d) appropriate materials, supplies and equipment for the student's personal use (e.g. pens, pencils, erasers, exercise books, rulers, calculators, film and paper).

Richmond School District's present practice is to provide school supplies for elementary students which can be purchased by students/parents for a set fee. This fee is set and approved by Trustees on an annual basis.

II. Field Trips and Special Events

In accordance with Ministerial Order 125/90, as amended, a Board may charge fees for field trip expenses.

III. Establishing Annual Fees Schedules

1. Prior to each school year the Principal, after consultation with teachers, students and parents, will recommend to the Superintendent a schedule of school fees and deposits of the school.
2. The Superintendent may establish district fee guidelines for elementary and secondary schools.

IV. Financial Hardship

1. Principals are responsible for establishing procedures to facilitate participation in school activities by students who would otherwise be excluded due to financial hardship. Insofar as possible, Principals will consult with teachers, students and parents in the development of such procedures.
2. The procedure must incorporate the principles of fairness, respect, dignity, confidentiality and sensitivity. Student, parents and staff will be advised of the procedure.
3. All communications with students and parents regarding fees must include a statement explaining that fees will not be a barrier to student participation in school activities. No student will be denied Ministry mandated educational opportunities offered at the school due to financial hardship.
4. In secondary schools, the statement explaining that no student will be denied participation in Ministry mandated educational opportunities offered at the school will be published along with the fee schedule in the school course selection handbook. The procedure for addressing financial hardship will also be included in the handbook.

V. Summer School / Night School / Continuing Education

As part of the Continuing Education program, the Board may make available optional "credit" and "non-credit" courses of study to in-school registered students outside the standard school schedule. Except for those courses where targeted Ministry of Education funding is provided, these courses require the payment of fees from those who wish to participate.

VI. Course Challenge or Equivalency and Distance Education Courses

The Board may charge students for costs incurred when students challenge a course or seek course equivalency. The Board will pay for students to enrol in Distance Education courses when such courses are required and unavailable within any of its schools.

VII. Extra-curricular Activities

Students might be charged for participation in some extra-curricular activities where the use of equipment, uniforms, and supplies are expended (e.g. sports teams such as football.)

Board Concurrence: 21 February 2000

References

1. School Act, Section 100, 168
2. Ministerial Order, M125/90, as amended
3. Order in Council, No. 0923, July 31, 1997
4. Regulation 265/89, as amended, Section 1(2)
5. Distance Education Policy/Regulation 602.10
6. Challenge Policy/Regulation 606.1

Cross References

602.10-Distance Education Courses
606.1-Challenge

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British Columbia
School Trustees Association

Tel: 604-734-2721 Fax: 604-732-4559 e-mail: bcsta@bcsta.org
4th Floor, 1580 West Broadway, Vancouver, BC V6J 5K9

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December 21, 2006

To: Superintendents, Secretary Treasurers, Board Chairs

From: Judith Clark, BCSTA General Counsel

Re: *School Fees for Field Trips and Special Events and Activities: A discussion paper*

Previous memos have described the October 2, 2006 decision in *Young v. Minister of Education* in general terms and as it specifically applies to musical instruments. (See *BCSTA Policy Backgrounder on School Fees* as amended October 3, 2006; BCSTA Legal Opinion from Harris and Company dated October 6, 2006; Deputy Minister's letter to Superintendents dated October 5, 2006, BCSTA memo of November 2, 2006: School Fees for Musical Instruments: A Preliminary Options Discussion.)

This memo examines the questions:

What options do school boards have to preserve programs, courses, and activities within the limits set by the court decision and by the current legislation on fees to be charged for field trips and special activities, while minimizing additional costs?

What legislative change would assist school boards to preserve these activities?

I. Young v. Minister of Education

What was decided with respect to field trips?

School boards may only charge fees for field trips where the field trip is not necessary to meet required learning outcomes or assessment requirements of the student's educational program.

The judge explained the concept of "necessary" as follows:



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“If a field trip is necessary, in the sense that a student will have more difficulty successfully completing the course that gives rise to the field trip, or if a student’s attendance on the field trip is mandatory, then it must be free of charge to the student. If, on the other hand, the field trip is an enhancement of the class or course, not necessary for its successful completion, and attendance is optional, the school may attempt to recover expenses from the students who choose to attend.”

How did the court reach that decision?

The judge firstly dealt with section 82(1) of the *School Act* and noted that it requires boards to provide free “instruction in an educational program” that is “sufficient to meet the general requirements for graduation.” He considered the definition of “instruction in an educational program” found in the *School Regulation*:

“instruction in an educational program” means the communication of information or knowledge to students, who are in attendance and under supervision, sufficient to meet the learning outcomes or assessment requirements of an educational program provided by a board.

He stated that:

“Although field trips can be classified as ‘instruction in an educational program’ because they are part of ‘an organized set of learning activities’ and constitute the ‘communication of information or knowledge to students’, a school board is only obliged to provide instruction free of charge that is ‘sufficient to meet the general requirements for graduation.’”

He then applied the 1997 decision of Drake J. in *Chamak and McDonald v. S.D.61 (Greater Victoria)* to limit the educational program to learning activities leading to graduation. “Other learning activities, though certainly contributing to the education of a student, must be considered as optional and outside the essential curriculum.”

The judge held that the *School Board Fees Order (SBFO)* could not permit the boards to charge fees beyond what was permitted by section 82, so that section 5 limiting field trip fees to the recovery of expenses must only apply to those field trips beyond the scope of section 82 (1), i.e. “optional enhancement” field trips. He does not appear to have considered whether the definition of “instruction in an educational program” was intended to exclude the non-instructional costs of field trips from s. 82(1)(a).

II. “Necessary” vs. Optional?

What is “necessary” is based on a consideration of what other choices exist. Without discussing this issue, the court decision states that if a student chooses a course to be part of his education program, a field trip that is required for that class or course must be provided, so that in order for something to be “not necessary” there must be an alternate choice available within the course. Under this interpretation, the availability of other courses that would satisfy the subject area requirements is not relevant.

The judgment provides a two part test. The trip must be provided free if:

- (a) attendance is mandatory; or
- (b) the student will have more difficulty successfully completing the course if he does not participate in the field trip.

Expressed conversely, the board may recover expenses if:

- (a) attendance is optional (which suggests that non-participating students will be provided with alternative instruction if the activity is within school time); and
- (b) the field trip is not necessary to successful completion of the course (which suggests that there is either no assessment component and no significant tie to learning outcomes, or assessment requirements and learning outcomes can be met in another way that is no more difficult.)

The test is not simply whether the field trip is related to the curriculum.

It is arguable that field trips in BC public schools are always optional; it is only that the schools have not always acknowledged that very clearly to parents.

