



employment handbook

for FIRST NATIONS SCHOOLS

prepared for the First Nations Schools Association

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- RECRUITMENT AND HIRING
- DEFINING THE JOB REQUIREMENTS
- IMPLEMENTING THE HIRING PROCESS
- FOLLOWING THE INTERVIEWS
- SUPPORTING EMPLOYEES
- DEALING WITH CONCERNS
- LEGISLATION



Employment Handbook for First Nations Schools

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Introduction



“We cannot ignore the difference made by effective employment practices. Schools employing only the best qualified candidates will outperform those that settle for less.”

(Longo, 2003)

WHY THIS HANDBOOK WAS CREATED

Effective hiring practices are one of the key aspects of operating a successful school. As described further below, student achievement and success depend to a large extent upon the quality of the staff members who interact with learners while they are in the care of the school. Perhaps more than any other single factor, a school’s ability to assemble and coordinate an effective, efficient staff will determine its success or failure. As Bishop, O’Sullivan, and Berryman (2010) write, fundamental to what moves an organization from good to great is the understanding that effective leaders work continuously to select the right people, and to support and develop them.

Yet research also suggests that establishing and implementing effective recruitment and retention practices, while critical, represents a challenge in almost all education settings. Further, in First Nations schools, recruitment and retention can be particularly challenging. There is a general lack of awareness about First Nations schools and the exciting opportunities they may offer to the right employees. In addition, First Nations schools may not appear to be as attractive to potential employees due to their remoteness. Historical funding inequities for the schools have led to resource constraints, including some difficulties providing adequate compensation to staff. Finally, in some cases the leaders of First Nations schools may not have significant experience in the hiring and ongoing supervision of school staff. Given those unique challenges, First Nations schools should be particularly diligent in their efforts to attract and retain talented, high quality employees.

Within this context, the First Nations Schools Association (FNSA) and First Nations Education Steering Committee (FNESC) maintain that some

of the challenges that exist can be mitigated through information sharing about effective employment policies and practices, which is why this Handbook was created.

This resource is intended to provide suggestions for defining employment needs, recruiting new employees, and implementing practices that will support the retention of high quality staff. The Handbook includes ideas and suggestions for First Nations schools in BC regarding their personnel policies and practices. The Handbook also includes a general discussion of a variety of topics and issues, as well as sample policies, forms and letters. In all cases, the samples are intended as ideas and suggestions, and they can and should be adapted and changed to reflect the unique circumstances of each school.

This edition of the Employment Handbook represents a significantly updated version of a document originally published in 1997, and subsequently updated in 2006.

The Handbook was also informed by an FNSA-sponsored Workshop on Effective Hiring Practices, facilitated by Mr. Ron Pound who worked with Make a Future BC in November 2012. The FNSA appreciates the expertise shared during that event.

As with all FNSA and FNEESC materials, comments and feedback on this resource are welcome, as we are committed to continually reviewing and improving our publications to ensure that they meet the needs of First Nations schools in BC.

Note

It is important to keep in mind that all of the information included in this Handbook is intended to convey only general information and does not constitute legal advice. Especially in the event that difficulties arise, school representatives are encouraged to obtain further advice to understand how the suggestions apply to their particular situation. In addition, this Handbook was created for the BC context. While many of the concepts presented within have widespread application, some information may be provincially specific. Also, this Handbook does not consider situations in which employees are represented by a labour union. In those cases, the collective bargaining agreement and obligations under relevant labour legislation must be considered.

PROJECT SPONSORS

The First Nations Education Steering Committee (FNESC) was established in May of 1992 and evolved into a non-profit society mandated to “facilitate discussion about education matters affecting First Nations in BC by disseminating information and soliciting input from First Nations.” Approximately 100 First Nations representatives from throughout BC provide overall direction for the Committee’s activities. FNESC works as a collective organization to provide support for First Nations in the area of education, and to communicate with both the federal and provincial governments to ensure that First Nations’ concerns are being addressed. FNESC also works to share with First Nations relevant and up-to-date information about federal and provincial government policies and programs, to undertake research to support effective First Nations education, and to facilitate communication amongst First Nations and with other education organizations.

The First Nations Schools Association (FNSA) was formally established in 1996. The FNSA represents and works on behalf of First Nations controlled schools in BC. Approximately 98 percent of the 130 First Nations schools in BC are members of the Association, which has a mandate to support those schools in creating effective, nurturing, and appropriate educational environments that provide students with a positive foundation in all academic areas.

HOW THE HANDBOOK IS ORGANIZED

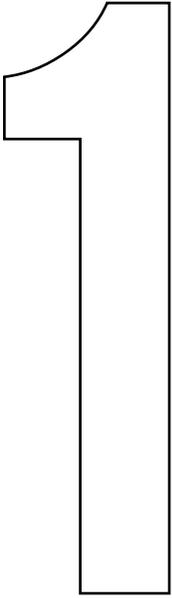
The initial sections of this Handbook outline general information about suggested hiring practices, support for employees, and an overview of issues related to discipline and, if necessary, termination.

The final section of this Handbook provides an overview of relevant legislation, including a brief consideration of whether or not First Nations schools are subject to federal, provincial, or First Nations jurisdiction over labour relations, as well as a brief description of important legislation and statutes.

Appendix One then provides information about the establishment of policies, including a selection of sample policies shared by First Nations Schools. Appendix Two highlights the FNSA Standards for Teachers and Principals in First Nations schools, and Appendix Three provides suggestions for the preparation of Written Job Offers. Appendix Four provides a brief description of how schools should consider criminal records reviews, and finally Appendix Five provides an FNSA-endorsed sample Teacher Evaluation Policy.

NB. This Handbook highlights effective employment practices that can be adapted as appropriate by schools that have the flexibility to design and implement their own employment practices.

However, it is always important to be aware of any community protocols that may affect how the school operates. For example, some First Nations may have employment policies that apply to the school. If that is the case, it is critical that the school leadership and employees follow community protocols, unless another arrangement is formally approved by the Nation.



Recruitment and Hiring

1.1 WHY SPEND SO MUCH TIME ON RECRUITMENT?

Hiring the best is not easy to do. It can be time consuming, labour intensive and sometimes politically unpopular. However, taking the time to effectively hire can result in improved student achievement, increased respect for teachers and other employees, and enhanced public relations. It is, in fact, one of the most important activities that take place in any school.

Hiring a Principal

Choosing a new leader is not an easy task for any organization, and the complex work of schools makes principal identification and selection even more challenging. Yet choosing an effective school principal is one of the most significant decisions that a school board can make, as new and effective leadership can propel a school forward in meeting its goals. Principals are responsible for setting school improvement agendas, establishing effective learning and workplace conditions, and ensuring that the school performs in accordance with community expectations. Research also indicates that school principals heavily influence the ability of schools to attract and retain talented teachers, and they have a key role in promoting student success. The responsibilities of contemporary school principals not only include the conventional task of efficiently managing students, staff, and grounds, but also include deep engagement in instructional leadership and community issues. Today, school principals are being asked to build professional communities of reflective practitioners who critically consider how schools can improve learning and the achievement of all

students. Given this range of responsibilities and the associated impacts they make, the importance of hiring an appropriate and skilled school principal cannot be overstated.

Hiring Teachers

Among the most significant decisions school leaders make is selecting the right teacher to fill every classroom, for students will only benefit from competent, dedicated teachers. Numerous studies demonstrate persuasively that the effect of teacher quality on academic achievement is high. Even though a school may have excellent facilities and curriculum, student success requires skilled and caring teachers. Good teachers promote learning and capture the hearts and minds of students. As summarized by Muhammad (2008), “if we want to make our schools centers for high levels of learning, we must address the skill of our teaching staff – and address it with vigor.” Accordingly, recruiting and retaining an effective teaching staff is a critical component of maintaining effective instruction and ensuring that all students reach their full potential.

Hiring Other School Staff

Of almost equal importance is filling all of the other assignments within the school. Choosing the wrong person to play a key role on the school staff can directly affect the success of children in the school and possibly jeopardize an otherwise successful program. A school cannot operate well without a full complement of qualified staff members, including administrative support staff, educational assistants, custodians, bus drivers, librarians, and other people who are integral members of the school community. The contributions of all school staff make learning most effective, and make the school a safe, clean, and welcoming environment for students, parents, and community members. Everyone working in the school must be fully committed to excellence in their own jobs if the school is to operate well, and if students are to enjoy the highest level of success possible – which ultimately should be the goal of every school.

1.2 INVESTING SUFFICIENT TIME AND ATTENTION IN THE HIRING PROCESS

In spite of the overwhelming evidence of the importance of an effective school staff, research suggests that many schools find it difficult to allocate significant time and funding to hiring processes – even when the hiring is for one of the more complex roles within the school, such as the principal position.

Generally, for example, schools allocate much less time and funding to leadership searches than do private businesses or nonprofit agencies. Executive search budgets for small businesses can exceed \$100,000, when including staff time and other expenses. Of course, most First Nations schools would find it extremely difficult – likely impossible – to fund a principal search at this level. However, it is still key to note that the cost of hiring the wrong person for a job can be very high, both immediately and in the future, and investing in a thorough and rigorous search may save considerable time and money in the long-term.

Also, it is important to note that recruiting the best individual often takes considerable time. If a position must be filled right away, it may be useful to consider hiring a person on a temporary basis. You can then take the time to complete a more thorough process, while the position is filled in the immediate term.

If this approach is in fact used, the person who is hired on a temporary basis may be encouraged to apply for a permanent position when it is posted. Even if that is the case, however, you may want to advertise the position more widely, to ensure that you choose correctly from among a number of potential candidates, and to ensure that everyone is allowed a fair chance to apply.

Therefore, while recognizing that time and resources are not limitless, schools are encouraged to give as much attention as is feasible to each hiring process.

1.3 WHEN A POSITION BECOMES AVAILABLE, WHO SHOULD BE INVOLVED IN THE HIRING PROCESS?

The first step necessary in the hiring process is a determination of who will be responsible for recruitment and hiring.



**If possible,
prepare ahead ...**

Prepare for Principal Succession.

A change in leadership can be emotional, and without conversation about what change may bring, a school may not be ready to receive a new principal. Engaging the current principal and staff in conversation about school goals and plans for a leadership transition is an important part of succession planning. Allow Time. Succession planning should start well before the actual recruitment, with meetings to prepare for the vacancy and to outline plans to fill the position. Although unanticipated personnel changes occur, the risk of choosing an ineffective school principal is great when hasty decisions are made. Schools will sometimes allow up to a year from the point of a vacancy announcement to recruit, select, and transition a permanent replacement for a school principal, although smaller schools may allow less time. Generally, planning for a comprehensive and holistic review process is essential.

(Clifford, 2012)

It often is useful to make the school's governing body responsible for filling only the most senior positions. Responsibility for implementing the hiring process for other staff usually can be delegated to either the principal, or more often to a small group of people – often with the principal as the lead.

In fact, the hiring process often begins with the creation of a hiring committee – a group of individuals who will be consistently engaged in the hiring process from beginning to end. The size and composition of the hiring committee will depend largely on the position that is open, as well as community structures and protocols (see sample policy in Appendix One). Generally, the hiring decision should be based on the perspective of more than one individual, but the committee should not be so large that it is unwieldy and threatening for the people being interviewed. Therefore, it is usually recommended that the hiring committee include a minimum of three people. Generally, 6 – 7 people would be maximum.

It is also important to establish early in the process the decision-making structures within any hiring committee. Will the committee operate according to consensus? If consensus cannot be reached, how will decisions be made? Also, given the implications of hiring decisions, it is often useful for the selection committee to have meaningful input throughout the hiring process, but the principal may retain ultimate responsibility for selecting the successful candidate.

What If You're Hiring a Principal?

If the hiring committee is responsible for finding a new principal, its membership often is slightly more complex and possibly larger than would otherwise be the case. As the principal is the leader of the school, hiring for that role often requires somewhat broader involvement than hiring for other positions.

- If the existing principal is leaving the school on good terms, such as leaving for retirement or leaving to access another opportunity after a positive experience with the community, the existing principal may help to lead the process of hiring his or her replacement.
- If the principal has left the school unexpectedly, the school board itself will likely lead the hiring process, perhaps with assistance from a consultant and possibly advice from a FNEESC/FNSA staff person.

First Nations might consider the following individuals for inclusion on a hiring committee for a new principal.

- The existing principal, if the relationship is a positive one. Alternately, if involvement of the principal who is leaving is not appropriate, it may be useful to involve a principal from a neighbouring First Nations or public school if doing so is feasible; another principal will bring to the hiring process a direct perspective of instructional leadership needs.
- A member of the school governing agency.
- A senior teacher.
- The Education Director or Coordinator, if that individual works closely with the school

Example 1

The principal of Cedar School has been working in the community for ten years. She began her career as the school's grade four teacher, and after five years she was offered the chance to become principal. She has enjoyed a successful five-year term in that position, but she feels the need to try working in another setting. She has never worked for another school and she wonders if she could learn new skills in another place. After much deliberation, she talks to the school board about her decision. The school board, although disappointed, understands her decision and asks her to help them in planning for a transition.

The principal agrees to stay for one more year, during which she leads a rigorous search for a new principal. One of the first things she does is establish a hiring committee including herself, one member of the school board, the grade one / two teacher, who has been with the school for four years, and the leader of the First Nations parents club.

The school board confirms the membership of the hiring committee and the plans for the recruitment process, and the board chair informs the Chief and Council about the principal's plans to leave and the school board's decision to create a hiring committee.

The principal also invites the Education Coordinator to join the hiring committee, but the Education Coordinator says that she is very busy, and asks only to participate in the interview component. The principal and the Education Coordinator discuss the challenges that could relate to this approach. The Education Coordinator will miss out on all of the planning and discussions leading up to the interview, and so she will not have the same information nor the same understanding of the position and school needs. After talking about the hiring process for a long time, the Education Coordinator agrees that she does not have the time needed to participate on the committee leading the thorough search, and so she asks only to be kept informed as the search proceeds.

Hiring the Principal Takes Extra Attention (Adapted from Clifford, 2012)

Set Priorities Carefully and Thoughtfully. It is important for the hiring committee to collect and share data and other information about school goals, and discuss—in light of student and teaching data—the degree to which goals have been met. Perhaps with assistance from a neutral and experienced facilitator, the hiring committee members should discuss how the new school principal can help the school meet these goals and what types of knowledge, leadership styles, and attitudes the ideal candidate must possess. By the end of the meeting, search committee members should be able to answer common questions, such as the following: “What are our priorities for this position?” “What will make someone a good candidate?” and “How will performance be measured?”

Reconsider the Position. School expectations and demands on the principal may have changed since the last vacancy. Use the information from the consideration of the school’s goals and data to rewrite, if necessary, the principal’s job description.

Think About Retention. Principal retention has been a challenge in some First Nations schools in BC, and research shows that new school principals often report job stress as a significant factor in their choice to leave a school or profession. In reviewing hiring criteria and job descriptions, it may be useful to consider how to mitigate the potential for excessive stress on the new principal, particularly during the transition period.

Following Appropriate Protocols. The school governing agency should always be asked to approve revisions to the job description for the school principal position.

What If You're Hiring Another Staff Person?

The search committee for hiring a staff person other than the principal might include the following people.

- The principal.
- A member of the school board or other governing agency.
- A teacher or person with experience in the job area being filled.
- The Education Director or Coordinator, if that individual works closely with the school.

Example 2

Hillside School has just completed its FNSA School Assessment and Certification Process and has identified the need for a new Educational Assistant. The school has made some difficult budget decisions to make it possible to hire a new employee. After discussing the hiring approach, the school board asks the principal to take responsibility for the hiring, and indicates that no school board members will join the hiring committee in this case, as they do not feel it is necessary.

The principal invites the grade one / two teacher to join the committee, as he will be working most closely with the new Educational Assistant. The principal also asks the grade three / four teacher to be a part of the committee, because the teacher is new to teaching and the principal thinks this will provide an important opportunity for her to learn more about hiring and the school's goals. The principal also invites a member of the school's Parents Club to join the hiring committee to include the perspective of parents, and the Education Coordinator also wants to be a member of the hiring committee.



"Because we want our staff and community to appreciate the importance we place on teaching, we involve teachers and students in the hiring process. Their participation removes the mystique of how and why a teacher is chosen. Involvement makes the hiring process credible."

(Longo, 2003)

Hiring Committee Considerations

- In forming the hiring committee, it may be useful to think about the team's combined knowledge of the position to be filled and their experience in hiring processes, to ensure that the committee has the collective ability to make effective recruitment decisions.
- Regardless of who is included on the hiring committee, all members must be given a clear understanding of the committee's role in the hiring process and they must have access to relevant data and information to assist them in making good decisions. For example, the committee should share a clear understanding of the goals for the position and the school – an issue that is described in more detail below. The members should also be fully aware of the salary and benefits that are available, and general expectations of school employees.
- At least one member of the hiring committee should meet with the school board to discuss the roles and responsibilities of the committee and members, the search process and budget, and criteria for selection. The hiring committee chair, if one is selected, and all other committee members should know how much time will be dedicated to the search.

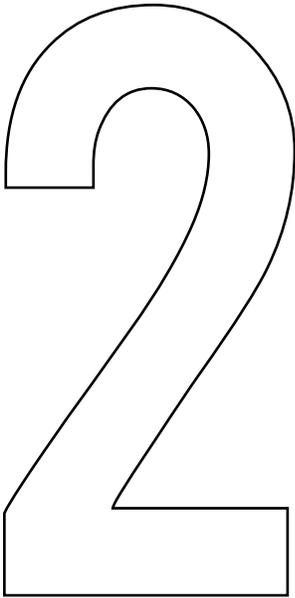


“School boards and principals feel pressure when teaching vacancies need to be filled. A number of people may have an expectation that they deserve the job. Because teacher employment decisions may directly affect the quality of learning in our schools for decades, the principal and school board must ensure that a consistent and focused selection process that's understood by the staff and community is in place.”

(Longo, 2003)

Avoiding Conflicts of Interest

Of course, it is critical that the hiring committee is seen to be avoiding conflicts of interest whenever possible, an issue that can be sensitive in regard to matters of hiring and employment, particularly in First Nations communities, where so many people are related and known to one another. Clear policies are therefore especially important in this regard, such as outlining what relationships would prohibit people being a member of the hiring committee (eg. an individual must not be involved in making decisions involving a spouse, a brother or sister, etc).



“Do your homework. Successful hiring is all about preparation.”

Ron Pound, FNSA Effective Hiring Decisions Workshop, 2012.

Defining the Job Requirements

Example

The school bus driver in Lakeforest Community has decided to retire after two decades of excellent service. The entire school community appreciates the driver’s twenty years of friendly good mornings to students and parents on her route, as well as her smiles and patient, gentle discipline when the children show their “exuberance” on the short drive home at the end of each day. The bus driver has been celebrated for her dependability in any situation, her willingness to pitch in for all special events and circumstances, and she has been acknowledged for her contributions to the entire school community.

The school advertised for a new bus driver as follows.

Wanted: Driver for 30 seat school bus for Lakeforest School.
Hours of work: 7:30 am to 8:45 am and 3:00 pm to 4:00 pm daily. All applicants must have an appropriate driver’s license and must successfully complete a criminal records check.

When the school reviewed the applications submitted and successful candidates were interviewed, the hiring committee was disappointed because they had not found the kind of person they were looking for. Overall, the applicants had the right license, but they were not very interested in the school or the children. Why?

