BCSSA British Columbia School Superintendents Association

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The Honourable Shirley Bond
Minister of Education and Deputy Premier
PO Box 9045
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Victoria, BC V8W 9E2

Dear Minister Bond:

The British Columbia School Superintendents Association is writing to share its analysis of the *Young v. British Columbia* judgment respecting school fees, to provide a sampling of actions being taken by school districts throughout the province to harmonize their current policies and procedures respecting school fees with the *Judgment*, to report some matters respecting the interpretation of the legislative framework that are currently beyond the capacity of school boards to understand and know, and to respectfully suggest, in very general terms, some legislative changes that you may wish to consider that will assist school boards.

Analysis

Prior to the *Young v. British Columbia* judgment, the legislative framework relied upon by school boards for charging fees consisted of the *School Act*, *School Act Regulation* and the *School Board Fees Order*. Based upon this framework, school boards, in diligent efforts to be clear, consistent and compliant have, in consultation with partner groups, established policies and procedures that: promulgate a schedule of permissible school fees for the school year; prescribe how the schedule of fees is established, published and reviewed; and make provisions for financial hardship to support equity of access.

The legislative framework required school boards to provide free access to an educational program sufficient to meet the requirements for graduation and educational resource materials necessary to participate in the educational program. *School Act Regulation* provided definitions for what is meant by "educational resource materials" and "instruction in an educational program", and specified what are not educational resource materials (e.g. paper, writing tools, calculators, planners, supplies and equipment for personal use, and appropriate personal clothing for school activities).

Ideally, there should be an alignment among the *School Act*, *School Act Regulation*, *School Board Fees Order* and school district (and individual schools) policies and procedures respecting fee schedules and collection. The *Young v. British Columbia* action was based upon the argument that the *School Board Fees Order* was not in harmony with the *School Act* and was beyond the authority of the Minister to promulgate. The *Young v. British Columbia* judgment amended the *Order* by removing some words that school boards had relied upon to charge some fees to students for field trip expenses, materials

for take home projects and rental of musical instruments. The problem for school boards is that while the *School Board Fees Order,* as amended by the *Young v. British Columbia* judgment, is now aligned with the *School Act*, many school districts' current policies and practices may not be similarly aligned.

Given the limited types of fees addressed in the *Young v. British Columbia* judgment, there is, in the view in many trustees, school officials and parents, uncertainty respecting the application of the *Judgment* to existing programs and activities. It is understandable that many parents and school administrators are unclear which fees are permissible and which are not. It is a considered view of many school districts that a common understanding now among parents is that everything necessary to participate in an educational program is free. One possible consequence of the uncertainty associated with the *Judgment*, is that any type of fee is subject to be challenged, particularly if the activity to which the fee is connected is during the school day.

The more quickly school boards take action and demonstrate concrete and corrective steps to being in full and complete compliance with the amended *School Board Fees Order*, the less will be the school boards' exposure to claims of remedy and accusations of ignoring the law.

A Sampling of Current Actions by School Districts

Arguably, the *Young v. British Columbia* judgment leaves a number of unanswered questions, but school boards, in the absence of 100% certainty/clarity in the reasons for judgment, must make, and are making, principled decisions about what is not free, which are defensible and in harmony with the spirit and intent of the *Judgment.*

By many accounts, school districts throughout the Province have taken the opportunity of the *Young v. British Columbia* judgment to review their practices and procedures respecting school fees and bring them into compliance with the legislation. These reviews and discussions have included:

- The examination of all fees currently being charged for compliance with the *School Act*, the *School Board Fees Order*, and the *Young v. British Columbia* judgment
- The identification of changes required to educational program delivery, school and classroom assessment practices, and communication with parents
- The consideration of ways to be more clear in consulting and communicating with parents respecting all bases and rationales for all fees charged and provisions for financial hardship
- The consideration of implications for the operating budget and, if necessary, alternative funding sources, where fees currently being collected are deemed impermissible

- The consideration of options, within the limits set by the *Young v. British Columbia* judgment and operating budget restraints, for school boards to preserve programs, courses and activities which require/involve musical instruments

- The examination of the possible effects of the *Judgment* on the quality of educational programs; the number, variety, relevance and richness of learning opportunities; and the choice of programs in public schools

- The consideration of the possible effects of aligning current practices respecting fees with the current legislative scheme on the continuing capacity and ability of public schools to compete for students, on an even playing field, with private schools

A recent BCSTA Academy provided a timely opportunity for trustees and school district officials to share their questions and issues respecting gaps between extant policies and practices for charging fees and the legislative scheme, implications for the delivery of educational programs within existing resources, and strategies being undertaken by school districts to be compliant with legislation in a constructive and timely manner. Parenthetically, these discussions are summarized in a nine-page document – *School Fees Discussion: Summary* - prepared by the BCSTA conference organizers. From these discussions, it is evident that school districts must change a number of practices with respect to charges for mandatory or essential field trips, general course fees and charges to students for resources essential to achieving the intended learning outcomes in courses. It is also positively evident from the Summary that school districts are moving swiftly to having discussions with parents and animating plans for changing practices.