With the exception of independent directed studies and Board/Authority Authorized (“BAA”) courses, the prescribed learning outcomes are those established by the Ministry. It is not clear that there are any field trips required by the provincial curriculum, although in some places they are suggested as instructional strategies (e.g. K-5 physical education). For provincial courses or programs, field trips are not necessary to meet learning outcomes. Field trip experience is not reflected in provincial exams; it is only the course mark that may reflect field trip experience.

The course mark is established through a variety of assessment tools and techniques established by the teacher. Field trips may have no assessment component and their purpose may be solely for students to have the field experience. Sometimes they have an assessment component (e.g. an assignment) but teachers are generally prepared to provide an alternate assignment for students who have a “valid” reason for not attending.

Parental consent forms for field trips must be signed for most or all field trips in most or all school districts. Even if the teacher does not state that attendance is optional, if parents do not consent, the teacher should make alternate arrangements for the student to meet learning outcomes and assessment requirements.

It appears that some BAA courses and programs of choice are designed on the basis that field trips are an integral component of the course and parents therefore give general field trip consent when the student is enrolled in the course. Although it is clearly understood by parents and students that they have other options available to meet required learning outcomes, because they do not have other choices within the specific course, these must be considered “mandatory” field trips.

III. Strategies

A. Enhancement Activities (e.g. museum trips, one-time PE class trips to the swimming pool, plays, Grade 7 excursion, Outdoor School, year-end waterslide day)

A curricular or co-curricular activity can still be optional enhancement.

For many field trips, school boards will only have to ensure that parent consent forms specify the purpose of the field trip as an enhancement activity and clearly notify parents that students who do not attend will be provided with alternate instructional programming at school. If the field trip includes an assessment component, the notice should indicate that alternate assignments will be provided for students who do not participate in the field trip.

Fees to cover expenses can be collected for students who choose to participate.

Hardship policies should be clearly communicated.

Sample wording for parent consent forms:

Example: Museum trip during class time

This is an optional field trip. If your child does not participate, alternative activities will be provided at school. There is a fee of \$.... to cover expenses. It is our hope that all students will be able to take advantage of this opportunity and that no student will be prevented from attending because of the cost. If the above fee would cause a financial hardship, it will be waived. In this case, please telephone or write a note to the school principal or your child's teacher. If you have questions about the activities planned, please contact your child's teacher.

B. Field Trips Integral to Instruction in the Course

Many elementary schools take advantage of local swimming pools or skating rinks to schedule swimming or skating lessons to meet the K-5 Elementary Physical Education prescribed learning outcomes for Movement (Alternative Environment Activities) included in the IRP (Integrated Resource Package). Suggested instructional strategies for this learning outcome include making use of outside facilities and instructors (e.g. swimming, skating or skiing lessons; outdoors school land or water-based activities that require students to demonstrate specific motor skills in a variety of alternative environments.) Suggested instructional strategies are not curriculum requirements; they are “suggestions only.”

For these activities to be considered optional, there must be another activity available to address the prescribed learning outcomes. Fees may be charged to recover the costs of the “optional” outside lessons if:

- the student is offered a choice of alternative activities that would meet the prescribed learning outcomes and some of them are at no cost; or
- there is a one-time trip to the rink or pool and students have the option of other learning activities in that time, attendance is optional and there is no assessment.

Making these types of field trips “optional” is not always practical. Arranging for alternative instruction for a student who does not go to the museum or the pumpkin patch for one afternoon is usually much easier than planning for some children to take tumbling instruction at school while others take swimming lessons at the local pool over a period of weeks. If field trips involve more work and more expense for teachers, school boards or parents because of the need to provide alternative instruction, they will be used less. Creation of “options” can also contribute to a perception of a “two-tiered” system if the no-cost option is unattractive to students.

If the outside activity is planned for the whole class, parents may be asked to contribute voluntarily to the costs of their child’s participation. Funding would need to be provided by the school to cover the shortfall. Students may go whether their parents have made a contribution or not. Fee waivers are not required because there is no fee, only a voluntary contribution. If voluntary contributions are not sufficient, the activity could be cancelled and another learning activity substituted.

For secondary courses such as BAA outdoor recreation courses, a similar approach can be taken to collect contributions for planned field trips. Where such courses (e.g. outdoor education) are heavily dependent on field trips, consideration may be given to whether the course can be divided into an instructional (no fee) component and an extracurricular component in which fees can be recovered for expenses. There would be many considerations in this situation, including paying a teacher to conduct extracurricular activities, contracting out issues, providing credit for the extracurricular portion, use of instructional time for extracurricular activities, evaluation of extracurricular activities.

Some sample wording for parent consent forms:

Example: PE Swimming lessons

Students have a choice of activities to satisfy the grade 5 PE requirements. For some activities, a fee is charged to recover expenses. A fee will be waived for financial hardship reasons. In this case, please telephone or write a note to the school principal or your child’s teacher.

Example: Camping trip as part of outdoor education course

An overnight camping trip to.... is proposed for the following date: ... as part of the course activities as set out in the course outline. This involves necessary expenses as well as contributions of food and equipment that will be organized by the students as part of their required preparation for the trip. Financial contributions to cover.... in the amount of \$... per student are requested to be paid by the following date.... Payment of a contribution is not required for students to attend. If there is insufficient support, the trip may be cancelled and an alternate activity will be proposed to satisfy the learning outcomes for this course.

C. Extracurricular Trips

Schools sponsor a variety of types of extracurricular trips. Many are connected to school teams. Others may be educational trips outside of class time, such as foreign travel during spring break or summer.

Trips that are not part of the educational program (even if they are planned to include an educational component and to have a relationship to the curriculum) are not “field trips” – fees may be charged, fees are not limited to expenses and hardship policies need not apply.

Hardship policies do not have to apply to things like team travel but boards should consider in what circumstances they want them to apply. For example, for some trips, fee waivers may be appropriate but for other trips a hardship policy may take the form of making it a condition of approval of the trips that fundraising efforts (group or individual) will be sufficient to permit all students to participate.

Sample wordings for parent notice and consent form:

Example: School Team Invitational Tournament

The ___ team has been invited to participate in the.....on... This will require us to travel to ... on the (date) and stay overnight at..... There is a cost of \$..... for each participating student. It is our hope that all team members will be able to participate and that cost will not be a bar to any team member. The team will be engaged in the following fundraising events for credit to the group costs:and for credit to participating students' individual costs:.... Please contact the supervising teacher or the coach..... if you have questions or concerns.