What the school actually wanted, although it was not indicated in the advertisement, was an individual with the appropriate license and a satisfactory criminal records check, plus a person who ...

- Is good with and enjoys children
- Is flexible and willing to assist with a range of tasks to make the school a success
- Is responsible and able to work without direct supervision

Lakeforest School, like all schools, would have had more success in its hiring process if it had begun with a thoughtful consideration of what skills, attitudes, and experience it really needed for the available position and made these traits clear in the hiring criteria and the job posting.

2.1 DEVELOPING HIRING CRITERIA

As described above, while it is important that the hiring committee is given adequate information and data to make a thoughtful hiring decision, it is also important to remember that committee members may interpret that information differently and have different visions for what the school needs and what will make an effective employee given the available position. Although schools collect information on candidates, it is not always clear how search committee members weigh such information and compare it to school needs when making hiring decisions.

It is therefore critical that the hiring committee starts by paying close attention to and analyzing the school's needs prior to beginning the search, and a job description must be established that clearly reflects those needs.

In addition, when thinking about the priorities for a principal or teaching position, it is important to consider relevant standards and research.

Of course, hiring committees can and should set their own selection criteria because hiring school staff is an important local decision. However, hiring committees should understand standards for professional practice and educator competencies when considering candidates for teaching positions. This information can then be compared with information from job applications,

interviews, or on-site performance opportunities that the committee systematically collects during the hiring process – practices that are all discussed in more detail below.

Generally, to address this fundamental component of the hiring process, the principal and hiring committee will prepare clear selection criteria and standards, making the expectations for the position explicit and tied to the school's goals and values.

Based upon those criteria, someone – usually the principal – will prepare a specific job description for the open position, which should then be carefully reviewed and, if necessary, revised by the hiring committee. The screening, hiring and evaluation criteria should then be consistent with the developed job description.

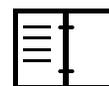
Finally, when considering the criteria to be used for each position, it is important to remember that you are hiring not only for the position, but for the organization. First Nations schools represent specific, unique learning environments that operate completely within the context of their communities. The distinct needs of First Nations schools can be a primary consideration in the hiring criteria. For example, when searching for new teachers, preference may be given to teachers who have had a successful experience in a First Nations setting, as well as previous training and demonstrated understanding of First Nations issues and pedagogy. Applicants may also be asked how they have shown their commitment to parental and community engagement – a core aspect of many First Nations schools.

Job Description Tips

- Job descriptions generally include job qualifications, assigned duties, responsibilities, knowledge required, reporting requirements, and physical working conditions.
- When preparing a job description, it is best to ensure that any qualifications listed relate to job criteria that have been thoughtfully prepared by the hiring committee.
- It can be useful to develop a clear policy to address a situation in which an employee or applicant loses any necessary credentials. For example, if the



Hiring committees may find it useful to review the research-based *FNSA Standards for Principals and Standards for Teachers in First Nations Schools* included in Appendix Two. Those standards were collectively developed by representatives of First Nations schools based on research of educator roles, responsibilities, and competencies, as well as the experience of people who work within the unique context of a First Nations school setting.



job description includes a requirement of a valid driver's license, it may be important to outline what will happen if an employee in that position loses his or her license.

- Job descriptions can be used to help a new employee fully understand the expectations and duties associated with the job. They can also be an important tool in employee evaluations (an issue discussed later in this Handbook). For that reason, it is important to carefully review job descriptions with new employees.

Generally, job descriptions should be updated regularly to ensure that they are reasonable and current.

The following sample worksheet might be useful in preparing a job description.

Sample: Job Description and Requirements Worksheet

Position: _____

When the job will begin: _____

Who the employee will report to: _____

Describe the essential activities involved in this job *(based on your hiring committee's determination of the job criteria)*:

1. _____
2. _____
3. _____
4. _____
5. _____

Describe any necessary knowledge, skills and experience *(based on your hiring committee's determination of the job criteria)*:

1. _____
2. _____
3. _____
4. _____
5. _____

List any specific education requirements (i.e. grade twelve, post-secondary, etc.)

List any specific skills and certifications required (for example: BC teaching certificate, computer literacy, driver's licence, first aid, specific knowledge of machine operations, etc.)

List any specific physical requirements associated with the job (such as must be able to lift heavy boxes, work evenings, etc.)

Wages to be paid: _____ Hours of Work: _____





“Essentially, when preparing the job advertisement, ask yourself “why would I want to work here?””

Ron Pound
FNSA Effective Hiring Practices
Workshop, 2012.

2.2 WRITING A JOB ADVERTISEMENT

Although the criteria developed for the position and the associated job description provide the foundation, the best techniques for writing effective job advertisements are the same as for other forms of advertising. The job is your product; the readers of the advertisement are your potential customers. You need to know your target audience, address them in the language they understand, and offer them what they want. The aim is to attract interest, communicate quickly and clearly the essential (appealing and relevant) points, and to provide clear response processes and mechanisms. Design should concentrate on clarity and on conveying a professional image.

In writing the job advertisement, the positive aspects of the job should be emphasized. However, it is equally important not to exaggerate the opportunity that is available. In other words, the writing of a job advertisement represents a kind of balancing act – needing to describe the unique and potentially exciting possibilities that are associated with working in your school and community, while also being realistic about the challenges that are associated with the setting so that you find someone who is an appropriate “fit” for the role. If the candidate who is eventually selected for the position has unrealistic expectations, he or she may not remain in the job, which is of no benefit to you or the employee.

Market Market Market Your School



A critical consideration is the importance of marketing your school so your positions seem the most desirable. The hiring process is aimed at attracting and selecting the best person for the position available. That is a two way process; of course candidates have to “sell themselves” to you, but you also have to “sell your job” to them.

As discussed in the following sections, while not over-exaggerating the positive aspects of your school and community, it is critical that you present the most professional, enthusiastic, and appealing image possible. Taking this approach includes highlighting the unique and interesting aspects of your school setting in all advertisements and any other written materials used in the hiring process.

Marketing your school also involves making sure that all staff and hiring committee members act as positive ambassadors for your school and community. The secretary should be helpful and courteous if potential applicants call with an information request. The principal should be very positive and personable when calling candidates to arrange their interviews. When candidates arrive at the school, someone should greet them and make them feel at ease.

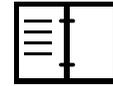
Employers are competing for the most talented and skilled candidates. It is critical that potential employees perceive your position as their best employment option. You can achieve that goal by being excited about the job and passionate about your school and students. When visiting the school and in all discussions, candidates should be encouraged to ask questions so they feel comfortable and optimistic that they will be supported and heard. Make each candidate feel confident that they are wanted.

If that individual turns out to be the best person for the job, you want to ensure that they choose your school for their future employment. If that person is not a match for the position that is available, they may speak highly of your school to other people, helping with future job searches. Presenting a positive image can only be of benefit to your school.

Suggestions for Writing a Job Ad

- An effective job ad is not just a job description. It is a carefully crafted message with the aim of attracting the best-qualified and most appropriate candidates for your job.
- Think of your job ad like a funnel, where initially you are casting the net out wide to a broad audience, but then as the readers make their way through your carefully crafted advertisement, they are either self-ejecting from the process or they are mentally ticking all the boxes because they can actually picture themselves in the role. In the end you really only want a handful of qualified and suitable candidates to apply.
- Be specific about the role. This will allow candidates to compare what is required with their own skills and experience, and may discourage those who are not at all qualified from applying.
- Provide a salary range, so applicants who are not interested in that salary level will not waste their time and yours by applying.
- Clearly indicate what requirements are “must haves” and what are “nice-to-haves.” Based upon your discussion of the criteria for the position and your school’s needs, what are the essential qualifications, which skills are desirable, and what previous experiences are preferred?
- Be positive, but don’t exaggerate. When a job sounds too good to be true, it generally is, and exaggerated ads may not attract the quality of candidate you are seeking.
- Provide a phone number for questions. This can help eliminate unsuitable candidates early in the process.
- Ask for a cover letter and CV/resumé. These can provide useful clues about character, education level, and communication style, and help you to filter out unsuitable candidates prior to interviews.
- Talk to the reader. When you are writing your advertisement, avoid phrases like “the successful candidate” or “the ideal applicant” since this will make even the most suitable candidate question whether they’re right for the role. Rather say something along the lines of “In this exciting role you will be working with ...” or “Coming from a strong teaching background, you will be expected to ...”. Talk to the reader. Use the word “you.”
- Do not forget to include a closing date, after which time no more applications will be accepted.

Sample Job Ad One



JOB AD ONE – WHAT NOT TO DO

Needed: Grade 2 teacher for small school with three grades and 35 students. Located in remote community in northwestern BC, with road access sometimes limited seasonally. BC Teacher Regulation Branch Certification required. Send resumes to: ...

JOB AD ONE – A BETTER EXAMPLE

Seeking energetic Grade 2 teacher for growing school in unique rural setting. The school has three grades with 35 students, offering flexibility and excellent opportunities for teacher-leadership. Situated in a distinct cultural context, this position provides a perfect environment for outdoor enthusiasts.

Requirements:

- BC Teacher Regulation Branch Certification
- Flexibility and interest in working in a dynamic work environment
- Two to three years teaching experience preferred
- Experience working a First Nations school environment a strong asset

For further information, call xxx-xxx-xxxx, or email xxxx. To apply, send cover letter and resume to xxxxxx by closing date of xxxxxx.

Sample Job Ad Two

PRINCIPAL, XXXXXXXX SCHOOL (K-12)

The xxxxxx First Nations seeks an experienced educator to lead its school.

This is a K-12 school that includes a Headstart Program, and has an enrolment of approximately 85 students. The school boasts a strong and supportive parent community that demonstrates a robust sense of pride in the school, as well as solid community partnerships with a commitment to service.

Located in the beautiful central region of British Columbia, the school's mission is ...

If you are a dynamic educator and have demonstrated the following qualities in previous assignments, we'd like to hear from you, with supporting documentation:

- Demonstrated commitment to and experience in instructional leadership and supervision of learning.
 - Knowledge and understanding of evidence based programs and strategies in school improvement, student achievement and staff development.
 - A strong working knowledge of assessment for and of learning.
 - Knowledge and understanding of First Nations education issues and highly successful experience working with First Nations communities.
 - Demonstrated experience establishing a welcoming learning environment that creates a sense of belonging for all students.
 - Commitment to the proven value of a strong parent and school partnership to enhance student achievement.
 - Experience in developing programs in support of student achievement in a K-12 school.
-

Sample Job Ad Three

EDUCATIONAL ASSISTANT - GENERAL

The xxxx school and community believe in the value of high expectations and in every individual's capacity to learn and positively impact the future. Our school staff is committed every day to ensuring our students' success in a responsible and safe environment.

Working under the direction of a teacher and the supervision of a Principal, you will work directly with students to provide a wide range of academic assistance, monitoring behaviour, and facilitating integration in the classroom and school environment.

No two days will be the same—you will be called on to facilitate student learning individually or in small groups, document daily progress, support students in learning social behaviour or life skills, supervise during recess or lunch, and organize classroom items. In this variety-filled role, you may also attend meetings with teachers, parents and therapists, or assist in the student's personal care such as feeding, hygiene or toileting.

Along with Grade 12 (or the equivalent) and current First Aid and CPR certification, you have completed either a Community Support Worker or Educational Assistant Program certificate, or equivalent post-secondary courses in child or adolescent development or behaviour management. One year of experience working with people with special needs is expected; experience in a school setting would be strongly preferred.

Although this is currently an on-call position, it may lead to continuing employment in the future.

With a vibrant community, unique cultural environment, magnificent natural setting, and outstanding recreational opportunities, our community represents a great place to live. Whether you are a hiker, skier, fisher, or lover of new experiences, you'll find what you're looking for here.

2.3 ADVERTISING THE JOB

Deciding *how* to advertise for candidates involves considering a number of factors, and one or more options may be pursued as appropriate and necessary.

To begin, it is always important to be aware if the First Nation has a job posting policy that applies to the school, as well. It is critical to follow any mandatory protocols established by the community.

If it seems likely that an appropriate person may be found nearby, a local job posting may be adequate. In fact, this may be the most cost and time-effective method of recruitment in the short-term, but it will not result in the widest selection of candidates.

In many cases, and especially if specific or extensive skills are required, it may be necessary to advertise more widely to attract an adequate number of qualified applicants. Usually, when hiring a new teacher or principal it is important to cast a wide net, and the most effective hiring processes usually include an effort to search aggressively and strategically. Therefore, it is useful to consider all sources and/or avenues for securing the names of qualified individuals to fill an opening.



Email your school's job posting to info@fnesc.ca and the FNSA will make it available on its Employment Opportunities web page.

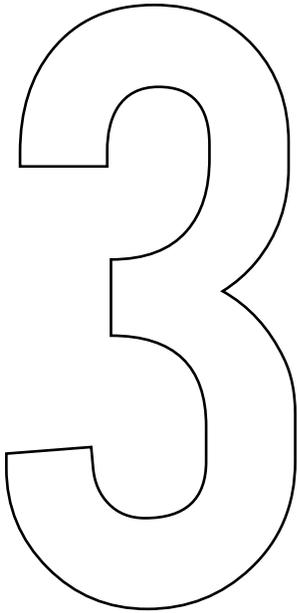
- It is always beneficial to develop and maintain professional networks that may serve as sources for candidates or recommendations of candidates. Notify the people in your network when vacancies arise.
- You can post the job description on the FNSA website and on your own school's website.
- You can also formally advertise positions through pre-service certification programs, professional associations, and Internet-based employment services.

When advertising for a new job, do not forget to update your own school information. A well-placed vacancy announcement will likely increase website traffic and requests for information about your school's size, culture, and performance. To attract the best candidates and reduce staff burden, plan to update the school website to include the most current information, and

have information packages ready for easy distribution – possibly including pamphlets showcasing the community, real estate listings (if applicable), nearby provincial and national park brochures, etc.

When writing a job advertisement, remember that the *Canadian Human Rights Act* prohibits discrimination in employment based on race, national or ethnic origin, colour, religion, sex, sexual orientation, marital status, family status, disability, and conviction for which a pardon has been granted. It is also a discriminatory practice for employers to use or circulate any form of application for employment or to publish any advertisement that expresses or implies any limitation, specification, or preference based on a prohibited ground of discrimination.

However, you can indicate in your advertisement that the successful candidate ideally will have experience working with First Nations people, or that an excellent understanding of a particular First Nation's language, culture, history and customs is required. If included, that criterion must then be used consistently throughout the hiring process and must be directly related to the job requirements. You may also give preference in hiring to First Nations people, as discussed more in Appendix One – which is critical! But apart from job requirements related to a particular First Nation's language, culture, history and customs, the *Canadian Human Rights Act* does not permit preference to be given to members of a particular First Nation, band or tribe, as opposed to First Nations people generally.



Defining the Job Requirements

“Resist quick or emotional decisions. Search Committee members commonly make decisions about candidates within the first three minutes of an interview and base these decisions upon personal attraction, candidate reputation, or candidate similarities to the search committee member. Well-coached candidates know this. In hiring, it is important to consider these initial reactions but remain focused on the goals and criteria for the hire. The hiring process should be methodical in surfacing these initial reactions and helping committee members work with them and other information to make a well-informed decision.” (Clifford, 2012)

3.1 SHORT-LISTING

Assessing Resumes; Relating the Assessment to Your Criteria

The goal of the application review is to identify the top candidates to be interviewed. The best way to meet that goal is to ensure that search committee members fully understand the selection criteria you have collectively established and consistently review applications according to those criteria.

One way to build reliability in the short-listing process is to have members rate a mock application and discuss their opinions. This step will help to build consensus about what the team is looking for in the short-listing process.

The criteria used in short-listing can usually be split into three sections:

- Technical – does the candidate have the necessary education, training or qualifications to succeed in the role?
- Experience – has the candidate worked in a similar role before?
- Personal – has the candidate given examples of when they have demonstrated the required competencies and attributes?

Further, short-listing involves understanding what essential qualities are required to do the job; specific qualifications, subject knowledge, number of years of experience, etc. Applicants who do not demonstrate these essential criteria in their application should not be shortlisted.

Desirable qualities are those which you would like applicants to have, but are not essential to the job itself. These tend to be 'softer' skills, such as specific experience and personality traits that would be beneficial but are not essential, and specific knowledge that can be gained through training and/or experience.

The basic goal of short listing is to exclude unsuitable candidates as quickly as possible. It is useful to start with an idea about the number of candidates that you want to interview. If there are a large number of applications, then the principal, or an experienced member of the hiring committee, may do an initial shortlist based on easy to identify, essential criteria.

To review the remaining applicants, and to keep things fair, it is a good idea to come up with a rating system and rank candidates according to each defined criteria. Developing a screening chart will enable the hiring committee to mark which candidate meets which criteria. The chart allows each member to go through each application, putting a score by each key criteria. The committee members can then quickly see which candidates best meet the school's needs.

Other Tips for Short Listing

- It is critical that the hiring committee members have no conflict of interest.
- Set your educational, professional qualifications and experience minimums and produce a list of all the candidates who meet your minimum criteria first. This will save a lot of time. As you go through this list, rank each candidate based on your essential factors and record the results.

- During the application review, all committee members should have the same information about each candidate, use the same rating form, and submit responses independently.
- A blind review can be considered, which eliminates names and significant identifiers from application forms in order to reduce biases. The hiring committee can ask support staff to eliminate names or other non-vital information prior to the review of applications.
- It is often useful to think carefully about inconsistencies within applications. For example, if you are looking to fill a permanent role and you want a teacher who will commit for a long term, you may want to ignore candidates with a vague employment history and frequent job changes.
- Stick to your criteria as much as possible, but be flexible. It is impossible to expect that a candidate will satisfy all the requirements while having perfect education, professional qualifications and experience. Recognize that you may have to deviate slightly, but to eliminate bias, try to make your decisions based on the person who most closely matches the criteria you have specified for the job.
- When screening resumes, it is important not to focus too heavily on one aspect. Instead, look for a relevant mix of education, experience and skills.

3.2 ARRANGING THE INTERVIEW

Once the screening process is complete, the interview can be arranged.

The implementation of this aspect of the hiring process will depend to a large extent upon specific community needs and circumstances. Some communities, especially those in remote locations and with a very limited budget, will screen promising candidates through a telephone interview, and then have one or a few finalists visit the school in person. Emerging information and communications technologies are making new options available, such as Skype. That being said, it is likely true that the best option is to have them all visit the school and community in person for interviews.

Either approach can be successful, and the suggestions outlined below should be adapted to whatever circumstances exist in your community.

3.3 PREPARING FOR THE INTERVIEW

It is clearly necessary to begin by informing candidates of the date, time, and place of the scheduled interview and make the necessary arrangements.

If the interview will be in person, be sure to establish an understanding regarding expenses etc. For example, if a candidate wants to bring a spouse to visit the community and surrounding area, ensure that there is a clear understanding of who will pay for the associated expenses. Also, you may pre-arrange for candidates (either with or without their spouse) to:

- tour the school (including the classroom he / she will be assigned) and meet the other staff;
- meet key leaders (Board Chair, etc.); and
- check for / tour available housing.

Also, it may be useful to ask the candidates who will be interviewed for additional information that will assist with decision-making. For example, individuals who come for an interview may be asked to fill out a standard application form, which will ensure that you obtain any necessary information that may not be included on all of the resumes. The application form may also include an authorization for reference checks. It is also useful to remind candidate's to bring their references to the interview as you will need to do follow-up.

