

# The Elephant Not in the Room: Presentation to CAFA Labour Relations Conference.

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# The Elephant Not in the Room

## Outline:

- What is PSEC? History and context.
- Putting PSEC in the context of labour relations in BC.
- What is PSEC's mandate?
- What are the prospects for change?

# The Elephant Not in the Room: A Bit of History and Context on PSEC.

## The Elephant Not in the Room:

- What is PSEC?
- Where did it come from?
- How does it function on the ground?

# The Elephant Not in the Room: A Bit of History and Context on PSEC.

## A bit of History:

- PSEC was created in 1992 by a then NDP government.
- At the time it was meant as a forum for employers and unions to work together to find joint solutions.
- Original intention was to harmonize language and realize an economy of scale in public sector pension and benefits.
- Quickly morphed into a soft fiscal mandate for bargaining. Universities (unlike colleges) had significant flexibility.
- Everything changed in Year 0: 1999. Liberal elected with 77-2 majority.

# The Elephant Not in the Room: Recent Bargaining Mandates.

## Recent History:

- 2014-2019: A Conditional Peace: 5.5% over 5 years. Co-operative gains provision.
- 2012-2014: Cooperative Gains – 2% per year. Management rights introduced as part of the mandate for the first time.
- 2010-2012: Thanks for nothing: 0/0.
- 2006-2010: With Glowing Hearts: 8%, market differentials, and \$3255 signing bonus.

# The Elephant Not in the Room: Where PSEC's Power Come From?

## PSEC: Paper Tiger?

- In September of 2012 then Ontario Finance Minister Dwight Duncan introduced the *Protecting Public Services Act* which legislated a wage freeze for all public sector workers (including colleges and universities).
- So of course everyone had to settle for 0.....

# The Elephant Not in the Room: Where PSEC's Power Come From?

PSEC: Paper Tiger?

Um...er.....not so much.

- During the subsequent round of bargaining the average settlements in the public sector were 2.1%.

So where does PSEC's power in BC come from?

# The Elephant Not in the Room: Where PSEC's Power Come From?

- How is the mandate communicated and enforced?
- What happens when you defy PSEC?

Well...Like good mafia bosses they send a few very loud messages so they don't have to send too many.



# The Elephant Not in the Room: Where PSEC's Power Come From?



# The Elephant Not in the Room: Legal and Legislative Context.

## **Governance as Enforcement vs. Oversight**

- BC government appoints a majority share of BOG members – one of only two provinces in the country to do so.
- Under the last regime BOG seats were reserved for donors, bagmen, and other loyal supporters.
- Direct political control and oversight of administrations at BC's research universities.
- This politicized structure has led to a number of political fiascos.

# The Elephant Not in the Room: Legal and Legislative Context.

Alberta: We're anti-union!

BC: Hold my wine.

- Both the Fraser Health and BCTF SCC decisions have been major setbacks in the cause of union busting.
- What are the prospects for a Charter challenge of PSEC?

# The Elephant Not in the Room: What Have Arbitrators Said About PSEC?

## What Have Arbitrators Said About PSEC?

### **UBC VS UBC FA - 2014**

*[20] The University submits its position is consistent with its bargaining mandate from PSEC, which is the limit for which it will receive government funding.*

*[21] As described in the 2013 Award, our role is to interpret and apply the parties' agreement in Article 11.02(e). That agreement does not involve application of the PSEC bargaining mandate, and does not mirror the University's funding from government.*

*(Taylor, Conlon, and Osborne UBC vs. UBC FA - Interest Arbitration 2014)*

### **UBC VS AAPS 2012**

#### **III. AWARD**

*AAPS argues further that any PSEC arguments or ability to pay arguments raised by UBC should not be considered....*

*[Any] arguments raised by UBC relating to ability to pay or PSEC will not be considered. The issue I must determine is whether the benefit costs are included in the \$1,000,000 market adjustments. I must determine what the parties agreed to in the December 2012 Memorandum of Settlement. While PSEC or ability to pay issues may have been topics that UBC considered during the negotiation process, they are not part of my assessment at this juncture when considering what the parties agreed to at the time.*

*Arbitrator Mark Brown, Mediation/ Arbitration UBC vs. AAPS November 4, 2013.*

# Current Political Climate: The Revolution has Suffered a Serious Soft Tissue Injury.

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- Fiscal situation is tight in view of the ICBC dumpster fire. ICBC is losing \$3.5 million *a day*.
- Dramatic measures to cool housing market which may well cool the economy.
- Very disappointing performance on board governance thus far.
- No appetite to overhaul PSEC, but a possible opening on non-monetary issues.
- New campaign finance law makes NDP less beholden to unions but after 16 years of Liberal rule a O/O mandate unlikely.
- PSE policy not a high priority.

# What is to be Done?

1. Push for exemptions for research universities that are not tone deaf.
2. Mobilize your members on a number of fronts: i) fair wages ii) free and fair collective bargaining iii) collegial governance and institutional autonomy iv) academic freedom.
3. Consider (carefully!) market differential and recruitment retention approaches.
4. Depending on the regime, don't rule out a Charter challenge.
5. If all else fails, don't be afraid of the S word!