Example: Spring Break Travel

Students in grades 11 and 12 who have taken have an opportunity to participate in a trip to to take place from.... to..... This trip is designed to support the curriculum of..... but this is not part of a course and there is no assessment component to the trip. The cost for each participating student will be approximately \$.... and is based on the costs of transportation, accommodation, meals, substitute teacher costs for one instructional day, and the costs of activities. The final cost will be determined after taking into account fundraising activities. Participating students will be expected to assist with group fundraising activities as follows:....

D. Special Events (e.g. performer at school)

Where an event such as a special performance happens at the school and in class time, it would be unusual to have this as an optional activity where only those students who paid to participate would attend. This would make have-not students very visible.

To support the costs of bringing in special performers, parents can be asked for voluntary contributions. Fees may not be charged unless the activity is optional and other programming is provided for other students.

Sample wording for parent notice:

Example: School performance

A performance by.... will take place at the school on.....as part of the school's program of cultural activities. These activities depend on parental support. A contribution of \$x in respect of this performance would be appreciated and will be collected by your child's teacher. A contribution is not required for your child to attend the performance.

IV. Related Issues

A. Optional Field Trip Fees Limited to Expenses

Section 5 of the *SBFO* states:

A board shall not charge fees in respect of field trips or special events except for expenses, including transportation, accommodation, meals, entrance fees and equipment rentals.

As noted above, this limitation does not apply to activities that are not “field trips”, such as extracurricular activities.

B. Special Instructors and Substitute Teacher (TOC) Costs

To what extent are instructional costs part of the “expenses” of an optional field trip?

The requirement under s. 82 to provide free instruction does not apply where the field trip or special event activity is optional. Thus expenses of the outside activity that are related to the providing of instruction (such as the costs of an outside instructor) are no different from other expenses and can be recovered from participants.

It is less clear whether the board can charge participating students for the costs of the TOC required for students who do not attend the optional field trip activity.

Where fundraising activities take place to support a field trip, funds raised may be allocated firstly to TOC costs so that it is not necessary to recover TOC costs through fees.

It is to be hoped that government will clarify this point in amending the *School Board Fees Order*.

C. Hardship Policies

Section 6 of the *SBFO* states:

A board must not charge fees for goods and services under sections 4 (*materials and equipment*) and 5 (*field trips*) except where the board has established policies and procedures to facilitate participation in activities by school age students resident in the school district who would otherwise be excluded due to financial hardship.

The application of this section has been significantly changed by the *Young* decision, under which this section now only applies to optional activities and materials.

This provision was supported by boards when it was seen as a means to address the need for equal access of all students to curricular activities. Most boards' "hardship policies" are straight fee waivers, although other forms of policies, such as setting upper limits on fees or requiring fundraising support, could also be considered as facilitating participation by students who would otherwise be excluded. Hardship policies may provide for a single annual waiver instead of requiring a waiver for each activity.

The policy question of whether school boards should be required to subsidize optional activities for low income families is one that the Ministry will have to consider in amending the *SBFO* consequential to the *Young* decision.

Section 6 is not clear as to whether it applies to extracurricular activities as well as curricular and co-curricular optional activities. In my view, section 6 should still be interpreted to apply only to curricular and co-curricular activities, although boards will want to extend hardship policies for many, but not necessarily all, extracurricular activities. Boards may wish to review hardship policies concurrently with school fees policies.

D. Communication

For a field trip to be considered optional, this must be communicated to parents, e.g. in a permission form. The notice should make it clear that alternate instruction will be provided for students who do not attend, and alternate assignments will be provided if applicable.

E. Course Donations

Instead of collecting for each activity, donations may be requested at the time that courses are chosen, based on a costing of the planned activities for the course.

Sample note for course selection form:

This course is planned to include numerous field trips. A contribution of \$... per student is requested to cover the expenses of field trips. A contribution is not a condition of enrolment in the course.

If insufficient support is received from parents to carry out all planned activities, then the course activities can be scaled back. Nevertheless, there is less incentive for parents to donate than when donations are collected for each activity.

In this model, there would be no need to refund donations if a specific trip is cancelled. However, parents who pay the initial requested amounts may feel short-changed if they perceive that activities are curtailed because other parents did not pay their share. If the course itself is cancelled because of insufficient funding, parents would probably expect a refund.

It is beyond the scope of this opinion whether a charitable receipt for tax purposes could be offered in this circumstance.

V. Equity Issues

Field trips often provide students with exposure to events and activities to which they would not otherwise have access. Loss of these opportunities has a disproportionate effect on students from families with financial challenges. Many school trips are considerably less expensive than family trips to the same destination would be.

If a field trip that was formerly paid for by fees is clearly communicated as an optional activity, what will be the effect on students? It seems reasonable to assume the following about parental behaviour:

- Parents who have previously kept their children home on field trip days will now send their children to school for the alternate program.
- Parents who took advantage of fee waivers before will presumably still do so if fee waivers are available
- Parents who paid fees before may decide to continue to pay fees so that their children can attend, or may decide not to pay and leave their children at school.

In no case do children gain more access to the field trips and some lose access to the field trips but gain access to the alternate programming. The board may have new expenses to provide the alternate programming (unless parents or students do not take advantage of it.) Converting class field trips to “optional” activities may have a chilling effect on the planning of these activities because of the need to provide alternate no cost programming.

If a field trip that was formerly paid for by fees becomes one for which donations are sought, what will be the effect on students? It seems reasonable to assume the following about parental behaviour:

- Most parents who have kept their children home on field trip days will send their children on the field trip but will not donate
- Parents who took advantage of fee waivers will send their children on the field trip but will not donate
- Parents who previously paid may donate if the cost is not too high and they believe others are doing so, or if they believe that their payment will have an impact on whether the trip proceeds. They will choose not to donate if they feel the cost is too high or they are bearing the cost of free riders or their conduct will have no effect on whether the trip or future trips proceed.

In the first two groups, children benefit by access to the field trip. The board now has to pay for the students in both groups, but the additional cost of the first group should not be an issue since those families are part of the intended audience of the fee waiver policies. The fees unpaid by parents in the third group are a new cost for the board and if significant will have a chilling effect on the board's abilities to provide field trips. This may eliminate the benefit to the children in the first two groups.

VI. Legislative Options

The court in *Young* did not see the relationship between the definitions in the *School Regulation* and the provisions of the *School Board Fees Order*. The definitions could be revised in the *Regulation* or for greater certainty amendments to the School Act could be made to introduce new definitions.

The distinction between "optional" and "mandatory" field trips as made by the court in the *Young* case does not fit very well with school district approaches to field trips. School districts are more likely to consider field trips as curricular or extracurricular, or as having an assessment component or not.

The following changes would address the issues identified.

- (1) Clarify definition of "instruction in an educational program" or "instruction" to more clearly exclude field trip expenses

This would be consistent with the original intention of the definition and of s. 5 of the *SBFO*.