In addition, employers should ask all short-listed candidates to sign and return a declaration and agreement, verifying that the information provided is truthful and confirming the candidate's permission to contact references and check social media sites. A sample form shared at the 2012 FNSA Effective Hiring Practice Workshop is provided below.

Sample: Applicant's Declaration and Agreement

1. I declare that all of the information I have given in this application form, interview, and in my resume and any other attachments is complete and true in every respect. I understand that if any of this information is found to be untrue or incomplete, or if I fail to respond completely and truthfully to any questions asked, my application may be rejected, or in the event that my application is successful, my employment may be terminated for cause.

2. As a condition of application and possible employment, I authorize [the school] to contact any references, school or faculty associates, or past or present employers named in this application form or in my resume and any other attachments, and to review Social Media sites, for the purposes of:
 - (a) verifying my qualifications and the other information in these documents
 - (b) assessing my past work performance; and
 - (c) determining my suitability for employment.

3. I understand that all references will be received in confidence by [the school] and will not be released to me without the referees' consent.

4. I also understand that any offer of employment is conditional on my providing, to [the school] at my own cost, a current, completed criminal record search pursuant to Criminal Records Review Act sufficient for our purpose and a satisfactory review of the results of the search by [date].

Signature of applicant:

Print Name:

School Official:

Date:



When making plans for the interviews, make sure that you allow adequate time for the interview and all follow-up that will take place. Also, while recognizing that cost constraints may lead some schools to schedule as many interviews as possible within a limited timeframe, if possible it is useful to avoid over-taxing the interview committee, as interviewing can be intensive and therefore tiring.

Arranging the Interview Setting

It is of course important to arrange the interview setting in advance, choosing an appropriate environment – one that is quiet and free from distractions. Generally, it is important to facilitate physical comfort, eye-contact, and privacy.

3.4 DEVELOPING THE INTERVIEW QUESTIONS

Preparing the interview questions might be considered one of the most important aspects of successful interviewing. Today, many human resource experts are recommending that interviewing should be behavioural-based.

There is no real difference in the actual format of the behavioural-based or traditional interview. It still involves an interviewer asking candidates to respond to a predetermined and consistent series of questions. The difference is in the type of interview questions that will be asked.

Behavioural-based interviewing is focused on discovering how the candidate acted in previous specific employment-related situations. The reasoning behind this approach is the growing evidence showing that how a person behaved in the past is a strong predictor of how they will behave in the future – i.e. “past performance predicts future performance.” However, asking questions in this way also provides an opportunity for asking the candidate what they learned from the situation and how they have handled similar situations since then differently. This information can provide information about how flexible and open to learning a candidate may be.

In a behavioural interview, an employer has decided what skills, attitudes and knowledge are needed for the position and asks questions to find out if the candidates have them. But instead of asking how the candidates would behave, the questions focus on how they did behave. The interviewer will ask about how candidates handled a situation in the past, instead of what they might do in the future. The questions aim to elicit specific “real life” examples of how people behaved in situations related to the questions.

Generally, behavioural interview questions are more probing and more specific than traditional interview questions. In a traditional job interview, you will be asked a series of questions which typically have uncomplicated answers like “What did you like about your job?” or “What are your strengths and weaknesses?” or “What were your responsibilities?” Behavioural interview questions will be more focused. For example, “Give an example of a goal you reached and tell me how you achieved it?” or “Talk about a time when you encountered a difficult situation with a supervisor. How did you handle it?” “What would you do differently now if the situation arose again?” The following are also examples of behavioural-based questions.

- Describe a decision you made that was unpopular and how you worked with others to gain their support?
- Have you ever had to convince a team to work on a project they weren't thrilled about? What did you do to improve the situation and how successful was your intervention? What have you learned from that experience?
- Talk about a time in your work life when you have gone above and beyond the call of duty? What was the situation and what motivated you? How did it turn out? Would you do it again?
- Give an example of how you have handled unexpected changes in your work plans. How would you advise others based on your experience?
- Please describe a situation when you handled a difficult issue with a co-worker? What were goals in trying to manage the situation and how successful were you in meeting those goals? What would you do differently if this were to happen today?
- Tell me about a time when you had to work under serious pressure and how you worked to complete the task.

Behaviour-based questions also often involve follow-up questions, asking candidates to share more details about what they did, what they said, and how they reacted or felt.

Other sample behaviour-based interview questions are highlighted below.

Sample Behaviour-Based Interview Questions

How do you handle challenges? Please give an example of how you have done this in the past.

Give an example of how you usually set goals and achieve them.

What do you do if you disagree with someone at work?

Give an example of a time when you used logic to solve a problem.

Give an example of a goal you reached and tell me how you achieved it.

Give an example of a goal you didn't meet. Why? How did you respond? What did you learn from the experience?

Describe a stressful situation at work and how you handled it.

Talk about a time when you didn't have enough work to do? How did you handle the situation?

Talk about a time when a project was put in jeopardy because of an error that you made? What did you do and what have you learned from this situation?

Talk about a time when you had to make a decision involving several options, none of which was perfect. What factors did you consider? In the end, were the factors the right ones? Was the decision a good one or not?

Have you ever postponed making a decision? Why?

Talk about a time when you have had to uphold and implement a policy you weren't in agreement with. How did you proceed? Would you change anything if you were to do this again?

Talk about a time when you have had to juggle multiple projects. How did you manage the situation? Was the strategy successful or would you change it in any way?

Talk about a time when you had to complete a project under very tight and strict timelines. How did you manage the work? Was your strategy successful? What would you do differently given the same situation again?

What do you do when your schedule is interrupted? Give an example of how you handle those situations.

Talk about a project that you worked on as a member of a team. Were you comfortable with the role you played? Would you do it differently if you were to do it again?

Share an example of how you were able to motivate employees or co-workers.

Do you listen? Give an example of when you did or when you didn't listen.

Talk about a time when you handled a difficult situation with a co-worker or co-workers [students, parents, supervisor]. Was your intervention successful? What advice would you give to others who may be facing a similar situation?



3.5 CONDUCTING THE INTERVIEW

The interview process will assist you in choosing the most qualified and appropriate person from among the candidates you have short-listed. Generally, in the interview you are looking for an individual with:

- job related knowledge, skills, ability and experience;
- intelligence and aptitude;
- relevant education and training;
- positive social, personal and behavioural qualities; and
- positive attributes including such traits as dependability, enthusiasm and motivation.

The following is a list of interview stages. It is good to try to include all of these stages in each interview.

1. Preparing for the Questioning: Prior to the interviews, the hiring committee members should review the job description and all information submitted by the applicant, looking for alignment between the school's needs and the applicant's qualifications and experience, and also identifying any questions that arise from the resume, such as unexplained gaps in employment or very frequent job changes. It will be useful to use the interview process as an opportunity to explore these questions.

It may also be useful to have the interview committee members take some time to reflect upon their own experiences to help prepare for an effective interview. For example, they might think about a positive interview experience they had, asking themselves ...

- “What verbal or non-verbal gestures did the interviewers display that made you feel positive?”
- “What actions did the interviewer take before, during, and to close the interview?”
- “How did the interviewers make you feel, and did that help you to provide more meaningful responses?”
- “Is there anything else that you think contributed to the positive experience?”



“Remember ... interviewing is not simply about finding a person. It is a process, involving you deciding whether you want to hire the candidates, and the candidates deciding if they want to work for you.”

(Ron Pound, FNSA Effective Hiring Decisions Workshop, 2012)

2. Opening: This stage should include establishing the objectives of the interview, explaining how the interview will proceed, and exchanging enough information to determine if the interview should continue. The opening stage includes:

- *Putting the Applicant At Ease:* Before you begin the interview, it is helpful to make the applicant feel welcome and at ease by offering a chair, taking the applicant's coat, offering a coffee, introducing yourself, and beginning with a few brief informal comments. It is helpful to provide note paper and a glass of water.
- *Explaining the Objectives of the Interview:* In this stage, you may want to outline the aim of and what will take place during the interview. If any tests will be conducted, it is good practice to explain the tests and their purpose.
- *Explaining Why the Interviewers Will Be Taking Notes:* During the interview, the committee members who did not ask the specific question should all take notes to serve as a reminder of the key points that arise. The person on the interview committee who asks the question (and this person can rotate) will not take notes but will be an active listener for the candidate. They may ask further questions for clarification if necessary. The notes will be important when the interview committee members later discuss their perspectives of the candidates. Usually notes are kept on a template form, which should include a place for recording scores for each question.
- *Outlining the Position:* It is important to provide a brief overview of the position early in the interview. In doing so, you will have an opportunity to ensure that the applicant's expectations are consistent with the available position, and that the applicant understands the situation before a significant amount of information is exchanged.

3. Data Exchange: This is the main stage of the interview, involving the gathering of information you will need to make your selection. The way in which you gather information is crucial, and you need to ask appropriate questions and constantly evaluate the applicant's responses.

Do not be afraid to ask a question in a different way if the first response is unsatisfactory. For example, you may want to say, "That answer didn't really address the issue I was aiming at. Perhaps you could tell me..."

Also don't be afraid to allow for pauses and silences, as the applicant thinks about an answer; don't rush the applicant.

During the data exchange you need to gather information about the work history, educational background, and professional goals of the applicant. Some of the things you might want to explore include:

- specific duties and responsibilities in prior positions;
- accomplishments at previous jobs;
- progress in terms of new positions and employment moves;
- the applicant's likes and dislikes in terms of employment;
- the applicant's ability to work independently / take direction from a number of different people;
- the applicant's ability to make decisions;
- any failures of the past and how they were dealt with;
- the educational background of the applicant;
- reasons for leaving his or her last job / reasons for seeking this position;
- if the applicant has future plans for education, and is interested in further training and schooling; and
- the applicant's long-term employment goals.

Be sure to give the applicant an opportunity to ask you questions about the position and the organization. Again, you want potential candidates to make informed decisions about whether the position and employment setting is right for them. A wrong decision can result in significant costs for both the employer and the new employee. The kinds of questions asked by candidates may also be helpful in your evaluation of the applicant.

4. Closing: After you have gathered all of the information needed to make a hiring choice, you should close the interview. This may involve reviewing your notes and clarifying any points which are still not clear, allowing the applicant an opportunity to ask any questions he or she might have, and establishing a system for follow-up, such as indicating how and when you will notify the applicant of your decision.



“Remember ... you set the tone for the interview, and that is important. A negative interview atmosphere will make candidates feel nervous, which will interfere with your ability to determine their true abilities. If they have a negative experience, people may also share their negative perspectives with others. When conducting an interview, you are the face of the school and community. Make an effort to connect people to the community and make them feel welcome. Doing so may have unforeseen benefits even if the candidate is not hired for the particular position open at the time.”

Ron Pound, Effective Hiring Practices Workshop, 2012.

Other Tips for Interviews

- Ask questions that require more than a “yes” or “no” answer. The best questions encourage the applicant to talk – that is, open-ended questions that require candidates to provide substantive responses about how they might apply skills to the unique needs of your school.
- Follow the pre-determined order of questions. Ask questions in a logical sequence, and don’t jump around from one issue to another.
- Interviews should be structured, but should allow for questions that arise. Follow-up on interesting and unusual responses, and use probing questions to learn more about the applicant.
- As an interviewer, demonstrate enthusiasm for your school and community.
- Do not allow one or a few of the search committee members to dominate questioning.
- Emphasize what is needed and the key aspects of the job.
- Take notes.
- Stay open-minded; don’t make up your mind too early, and don’t let one factor make your decision.
- At the end of the interview, tell the applicant what to expect next, such as when you will call or if the applicant should phone you.

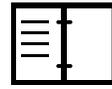
Interview Cautions

There are several questions that are inappropriate and possibly illegal to ask during an interview. For example, you should not ask an applicant about his or her age, height, weight, marital status, spouse’s name or occupation, religion, national or ethnic origin, number and/or age of children, potential disabilities, sexual orientation, affiliation with unions, child care arrangements, or future plans to become pregnant or have children.

The following illustrates an appropriate and inappropriate way to phrase a question during an interview:

An inappropriate question: *Do you have any young children who might interfere with your work?*

A more appropriate question: *In this job, you may be required to work varying hours, such as an occasional Saturday or evening. Will that be a problem for you?*



Interviewers should not make any written comments based on prohibited grounds of discrimination – not even rough notes on interview comment sheets. Personal identifiers (such as noting the person's gender, race, approximate age...) may be useful for remembering the applicants after they have left, but records of that nature increase the risk of a human rights complaint.

Can You Ask the Following Questions?

Have you ever worked under a different name?	Generally, no. You may only ask about this after the selection process, if necessary to check references.
How many children do you have?	No.
Are you planning to start a family soon?	No.
Would you be able to work Saturdays when necessary?	You can ask this if it is a job requirement.
Can we see your birth certificate before we hire you?	You cannot ask this question until after a person is hired.
Do you have any disabilities?	No.
This job requires heavy lifting. Is that o.k. for you?	You can ask this if it is a job related requirement.
Were you born in this country?	No.
If you're hired will you provide a photo for your file?	Yes.
Will you provide a photo to attach to your applications?	You cannot request this until after a person is hired.
Have your wages ever been garnished?	No.
Who referred you for a position here?	Yes.
Are you single, married or divorced?	No.
Do you plan to move any time soon?	No.
Do you own or rent your home?	No.
Do you speak any languages fluently?	You can only ask this if it is a job related requirement.
Do you attend Church? Which one?	No.
What is your ancestry?	No.
What schools have you attended?	Yes.
Have you ever been arrested?	You can only ask about convictions, and only if it is job related.
Who should we notify in case of an emergency?	Yes.
Have you ever had trouble getting credit?	No.
Have you ever worked with a First Nations organization?	You can ask this if it is a job related requirement.



3.6 TASK PERFORMANCE

A variety of tests or task performance activities can also be used to assess the skills of applicants, such as tests to assess the applicant's typing ability, computer skills, and/or ability to write formal letters, fill out forms, and write reports. Such tests can help to distinguish between similarly qualified candidates, and are a consistent measure if all of the tests are performed under the same conditions. However, it is important not to rely too heavily on tests. They should be viewed as one factor among many to be considered, and remember – some people do not respond well to tests, but perform very well in other circumstances.

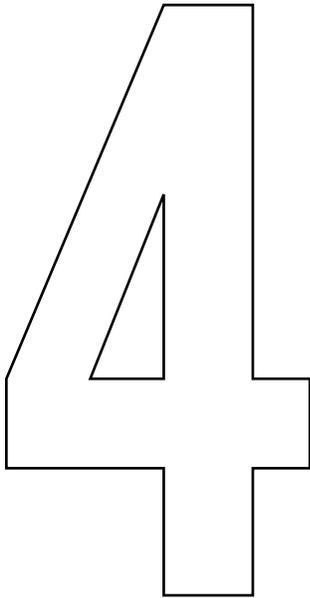
If you ask applicants to take a test as an aspect of the interview process, the tests must be done using a standard format, in a consistent environment, and in a neutral way. In addition, the *Canadian Human Rights Act* does apply to testing. For example, an applicant with a disability may need to be accommodated in performing tests.

If you are filling a teacher position, the most promising candidate or a small number of promising candidates may be asked to teach a 20-minute demonstration lesson to the committee or even to a class of students. If so, candidates should be provided the same instructional objective, and the hiring committee can observe the lesson and then review the session with the candidate. A demonstration lesson can be a vital part of the hiring process; when candidates are able to deliver a well-planned and executed lesson to students under close scrutiny and within tight time constraints, they often have the competence required for the job.



When hiring teachers, it is imperative to consider each candidate's willingness to promote a challenging, caring school environment, and their interest in students of all levels of ability and motivation. In the end, the classroom is where all students spend most of their day, and what happens there significantly influences how they feel about themselves as learners.

(Pasi, 2001)



Following the Interviews

4.1 EVALUATING INTERVIEW RESPONSES

Following each interview, the hiring committee members should take time to consider the applicant, thinking primarily about which candidate aligns best with school priorities and community values.

Hiring committee members should review the notes they took and make any necessary additions. Committee members can also complete an applicant appraisal form individually and then compare scores. The final decision, however, should reflect a number of factors, some of which may not be included on the forms, and it is usually best not to focus too heavily on one or two criteria.

4.2 CHECKING REFERENCES

It is critical to always check an applicant's references before he or she is hired. In fact, reference checks can be among the most reliable selection methods as long as relevant questions are asked. References will provide information that should be a central factor in your decision-making. Therefore, make sure to obtain consent from all candidates in writing to contact their references and prior employers (whether listed as references or not). Of course, if an individual is unwilling to provide that consent, that is a strong indicator of a potential problem.

It is important to make every effort to watch for false references. In rare cases, people who feel that they really need a positive reference may ask a friend or someone they do not know well to write one for them. They may also write a fake reference themselves and sign it with a fake name. In fact, there are even new web-based services that offer fake

work histories and references to job seekers. This makes it more important than ever to follow-up on written references with thoughtful personal phone calls and careful questioning about past employment performance.

As with all of the other steps of the hiring process, it is important to be well prepared for the reference checks; it is useful to have a form prepared before you make calls, and to ask consistent questions. See the Sample Reference Check Questions included on the following page.

4.3 USING TEACHER REGULATION BRANCH RESOURCES WHEN HIRING TEACHERS

The Teacher Regulation Branch (TRB) works in the public interest to set and uphold standards and award certificates to educators who meet those standards. Being certified is the same as being licensed – it allows a person to do something that an uncertified person cannot lawfully do, in this case teach in BC schools.

The TRB issues two categories of certificates – a Certificate of Qualification (COQ), which allows the holder to teach in any school in BC, and the Independent School Certificate (ISC), which allows the person to teach only in independent schools in BC. The TRB also offers a number of services to help schools determine whether an applicant for a teaching job actually holds a teaching certificate.

Teacher Certificate Verification Card

All persons in BC who hold a valid teaching certificate will be issued a teacher certificate verification card. An employer can ask to see the card and check the “valid to” date on it. This information is useful but not foolproof, as the card is issued once a year and reflects the status of the individual at that point in time. The card also does not tell the full story of the status of a teacher. Therefore, two online tools are available to provide more information – the teacher online registry and the online employers area.

Sample Reference Check Questions

- Was the applicant employed by your company? If yes, what was the date of that employment?
- What was his or her job title?
- What was the nature of the work performed?
- If (the applicant) had supervisory responsibilities, please describe how the applicant fulfilled this role in his/her employment with your organization.
- Please describe how (the applicant) worked with others?
- How was (the applicant's) attendance record?
- Did the applicant arrive to work on time?
- How would you describe (the applicant's) ability to complete the work assigned to him/her?
- What strengths did (the applicant) demonstrate?
- What were (the applicant's) areas for improvement?
- How well did the applicant follow instructions when in your employ?
- Please describe how the applicant was able to work independently? Was the applicant reliable?
- Please give examples of how this was demonstrated.
- How would you rate the applicant's performance? Excellent, good, average, below average, or poor?
Please describe why you chose that response.
- Would you recommend this person for a job, or would you rehire (the applicant)? Yes or no? If no, why not?

You may want to add additional questions that are specific for each job, but be sure to ask the same questions in all reference checks.



Teacher Online Registry

All teachers who hold a current teaching certificate will be listed on the online registry, which is available on the TRB website, www.bcteacherregulation.ca. Here it is possible to enter the name of a candidate for a teaching job and determine whether the candidate does indeed hold a valid certificate to teach in BC.