Some Matters Surpassing the Capacities of School Boards – Four General Questions

While discussions respecting permissible school fees and the implications of *Young v. British Columbia* will continue and some school district, school and classroom practices will be changed, at least four areas remain problematic for school boards and, to a certain extent, "beyond their ken." Some provincial direction and changes to legislation may be required to reduce uncertainties associated with these questions.

The first area is the question of whether *School Regulation* (e.g. the definition of "educational resource materials" and "instruction in an educational program") upon which the *Young v. British Columbia* judgment was reasoned and based is aligned with the current intentions of the provincial government. It may well be that the words in *School Regulation* were given their plain ordinary and literal meaning even though the intention of the legislation may have been different.

The second question is the legal status of students enrolled in apprenticeship programs paying for the cost and maintenance of their tools of the trade. In short, are such tools "educational resource materials" and, as such, are schools required to provide tools for students in apprenticeship programs? Arguably, the legislation now says yes, though common sense suggests that the purchase is the obligation of the student insofar as these tools are for personal use and the students will retain them upon graduation.

The third question is related to the provision of musical instruments. The *Young v. British Columbia* judgment, arguably, concluded that musical instruments fall within the definition of "educational resource materials," and are not included among the exemptions – items that are not "educational resource materials." In short, if a student chose a course as part of his/her educational program then materials and equipment required for that course must be provided. Was it the intention of the legislation to include musical instruments for use by students in their educational program as "educational resource materials" or was the intention of the legislation to include musical instruments among "other school supplies and equipment for a student's personal use?" Complicating a clear understanding by school boards of their legal obligations was the absence in the *Judgment* of any action or comment respecting section 7 of the *School Board Fees Order* permitting school boards to require students to provide a musical instrument.

The fourth question is the legal status of charges to students for enrolment and participation in programs and courses of choice (e.g. Advanced Placement, International Baccalaureate, Sport Academies, Outdoor Education Programs). Students participating in such programs and courses are often charged fees, in addition to examination fees, for various and additional non-staffing costs, such as special equipment, materials and field trips. These additional costs are necessary for the delivery of many programs of choice. Such courses however are part of a student's educational program and the fees charged to recover the costs of these programs are, arguably, not compliant with the current legislation. If this is the case, then programs of choice, in their current forms, may not be sustainable. The current legislative scheme respecting permissible charges to students may pre-date and not accommodate the importance assigned by government to promoting choice within the public school system.

Suggested Actions

It is quite clear that the *Young v. British Columbia* judgment will affect certain educational programs in public schools and will require departures by school districts from a number of their current practices. School boards are by all accounts taking steps to review all fees being charged within their jurisdictions; identify options to preserve, in an equitable manner, the quality and relevance of learning experiences for students; consult with parents to ensure that they understand the legislative scheme for school fees and the implications of the *Young v. British Columbia* judgment; prioritize the educational activities and programs they are able to provide within the limits of operating budgets; and align their practices with the amended *School Board Fees Order*.

The British Columbia School Superintendents Association believes that in addition to the actions described above, changes to the legislative and regulatory framework for school fees are required to clarify government's intentions and to preserve the quality and competitiveness of public schools.

Respectfully, the British Columbia School Superintendents Association requests that the Minister, in support of actions being undertaken by school districts to harmonize all their policies and practices respecting school fees, contemplate actions that will achieve the following outcomes:

- Amend section 1(2) of *School Regulation*, with consequent amendments to *School Board Fees Order*, with the specific intent to exclude apprenticeship tools and musical instruments from the definition of "educational resource materials."

- Amend legislative and regulatory provisions to clearly define programs and courses of choice and to enable school boards to charge fees for defined programs of choice. In support of such action, it has been reported to trustees and other education partners that there is such precedent in other provincial jurisdictions for amendments to legislation that reflect the growing recognition across Canada of the importance of programs of choice in strengthening public schools and providing students with enriched and relevant learning opportunities.

The British Columbia School Superintendents Association thanks you for considering the points set out in this letter and is eager to work with the Ministry of Education and other education partners in ensuring that students continue to have equitable access to educational programs and experiences of the highest quality.

Yours sincerely,

Geoff Jopson
President

cc. Emery Dosdall, Deputy Minister of Education
Penny Tees, President, BC School Trustees Association
Les Dukowski, President, BC Principals' and Vice-Principals' Association
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