This definition could remain in the regulation or be moved into the *Act*.

- (2) In the *SBFO*, clarify the restrictions on charging fees for field trip expenses. If a field trip is optional and within class time; the board may need to provide additional teacher time because the group is split. The board should be able to recover the full expenses of the trip through fees, including the teacher on call costs.
- (3) In the *SBFO*, clarify the requirements for hardship policies. The provincial interest is in providing access to the provincial curriculum on an equal basis; hardship policies should be required to apply to curricular activities within regular class time only and should not apply to programs or courses of choice..

I hope these comments are helpful in addressing these issues.



British Columbia
School Trustees Association

Tel: 604-734-2721 Fax: 604-732-4559 e-mail: bcsta@bcsta.org
4th Floor, 1580 West Broadway, Vancouver, BC V6J 5K9

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November 9, 2006

To: Superintendents, Secretary Treasurers

From: Judith Clark, BCSTA General Counsel

Re: School Fees for Musical Instruments: A Preliminary Options Discussion

Previous documents have described the October 2, 2006 decision in *Young v. Minister of Education* in general terms. (See *BCSTA Policy Backgrounder on School Fees* as amended October 3, 2006; BCSTA Legal Opinion from Harris and Company dated October 6, 2006; Deputy Minister's letter to Superintendents dated October 5, 2006.)

This is the first in a series of memos that will consider the question:

What options do school boards have to preserve programs, courses, and activities within the limits set by the court decision and the current legislation, while minimizing additional costs?

I am starting with a consideration of musical instruments because:

- they were specifically commented on in the decision;
- they are expensive;
- programs involving musical instruments touch a very large number of students; and
- the interpretation problems illustrate some of the problems with other aspects of the decision.

This is a preliminary analysis and intended to begin discussion. More insight may develop as the various options are considered in the light of specific curriculum requirements and practicalities.

The *Young* decision has a direct impact on fees that were considered to be permitted under the *School Board Fees Order*, specifically fees for field trips, musical instrument rental, and materials for take-home projects. The ability to charge fees for school supplies and equipment for a student's individual use was not challenged, although the scope of this exception will need to be re-examined in light of the judgment. The decision also contains a very broad interpretation of section 82(1) of the *School Act* that may affect "choice" or "enriched" programs and courses.



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Because the case will prompt school boards to review school fee schedules closely, it is likely that they will discover some discrepancies between their fees and the previous *School Board Fees Order*, and/or needs for more clarity or better communication about some district or school practices.

The contribution of Wendy Harris of Harris and Company is gratefully acknowledged. (Responsibility rests with BCSTA and the writer.)

I. Young v. Minister of Education

What was decided with respect to musical instruments?

School boards may only charge fees for rental of a musical instrument where the instrument is not necessary to meet required learning outcomes or assessment requirements of an educational program provided by the board.

How did the court reach that decision?

The judge firstly dealt with section 82(1) of the *School Act* and decided that it “requires a school board to provide free of charge to every student of school age resident in BC and enrolled in an educational program in a school operated by the board educational resource materials necessary to participate in the educational program.”

He then applied the definition of “educational resource materials” from the *School Act Regulation*, which includes “materials and equipment necessary to meet the learning outcomes or assessment requirements of an educational program provided by a board,” but excludes “... school supplies and equipment for a student’s individual use.” (Emphasis added.)

The petitioner did not challenge the exception in the definition of “educational resource materials” for “school supplies ... and equipment for a student’s individual use.” There is no discussion in the reasons for judgment about whether musical instruments could fall within the exception for “equipment for a student’s individual use.” The reasons for judgment also do not address the fact that the definition of “goods and services,” for which school boards may charge, specifically includes “provision of a musical instrument for a student’s individual use,” which supports the proposition that musical instruments are not intended to be “educational resource materials.” The judge’s findings about rental fees for musical instruments appear to be based on an unstated conclusion that they are “educational resource materials.”

The judge then applies his interpretation of section 82(1) to sections 3, 4 and 5 of the *School Board Fees Order* and states that these provisions mean that school boards “may only charge fees for use of a musical instrument beyond that which would reasonably be required for a student in a music course that is part of the educational program leading to graduation.”

What is the effect of the decision on school boards?

The court action was taken against the minister of education and directly affects the *School Board Fees Order*. Many school boards are charging fees that were apparently authorized under the *School Board Fees Order* at the time the boards approved and published their fee schedules last May or June, and at the time that some of the fees were collected in September, but which are apparently no longer authorized under the *School Board Fees Order* as of October 2, 2006.

The *School Act* requires a schedule of fees to be published and made available to parents before the beginning of the school year (July 1). Had the minister changed the *School Board Fees Order* to remove authority for some fees, the minister could be expected to have made the change effective for the following school year. Had the order been made directly against school boards, school boards would have asked that its effect be stayed until the next school year.

The decision is thus a statement of the present law that should be considered by school boards on a going-forward basis. Boards must therefore move to comply with the order as they comply with other laws of general application. Because there was no order made against school boards, they are not acting in contempt of the court if they are not immediately in compliance. The law can be enforced against the school board by the ministry through its processes for replacing a board, withholding grants, etc. The law can be enforced by legal action by parents seeking return of fees paid, through civil action or judicial review. It is conceivable that legal actions may take the form of class actions, although there are substantial procedural barriers to certification of class action suits. There may be defences to such claims, particularly considering that the students would have had the benefit of the programs supported by the fees.

The more quickly school boards move into compliance, the less exposure they have to claims for repayment of illegal fees, and the less political exposure boards have to the accusation that they are ignoring their legal obligations.

II. What is “necessary”?

What is “necessary” is based on a consideration of what other choices exist. Without discussion of this point, the court decision states that if the student chooses a course to be part of his education program, the material or equipment required for that class or course must be provided, so that in order for something to be “not necessary” there must be an alternate choice available within the course. Under this interpretation, the availability of other courses that would satisfy the subject area requirements is not relevant.

A. Music Curriculum Requirements

Many elementary and secondary students across the province take courses or engage in activities that require use of musical instruments (e.g., band, guitar, strings, recorder). Students may bring their own instruments (or make their own rental arrangements). Some districts or schools have a pool of instruments and charge rental fees; others require students to make their own arrangements for an instrument. Recorders are generally individually purchased.

This discussion includes only the 2004 graduation program requirements, not the 1995 graduation program that still governs some students' educational program choices.