The registry also provides a status history. In Example 1, the certificate holder

has paid the certificate fee and is able to work in BC schools until June 30, 2014. As certificate fees are paid annually, this is the longest period that would be possible in 2013, the time at which this document was written. The status says that the certificate is valid for teaching in both public and independent schools, which means that the certificate holder has qualified for a COQ.

Last Name:	DOE		
Given Name(s):	JANE		
Current Validity Status:	VALID To Jun 30, 2014 ?		
Current Certificate Holder Status:	Certificate Holder Certification valid for employment in BC K-12 public and independent schools.		
Status History ?			
Type	Start Date	End Date	Case Summary
No Status History			

Online Registry Example 1

Example 2 is for a person who has not paid the certificate fee for the 2013-2014 year, and is therefore only valid to June 2013. Note also that the certificate is valid only for teaching in independent schools. This status means that the person has not met all the certification standards required to be issued a COQ.

Last Name:	DOE		
Given Name(s):	JOHN		
Current Validity Status:	VALID To Jun 30, 2013 ?		
Current Certificate Holder Status:	Certificate Holder Certification valid for employment in BC K-12 independent schools.		
Status History ?			
Type	Start Date	End Date	Case Summary
No Status History			

In both of the cases above, the status shows as “No Status History.” This means that there has been no concerns with respect to a breach of the Standards that resulted in discipline. If there is any disciplinary

action with the TRB, it will be shown in the Status History section. The example below shows a certificate holder who has two discipline records with the TRB. By clicking on “Show Details,” a summary of the findings and the disciplinary penalty imposed will be shown.

Online Registry Example 2

It is very important to note that it is possible for a certificate holder to have a disciplinary record and hold a valid certificate. For example, if a certificate holder is reprimanded or has his or her certificate suspended for a short time

as a result of a disciplinary decision, the certificate will, in the case of a reprimand, remain valid or, in the case of a suspension, will become valid again after the suspension is lifted.

The existence of a discipline record is one very important reason to check the registry even if an applicant presents a certification card that is current.

If, when you search the registry, you cannot find the candidate's name, there may be a number of reasons.

1. The candidate may commonly use a different name from his or her legal name. The TRB certifies all teachers using their legal names. Before assuming that the candidate does not hold a teaching certificate, it might be useful to ask for more information from the candidate.
2. The candidate may have a teaching certificate in another province or country but is not yet registered in BC. In this case, more information is needed to determine whether a BC certificate will indeed be issued. The TRB can be contacted to find out if there is an application for certification currently being processed. If the candidate has not applied, it would be useful to talk with the candidate.
3. The candidate may not have a teaching certificate.

Last Name:	DOE		
Given Name(s):	JANE		
Current Validity Status:	Cancelled - Discipline ?		
Current Certificate Holder Status:	Ineligible Not authorized to practise.		
Status History ?			
Type	Start Date	End Date	Case Summary
Suspended - Discipline	Jan 31, 2011	Feb 02, 2011	Show Details
Cancelled - Discipline	Jul 01, 2013	-	Show Details

Online Registry Example 3

Employers Area

The second TRB tool that is available to First Nations schools is located in another area of the website called the Employers Area. Created under provincial legislation in the *Teachers Act*, the Employers Area is intended to provide potential employers of teachers with a record of their employment as teachers in BC. The legislation requires all public school districts and all independent schools to upload onto the TRB website a list of all TRB certificate holders who worked for them in the previous year. This list must be submitted annually. The legislation then provides for potential employers, including First Nations schools, to view the lists by searching for an individual's name.

By agreement signed by the FNSA and the BC College of Teachers in April 2009, First Nations schools are now also able to upload lists of the teachers they employed. First Nations schools are encouraged to upload a list of all of their employees who hold a TRB certificate. The list should be uploaded by October 15 of every year and should include anyone who was employed in the previous school year, even if the employment was of short duration.

The intent of the Employers List is to provide potential employers with a way to determine if an applicant is being honest about past employment as a teacher in BC. For example, a certificate holder who was in trouble with a previous employing school may not want this information to be available to a potential employer. Accordingly, they may provide a resume that omits the record of employment they want to hide and replace it with something innocuous, like child rearing or travelling.

By searching the Employers Area, you can see the BC K - 12 employment history of the individual candidate. This information is kept for the last ten years, although the Employers Area has not been available for a full ten years at the time of writing this document. If you see that an applicant was indeed employed as a teacher, although the resume says that he or she was doing something else, this may be a good reason to ask some direct questions of the candidate and to ask the candidate for permission to speak with that employer. Failure to allow you to do so would be grounds for concern.

In order to access the Employers Area, a principal or other authorized person needs to contact the TRB to request a password. This password will allow access to the website where the information is provided and where you can upload your information. The staff at the TRB can assist by providing written instructions and help as you navigate the site.

Once you have logged in using your new login and password, you will want to navigate to the employers area home page on the TRB website. You can find this page by clicking on “employers” at the top of the TRB home page.

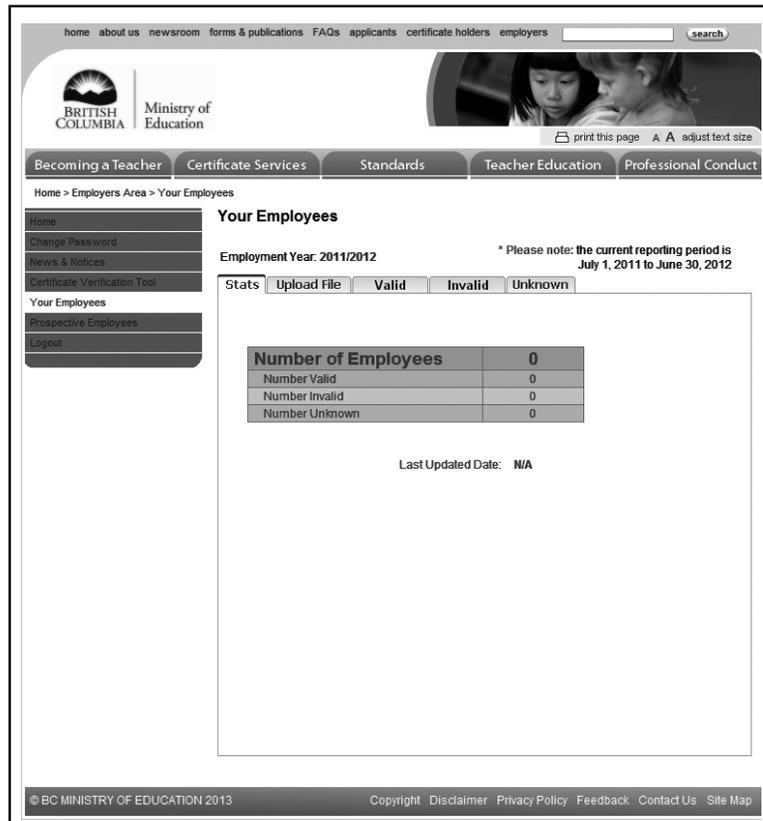
The screenshot shows the website's header with navigation links: home, about us, newsroom, forms & publications, FAQs, applicants, certificate holders, employers, and a search box. The Ministry of Education logo is on the left, and a photo of children is on the right. Below the header is a menu with links: Becoming a Teacher, Certificate Services, Standards, Teacher Education, and Professional Conduct. The main content area is titled "Employers' Area Login" and includes a sidebar with links: Home > Employers, Employers Login, Change Password, Forgot Password, and Apply for Login. The main content area contains a login form with fields for "1. Employer ID:" and "2. Password:", each with a question mark icon, and a "Login >" button. Below the form are links for "If you have forgotten your password please click here" and "To apply for a login please click here". The footer contains copyright information: © BC MINISTRY OF EDUCATION 2013, and links for Copyright, Disclaimer, Privacy Policy, Feedback, Contact Us, and Site Map.

Once on the page, you can then access a number of services, shown on the page below.

The screenshot shows the website's header with navigation links: home, about us, newsroom, forms & publications, FAQs, applicants, certificate holders, employers, and a search box. The Ministry of Education logo is on the left, and a photo of children is on the right. Below the header is a menu with links: Becoming a Teacher, Certificate Services, Standards, Teacher Education, and Professional Conduct. The main content area is titled "Employers Area" and includes a sidebar with links: Home, Change Password, News & Notices, Certificate Verification Tool, Your Employees, Prospective Employees, and Logout. The main content area contains a "Welcome bwu," message and four service cards: "News & Notices" (Access information pertinent to Employers in British Columbia.), "Certificate Verification Tool" (Upload a list of certificate holders you are wishing to enquire about. Download files containing the Teacher Regulation Branch's up-to-date information about the status of all certificate holders contained in your list.), "Your Employees" (Upload a list of teachers employed between July 1, 2011 to June 30, 2012.), and "Prospective Employees" (Search for prospective employees from our Employers Registry.). The footer contains copyright information: © BC MINISTRY OF EDUCATION 2013, and links for Copyright, Disclaimer, Privacy Policy, Feedback, Contact Us, and Site Map.

The first two, “news and notices” and “certification verification tool,” are not the subject of this handbook, and so are not discussed here. However, you may find the information there useful for other purposes.

The two tools that are of consequence for hiring certificate holders are the last two. “Your Employees” allows you to upload a list of the certificate holders that you have employed over the previous year. This is required of independent schools and schools that are administered by a public school district.



By clicking on “Upload File” an employer can then attach a list of all the certificate holders who worked for them in the last school year. This list will remain in the system for at least ten years and will confirm or refute statements related to teaching history. Contact the TRB for instructions on how to upload the file.

home about us newsroom forms & publications FAQs applicants certificate holders employers (search)

BRITISH COLUMBIA Ministry of Education

print this page A A adjust text size

Becoming a Teacher Certificate Services Standards Teacher Education Professional Conduct

Home > Employers Area > Your Employees

Your Employees

Home
Change Password
News & Notices
Certificate Verification Tool
Your Employees
Prospective Employees
Logout

Employment Year: 2011/2012 * Please note: the current reporting period is July 1, 2011 to June 30, 2012

Stats Upload File Valid Invalid Unknown

The *Teachers Act* states that, on or before October 15 of each year, an employer (a board of education or independent school authority) must submit to the Director of Certification [through the Teacher Regulation Branch of the Ministry of Education] information that identifies the certificate holders employed by the employer during the 12-month period from July 1 in the previous year to June 30, including information that identifies any certificate holders currently employed by that employer. The Act also requires that the Director of Certification create and maintain a list of all of the certificate holders who are employed by boards or authorities for use by prospective employers.

Upload Employee List * Click [here](#) to view the required fields.
* Please upload your [Tab Delimited Text File](#) below.

Employee List File Location:

Uploaded List(s)

FileName	Uploaded On	Size(kb)	Emp Year	Status	Edited On
ttttt.bt	01/17/2013	1	2011/2012	Rejected	
Employees.bt	01/10/2013	1	2011/2012	Rejected	
Employees.bt	01/10/2013	1	2011/2012	Rejected	
Employees.bt	10/15/2012	5	2011/2012	Rejected	
Emolowees.bt	10/15/2012	5	2011/2012	Rejected	

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Employers who wish to check the work history of an applicant can access the part of the employers area called “Prospective Employers.” Once you agree to the terms of using the site, you will be able to search for an individual certificate holder by entering either their certificate number or their full name.

The screenshot shows the website interface for the British Columbia Ministry of Education. At the top, there is a navigation menu with links: home, about us, newsroom, forms & publications, FAQs, applicants, certificate holders, and employers. A search bar is located to the right of the employers link. Below the navigation is the Ministry of Education logo and a header image of two children. A secondary navigation bar includes: Becoming a Teacher, Certificate Services, Standards, Teacher Education, and Professional Conduct. The main content area is titled "Home > Employers Area > Prospective Employees". On the left is a sidebar menu with options: Home, Change Password, News & Notices, Certificate Verification Tool, Your Employees, Prospective Employees, and Logout. The main content area is titled "Prospective Employers" and contains the following text: "To search the Employment Registry please enter your prospective employee's certificate number (L or J followed by 6 digits) below." Below this is a "Certificate Number:" label and an input field. Further down, it says "You can also search by the educator's last name and/or given name(s)." with "Last Name:" and "Given Name(s):" labels and corresponding input fields. A "Search" button is located to the right of the input fields. At the bottom of the page, there is a footer with copyright information: "© BC MINISTRY OF EDUCATION 2013" and links for Copyright, Disclaimer, Privacy Policy, Feedback, Contact Us, and Site Map.

The TRB also issues letters of permission to individuals who do not possess a certificate. These are generally issued when an employer cannot find a qualified teacher to fill a position. Please contact the TRB for further information on how to apply for letters of permission.

First Nations school representatives are also encouraged to contact the TRB with any questions about using either the register or the employer's area.

Contact Us

The Teacher Regulation Branch is open from 8:30am to 4:30pm, Monday through Friday.

Telephone: 604 731-8170 (Metro Vancouver)

Toll-Free Telephone: 1 800 555-3684 (within North America)

Fax: 604 731-9142

Mailing Address

Teacher Regulation Branch
Ministry of Education
400-2025 West Broadway
Vancouver, BC V6J 1Z6

4.4 MAKING AN OFFER

Once a decision has been made, the successful applicant is sent an offer of employment.

An applicant may be told in person or in a telephone conversation that he or she has been selected for the position, but the conversation should be to the effect that the employer will be making an offer in writing, and that the conversation itself should not be regarded as the offer.

The terms and conditions of employment must be specified in the letter of offer and any conditions (such as a criminal record check or verification of teaching qualifications) should be spelled out in the written offer. The written offer should also indicate that the employee will be bound by the school's employment policies, as amended from time to time. It is also important that the applicant is told in the letter whether there is a probationary period and the possibility that it may be extended.

An offer letter can also contain other details, such as the term of employment, with a start date, hours, and the starting salary and benefits. A full job description can also be included with the offer as an attachment. Policies or documents referred to in the written agreement should be available for the person to review before accepting the employment. Potential employees should have a clear understanding of their job responsibilities prior to accepting employment.



The offer also may be subject to the signing of a contract, or to the signing of the offer by both the employer and employee. A contract that an employee is required to sign after employment has been commenced, or even after the offer has been accepted, may be unenforceable.

More details about written employment agreements are provided in Appendix Three.

Licensing and Membership Checks

If a job applicant is required to be a registered member of an organization or to be licensed, those requirements should be specified, preferably in writing, at the time you offer the employment. For example, an offer to a teacher could state that the offer is conditional upon the applicant holding a valid certificate issued by the BC Teacher Regulation Branch (or holding other specified qualifications) and providing satisfactory evidence of that status (or the other qualifications). Licensing requirements should also be indicated in the job advertisement. If it is a condition of employment that membership in good standing in a professional association or other body be maintained, that should also be specified in the employment contract.

Criminal Record Checks

In the *Criminal Records Review Act* (BC), “employer” is defined as including a board as defined in the *School Act* and an authority as defined in the *Independent School Act*. An “employer” is required to ensure that every individual who is hired for employment involving work with children and every employee who works with children undergoes a criminal record check (section 8(1)). An employer must not require an applicant for employment to authorize a criminal record check unless the employer has offered employment to the applicant and that offer could be subject to a satisfactory criminal records check (section 8(2)). The employer is also required to inform individuals of the requirements of the Act if those individuals are employed by or are applicants for employment with the employer in a job that involves working with children (section 8(3)).

Whether or not your First Nations school falls within the definitions described above, it is wise to require satisfactory criminal record checks of all employees working in a school as a condition of employment. This is an area where federal human rights legislation may be helpful in that the *Canadian Human Rights Act*

only prohibits discrimination based on a criminal conviction for which a pardon has been granted. The *BC Human Rights Code*, on the other hand, prohibits discrimination because someone has been convicted of an offence that is unrelated to the employment or intended employment, which is a less certain test to meet.

Criminal record checks are intended to help protect children from abuse. Already more than 280,000 British Columbians are subject to having such a check in order to access a range of employment opportunities, including anyone who works with children. This issue is discussed in more detail in Appendix Four, in the section outlining the *Criminal Records Review Act* Implementation Guide.

Employers should be aware, however, that simply meeting the requirements of the *Criminal Records Review Act* may not be enough to protect them from a claim of negligence if an employee who works with children abuses them in the course of that employment. Also see the section on the *Criminal Code* in Section 7 of this Handbook.

4.5 RESPONSIBILITIES TO UNSUCCESSFUL CANDIDATES

Ideally, you will write to the other applicants thanking them for their interest in the position and informing them that it has been filled. You may want to suggest to them that you will keep their resumes on file for future consideration for a set period of time, but if you do so, you should be sure to consider their resumes for all relevant positions that become available during that time.

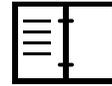
Document Each Step in the Process

It is also important to be fully prepared to account for your hiring decision if asked to do so by an unsuccessful applicant. Hiring processes should be formalized and systematic, and each step in the hiring process should be documented. Should questions arise about search committee decisions, documentation can then be produced to show that the search proceeded systematically and without bias.

It is important to remember that any template forms used during the interview process could be requested in a legal challenge. Therefore, when taking notes during the interview, personal or “off the cuff” comments should be carefully avoided.

It is also important to remember that privacy considerations apply with respect to the successful candidate's personal information and the personal information of any unsuccessful candidate. Thus, while you should be able to justify the decision if ever called on to do so, care will need to be exercised in how any decision is explained to an unsuccessful candidate.

Sample Rejection Letters



SAMPLE LETTER FOR APPLICANTS NOT INTERVIEWED

Dear (Applicant),

Thank you for your recent application. We sincerely appreciate your interest in our school.

I regret to inform you that we have offered the position to another applicant whom we think best meets our needs for the position.

Again, we thank you for your interest in our school, and the time you spent in submitting an application. We wish you every success in your job search.

Sincerely,

SAMPLE LETTER FOR APPLICANTS WHO WERE INTERVIEWED

Dear (Applicant),

Thank you for your recent application and interview for (the position). We sincerely appreciate your interest in our school.

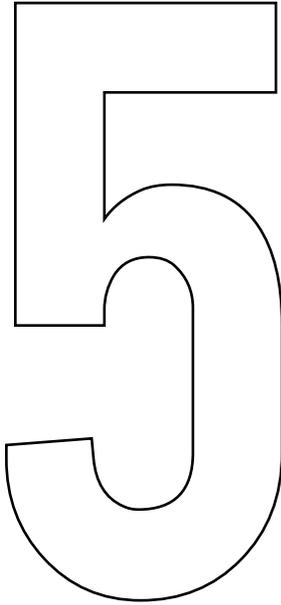
I want to inform you that we have offered the position to another applicant whom we think best meets our needs for the position. It was a difficult decision because a number of applicants were strong candidates. We will keep your application on file for a period of 60 days in the event that another position for which you are qualified becomes available.

Again, we thank you for your interest in our school, and for attending the interview. We wish you every success in your job search.

Sincerely,

A further note about retention.

Challenges related to principal and teacher recruitment are all too common for many First Nations schools. Too often, educators with limited experience accept a job with a First Nations school, and then leave the school when they are able to access other opportunities. If this is a particular concern for your school, make it an explicit hiring criterion, and address the issue during the interview process. You could ask “ideally we want a principal who will commit for a minimum of “x” years. Where do you see yourself in the next five years?” If the criterion is a high enough priority, you could select a candidate who may be less skilled, but with significant potential given training and experience, if he or she is committed to remaining in the position for a long-term. You of course cannot require a new employee to stay in the job after hiring, but you can offer incentives, such as a retention bonus payable after a defined length of employment (say three years), or a commitment to pay for training after an agreed upon term of employment has been met.