In K-9, BC curriculum requirements are framed in terms of "required areas of study" rather than courses. (See the *Required Areas of Study in an Educational Program Order*.) In K-7, there is one Integrated Resource Package (IRP) for Fine Arts K-7, divided into four curricula, one of which is music. The music curriculum is divided by grade and by curriculum organizers (e.g., Structure) and sub-organizers (e.g., Elements of Rhythm). For each grade, each sub-organizer has prescribed learning outcomes. The district, school, and teacher have a wide variety of choices as to how to achieve the learning outcomes but the required learning outcomes are the same for all students in the grade. There are suggested (not required) teaching and assessment strategies.

In Grades 8 and 9, the Fine Arts subject area is divided and the board is required to provide an educational program that includes one of Dance, Drama, Music or Visual Arts and meet the prescribed learning outcomes applicable for that subject area.

In Grades 10-12, the curriculum requirements address courses. (See *Graduation Program Order* for 2004 graduation program requirements.) A "course" is defined as "an organized set of learning activities in a subject area that meet the learning outcomes set out in the applicable educational program guide listed in *Ministerial Order 333/99*, the *Educational Program Guide Order*, and includes a Board Authorized Course, a Ministry Authorized Course, and independent directed studies." The 2004 Graduation Program requires at least four credits of Fine Arts courses. Courses that are approved to be part of a graduation program are listed in the ministry resource *Course Information for the Graduation Program*. There are a wide variety of music courses listed that fulfill requirements for Fine Arts.

B. Is an instrument "necessary" if the student has other choices available?

Section 82(1) (as interpreted by the court) requires a board to provide a musical instrument if it is "necessary to participate in the educational program." Section 3 of the *School Board Fees Order* (as amended by the decision) prohibits fees if the musical instrument is something "without which the student could not meet required learning outcomes or assessment requirements of an educational program provided by the board." If it is "necessary" in this sense, the board may not charge fees.

What defines the educational program? Does a difference in learning activities between two classes studying the same subject mean that they are part of different educational programs? Or is it the prescribed learning outcomes and associated assessment requirements that determine the educational program?

The judgment refers to instruments that are required to complete a "music course" within an educational program leading to graduation. The apparent reasoning is that a student's educational program is made up of courses, so that the set of required learning outcomes and assessment

requirements of a student's educational program is composed of the learning outcomes and assessment requirements of the individual courses. If the student cannot meet the learning outcomes or assessment requirements of an individual course without a musical instrument, then the student cannot meet the learning outcomes and assessment requirements of the student's educational program.

However, at the elementary level, the prescribed learning outcomes and assessment requirements of the student's educational program are defined by the student's grade, not by a selection of courses. It is then necessary to go back to the words of section 82(1) and section 3 of the *Order* and consider what is necessary "within the [student's] educational program."

1. What is necessary within a K-7 educational program?

In K-7, the learning outcomes and assessment requirements of a student's "educational program" are defined by the student's grade, not by a selection of courses. Thus the question of what is "necessary" should not be based on a course selection as it is in the graduation program, but on the learning outcomes defined for the grade in each subject area, including the learning outcomes for music.

For example, within the Grade 5 music curriculum, there are a variety of suggested instructional strategies to meet the required learning outcomes. A teacher may choose some that involve instruments (e.g., recorders, ukuleles) and expect all students to participate. In this case, the instrument is necessary to meet the learning outcomes and assessment requirements and the board must provide an instrument without a rental or purchase fee (a refundable deposit may be charged as discussed below). On the other hand, if the student is offered an option as to whether to satisfy the Grade 5 learning objectives through a band activity instead of another activity that would satisfy the same learning outcomes, then there is a strong argument that the band instrument is not necessary to meet the required learning outcomes or assessment requirements of the Grade 5 educational program. If the board provides all educational resource materials necessary to participate in the Grade 5 music program without charge, it has met its obligation under s. 82(1).

This would apply where an elementary band program operates with staffing additional to the classroom teacher and students can choose whether to participate in the band program or to meet the required learning outcomes for music in another way. In this circumstance I would argue that the school board can charge rental fees or require students to bring their own instrument.

This conclusion is not free from doubt. There is an alternative argument that a student's choice of a band activity to meet Grade 5 music subject area requirements amounts to a choice of a different educational program with different assessment requirements, and that what is necessary must be considered within the context of that chosen educational program.

The question deserves some further consideration.

2. What is necessary within a Grade 8 or 9 educational program?

In Grades 8 and 9, under the *Requirements of an Education Program Order*, the learning outcomes and assessment requirements of a student's "educational program" are defined by the student's grade and by the student's selection of a Fine Arts subject area, a language and an Applied Skill subject area. However, the IRP for Music 8-10 (based on the 1995 graduation program) states that the Music 8, 9 and 10 courses "could be further designated according to the specific focus or methodology of the course (e.g., Music 9: Concert Band, Music 9: Jazz Choir, Music 9: Multimedia Music) ... Schools are encouraged to provide opportunities for students to take more than one music course (or other Fine Arts course) at a given grade level. All courses must address all of the learning outcomes for their designated grade level."

Although the courses are separate in methodology, they all have the same learning outcomes. Thus it can be argued that the student is not required to have a musical instrument to meet the required learning outcomes and assessment requirements of the student's education program, as long as other options are available within the educational program, including a "no fee" option within the music subject area that meets the board's obligations under s.81(2).

The argument is not as strong as for the K-7 curriculum because the choice is between different "courses" rather than a choice between different learning activities within one grade and subject area.

3. What is necessary within a Grade 10-12 educational program?

In Grades 10-12, the "educational program" is defined by courses, and each course has its prescribed learning outcomes. The reasons for judgment clearly reflect the view that a different course defines a different educational program and therefore if the musical instrument is required for successful completion of a course, it would not be relevant that a different music course would be available at no cost.

4. How "necessary" must the instrument be for the board to be required to provide it?

The court indicates that it is not what is strictly or formally necessary, but what might be considered as reasonably necessary to successful completion of the course. So, if students are instructed to practise the instrument outside of class, the fact that students sometimes pass who do not do additional practice does not mean that access to the instrument to practise is not necessary.

III. Types of Fees

Based on consideration of the judgment and the legislation, I offer the following guidance with regard to types of fees that may and may not be charged.

A. Rental fees

Rental fees are not permitted for an instrument that is necessary to meet educational program (or course) requirements.

Fees can be charged if instruments are rented for the summer.

Comment: The court decision addresses rental fees for musical instruments specifically and states: “School boards may only charge fees for use of a musical instrument beyond that which would reasonably be required for a student in a music course that is part of the educational program leading to graduation. So, for example, if a student enrolls in a music course, and requires, for successful completion of that course, a musical instrument for class and home practice, s. 82(1) of the act does not permit a school board to charge rental fees for this instrument.” Further on, the judgment states: “a school board is not permitted to charge students fees for ...musical instruments, that are required for students to successfully complete a course leading to graduation.”

B. Requirement to supply own instrument

The case did not deal with this issue. It is necessary to read between the lines. The judge’s comments about musical instruments suggest that he concluded they were “educational resource materials.” If they are “educational resource materials,” then section 82(1) says that they must be provided by the school board free of charge (if they are necessary to participate in the educational program.)

On this logic, a school board could not require a student to bring a musical instrument in order to participate in an educational program.

Comment: The court decision does not specifically address s. 7 of the *School Board Fees Order*, which was not challenged by the petitioner Mr. Young and which states that “Nothing in this *Order* prevents a board from requiring a student to provide appropriate personal clothing for school activities ... and personal safety equipment and musical instruments or permitting a student to bring appropriate materials, supplies and equipment for their personal use at school.” (Emphasis added.)

C. Cost of reeds, replacement strings

Charges should be permitted as a school supply for a student’s individual use, unless the instrument is shared.

Comment: Reeds are personal to a student and may wear out a number of times during the year. The definition of “educational resource material” excludes “school supplies and equipment for a student’s individual use.” It is arguable that the school could charge the

student for replacement reeds (during the year) or the student could be required to purchase their own. Strings may break; although they are not of the same personal nature as reeds, they are for the student's individual use if the instrument on which they are installed is for the student's individual use. If the instrument is shared, then the school must supply the replacement strings.

IV. (Long Range) Options: Musical Instruments

What options do school boards have to preserve programs, courses, and activities requiring or involving musical instruments within the limits set by the court decision and the current legislation, while minimizing additional costs?

School boards may consider options including the following and consider which ones will be practical in the context of the course and learning outcomes and which ones will be acceptable to the school community. Some options have a degree of legal risk, as discussed previously in this opinion. Options identified are not necessarily educationally sound and some may be acceptable to boards only as interim measures to keep programs going.

(1) Scale down music programs: Limit course enrollments; limit instrument selection

Enrollment in instrumental courses could be limited to the level that the board can accommodate with purchased or leased instruments, taking into account that many students, especially at senior levels, will already have access to instruments and will bring their own.

Considerations:

- Fewer students can participate than previously.
- Students lose choices; the system loses richness.
- Smaller programs tend to be less attractive to students.

Develop less expensive music programs, e.g. replace band with vocal courses, guitar ensembles, recorder groups, etc.

Considerations:

- It takes time to build a strong program
- Teachers who have built a strong band program may not have the same level of skills or passion for other forms of musical training.

(2) Share instruments; optional home practice.

District-owned instruments may be shared. Home practice may be made optional by providing other options for practice. For example, a "class set" of guitars or ukuleles could be shared among several intermediate level classes. District-owned instruments could be distributed for class time and could be signed out for additional practice at school.

Considerations:

- Where there is a small pool of district-owned instruments, sharing instruments would mean more students could participate in the courses.

- Hygiene issues would have to be taken into account for sharing of wind or brass instruments, e.g., separate mouthpieces. Stringed instruments (e.g., guitars) are more easily shared.
- There would need to be arrangements for students to practice at school, so that home practice is not required. Would bused students have sufficient access to before and after school practice?
- If students do not take instruments home, there can be expected to be a loss of family involvement in the music program and a loss of sense of personal responsibility for instruments.
- At-school practice may be of poorer quality than at-home practice because of distractions.
- There would be an administrative burden in a sign-out process

(3) Limit choice of instruments

For a band course, the district must provide an instrument but not necessarily the instrument of choice. Parents would be advised of the option to bring their own instrument or make their own arrangements, and that district instruments are limited and students may not have their first choices of instrument.

Considerations:

- It may not follow that districts should stock up on only the least expensive instruments. For example, if a student had been learning to play French horn with a district-provided instrument for the past three years, but in the fourth year the district only offered a flute, would the student be reasonably able to meet the learning outcomes for the senior music course? In such a case it is arguable that it is a French horn, not any instrument, that is the required educational resource material.
- Generally districts that purchase band and string instruments focus on the more expensive instruments, because the cheaper ones are more affordable for parents to rent and a blend and balance of instruments is necessary to create a band or orchestra.

(4) Optional elementary band programs

Elementary band programs are arguably optional activities if not all students are required to participate and the program has additional staffing beyond the classroom teacher. (See discussion above.) Students can be required to provide their own instruments or can be offered the opportunity to rent district-owned instruments.

Consideration:

- It is counter-intuitive to provide instruments in the upper years but not in the lower years.

(5) Make it easy for parents to purchase instruments.

Strategies could include:

- Use refundable deposits to promote parental purchase of inexpensive instruments (such as recorders). The school board may charge a refundable deposit comparable to

the purchase price and give parents the option of purchasing rather than returning the instrument at the end of the year. The school board would still have to purchase the instruments but some of them would be paid for, and the families would then have their own instrument for the student (or a sibling) to use in a following year.

Consideration:

- This option may be workable for an inexpensive instrument such as a recorder but the cost of the deposit would be prohibitive for a cello.
- Arrange favourable rental or rent-to-own arrangements (or bulk purchases for inexpensive instruments) with suppliers to encourage parents to obtain their own instruments.

(6) Increase district resources to support the program

Strategies could include:

- Ask parents to make donations that are at least equivalent to the rental cost of the instrument. A donation cannot be a condition of participating in the course or activity.

Consideration:

- Consider tax receipts for donations. Note that a tax receipt cannot be issued for a donation that directly benefits the specific child, but the receipt could be issued if the donation is to support the whole program.
- The school or board may seek out corporate donations, or ask for help through parent or student fundraising, to assist with the costs of acquiring and providing instruments, bringing them to usable standards, and continuing to maintain them.
- The school board or school may conduct a community campaign to collect instruments to assemble a pool of district-owned instruments. Consider issuing tax receipts for donations.
- Music parents may be willing to fundraise for initial costs of bringing donated instruments to usable standards.
- Consider using a referendum (s. 112 *School Act*) to raise additional funds (probably in conjunction with other program enrichments or local capital.)

Considerations:

- Referendum costs
- Need to conduct referendum annually.
- Make other district budget cuts to find necessary funds.

Considerations:

- Spread costs over several years by means of capital lease.

(7) Make programs requiring musical instruments extracurricular. Consider whether credit may be granted under challenge or independent directed studies or other processes.

Considerations:

- Can teachers be employed to teach extracurricular activities?
- If district hires someone other than a teacher to run the program, is this impermissible contracting out?

(8) Partner with an outside agency such as a post-secondary institution or independent school to provide the course and collect necessary fees. Consider how credit may be granted.

Considerations:

- Loss of control of the quality of the program;
- Additional costs from other agency;
- Loss of options within the public school system;
- Staff and union concerns, especially if school facilities are used, including contracting out issues;
- Political concerns about privatization of public system.