Supporting Employees

5.1 NEW EMPLOYEES

Probationary Periods

It is common for new employees to be subject to a probationary period, which is intended to allow for a mutual assessment as to whether the employee and job are suitable for one another.

If there is to be a probationary period, it must be mentioned as a condition in the offer of employment, and the implications of dismissal during the probationary period must also be made clear. Usually the length of the probationary period also is noted in the letter of offer. If an employee has accepted a position without having been told about the probationary period, the employee will have a strong argument that probation was not a term of the contract.

The length of the probationary period is usually three months, although it is sometimes extended – particularly for managers, whose period is sometimes six months or longer. The time period should be chosen to allow the new employee to become familiar with the job and the work environment, and to demonstrate his or her ability to fulfill the job requirements.

Employment agreements can indicate expressly that employment may be terminated for any reason without notice or compensation, except as required by statute, during the probationary period. In the absence of a written agreement to that effect, the employment of a probationary employee may only be terminated without notice or cause if the

employer determines during the probationary period that the person is not suitable for the position and the termination of employment occurs before the end of the probationary period.

It is important to distinguish between a probationary period for new employees, and a trial period for existing employees moving into a new position. While these are sometimes referred to as similar, they are not the same thing. If an existing employee is offered a new position within the school, consider whether a new probationary period will apply. In those circumstances, the letter offering the new position should clearly state whether any new probationary period is a condition of the offer and what will happen if the employee fails to complete the probationary period successfully. For example, will he or she be able to return to the position previously held?

Before the probationary period has expired, it is important to review the employee's performance and either continue their employment or let them go. Unjust dismissal provisions now in place make it much more difficult to terminate employment after employees have more than one year's service.

Therefore, all new employees should have their performance evaluated prior to the completion of their probationary period, and again about one month before their first anniversary of employment.

It is a good practice for employers to evaluate new employees two or three weeks before the end of their probationary period. At that time, the employee should also have an opportunity to express any concerns or difficulties to the employer to ensure that employment continues to be successful. Employers should be careful about "extending" probationary periods. It is generally preferable to evaluate the employee well in advance of the end of the probationary period and ensure that the probationary period is long enough to allow for that evaluation.

Sample probationary period policies are included in Appendix One.

Sample Probationary Period Employee Review Form

Name: _____ Position: _____

Start Date: _____

Overall Assessment: Satisfactory Unsatisfactory

This probationary review has been discussed with the employee, who has been recommended for:

Retention Dismissal Extended Probation**

*** extended probation should only be used in exceptional circumstances and the employee should have been aware of the possibility of extended probation at the time the original offer of employment was made*

Reasons: *(if extended probation, state action necessary before next review)*

Additional Comments: _____

Employee's Comments: _____

Signature of Employee: _____ Date: _____

Signature of Supervisor: _____ Date: _____



Orientations

When a new employee begins work, it is important to give the person a full orientation. The orientation may involve a tour of the school, as well as any other relevant facilities and offices.

Information about parking and times for access to the school should be provided. It is useful to introduce the new employee to as many other staff members as possible, and to make him or her feel comfortable in the working environment.

You may also want to have an orientation package prepared for all new employees. The package may include a brief history of the school, its mission, vision, and goals, and a brief profile of the staff and students (being sensitive to privacy concerns, of course).

Having previously provided a job description or list of duties in the offer of employment, it is useful to provide another copy of the job description in order to reiterate the job expectations. Any relevant regulatory requirements (such as health and safety manuals) should also be included in the orientation package. The package should include a copy of the policy manual, and/or an outline of policies and practices related to issues such as vacation, sick days, maternity leave, parental leave, compassionate care leave, bereavement leave, the possibility of pay increases or salary scale, smoking, overtime, general dress, and reporting. It may also include the FNSA Standards for Teachers in First Nations Schools. Performance management practices and expectations should be provided. If the harassment policy, workplace violence, and privacy policy are not in the policy manual, then they should also be provided. A description of any benefits and training / employment opportunities would also be useful, as would an indication of any support groups or employee assistance programs which may exist. Ideally, someone will review the orientation package with the new employee and answer any questions the employee may have.

The school may well have other policies and procedures that are not directly related to the individual's employment but that the employee will be required to comply with and/or enforce.

For example, the school should have policies governing use of the Internet, e-mail and instant messaging by staff and students. In addition to harassment policies aimed at employees, schools should also have policies to cover teacher interactions with students and matters such as bullying or harassment of students by each other. Part of the orientation process should involve providing copies of such policies to new employees and explaining their application.

Because most new employees in a school setting will begin employment at the beginning of the school year, many of these matters can be conveniently dealt with as part of a general orientation or in-service days for all staff prior to the start of classes in September. If, for example, the school will have a general orientation for staff at the end of August of each year, then the start date for the employment contract should take that into account.

Sample New Employee Information Checklist

Employee's Name: _____

Date: _____

Supervisor: _____

Please check off the following topics as they are discussed with the new employee.

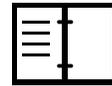
- | | | |
|--|---|---|
| <input type="checkbox"/> Rate of Pay | <input type="checkbox"/> Pay Schedule | <input type="checkbox"/> Probation Period |
| <input type="checkbox"/> Performance Reviews | <input type="checkbox"/> Benefits | <input type="checkbox"/> Working Hours/Shifts |
| <input type="checkbox"/> Safety Procedures | <input type="checkbox"/> Smoking Policies | <input type="checkbox"/> Sick Days |
| <input type="checkbox"/> Vacations | <input type="checkbox"/> Discipline | <input type="checkbox"/> Termination |

Please also ensure that the following steps are taken:

- | | | |
|---|---|---|
| <input type="checkbox"/> Introduce co-workers | <input type="checkbox"/> Show washrooms | <input type="checkbox"/> Show lunchroom |
|---|---|---|

Signature of Employee _____

Signature of Supervisor _____



Sample New Employee Information Checklist

NEW EMPLOYEE ORIENTATION

As a new employee we would like to acquaint you with our policies and benefits programs. All employees, upon joining our staff, will be asked to participate in an orientation. The following checklist is provided to serve as a guide to that orientation.

Issuance of School Materials	Received	Policy Review	Discussed
Standards for Teachers _____	<input type="checkbox"/>	Performance Review _____	<input type="checkbox"/>
School Policy Manual _____	<input type="checkbox"/>	Benefits and Insurance _____	<input type="checkbox"/>
Equipment Manuals _____	<input type="checkbox"/>	Vacation Procedures _____	<input type="checkbox"/>
Safety Manuals _____	<input type="checkbox"/>	Sick Days and Leave of Absence _____	<input type="checkbox"/>
Building Keys _____	<input type="checkbox"/>	Paid Holidays _____	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	Grievance Procedures _____	<input type="checkbox"/>
Information Review	Discussed	School Principles	Discussed
Hours of Work/Overtime _____	<input type="checkbox"/>	School Mission, Vision, and Goals _____	<input type="checkbox"/>
School Security / Alarm System _____	<input type="checkbox"/>	Student Discipline _____	<input type="checkbox"/>
Payday, Deposit of Pay, Pay Stub _____	<input type="checkbox"/>	Relationships with Other Organizations _____	<input type="checkbox"/>
Classification _____	<input type="checkbox"/>	Other _____	<input type="checkbox"/>
Use of Office Equipment _____	<input type="checkbox"/>		
Safety Procedures _____	<input type="checkbox"/>		
Dress Code _____	<input type="checkbox"/>		
Bell Times _____	<input type="checkbox"/>		

I have received the items and discussed the topics outlined above, and I am satisfied with my orientation.

Signature of employee: _____



5.2 RECORD KEEPING

Each school must maintain a confidential file with complete information for each employee. That file should include the employee's application, any relevant authorization forms, the orientation checklist, evaluation forms, and disciplinary notes.

The *Canada Labour Code* provides explicit obligations with respect to the records an employer is required to keep in relation to an employee.

Section 24(2) of the *Regulations* requires every employer to keep the following records for at least three years after work is performed by an employee:

- a. the full name, address, Social Insurance Number, occupational classification and sex of the employee, and where the employee is under the age of 17 years, the age of the employee;
- b. the rate of wages, clearly indicating whether it is on an hourly, weekly, monthly or other basis and the date and particulars of any change in the rate;
- c. where the rate of wages is on a basis other than time or on a combined basis of time and some other basis, a clear indication of the method of computation of that basis;
- d. the hours worked each day;
- e. the actual earnings, indicating the amounts paid each pay, with a recording of amounts paid for overtime, vacation pay, general holiday pay, bereavement leave pay, termination pay and severance pay;
- f. the payments made each pay day after deductions, with clear details of the deductions made;
- g. the dates of commencement and termination of annual vacations, and the year of employment in respect of which each such vacation is given;
- h. any written agreement between the employer and the employee to postpone or waive the employee's entitlement to annual vacation;
- i. the dates of commencement and termination of any pregnancy leave, maternity leave, parental leave, or compassionate care leave granted to the employee, a copy of any notice concerning the leave, and any medical certificate submitted by the employee in respect of that leave;

- j. the dates of commencement and termination of any job modification or reassignment of the employee related to pregnancy or maternity and a copy of any notice provided by the employer concerning the job modification or reassignment;
- k. any general holiday or other holiday with pay granted to the employee pursuant to Division V of the *Canada Labour Code*, any notice of substitution of a general holiday required to be posted, and, if applicable, proof of agreement for the substitution of a general holiday by at least 70 percent of affected employees;
- l. where hours of work are averaged, any notice concerning the averaging of hours of work, details of any reductions in the standard and maximum hours of work, and the number of hours for which the employee was entitled to be paid at the overtime rate of wages;
- m. the employer's pay periods;
- n. a copy of any medical certificate provided in respect of sick leave and any request made for the certificate by the employer, and any notice of termination of employment or intention to terminate employment;
- o. the dates of any bereavement leave granted to an employee;
- p. any notice of a work schedule that is required to be posted under the Code, and proof of agreement to the work schedule by at least 70 percent of the affected employees.

Employers should also keep records of the employee's date of birth and telephone number, and all benefits paid to the employee by the employer.

If, for purposes of determining annual vacations, an employer has determined a "year of employment" to be something other than a calendar year or the period of 12 consecutive months beginning with the date the employment began or any subsequent anniversary (s. 183 of the *Code*), then the employer is also required to keep a record of any notice provided to employees. Section 12 of the *Regulations* requires that the employer give employees notice 30 days in advance.

Where an employee has been absent from work due to a work-related illness or injury, the employer is required, where reasonably practicable, to return the employee to work after the absence (s. 239.1(3) of the *Code*). For at least three years after the employer's obligation to return the employee to work expires, the employer is required to keep the following information:

- a. detailed reasons for the employee's absence;
- b. copy of any certificate of a qualified medical practitioner indicating that the employee is fit to return to work; and
- c. the date the employee returned to work, or a copy of any notification from the employer to the employee that return to work was not reasonably practicable and the reasons why it was not.

The *Regulations* also require an employer to preserve the confidentiality of any certificate of a qualified medical practitioner provided to the employer concerning the employee. This obligation and the other record keeping obligations mentioned above should be considered together with the requirements of the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, which is addressed in Section 7 of this Handbook.

5.3 SUPPORTING SCHOOL STAFF

Professional Development and Supervision of Teaching

As described above, there is significant evidence that the quality of teachers is central to the experience of learners – be that positive, or negative. Research also shows that teachers differ significantly in effectiveness. In fact, individual differences in teachers will never go away, but effective forms of professional development and support can reduce those differences to the point that every teacher should be good enough so that all children learn at high levels. In fact, even the most talented teaching staff needs effective support, and no teacher will remain current for their entire career without meaningful professional development.

Teachers in First Nations schools, who often work in significant isolation, have particularly noted the importance of professional development opportunities, suggesting that it is easy for them to become isolated and unaware of the latest educational trends. In those circumstances, providing access to high quality, appropriate support and opportunities for professional learning can actually help to retain teachers who might otherwise become frustrated and leave for other employment.

The issue of professional development planning and implementation is discussed in detail in the FNSA 2012 publication *A Handbook for Principals in First Nations Schools*.

What is important to note in terms of supporting educators is the growing consensus of researchers and practitioners that systemic, ongoing teacher professional development is more effective than traditional one-time workshops. Reflecting this perspective, the FNSA has chosen to promote Professional Learning Communities (PLC) as a key element of school professional development efforts. The PLC approach is described in the *Handbook for Principals*, and additional information is also available from the FNSA.

Further, the Professional Growth Process (PGP) is a central component of the FNSA's ongoing efforts to support First Nations schools in BC and to address the need to help principals provide more effective support to their teachers through supervision for learning. The focus of the FNSA PGP is the promotion of principals' and teachers' professional growth through a supportive process for identifying priorities for improvement and monitoring principals' and teachers' effectiveness and demonstrated progress. FNSA staff members, called Regional Principals, are available to visit participating schools to mentor principals in undertaking their supervision for learning role and facilitate ongoing teacher growth. The focus of the effort is support for teacher growth – **not** evaluation. Any principal interested in learning more about participation in this process is encouraged to contact the FNSA.

Other Training and Upgrading Opportunities

In addition to the specific importance of teacher support, a comprehensive training and development program for all staff can prove to be both useful and motivational. To be most successful, such a program will be designed to meet the needs of both individuals and the school. It is important that all employees are provided reasonable opportunities for training, both as a matter of good employee relations and in order to avoid perceptions of favouritism or discrimination. An employee who feels that he or she has been dismissed as a result of inadequate training for a position, for example, may be more likely to harbour ill will and bring a complaint against an employer. Therefore, you may want to develop a clear policy regarding training programs and the development of necessary skills and abilities (see a sample policy in Appendix One).

Training programs, it should be remembered, do not necessarily involve formalized classroom courses or workshops. Training and skills development may involve on-the-job-training, special projects, job rotation, job shadowing, apprenticeships, correspondence or reading programs, self-study or group work.

Employee Safety

Employers should have policies related to safety included in their employment policies or in an employee handbook. Further, Section 135 of the *Canada Labour Code* requires that every employer shall, for each workplace controlled by the employer at which 20 or more employees are normally employed, establish a safety and health committee.

The Canada Occupational Health and Safety Regulations contain provisions requiring employers to have hazard prevention programs. The employer now has to analyze the work environment to identify what could cause an unsafe condition and implement measures to prevent an accident or injury from occurring. Section 19.6 requires the employer to provide health and safety education to each employee, including education about the employer's hazard prevention program. This is an ongoing obligation. The employee education program must be reviewed and if necessary revised at least every three years, whenever there is a change in conditions in respect of the hazards, and whenever new information in respect of a hazard in the workplace becomes available to the employer. Section 19.6(4) provides that each time education is provided to employees, the employees must acknowledge in writing that they received it and the employer must acknowledge in writing that it was provided. The employer must keep records of the education provided to each employee for a period of two years after the employee ceases to be exposed to a hazard.

For more information, employers should consult Part 2 of the *Canada Labour Code* regarding occupational safety and health, as well as the *Canada Occupational Health and Safety Regulations*. For employers whose labour relations are within federal jurisdiction, Part 2 of the *Canada Labour Code* and the federal regulations will be of greater concern than the *Workers Compensation Act and the Industrial Health and Safety Regulations*.

A good safety policy will make it clear that all injuries and work-related conditions must be reported to the employer immediately. A sample violence report form is included below.

Health and safety legislation also provides for three basic principles for workers.

1. The right to know about health and safety risks and hazardous materials, and the right to know about health and safety procedures.
2. The right to participate in health and safety policy development and decisions, such as through health and safety committees.
3. The right to refuse dangerous work.

Violence Report Form Sample

Date of Incident: _____ **Time:** _____

Exact Location of Incident: _____

Full Name of Employee Involved: _____

Employee's Position: _____

Type of Incident: (check appropriate descriptions)

Assault Threat Physical Verbal Weapon Involved Intimidation

Person Committing Assault/Threat

Full Name: _____ Parent Student Staff Member Other: _____

Address: _____

Action Taken (check as relevant):

Principal Notified Safety Committee Notified Police Notified Parent/Guardian Notified

Description of Injury (if any) _____

Was a physician involved? Yes No

Was work time lost? Yes No

Describe the Incident: (include what happened, under what conditions, what contributed to the incident, and what people involved said and did) _____

Description of Person Who Committed Assault: (If their identity is unknown and court action may result)

Male Female Weight: _____ Height: _____ Hair Colour & Length: _____

Any Identifying Marks: _____

Witnesses (if any) _____

Employee Statement Available? Yes No (if yes, attach; if no, why)

Completed By: _____



5.4 PERFORMANCE MANAGEMENT

The general purpose of a performance management system is to establish a clearly understood process for monitoring the work being done by the staff of a school in order to support employees, promote and reinforce effective work practices, and to maintain excellence in the school. The approach established by each school should be clear to the entire staff, and standard procedures and forms should be used to ensure consistency and fairness for all employees. The performance management process should provide feedback on past performance, as well as expectations for the future.

Teacher Evaluations

Given their unique and important role with students, the FNSEA has developed an evaluation policy specifically for teachers, as included in Appendix Five. This policy has been reviewed by legal counsel and is endorsed as a possible sample for use by interested schools. The policy suggests teacher evaluations should be conducted on an as-needed basis. Alternatively, the promotion of teacher growth through supervision of teaching should be an ongoing focus.

5.5 REASSIGNMENTS

There are benefits to promoting from within, but care must be exercised in doing so. If a school has a policy of allowing reassignments from within, it must be sure to do that whenever possible if it is to maintain credibility.

Of course, if your school allows reassignments of staff to new positions, it is important to keep in mind that if the new position proves to be inappropriate for the employee, his or her previous position may no longer be available, which can result in the loss of employment. This must be made clear in writing in all circumstances.

5.6 COMPENSATION

Compensation policies usually include salary, payroll procedures, and all forms of wages and benefits.

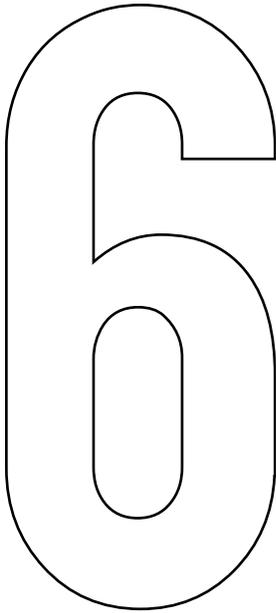
Each school should decide on a clear salary policy and should communicate that policy to its employees and prospective employees. You may want to use salary ranges for positions at various levels, such as a secretarial range, a range for custodians, etc. You may also want to outline clear salary increase policies, which can be based on cost of living factors, length of service, performance (merit), or a combination of factors. Policies regarding the effects of demotions or poor performance on salaries are also important considerations.

Salary reviews are most effective when a clear job description is available as a measurement of performance.

Overtime compensation should be paid according to the provisions of the relevant legislation (see Section 7 of this Handbook). Overtime policies often vary between positions. It is also common for organizations to indicate that overtime is not desirable, and that it should only occur when absolutely necessary and with the approval of the principal.

Payroll policies should also be developed according to the relevant legislation and should indicate the pay periods, method of payment, calculation of earnings, and necessary deductions.

Any employee benefits you offer should be clearly outlined for all employees. Some of the considerations in this regard include insurance benefits, sick leave, leaves of absence, vacation, paid holidays, travel policies, employee discounts, pension plans, and employee assistance programs. Benefits may also include reimbursement for education, such as paying some or all of the costs associated with college, university, correspondence or other training courses. Although the appendices are not exhaustive, they provide more detailed information about some of the minimum requirements set out in the *Canada Labour Code* in relation to these matters.