V. Legislative Options

Restoring the ability of school boards to charge fees for musical instruments would require a change to the definition of “educational resource material” (presently in the *School Regulation*) and changes to the *School Board Fees Order*.

This would be completely consistent with the original intention as indicated by the wording of the definition of “goods and services” and the wording of section 7 of the *School Board Fees Order*.

A. Definition of “educational resource materials”

The definition should more clearly exclude musical instruments. For example:

“educational resource material” means:

- (a) information, represented or stored ..., and
- (b) materials and equipment ...

but does not include

- (c) paper, ...and other school supplies and equipment, including musical instruments, for a student’s individual use, and
- (d) appropriate personal clothing

Authority is given in the *Act* for terms to be defined by regulation. The proposed change to the regulation clarifies the intent of the exclusion in (c).

An Order in Council (done by Cabinet) is required to change the *Regulation*. If the government is of the view that this definition would contradict section 82(1) as interpreted by the court, then the government could introduce legislation to move this definition into the *Act* in the spring legislative session. This would also resolve uncertainty about whether the other exclusions in (c) and (d) also contravene section 82(1).

B. School Board Fees Order

Changes to the *School Board Fees Order* are made by the minister of education.

The *School Board Fees Order* enacts limitations on the board's rights to charge fees, additional to those fees prohibited by section 82(1) (for necessary instruction and educational resource materials). Sections 3, 6 and 7 are relevant to the provision of musical instruments.

Section 3 of the *School Board Fees Order*, without the words removed by the court, would prohibit the board from charging fees rental of necessary musical instruments. There are two possible approaches to section 3, repeal it or amend it. The choice may depend on what other changes are made to the *School Board Fees Order*.

(a) Repeal section 3.

The court in *Young* appears to find that section 82(1) of the *School Act* means the same thing as section 3. This suggests that section 3 does not add anything to section 82(1) so is redundant and could be repealed.

(b) Alternatively, amend section 3.

Instead of repealing section 3, it could be amended so that it would clearly not apply to musical instruments. Since musical instruments would not be educational resource materials, there would no longer be an inconsistency with section 82(1).

(c) Section 7 (permitting boards to require students to bring their own instruments) could remain.

(d) Section 6 ("hardship policies" as a condition of being able to charge fees) could remain.

If school boards are permitted to charge fees that could act as a barrier to access to an educational program, such as musical instrument rentals, it is reasonable to require that boards have such policies and procedures.

VI. Judicial Option

The court decision did not consider a number of arguments that school boards might make with regard to musical instruments, including the following:

1. The court failed to consider the exclusion of "equipment for a student's individual use" from the definition of "educational resource materials" and failed to consider that a musical instrument could be such equipment.
2. The court failed to consider the definition of "goods and services," which together with the definition of "educational resource materials," indicates that musical instruments for a student's individual use are not intended to be included in the definition of "educational resource materials."

3. The court failed to consider the availability to students of other options within an educational program in deciding what educational resource materials were “necessary to participate in the educational program.”
4. The court misinterpreted section 82(1), ignored the effect of the words “sufficient to meet general requirements for graduation,” and failed to recognize that those words were intended to limit the obligation of the board.

The Ministry of Education has decided not to appeal the decision. BCSTA is seeking further advice on whether there is a mechanism by which school boards could bring these questions back before the courts.

VII. Interim Options

If the board does not wish to disrupt this year’s educational programs and music instruction for students, its options include:

1. Establishing a consultation process with parents to discuss the available resources and the available options. Consider dividing the consultation process into segments that would reflect parental interests, such as consulting separately with parents of students in instrumental music programs.
2. Asking music parents to continue to support the instrumental music programs for this year; publicizing the hardship policies applicable for those who cannot afford to provide an instrument; establishing a consultation process to consider options for next year; dealing with requests for refund of district rental fees on an individual basis. Consider the issuance of tax receipts for program donations.
3. Advising music parents that refunds will not be issued for musical instrument rental costs because:
 - Rental fees were authorized by the *School Board Fees Order* at the time they were approved and published as required by the *School Act*.
 - Students have available other no-cost options for musical instruction within their educational programs.
 - Course offerings and musical activities have been planned for this year on the basis that the school board did not have the obligation to provide instruments and the board does not wish to disrupt these courses and activities.
 - Hardship policies will continue to apply for those for whom these costs are a barrier to access.
 - There is still uncertainty about how this problem will be resolved and whether there will be some further legislative action to address the real problems that the decision has created for districts who wish to continue to provide strong instrumental music programs.

- The board expects to be in compliance with the law by next September.
- Parental input will be considered in planning for the future of affected programs.

Considerations:

- This puts parents who withheld payments in September in a better position than those who did not.
 - Parents who did pay will be concerned if parents who did not pay are asked to make a donation instead, and are offered a tax receipt.
 - The district may not be able to issue a tax receipt for those fees paid in September since they were paid specifically to provide access to an instrument for the payer's child.
4. For intermediate classes that have already committed to use instruments such as recorders or ukuleles to meet the prescribed learning outcomes for music as set out in the IRP for Music K-7, consider requesting students to bring their own recorders and making available a number of used recorders on loan. PACs may be willing to assist with collecting used instruments from families of older students who no longer use them.
5. Waiver and refund of band instrument rental charges.
The board may decide to waive district rental fees for musical instruments for the rest of the year, refunding a proportionate amount of rental fees already collected.

Considerations:

- This would put parents who paid rental fees at the beginning of the year in almost the same position as those who delayed payment.
- This can be expected to be followed by a demand from some parents who had made their own instrument rental arrangements that the district assume these costs as well.
- This may establish an expectation that next year the district would pick up costs of all musical instruments, whether district owned or rented, and might make it more difficult for the district to implement any other options.
- If there is any legislative or judicial action that would restore the ability of the boards to charge fees or remove the obligation to provide musical instruments, it will be difficult for the board to reinstate fees or recover the funds.

VIII. Next Steps

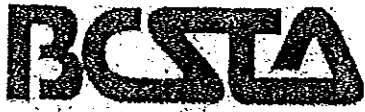
It is important to consider the long-range options and implications before acting on an interim solution. However, some timelines need to be respected. The issuance of tax receipts for parental donations is governed by the Income Tax Act. Semestered schools will need to know what fees they may collect in January. Budgets need to be planned for 2007-08.

There are still questions to be resolved about changes to the *School Board Fees Order* and the possibility of other legislative change. Boards will want to assess cost and educational impacts and explore further some of the issues identified above. Further options may be developed through consultation processes and more implications identified.

There is further work to be done with regard to field trips and elementary physical education programs, sports academies and special programs. BCSTA is planning to work on these with the BC School Superintendents Association.