Dealing with Concerns in a Non-Union Environment

6.1 ADDRESSING PROBLEMS

Employers often find themselves facing challenging circumstances with employees and need to carefully consider their options, which may include working with the employee to change behaviour, applying permitted discipline, or even termination, with or without cause.

The following discussion assumes that the workplace is not a unionized environment.

The appropriate action for an employer to take in any case will depend upon the circumstances. In some cases, conduct may justify immediate dismissal without compensation or notice (for example, serious incidents such as sexual misconduct). For less serious offences, however, other discipline, such as verbal or written warnings, may be appropriate. Additionally, not only the conduct meriting discipline, but also the employee's work record and circumstances should be considered in determining the appropriate action to be taken. Also, before any disciplinary action is taken, the employer should have investigated the problem fairly and given the employee a reasonable chance to respond to any accusations or complaints.

The employee's privacy should be respected as much as possible in the process that is put in place.

Depending on the nature of the problem, a verbal correction or warning to the employee may be the appropriate first step. In other cases – such as instances in which one or two verbal warnings have been ineffective or if the problem is more serious – a written warning or reprimand will be appropriate. In any case, a written record of any warning should be retained, even if the warning was delivered verbally. Typically, the written record should include the circumstances that led to the discussion, the main points that were made with respect to the actions or behaviours that were unacceptable, and the actions or behaviours that will be expected in the future.

In considering what to include in a verbal warning ...

- if the conduct in issue is inconsistent with recognized standards or the job descriptions, this should be noted.
- if dates are important – such as completing report cards by a certain time – these should be included.

If the conduct is more serious or if after verbal warnings the situation does not improve, the next step may involve giving a written warning or reprimand. Again, it is important to have documentation if an employee is being informed that his or her performance is not satisfactory. Like the verbal warning, the written warning should include expectations as to how the performance can be improved – what constitutes appropriate behaviour, conduct or competence.

It is a good practice to have employees read and sign an acknowledgement that they have received and read the reprimand. This does not, of course, mean that they agree with it.

Examples of some of the issues that may warrant warnings include, among others: lateness; rudeness to fellow employees, parents or students; inappropriate language; excessive personal telephone calls or personal visits; and below standard or unsatisfactory work. Again, every circumstance must be considered individually.

Unless it is specifically agreed in the employee's contract, a non-unionized employer does not have the right to suspend an employee for misconduct. Rather, the employer's choice is whether to terminate the employee or to continue the employee's employment with a verbal or written warning as described above.

The most serious employment consequence is termination. If termination is necessary, it is useful to be very clear about the reasons for the dismissal, and to avoid any personal criticisms or attacks. Termination is discussed more fully below.

6.2 TERMINATION

When an employer terminates employment, they may have both contractual and statutory obligations to employees. The statutory obligations are set out in the *Canada Labour Code*, discussed in more detail below. The contractual obligations of an employer will depend on the terms of a written agreement and will also be determined by terms the court will imply.

A contract of employment may be terminated “for cause” or “without cause” (subject to the provisions of the *Canada Labour Code*.) Where a contract is terminated because of a fundamental breach of it by the employee (i.e., an incident of significant misconduct that makes the continuation of the employment relationship impossible), the employer is said to have “cause”, and can terminate the employment immediately, without notice or compensation. Where an employer simply wishes to end the relationship (again, subject to the unjust dismissal provisions of the *Canada Labour Code*), then on termination the employer will be obliged to pay severance, both under the *Code* and under the terms of the employment contract.

Having a written contract of employment that clearly deals with the consequences of a termination is critical for employers. If a contract of employment is silent on what happens on termination of employment, then the courts will find that it is an implied term of the contract that an employee is entitled to reasonable notice of termination. The court will determine the amount of notice that is reasonable based on several factors, such as the employee’s age, qualifications, length of service, position held, and how difficult it will be for the employee to replace the employment. The upper limit for notice in British Columbia is generally considered to be 24 months. However, the amount that an employer may ultimately have to pay may be increased as a result of damage caused to the employee by the manner in which they were terminated.

A terminated employee has a duty to try to find other employment, and, subject to the terms of an employment contract, income from other employment earned by the employee during the notice period will be deducted from damages.

If a court decides that the appropriate amount of notice was not given, then the court will award damages to put the employee in the same position as if the appropriate amount of notice had been given. As a result, the obligation during the notice period extends not only to providing wages, but may also include benefits. Because of possible liability for benefit coverage that the employee was unable to replace or which the employee did not realize he or she should have taken steps to replace, it is imperative that the employer notify

each employee in writing at the time of termination of precisely what benefits will cease and on what dates. The termination letter should also indicate the possibility of conversion from group to individual coverage where that is an option.

The best way for an employer to limit its contractual liability to a terminated employee is by having an express written employment contract which sets out the obligations of the employer at termination (with and without cause), as long as it does not violate the statutory requirements.

1. Written Employment Agreements

If a written employment agreement exists, it should be examined to see if it contains a provision dealing with termination. If it does, then that provision should be followed when an employee is terminated. If, for example, the contract provides that termination without cause can be effected by giving three months' notice by March 31 of each year, then the employer should comply with that provision. If notice is given on April 1, the employer will be in breach of the contract.

2. Statutory Obligations

Employees with more than one year's service tend to have greater protection under the *Canada Labour Code* than they do at common law. It is important to note, however, that common law obligations will not always meet the employer's obligations to an employee whose employment is being terminated. Some of those protections are summarized below.

(a) Individual Terminations of Employment

Under the *Code*, where an employer terminates the employment of an employee who has completed three consecutive months of continuous employment, the employer must, except where the dismissal is for just cause, give the employee either:

- (i) notice in writing, at least two weeks before a date specified in the notice, of the employer's intention to terminate employment on that date; or

- (ii) two weeks' wages at the regular rate of wages for regular hours of work, in lieu of the notice.

For the purpose of the *Code's* notice of individual termination requirement, an employer is deemed to have terminated employment when the employer lays off an employee.

After notice of termination has been given, the employer cannot reduce the employee's wage rate or alter any other term or condition of employment except with the written consent of the employee.

If an employee to whom notice has been given continues to be employed by the employer for more than two weeks after the date specified in the notice, the employment must not, except with the written consent of the employee, be terminated except by way of dismissal for just cause, unless the employer gives a new notice or pay in lieu of notice.

(b) Severance Pay

Except where the dismissal is for just cause, an employee who has completed 12 consecutive months of continuous employment and whose employment is being terminated by the employer is entitled to be paid the greater of:

- (i) two days' wages at the employee's regular rate of wages for his regular hours of work in respect of each completed year of employment that is within the term of the employee's continuous employment with the employer; and
- (ii) five days' wages at the employee's regular rate of wages for regular hours of work.

For the purposes of determining entitlement to severance pay, an employer is deemed to have terminated the employment of an employee when the employer lays off that employee.

For the purpose of regulations of the *Canada Labour Code* regarding termination, individual termination, and severance pay, the regulations provide that a layoff of an employee shall not be deemed to be a termination of the employment where, among other things:

- a. the term of the layoff is three months or less;
- b. the term of the layoff is more than three months and the employer:
 - (i) notifies the employee in writing at or before the time of the layoff

that he or she will be recalled to work on a fixed date or within a fixed period neither of which shall be more than six months from the date of the layoff, and (ii) recalls the employee to employment in accordance with subparagraph (i); or

- c. the term of the layoff is more than three months and (i) the employee continues during the term of the layoff to receive payments from his employer in an amount agreed on by the employer and the employee (ii) the employer continues to make payments for the benefit of the employee to a pension plan that is registered pursuant to the *Pension Benefits Standards Act* or under a group or employee insurance plan, (iii) the employee receives supplementary unemployment benefits, or (iv) the employee would be entitled to supplementary unemployment benefits but is disqualified from receiving them pursuant to the *Employment Insurance Act*.

In determining the term of layoff for purposes of (a) and (b) above, any period of re-employment of less than two weeks duration shall not be included. An employer's ability to fund severance pay will have no bearing on its liability.

(c) Unjust Dismissal

Pursuant to section 240 of the *Code*, any person who has completed 12 consecutive months of continuous employment and who is not a member of a group of employees subject to a collective agreement may make a complaint to an inspector under the *Code* if the employee has been dismissed and considers the dismissal unjust. A dismissal may be unjust even if a court would find the dismissal to be for cause. Unjust dismissal is therefore a higher standard than that required by the common law.

Section 167(3) of the *Code* provides that Division XIV of the *Code* (the unjust dismissal provisions) does not apply to or in respect of employees who are managers.

Where an employer dismisses a person to whom section 240 applies, that person or an inspector may make a written request to the employer to provide a written statement giving the reasons for the dismissal. An employer must respond to such a request within 15 days. If the matter is not settled, the complaint will be referred to an adjudicator.

Section 242(3.1) of the *Code* says no complaint shall be considered by an adjudicator in respect of a person where:

- a. that person has been laid off because of lack of work or because of the discontinuance of a function; or
- b. a procedure for redress has been provided elsewhere in the *Code* or under any other Act of Parliament.

Where an adjudicator decides that a person has been unjustly dismissed, the adjudicator may require the employer to:

- a. pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;
- b. reinstate the person; and
- c. do any other thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal.

A “just” dismissal is one that is based on an objective, real and substantial cause, independent of caprice, convenience or purely personal disputes, entailing action taken exclusively to ensure the effective operation of the business. A high standard must be met to justify dismissal under the *Code*.

Being laid off is something different from being dismissed for purposes of Division XIV of the *Code*. A lay off means the employer’s temporary or permanent termination of the employee’s employment because of the employer’s economic concern of lack of work or the discontinuance of a function.

A person will not likely be considered to have been “laid off because of lack of work” unless that was the real, essential, operative and dominant reason for the termination of employment. It would be problematic if another employee was hired to do the work of the laid off employee or if the employee’s work was contracted out to someone else.

With respect to “discontinuance of a function”, a “function” must be the “office” that contains the bundle of responsibilities, duties and activities that are carried out by a particular employee or group of employees. The employer must be acting in good faith. Where a set of duties is handed over entirely to another person, or if the activity or duty is simply given a new and different title to fit another job description, there would likely not be a “discontinuance of a function.” However, there is authority that if the activities that form part of the bundle are divided among other people, there would be a “discontinuance of a function.”

(d) Group Termination

Additional provisions apply when an employer terminates the employment of a group of 50 or more employees. If that circumstance arises for a First Nations school, specific legal advice should be sought.

3. Common Law (Contractual) Obligations

It is important to remember that the amount of notice set out in the *Canada Labour Code* is the minimum notice or severance pay required. In the absence of an employment contract stating otherwise, the employee is also entitled to notice pursuant to the common law.

(a) Termination For Cause

At common law, an employee who is dismissed for cause is not entitled to any notice of termination, essentially because cause for dismissal means that the employee has fundamentally breached the contract of employment. What amounts to cause is strictly construed by the courts. Generally speaking, only very serious misconduct such as theft or rank insubordination will justify immediate dismissal. Other matters which, if proved, may be considered cause for dismissal include dishonesty, disobedience, insolence, absenteeism, breach of trust, conflict of interest, sexual misconduct towards students or incompetence.

A key consideration in deciding whether to terminate for cause is how strong the employer's evidence will be should the matter proceed to a trial or other hearing. It is impossible to know the strength of your case without conducting an investigation. That means gathering and reviewing any relevant documents and speaking with any witnesses (including other employees).

You may need to suspend the employee with pay while the investigation is being conducted. Until the employment has been terminated, benefits should be continued.

Before terminating for cause, you should also consider the employee's length of service and past work record, as well as the message being sent to other employees or to students by allowing conduct to continue without any consequences. Another important question to explore before terminating for cause is whether the employee has a physical or mental disability that is contributing to the problematic conduct. If that is the case, then you may have

a duty to accommodate the disability by referring the employee to an employee assistance program, if you have one, or to another treatment program, before terminating.

Lack of work or the employer's financial difficulties are not cause for dismissal.

(b) Termination Without Cause

If an employer dismisses an employee without cause, then assuming a written agreement does not address termination, it will be an implied term of the contract of employment that the employee is entitled to reasonable notice of termination. Failure to provide sufficient notice or pay in lieu of notice may lead to a wrongful dismissal claim by the employee. Damages are assessed by the court as the amount necessary to put the employee in the same position as if he or she had been given reasonable notice of termination.

Damages are not limited to base salary during the notice period but may also include expected commissions, bonuses, profit sharing, salary increase and increased benefits during the term of reasonable notice and the value of benefits such as expense accounts, company car, medical and dental plans and insurance pension plans.

(c) What Constitutes Reasonable Notice?

In determining what constitutes reasonable notice of termination, the courts have generally applied the principles articulated by McRuer C.J.H.C. in *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (Ont. H.C.) atp 145:

There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

These factors are not exhaustive. The courts have considered other factors, for example, whether the employee was induced to leave previous secure employment. In those circumstances, the amount of notice to which the employee is entitled will be increased.

Another factor that may increase the damages payable on wrongful dismissal is the manner of termination. Increased damages may be payable where the

manner of dismissal causes additional harms beyond those typically associated with the loss of one's position, such as humiliation, embarrassment and damage to his or her self-worth and self-esteem.

The Supreme Court of Canada has held that the tactic of maintaining an unfounded allegation of cause until the start of the trial constituted bad faith conduct in the manner of dismissal.

The Supreme Court of Canada has described the obligations at the time of dismissal as follows:

The obligation of good faith and fair dealing is incapable of precise definition. However, at a minimum, I believe that in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive.

The Supreme Court of Canada described a number of examples that constitute bad faith. For example, an employer who maintains a wrongful accusation of theft and communicates this accusation to other potential employers of the dismissed employee will be acting in bad faith.

Another example involves a case where an employee's position was eliminated and he was told by the employer that another position would be found for him, and that this new assignment would necessitate a transfer. However, at the same time that the employee was being reassured about his future, a senior representative of the company was contemplating his termination. When a position could not be found, the decision was made to terminate the employee. This decision was not communicated to the plaintiff for over a month despite the fact that his employers knew he was in the process of selling his home in anticipation of the transfer. News of his termination was communicated to the plaintiff abruptly following the sale of his home. This behaviour amounted to bad faith.

As a result, it is vital that employers terminate employees in a careful and considered way. Before an employer raises an allegation of cause, the employer should think long and hard about whether it can substantiate such an allegation.

One factor that is particularly relevant in determining the amount of notice a teacher is entitled to where the contract does not specifically address it, is the timing of the termination. For teachers, there are certain times of the year when

it will be easier or harder for them to find a job. Employers should try to dismiss them at a time that allows them to apply for the jobs available during the next school year.

(d) Mitigation

Upon dismissal, unless the contract provides for a fixed notice period or otherwise excludes mitigation, the employee has a duty to mitigate his or her damages by seeking new employment. The damage award may be reduced to the extent that new employment is obtained during the period of reasonable notice or if the necessary steps to mitigate are not taken.

(e) Outplacement Consulting

As indicated above, the sooner the employee finds a new job, the better it is for the employer in terms of its liability. Therefore, the employer may want to consider the use of outplacement counsellors who could help the employee find a new job sooner or choose a new career direction.

There are also other important but less quantifiable benefits that can be realized in the morale of the remaining employees and in the recruitment of further employees by using outplacement counsellors. An employer is more likely to establish a reputation for dealing with terminations in a sensitive and successful manner for both the employer and the employee.

(f) Benefits

In assessing damages, it is important to remember that the purpose of damages is to put the employee in the same position he or she would have been in if reasonable notice had been given. If the employee had worked through the period of notice, then the employee would have been entitled to benefits. The loss of benefits that would have been provided during that period can create large liabilities for the employer if handled incorrectly.

If the employee is not able to or does not replace some of these benefits, the employer may be liable not just for the cost of purchasing the benefit but for the loss of the benefit itself. This is perhaps the most dangerous area to be considered.

A typical example is long-term disability coverage. It is very difficult to obtain personal long-term disability insurance. And the employer may not be able to continue long-term disability coverage for employees who are not "actively" at work. The availability of benefits will depend not only on the terms of agreement between the employer and the employee, but also on the terms of

the insurance if coverage is provided by a third party. The practical problem is that an employee whose employment has been terminated could have a claim for long-term disability benefits within the period of reasonable notice.

Life insurance benefits can lead to similar problems. Sometimes employees can replace these benefits, but it is either too expensive or they are unwilling to do so. In some cases, the employee may not be able to replace the benefit due to poor health or because the benefit is not available outside a group plan.

If the employee is disabled or dies during the notice period, the employer may be found liable, not for the lost premiums, but for the actual benefit. In the worst case, an employer may have to provide the equivalent of disability benefits until the coverage would have run out, usually until the employee attains age 65.

Therefore, it is wise to continue, when possible, some of the employee's benefits, particularly those that create large liabilities (such as life insurance, extended health, dental or long-term disability) during the notice period or at least until a settlement can be reached with the employee.

It is also important to advise the employee in writing which benefits have ceased and give sufficient warning to the employee that it is his or her responsibility to replace coverage. It is often a term of group plans that the group life insurance coverage can be converted to an individual plan without the need for medical examination if the conversion option is exercised within 30 days of termination of employment. By notifying the employee of his or her responsibility and of the options available, the employer can at least argue that the employee had notice of the termination of the benefits and had an opportunity to mitigate losses by obtaining the benefits personally. The employer may want to offer to pay the cost of the employee replacing the benefit through an individual plan, or seek the approval of the insurer to continue the terminated employee on the group plan for the duration of the notice period. Insurers seem more willing to agree to continue long-term disability coverage for employees if the employee's salary is being continued.

Most importantly, the contract of employment should explicitly state that certain benefits, such as disability benefits, may not be continued during the notice period and that the employee accepts that fact when accepting employment.

4. Constructive Dismissal

A dismissal might take place without actually using the words "you're fired." A unilateral change to a fundamental term of the employment contract can

amount to constructive dismissal, which gives the employee the same rights, and subjects the employer to the same liabilities, as if employment had been terminated without cause. For example, a demotion or a significant reduction in compensation can amount to a constructive dismissal.

Constructive dismissal can often be difficult to identify and the appropriate course of action for both the employer and employee may be difficult to determine. The employer should avoid making changes to the terms and conditions of employment before being satisfied that they will not amount to a constructive dismissal. Similarly, the employee should be satisfied that a constructive dismissal has taken place before raising the allegation and leaving his or her job.

5. Releases

It is generally preferable not to make any payment in respect of damages for termination of employment without a formal release from the employee. Always get a release or, at a minimum, have clear language stating the severance package is in full satisfaction of any claims the employee may have relating to his or her employment. Note that a release will not be effective if the only payment to the employee is the amount required by statute. There must be some other consideration to the employee.

6. Records of Employment

When filling out the Record of Employment of the employee (for Employment Insurance), it is essential that it be filled out frankly. Some employers try to help the employee by saying something that will help the employee get Employment Insurance benefits. For example, the employer will indicate that the employee was laid off rather than, for example, terminated for cause. The reason for termination given in the Record of Employment should reflect the circumstances – it may become evidence in a later proceeding.

6.3 REPORTING TO THE TRB

As described above, employers may sometimes have to discipline or terminate an employee for misconduct or incompetence. There may also be circumstances where an employee resigns before disciplinary action can be taken. If this is the case, it is important that the TRB receives information about the misconduct or incompetence of a certificate holder so that the TRB can

discharge its role as the regulator of teachers in BC and make a decision about whether further discipline should be imposed by the TRB, including whether the person should continue to hold a certificate.