I hope these comments are helpful in considering these difficult issues.

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British Columbia
School Trustees Association

Tel: 604-734-2721 Fax: 604-732-4559 e-mail: bcsta@bcsta.org
4th Floor, 1580 West Broadway, Vancouver, BC V6J 5K9

November 20, 2006

The Honourable Shirley Bond
Minister of Education
PO Box 9052
Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Bond,

At its meeting on October 20th, BCSTA's Board of Directors passed the following motion:

That BCSTA approach the Minister of Education to request that government proceed quickly with measures that will have the effect of protecting education programs and allowing school boards the flexibility to provide a wide selection of course offerings responsive to the needs of their local communities.

This motion arises from the concern that school boards have to ensure that the recent court decision respecting school fees does not erode the array of educational opportunities, nor the quality of programming currently available to students.

Reasonable people can disagree on whether any fees should be charged for programs or activities in the K-12 public schools or the degree to which there is sufficient funding within the system to absorb the loss of existing fees. The plain fact is that if legislation is not enacted and school boards have to comply with the decision as it stands then despite the best efforts of the Boards to re-allocate funding many programs will have to be modified (or worse, eliminated), resulting in substantial numbers of students receiving a lesser quality educational experience than has been available to now. If no legislation is enacted, it is possible that over time, depending on future funding levels, school boards might be able to re-build educational opportunities to current levels, but that will be no consolation to the students who currently benefit but will not do so in the interim. There are further concerns that if the enhanced experiences for students that communities have built with their school boards are driven out of the public education system, no provision for hardship will occur, resulting in further inequities.

BCSTA is developing some proposed changes which would address this dilemma whilst respecting the concept of free public education balanced with enhanced opportunities equitably accessible. We are keen to consult with your officials to explore such options.



Improving student achievement through community engagement

School boards will do their duty and comply with the law; however, when they view an interpretation of the law as being detrimental to the quality of education on offer then they also have a duty to advocate for legislative change to prevent an adverse outcome for students. The recent school fees judgment is such a case.

BCSTA respectfully requests your government to give serious consideration to enacting legislation to meet this challenge.

Sincerely,

A handwritten signature in black ink that reads "Penny Tees". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Penny Tees
President

Cc: Deputy Minister Emery Dosdall
School Board Chairs, Superintendents, Secretary-Treasurers



School District No. 38 (Richmond)

7811 Granville Avenue, Richmond, B.C. V6Y 3E3

Tel: 604-668-6000 Fax: 604-668-6161

October 18, 2006

The Honourable Shirley Bond
Minister of Education
Ministry of Education
PO Box 9045, Stn Prov Govt,
Victoria, BC
V8W 9E2

Dear Minister Bond:

As you know, the recent Supreme Court ruling on school fees and ensuing media interpretation has caused a great deal of confusion and anxiety for staff, students, and parents. While we recognize that interpreting this decision, appreciating its implications, and devising a response that is respectful of the law and the complexity of the underlying issues takes time, we are writing to urge you to respond at the earliest possible date in order to bring some clarity to this situation.

Our preferred solution, of course, would be a funding increase sufficient to replace the revenue lost by completely eliminating fees. However, if this is not possible, then we would appreciate your guidance in understanding what charges continue to be permissible.

An underlying issue is the tension between our desire for equity and our concerns for enrichment. We understand that a free public education is the right of every citizen and that this is an important foundation for a democratic society. We strongly endorse this principle. At the same time, we know that it is not possible for us to provide the rich educational experiences that students desire and deserve without, on some occasions, asking parents to assist by paying a suitable fee. Simply eliminating fees would result in an unacceptable impoverishment of learning experience for many students and in the elimination of valuable learning opportunities.

We take great care to ensure that no student is denied a core learning opportunity because of inability to pay. However, we realize that students and parents are often reluctant to ask for assistance because they find it demeaning to do so. Notwithstanding the imperfections in the current system, it is our belief that through our existing policies and practices we have been able to provide rich learning opportunities to many students who would otherwise not experience them with their families. In a somewhat contradictory way, straight elimination of school fees may very well do harm to the same students that it is intended to protect.

BOARD OF SCHOOL TRUSTEES

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Superintendent of Schools

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Richmond

Ken Morris
Secretary-Treasurer

There is a long list of specific issues that concern us. What will be the effect on secondary music programs if the school is neither permitted to rent instruments nor to ask students to rent their own? If we are not permitted to ask students for a fee to supplement consumable expenses in a Home Economics course, what effect will reduced supplies have on the learning experience, and the enrolment?

What precisely are the tests that should be applied to an elementary field trip in order to determine whether it is optional and, therefore, a charge may be applied? Questions such as these are, surely, common to all school districts and would, therefore, benefit from the legal and legislative advice that your Ministry can provide.

We appreciate your attempts to give school districts as much autonomy as possible and are not requesting a heavily prescriptive legislated regime. Some ambiguity will inevitably remain. However, we do think it essential for the Ministry to speak on this issue and to provide guidance on common questions such as those above. We would be very interested in participating in a think tank or problem-solving effort related to the school fees conundrum. Perhaps this could be organized in collaboration with the BC School Trustees Association and perhaps it is even a topic that would benefit from the attention of a special task force of partner groups, and perhaps it is even something the Round Table might wish to consider.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda McPhail".

Mrs. Linda McPhail, Chairperson
On Behalf of the Board of School Trustees

cc: Trustees
B. Beirsto, Superintendent of Schools
BCSTA



*Copied
10/5/06*

DEC 22 2006

Our Ref: 115876

Linda McPhail, Chair
Board of School Trustees
School District No. 38 (Richmond)
7811 Granville Ave.
Richmond BC V6Y 3E3

Dear Mrs. McPhail:

Thank you for your letter requesting clarification of the British Columbia Supreme Court ruling on school fees. I apologize for the delayed response.

In your correspondence you note that you would like some clarity regarding the interpretation of this decision, and some guidance in understanding what charges continue to be permissible. The Ministry of Education cannot provide legal advice to school boards. I encourage you to refer your questions to your solicitor.

You also note that, in your opinion, eliminating fees would result in an "unacceptable impoverishment" of the learning experience for many students. Consideration is being given to amendments to the School Board Fees Order necessary to ensure consistency with the recent ruling. We understand that there may be changes in practices resulting from this ruling, and the Ministry will continue to have discussions with partner groups to discuss options and opportunities to grow specialty programs like fine arts academies and soccer schools.

Thank you for sharing your suggestions with me.

Sincerely,

Shirley Bond
Minister
Deputy Premier

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DEC 28 2006

School District No. 38 (Richmond)
OFFICE OF THE SECRETARY TREASURER