Role of the Commissioner

The Commissioner is appointed under the *Teachers Act* to ensure that concerns about teacher competence and conduct are addressed fairly and in the public interest. The Commissioner is independent and has two main functions under the Act: 1) he is responsible for overseeing all discipline processes and 2) he considers certification appeals. If a certificate holder is disciplined, the discipline will be listed on the TRB website, which provides vital information to employers in BC and throughout the world.

There are four main avenues by which a conduct or competence concern can be brought to the Commissioner's attention.

1. **Public:** Complaints may be made directly by members of the public about the competency or conduct of a certificate holder or holder of a letter of permission.
2. **Certificate Holders:** Pursuant to section 38 of the *Teachers Act*, all certificate holders (including holders of letters of permission) must report any instances in which certificate holders cause:
 - physical harm to a student,
 - sexual abuse or sexual exploitation of a student, or
 - significant emotional harm to a student.
3. **Employers:** Reports may be made by a superintendent or a board (pursuant to section 16 of the *School Act*), or a principal or school authority (pursuant section 7 of the *Independent School Act*) regarding:
 - the suspension, dismissal or discipline of a certificate holder, or
 - conduct or competence of a certificate holder that is in breach of the certification standards if it is in the public interest to do so, or
 - the resignation of a certificate holder, if it is in the public interest to do so, or
 - discipline of a certificate holder for misconduct that involves

- i. physical harm to a student or minor
 - ii. sexual abuse or sexual exploitation of a student or minor
 - iii. significant emotional harm to a student or a minor
4. **Commissioner Initiated:** The Commissioner may become aware of information related to the competence or conduct of a certificate holder, including information about criminal proceedings.

For the purpose of reporting to the Commissioner, First Nations schools fall into the following three categories:

- i. independent schools, which fall under the *Independent School Act*;
- ii. schools operated within the public system, which fall under the *School Act*; and
- iii. schools that are not affiliated with either the public or independent school systems in BC.

If Your School is an Independent School or Is Within the Public School System

The two pieces of legislation that govern reporting by employers in public and independent schools are the *School Act* and the *Independent School Act*. Because most First Nations schools that are governed by these pieces of legislation are independent schools, the pertinent section of that Act, section 7, is set out below. Note that section 16 of the *School Act* is identical in all practical aspects, except that it includes wording that is specific to public schools, such as replacing “principal” with “superintendent.”

- 7 (1) In this section, “authorized person” means
- (a) a person who holds a certificate of qualification issued under the *Teachers Act*, but does not include a principal,
 - (b) a person who holds an independent school teaching certificate issued under the *Teachers Act*, but does not include a principal, or
 - (c) a person who holds a letter of permission issued under the *Teachers Act*.

- (2) If a principal
 - (a) suspends or dismisses an authorized person, or
 - (b) disciplines an authorized person for misconduct that involves
 - (i) physical harm to a student or minor,
 - (ii) sexual abuse or sexual exploitation of a student or minor, or
 - (iii) significant emotional harm to a student or minor.

the principal must without delay send to the commissioner a report regarding the suspension, dismissal or disciplinary action.

- (3) If an authority suspends or dismisses an authorized person or disciplines an authorized person for misconduct referred to in subsection (2) (b),
 - (a) the authority must without delay notify the principal of the suspension, dismissal or disciplinary action, and
 - (b) the principal must without delay send to the commissioner a report regarding the suspension, dismissal or disciplinary action.
- (4) A report referred to in subsection (2) or (3) (b) must
 - (a) be in writing,
 - (b) be signed by the principal, and
 - (c) include reasons for the action taken by the principal or authority.

- (5) The principal must send a copy of a report referred to in subsection (2) or (3) (b) to the authorized person who is suspended, dismissed or disciplined.
- (6) If the principal considers any conduct by, or the competence of, an authorized person to be in breach of the independent school teaching certificate standards or the certification standards, as applicable, the principal must send to the commissioner a report, in writing, regarding that conduct or competence if it is in the public interest to do so.
- (7) The principal must send a copy of the report referred to in subsection (6) to the authorized person whose conduct or competence is the subject of that report.

- (8) If an authorized person resigns, the principal must
- (a) report, without delay, the circumstances of the resignation to the commissioner if it is in the public interest to report the matter, and
 - (b) send a copy of the report to the authorized person who resigned.
- (9) A principal who has made a report to the commissioner under this section in respect of an authorized person must, without delay after being requested to do so by the commissioner,
- (a) provide the commissioner all of the records available to the principal that relate to the matter in respect of which the report was made, and
 - (b) send to the authorized person a copy of the records referred to in paragraph (a).
- (10) A principal who fails to report as required under subsection (2), (3) (b) or (8) commits an offence.

Report of dismissal, suspension and discipline regarding principals

- 7.2 (1) If an authority
- (a) suspends or dismisses a principal, or
 - (b) disciplines a principal for misconduct referred to in section 7 (2) (b)
- the authority must without delay send to the commissioner a report regarding the suspension, dismissal or disciplinary action.
- (2) The report referred to in subsection (1) must
- (a) be in writing,
 - (b) be signed by the chair of the authority, and
 - (c) include reasons for the action taken by the authority.

- (3) The authority must send to the principal a copy of the report referred to in subsection (1).
- (4) If an authority considers any conduct by, or the competence of, a principal to be in breach of the independent school teaching certificate standards or the certification standards, as applicable, the authority must send to the commissioner a report, in writing, regarding that conduct or competence if it is in the public interest to do so.
- (5) The authority must send to the principal a copy of a report sent to the commissioner under subsection (4).
- (6) If a principal resigns, the authority must
 - (a) report, without delay, the circumstances of the resignation to the commissioner if it is in the public interest to report the matter, and
 - (b) send to the principal a copy of the report.
- (7) An authority that has made a report to the commissioner under this section in respect of a principal must, without delay after being requested to do so by the director of certification,
 - (a) provide the commissioner all of the records available to the authority that relate to the matter in respect of which the report was made, and
 - (b) send to the principal a copy of the records referred to in paragraph (a).

What does section 7 of the Act mean for you, as the employer? In particular, section 7(2) means that the Principal has a legal obligation to report an authorized person (someone who holds a teaching certificate or letter of permission) whenever the conditions set out in sections 7(2) or 7(6) are satisfied. A failure to make a report under section 7(2) is an offence. This includes whenever an authorized person is suspended or dismissed or when disciplinary action is taken against an authorized person for physically harming a student or minor, for engaging in sexual abuse or exploitation of a student or minor, or for causing significant emotional harm to a student or minor. Legally, the employer **MUST** report – there is no discretion. Note that the requirement is in effect for both students and minors who are not students.

Section 7(6) of the legislation also requires the principal to make a report to the Commissioner if the Principal believes that the conduct or competence of an authorized person does not meet the applicable standards and it is in the public interest to make a report. The standards are set out on the TRB website. Again, note that the obligation is on the principal to make the report. In making the report the principal must consider that it is in the public interest to do so. What does this mean? Defining the public interest is difficult and, generally, it is wise to report when you are in doubt.

If Your School is NOT an Independent School or Affiliated with the Public School System

Even if a school is not regulated under the *School Act* or *Independent School Act*, there are still obligations on individuals associated with those schools who are certificate holders or who hold a letter of permission to report the misconduct of other employees of that school who are also certificate holders or working on a letter of permission. Section 38 of the *Teachers Act* provides as follows.

- 38 (1) An authorized person must promptly provide to the commissioner a written and signed report if the authorized person has reason to believe that another authorized person has engaged in conduct that involves any of the following:
- (a) physical harm to a student;
 - (b) sexual abuse or sexual exploitation of a student;
 - (c) significant emotional harm to a student.
- (2) Subsection (1) applies even if the information on which the belief is based
- (a) is privileged, except as a result of a solicitor-client relationship, or
 - (b) is confidential and its disclosure is prohibited under another Act.
- (3) An authorized person who knowingly reports false information under subsection (1) commits an offence.

- (4) No action for damages lies or may be brought against an authorized person for reporting information under this section unless the authorized person knowingly reported false information.

Additionally, if the person considering whether to report is not a certificate holder and does not hold a letter of permission, they can report as a member of the public about the conduct or competence of an authorized person under Part 6 of the *Teachers Act*. With these provisions, employers, authorized persons, and the public have all the tools necessary to ensure that appropriate reports are made to the Teacher Regulation Branch.

The requirement to report to the Commissioner is critical so that actions can be taken that will prevent dangerous, incompetent or unscrupulous teachers from continuing to teach. Firing a teacher will protect children in one school, but taking away a certificate will protect children all over BC and beyond.

Consider some examples, and whether a principal would be required to report to the Commissioner, would choose to report, or would likely not report. Each case needs to be considered on the basis of the school category and the teaching status of the employee.

An employee is ...

1. *terminated for shouting at and humiliating students.*

If the school is an independent or public school, the employer must report the termination under section 7 of the *Independent School Act* or section 16 of the *School Act*. Both of these Acts require reports for any suspension or termination.

As well, if the school is not in either category but an employee (such as the principal) is an authorized person, then s/he must report under section 38 of the *Teachers Act*. Arguably any shouting at or humiliating of students that results in a teacher being fired could be considered significant emotional harm under section 38 (1) (c) of the Act.

Finally, if the person considering making the report is not an authorized person, he or she may make a person complaint under Part 6 of the *Teachers Act*.

2. *reprimanded for stealing \$300.00 from a charitable endeavor undertaken at the school. The money was repaid.*

These actions could certainly be construed as breaching Standard 2 (Educators act ethically and honestly) and so a report may be made. The decision for the principal under section 7(6) of the *Independent School Act* is whether the public interest requires reporting. All factors should be considered here – Is this a repeat action? Is the employee remorseful? Did they take responsibility and make restitution? Is it in the public interest for a school to employ a person who steals from charities? However, it is always possible, when disciplinary action is taken, to report and leave the decision to the Commissioner.

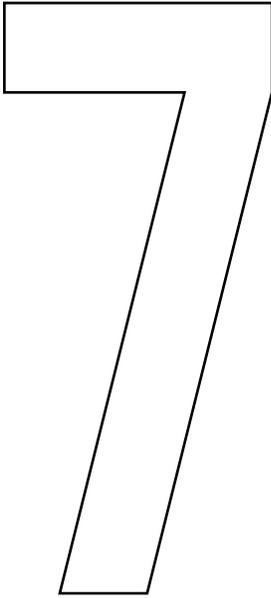
3. *late for work on two occasions over a six month period.*

If this is the only time that such lateness has occurred, it is likely not a matter that need be reported, unless disciplinary action (suspension or termination) was imposed for it. The infraction is relatively small and has not yet shown a pattern. However, lateness can put the safety of students at risk and care should be taken to ensure that all students are safe. A pattern of lateness may be cause for concern and for disciplinary action and/or reporting.

4. *suspended for using inappropriate language with elementary students.*

This scenario is similar to #1. As this case involves a suspension, it must be reported under the *Independent School Act* or *School Act*.

The most important thing to remember in considering all of the issues outlined above is that anyone can contact the TRB at any time for further information and assistance. If you are unsure, you are encouraged to ask for help.



The Context for Employment Policies and Approaches

RELEVANT LEGISLATION

7.1 APPLICABILITY OF THE CANADA LABOUR CODE

A. Introduction

In dealing with employment issues for First Nations schools, it is important to keep in mind which structure is being used. Generally, First Nations schools are based on one of three models:

1. local, band-operated schools (generally under the administration of a community-based school governing agency pursuant to education agreements and/or treaty rights);
2. federal schools controlled by Aboriginal Affairs and Northern Development Canada (AANDC) pursuant to the *Indian Act* and/or individual treaties; or
3. provincial public or private schools.

Whether or not employees in First Nations schools are subject to federal, provincial or First Nations jurisdiction over labour relations is the first question that needs to be addressed. The determination of this issue is very fact-specific and depends on a number of factors, such as which model is used, the location of the school, the curriculum, and the terms of any funding agreements. There have been recent developments at the Supreme Court of Canada which have attempted to clarify the determination of whether the labour relations of a First Nations entity are governed by federal or provincial laws.

For purposes of this Handbook, it is assumed that most First Nation schools are subject to federal laws regarding labour relations, and this

Handbook focuses on the application of federal laws. If your organization may be subject to provincial jurisdiction, specific advice on the topics covered here should be sought. While there are many similar provisions in British Columbia law to those discussed under federal law, there can be important differences. If a First Nation aspires to exercise jurisdiction over labour relations on reserve, language regarding jurisdiction over labour matters should be included in written agreements whenever possible.

Assuming then that federal laws apply and that there are presently no treaty provisions or bylaws affecting labour matters, the key statutes relevant to First Nations schools are the *Canada Labour Code* and the *Canadian Human Rights Act*. Those statutes set the minimum standards that employers must meet. In order for employees to enforce their rights under those statutes, they must use the mechanisms created in the statutes. Under the *Canada Labour Code*, that means a complaint may be filed with Labour Canada. Similarly, under the *Canadian Human Rights Act*, a complaint may be made to the Canadian Human Rights Commission.

The contract of employment between the employer and employee can be oral, in writing, or partly oral and partly in writing. Even if there is nothing on paper saying this is your employment contract, after an employer has offered a job (with the terms being specified sufficiently) and a person has accepted that offer, a contract has probably been created. The fewer the terms that are specified in writing, the more a court will have to imply terms if a dispute arises. But the court will not imply terms that are inconsistent with the statutes. And if a written contract contains a term that is less favourable to the employee than the statutory requirements, that term of the contract will be void; a court will not enforce it.

If the employees are represented by a union, then the collective agreement negotiated between the union, on behalf of the employees, and the employer establishes the terms of employment. Because very few First Nation schools' employees in British Columbia are represented by unions, the focus here is on non-union contracts of employment. In either case, however, the statutory provisions cannot be ignored.

B. Canada Labour Code

The *Canada Labour Code* consists of three parts. Part I deals with industrial relations, including the way in which unions become certified to represent employees and how collective agreements are negotiated. Part II deals with occupational health and safety, and Part III deals with standard hours, wages,

vacations and holidays. Part III is the focus here. It is divided into 19 divisions including hours of work, minimum wages, equal wages, annual vacations, general holidays, multi-employer employment, reassignment, maternity leave and parental leave, compassionate care leave, bereavement leave, group termination of employment, individual termination of employment, severance pay, garnishment, sick leave, work-related illness and injury, unjust dismissal, payment of wages, sexual harassment and leave of absence for members of the Reserve Force.

The relevant sections in the *Code* cannot be read alone. Important provisions are also contained in the Canada Labour Standards *Regulations*.

What Provisions of the Canada Labour Code Apply to Teachers?

Unlike the *British Columbia Employment Standards Act*, the *Canada Labour Code* does not contain any exemptions for teachers. This distinction between the federal and provincial legislation highlights the risk of relying solely on advice from the BC Employment Standards Branch and the importance of ensuring that you understand which jurisdiction's laws apply.

Section 34 of the *BC Employment Standards Regulation* states that Part 4 of the *Employment Standards Act* does not apply to teachers:

34. (1) Part 4 of the *Act* [regarding hours of work and overtime] does not apply to any of the following:

...

(c) a teacher;

(d) a person employed as a noon hour supervisor, teacher's aide or supervision aide by (i) a board as defined in the *School Act*, or (ii) an authority as defined in the *Independent School Act*[.]

As a result of the exemption in the Regulation, provincially regulated teachers are not entitled to overtime under that *Act*. In contrast, overtime and other provisions under the *Canada Labour Code* do apply to teachers.

Requirements of the Canada Labour Code Cannot Be Waived

Section 168 of the *Canada Labour Code* provides that employees are entitled to their rights under the *Code*, unless an amount provided by contract is more favourable to the employee:

168. (1) This Part and all *Regulations* made under this Part apply notwithstanding any other law or any custom, contract or arrangement, but nothing in this Part shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to the employee than his rights or benefits under this Part.

(1.1) Divisions II, IV, V and VIII do not apply to an employer and employees who are parties to a collective agreement that confers on employees rights and benefits at least as favourable as those conferred by those respective Divisions in respect of length of leave, rates of pay and qualifying periods for benefits, and, in respect of employees to whom the third party settlement provisions of such a collective agreement apply, the settlement of disagreements relating to those matters is governed exclusively by the collective agreement.

Hours of Work

Division I of Part III of the *Code* governs hours of work. Under section 167 of the *Code*,

Division I does not apply to or in respect of employees who are managers or superintendents or exercise management functions. Under the *Code* “manager” is given a relatively narrow interpretation and, according to one adjudicator, is someone who has the power to Act “independently, autonomously, using one’s discretion.” The term “manager” does not include all persons who exercise some management functions, nor does the title “manager” necessarily mean the person is one.

Section 169 of the *Code* provides that, except as otherwise provided, an employee’s standard hours of work shall not exceed eight in a day and 40 in a week, and no employer shall cause or permit an employee to work longer than those hours (not including general holidays provided under Part V of the *Code*). Generally, the total hours that may be worked by an employee in a week must not exceed 48 hours.

Hours of work are to be scheduled and actually worked so that each employee has at least one full day of rest each week, and, wherever practicable, Sunday shall be the normal day of rest in the week.

Section 11.1 of the *Regulations* requires an employer to pay an employee who reports for work at the call of the employer wages for not less than three hours of work at the employee's regular rate of wages, whether or not the employee is required to perform work after reporting for work.

Overtime

Section 174 of the *Code* provides that when an employee is required or permitted to work in excess of the standard hours of work, the employee shall be paid for the overtime at a rate of wages not less than one and one-half times his regular rate of wages (subject to the *Regulations*). "Wages" include every form of remuneration for work performed but do not include tips and other gratuities. Requiring an employee to attend a conference or workshop on a regular day of rest without paying overtime likely violates the overtime provisions in the *Code*.

The overtime requirement does not apply in circumstances where there is an established work practice that:

- a. requires or permits an employee to work in excess of standard hours for the purpose of changing shifts;
- b. permits an employee to exercise seniority rights to work in excess of standard hours pursuant to a collective agreement; or
- c. permits an employee to work in excess of standard hours as the result of his exchanging a shift with another employee (see section 7 of the *Regulations*).

Because the *Code* does not provide for banking overtime, employers who allow employees to do so may be exposed to a claim for unpaid wages.

Statutory Holidays

In section 166 of the *Code*, “general holiday” means New Year’s Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day, and includes any day substituted for any such holiday pursuant to section 195 of the *Code*. Under the British Columbia *Employment Standards Act*, in addition to the general holidays provided under the *Code*, British Columbia Day and Family Day are listed as statutory holidays. (But the *Employment Standards Act* does not include Boxing Day.)

Generally, when a statutory holiday falls on a day that is a non-working day for an employee, the employee is entitled to a holiday with pay at some other time. Under section 193 of the *Code*, the holiday may be by way of addition to the employee’s annual vacation or at a time convenient to both the employee and the employer. Section 193(2), however, provides that when New Year’s Day, Canada Day, Remembrance Day, Christmas Day or Boxing Day falls on a Sunday or Saturday that is a non-working day, an employee is entitled to a holiday with pay on the working day immediately preceding or following the holiday.

With respect to holiday pay, section 197 of the *Code* provides that an employee who is required to work on a day on which the employee is entitled to a statutory holiday with pay is entitled to, in addition to his regular rate of wages for that day, wages at a rate of at least one and one-half times his regular rate of wages for the time worked on the holiday. A manager who is required to work on a statutory holiday must be given a holiday with pay at some other time. An employee who does not work on a statutory holiday is not entitled to holiday pay if, during the 30 days immediately preceding the holiday, the employee is not entitled to wages for at least 15 days.

This exception does not apply with respect to an employee whose terms and conditions of employment with respect to hours of work (for example, a part-time employee) are such that the employee is unable to establish entitlement to wages on at least 15 days during the 30 calendar days immediately preceding a general holiday. Such an employee is not entitled to pay for a general holiday on which the employee does not work but is entitled to be paid 1/20th of the wages he has earned during the 30 calendar days immediately preceding that general holiday.

Section 202 of the *Code* provides that an employee is not entitled to pay for a general holiday that occurs in his first 30 days of employment if the employee does not work on the holiday. But if the employee is required to work on the holiday, the employee must be paid at a rate at least equal to one and one-half times his regular rate of wages for the time that the employee worked on the

holiday. For the purpose of section 202, a person is deemed to be employed when he or she is available at the call of the employer, whether or not the person is called on to perform any work.

Some other exceptions apply in the case of employees who are on an unusual work schedule. The *Code* and the *Regulations* also have specific provisions dealing with the calculation of an employee's "regular rate of wages" for purpose of calculating holiday pay where the employee receives irregular wages.

If a school provides holidays in addition to those required by statute, it should clarify whether the non-statutory holidays will have the same consequences as holidays required by the *Code* and the *Regulations* (e.g., holiday pay).

Deductions from Wages

Section 254.1 of the *Code* deals with deductions from wages. The only deductions permitted under section 254.1 are:

- a. those required by a federal or provincial *Act* or *Regulations*;
- b. those authorized by a court order or a collective agreement or other document signed by a trade union on behalf of an employee;
- c. amounts authorized in writing by the employee;
- d. overpayments of wages by the employer; and
- e. other amounts prescribed by regulation.

The section also provides that no employer shall make a deduction pursuant to (c) above in respect of damage to property, or loss of money or property, if any person other than the employee had access to the property or money in question.

A clear written authorization should be obtained from employees before any deductions are made. The effect of section 89 of the *Indian Act* should also be taken into account.

No Limitation Period

In light of the absence of a limitation period in the *Canada Labour Code* and a decision of the Federal Court upholding an award of overtime wages in the amount of \$192,000 covering a 13-year period, First Nations schools should take steps to minimize possible liability for unpaid wage claims. A written acknowledgement that no overtime, vacation pay, etc. is outstanding, signed by the employee, would be helpful. [Note: if jurisdiction proceeds, those schools that will be undergoing a transition to come under the First Nations Education Authority could incorporate terms addressing this matter as part of their transition (e.g., in new written employment contracts with each employee)]. Generally, schools should assess the risk and take steps to confirm the possibility of outstanding liability.

Leaves

(a) Maternity and Parental Leave

The *Canada Labour Code* contains extensive provisions describing what leaves must be granted and in what circumstances.

Reassignment and Job Modification

Under section 204 of the *Code*, an employee who is pregnant or nursing may, during the period from the beginning of the pregnancy to the end of the 24th week following the birth, request the employer to modify her job functions or reassign her to another job if, by reason of the pregnancy or nursing, continuing any of her current job functions may pose a risk to her health or that of the baby. An employee's request for job modification or reassignment must be accompanied by a certificate of a qualified medical practitioner of the employee's choice indicating the expected duration of the potential risk and the Activities or conditions to avoid in order to eliminate the risk.

Where a request has been made, the employer must examine the request in consultation with the employee and, where reasonably practicable, shall modify the employee's job functions or reassign her. An employee who has made such a request is entitled to continue her current job while the employer examines her request, but if the risk posed by continuing any of her job functions so requires, she is entitled to a paid leave of absence until the employer either modifies the job, reassigns her, or informs her in writing that it is not reasonably practicable to modify her job functions or reassign her. An employee whose job functions are modified or who is reassigned shall be deemed to continue to

hold the job that she held at the time of making the request, and shall continue to receive the wages and benefits that are attached to that job. If modification or reassignment is not reasonably practicable, the employee is entitled to a leave of absence without pay for the duration of the risk as indicated in the medical certificate.

An employee who is pregnant or nursing is entitled to a leave of absence during the period from the beginning of the pregnancy to the end of the 24th week following the birth, if she provides the employer with a certificate of a qualified medical practitioner of her choice indicating that she is unable to work by reason of the pregnancy or nursing and indicating the duration of that inability.

An employee whose job functions have been modified, who has been reassigned, or who is on a leave of absence must give the employer at least two weeks' notice in writing of any change in the duration of the risk or in the inability as indicated in the medical certificate, unless there is a valid reason why that notice cannot be given. The notice must be accompanied by a new medical certificate.

Section 132 of the *Canada Labour Code* is an occupational health and safety provision relating to pregnancy and nursing. Under section 132, an employee who is pregnant or nursing may cease to perform her job if she believes that, by reason of pregnancy or nursing, continuing any of her current job functions may pose a risk to her health or to that of the baby. On being informed of the cessation, the employer, with the employee's consent, must notify the workplace committee or the health and safety representative.

The employee must consult with a qualified medical practitioner of her choice as soon as possible to establish whether continuing any of her current job functions poses a risk to her health or that of the baby. Once the medical practitioner has established whether there is a risk, the employee may no longer cease to perform her job. For the period during which she does not perform her job, the employer may, in consultation with the employee, reassign her to another job that would not pose a risk to her health or to that of the baby. Whether or not she has been reassigned to another job, the employee is deemed to continue to hold the job that she held at the time she ceased to perform her job functions and shall continue to receive the wages and benefits that are attached to that job for the period during which she does not perform the job.

Section 208 of the *Code* provides that an employer cannot require an employee who is pregnant to take a leave of absence simply because she is pregnant. However, an employer may require a pregnant employee to take a leave of absence if she is unable to perform an essential function of her job and

no appropriate alternative job is available for that employee. The required leave can only be for such time as the employee is unable to perform the essential function. The school would have to be able to prove that the employee is unable to perform an essential function of the job.

Maternity Leave

Every employee who has completed six consecutive months of continuous employment with an employer and provides her employer with a certificate of a qualified medical practitioner certifying that she is pregnant is entitled to an unpaid leave of absence of up to 17 weeks. The leave may begin not earlier than 11 weeks prior to the estimated date of her confinement and end not later than 17 weeks following the Actual date of her confinement.

Parental Leave

Every employee who has completed six consecutive months of continuous employment with an employer is entitled to and shall be granted a leave of absence from employment of up to 37 weeks to care for a new-born child of the employee or a child who is in the care of the employee for the purpose of adoption under the laws in the province in which the employee resides. The leave of absence may only be taken during the 52-week period beginning on the day on which the child is born or comes into the care of the employee although this period may be extended in certain circumstances.

The total amount of parental leave that may be taken by two employees in respect of the same birth or adoption shall not exceed 37 weeks.

The total amount of maternity and parental leave that may be taken by one or two employees in respect of the same birth cannot exceed 52 weeks.

General

Every employee who intends to take a maternity leave or parental leave must give at least four weeks' notice in writing to the employer unless there is a valid reason why that notice cannot be given and must inform the employer in writing of the length of leave intended to be taken.

Every employee who intends to take or who is on a maternity leave or parental leave must give the employer at least four weeks' notice in writing of any change in the length of leave intended to be taken, unless there is a valid reason why that notice cannot be given.

Every employee who intends or is required to take a leave of absence related to maternity, parental or compassionate care leave is entitled, on making a written request to the employer, to be informed in writing of every employment or training opportunity that arises during the period when the employee is on leave of absence and for which the employee is qualified. (Compassionate care leave is addressed in more detail below.)

Every employee who takes or is required to take a leave of absence related to maternity, parental or compassionate care leave is entitled to be reinstated in the position that the employee occupied when the leave of absence commenced. Where for any valid reason the employer cannot reinstate the employee in the same position, the employer shall reinstate the employee in a comparable position with the same wages and benefits and in the same location. Where an employee takes a leave of absence of the type referred to above, and during the period of the leave the wages and benefits of the group of employees of which that employee is a member are changed as part of a plan to reorganize the industrial establishment in which that group is employed, that employee is entitled, on being reinstated in employment, to receive the wages and benefits that the employee would have been entitled to receive had the employee been working when the reorganization took place. The employer shall notify the employee in writing of the change in wages and benefits as soon as possible.

The pension, health and disability benefits and the seniority of an employee who takes or is required to take a maternity, parental or compassionate care leave shall accumulate during the entire period of the leave. Where contributions are required from an employee in order for the employee to be entitled to a pension, health or disability benefit, the employee is responsible for and must, within a reasonable time, pay those contributions for the period of any leave unless, before taking the leave or within a reasonable time thereafter, the employee notifies the employer of his or her intention to discontinue contributions during the leave period. An employer who pays contributions for pension, health and disability benefits must continue to pay those contributions during an employee's leave of absence at least in the same proportion as if the employee were not on leave. The employer may cease paying its share of benefit contributions if the employee does not pay his or her contributions within a reasonable time. Employees should receive written warning before the employer ceases paying its share of any contributions. Where pension, health and disability benefit contributions have not been paid during the leave of absence, the benefits shall not accumulate during the leave of absence. On the employee's return to work, employment shall be deemed to be continuous with employment before the employee's absence. For benefits

other than pension, health and disability benefits, on the employee's return to work, employment shall be deemed to be continuous with employment before the employee's absence.

An employee who takes a maternity, parental or compassionate care leave of absence of the type described above is entitled to benefits under any income-replacement scheme or insurance plan in force at the workplace on the same terms as any employee who is absent from work for health related reasons and is entitled to benefits under the scheme or plan.

No employer shall dismiss, suspend, lay off, demote or discipline an employee because the employee is pregnant or has applied for or been required to take maternity, parental or compassionate care leave. Similarly, the employer may not take into account the pregnancy of an employee or the intention of an employee to take maternity, parental or compassionate care leave in any decision to promote or train the employee.

(b) Compassionate Care Leave

Under the *Canada Labour Code*, employees are entitled to up to 8 weeks of unpaid compassionate care leave to provide care and support to a gravely ill family member. A certificate is required from a qualified medical practitioner stating that the family member has a serious medical condition with a significant risk of death within 26 weeks. Some employees may be entitled to benefits under the *Employment Insurance Act*.

Each employee is not entitled to 8 weeks of compassionate care leave to care for the same person. However, the 8-week entitlement may be shared by two or more employees. The total amount that may be taken by two or more employees in regard to the same family member is 8 weeks in the 26-week period. Note that this is the statutory minimum and that you may wish to leave some flexibility to allow for additional time being granted in particular cases.

If the family member is still gravely ill at the end of 26 weeks, an employee is entitled to a further period of up to 8 weeks of compassionate care leave. A qualified medical practitioner would be required to issue another certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.

As with pregnancy, maternity and parental leave, the employee must be reinstated in his or her former position at the end of the leave or be given a comparable position in the same location and with the same wages and benefits.

For purposes of the *Canada Labour Code* compassionate care leave provisions, a “family member” includes the following classes of persons:¹

- a. a child of the individual's parent or a child of the spouse or common-law partner of the individual's parent;
- b. a grandparent of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's grandparent;
- c. a grandchild of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's grandchild;
- d. the spouse or common-law partner of the individual's child or of the child of the individual's spouse or common-law partner;
- e. a parent, or the spouse or common-law partner of a parent, of the individual's spouse or common-law partner;
- f. the spouse or common-law partner of a child of the individual's parent or of a child of the spouse or common-law partner of the individual's parent;
- g. a child of a parent of the individual's spouse or common-law partner or a child of the spouse or common-law partner of the parent of the individual's spouse or common-law partner;
- h. an aunt or uncle of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's aunt or uncle;

¹ Subsection 206.3(1) of the *Canada Labour Code* defines “family member” for purposes of federal compassionate care leave. Paragraph (d) in that definition refers to any other person prescribed in the definition of “family member” in subsection 23.1(1) of the *Employment Insurance Act*. The definition in subsection 23.1 of the *Employment Insurance Act* tracks the language in subsection 206.3(1) of the *Canada Labour Code*. The *Employment Insurance Regulations* were amended in June 2006 (SOR/2006-135) to provide the more comprehensive definition of “family member” set out here.

- i. a niece or nephew of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's niece or nephew;
- j. a current or former foster parent of the individual or of the individual's spouse or common-law partner;
- k. a current or former foster child of the individual or the spouse or common-law partner of a current or former foster child of the individual;
- l. a current or former ward of the individual or of the individual's spouse or common-law partner;
- m. a current or former guardian of the individual or the spouse or common-law partner of that guardian;
- n. in the case of an individual who has the serious medical condition, a person whether or not related to the individual by blood, adoption, marriage or common-law partnership, whom the individual considers to be like a close relative;² and
- o. in the case of an individual who is the claimant, a person, whether or not related to the individual by blood, adoption, marriage or common-law partnership, who considers the individual to be like a close relative.³

A common-law partner means a person who has been cohabiting with the individual in a conjugal relationship for at least one year.

(c) Family Responsibility Leave

Although the *Canada Labour Code* does not provide for family responsibility leave, federally regulated employers in British Columbia may wish to, but are not obligated to provide family responsibility leave in order to be consistent with provincially-regulated employers in BC. The *Employment Standards Act* provides that employees are entitled to up to 5 days of unpaid leave in each

² This means that the person who has the serious medical condition may designate any individual who is not included in the definition of "family member" but who is considered to be like a close relative.

³ This means that any individual who is not listed in the definition of "family member", but who considers the person who has the serious medical condition to be like a close relative, may claim compassionate care benefits.

employment year to meet responsibilities related to (a) the care, health or education of a child in the employee's care, or (b) the care or health of any other member of the employee's immediate family.

(d) Leaves of Absence

Leaves of absence, with or without pay, should not be granted in a way that is contrary to the *Canadian Human Rights Act* (i.e., based on prohibited grounds of discrimination). It will be important to consider whether or not an employee who takes an unpaid personal leave of absence continues to accrue seniority. Given the nature of seniority, there may be significant human rights issues if seniority does not continue to accrue.

Section 29 of the *Canada Labour Standards Regulations* provides that for the purposes of certain Divisions of the *Code* dealing with labour standards, the absence of an employee from employment shall be deemed not to have interrupted continuity of employment where (a) the employee is absent as a result of a layoff that is not a termination, or (b) the employer permits or condones the employee's absence from employment.

(e) Sick Leave

Employees should understand clearly when they are required to report an absence and to whom they should report it. It is arguably not sufficient to have employees leave the message with a co-worker. You will, however, need to be flexible in the case of an extremely ill or hospitalized employee.

Absent employees should indicate the anticipated length of the absence. Depending upon the individual, you may require daily follow up calls or perhaps over some longer period. Section 239 of the *Code* provides that no employer shall dismiss, suspend, lay off, demote or discipline an employee because of absence due to illness or injury if:

- a. the employee has completed three consecutive months of continuous employment prior to the absence;
- b. the period of absence does not exceed 12 weeks; and
- c. the employee, if requested in writing by the employer within 15 days after his return to work, provided the employer with a certificate of

a qualified medical practitioner certifying that the employee was incapable of working due to illness or injury for a specified period of time, and that period of time coincides with the employee's absence from work.

If these conditions are met, then the pension, health and disability benefits and the seniority of an employee who is absent due to illness or injury shall accumulate during the entire period of the absence. Where contributions are required from the employee, the employee is responsible for and must, within a reasonable time, pay those contributions for the period of absence unless, at the commencement of the absence or within a reasonable time thereafter, the employee notifies the employer of the employee's intention to discontinue contributions during that period. An employer who pays contributions for pension, health and disability must continue to pay the contributions in at least the same proportion as if the employee were not absent, unless the employee does not pay his or her contributions, if any, within a reasonable time.

If contributions are not paid as set out above, the benefits shall not accumulate during the absence. On the employee's return to work, employment will be deemed to be continuous with employment before the absence.

An employer may assign to a different position, with different terms and conditions of employment, any employee who, after an absence due to illness or injury, is unable to perform the work performed by the employee prior to the absence.

Work-Related Illness and Injury

Section 239.1 of the *Code* contains an even broader protection for an employee who has been absent from work due to work-related illness or injury. An employer cannot dismiss, suspend, lay off, demote or discipline an employee because of absence from work due to work-related illness or injury.

Employers are required to subscribe to a plan that provides an employee who is absent from work due to work-related illness or injury with wage replacement, payable at an equivalent rate to that provided for under applicable workers' compensation legislation in the employee's province of permanent residence.

Where reasonably practicable, the employer shall return an employee to work after the employee's absence. An employer may assign the employee to a different position, with different terms and conditions of employment, if the employee is unable to perform the work performed by the employee prior

to the absence. Pursuant to section 34 of the *Regulations*, the obligation to return an employee to work begins on the date that, according to a certificate from the qualified medical practitioner authorized by the plan the employer subscribes to in accordance with section 239.1(2) of the *Code*, the employee is fit to return to work with or without qualifications, and ends 18 months after that date.

Where, within nine months after an employee's return to work, an employer lays off or terminates the employment of that employee or discontinues a function of that employee, the employer must demonstrate to an inspector that the layoff, termination of employment or discontinuance of function was not because of the absence of the employee from work due to work-related illness or injury.

Where an employer cannot return an employee to work within 21 days after the date of receipt of the certificate of the qualified medical practitioner referred to above, the employer must, within those 21 days, notify the employee in writing whether return to work is reasonably practicable and if not, the reasons.

The pension, health and disability benefits and the seniority of the absent employee shall accumulate during the entire period of the absence. Where contributions are required from the employee, the employee is responsible for and must, within a reasonable time, pay those contributions for the period of absence unless, at the commencement of the absence or within a reasonable time thereafter, the employee notifies the employer of the employee's intention to discontinue contributions during that period. An employer who pays contributions for pension, health and disability benefits must continue to pay the contributions in at least the same proportion as if the employee were not absent, unless the employee does not pay his or her contributions, if any, within a reasonable time.

If contributions are not paid as set out above, the benefits shall not accumulate during the absence. On the employee's return to work, employment will be deemed to be continuous with employment before the absence.

The Disabled Employee

It is a good idea to have a sick leave policy indicating when employees will be required to provide a medical certificate to the employer. Mental and physical disabilities raise a host of legal issues, with two of the main ones being privacy and human rights.

Human Rights Commissions take the view that the employer has no need to know precisely what ails an employee. All the employer needs to know is that the individual is disabled from working for some medical reason. You should not ask for the diagnosis.

Where an employee has been absent for medical reasons, the employer may want to require the employee to have his or her physician complete a doctor's report that contains information about the individual's circumstances, treatment, and ability to return to work assuming complete or modified duties. You may wish to send the doctor a job description and ask if the employee can perform that particular job. Relevant information about the physical or mental requirements of the job should be specified. On the doctor's form, the employee should sign an authorization allowing the physician to release information to the employer. The employer should not try to obtain any more information than is reasonably necessary, such as information relevant to the employee's eligibility for benefits, workplace accommodations necessary to support a return to work, and/or the individual's prognosis. Employees who will be receiving such information about other employees should be required to sign a confidentiality agreement that recognizes the sensitivity of the medical information they handle. Requests for additional information should be made of the employee directly and not of the employee's physician unless the employer has a valid signed consent form permitting the employer to speak directly to the physician. (See *PIPEDA Case Summaries #284 and #287*, decisions of the federal Assistant Privacy Commissioner.)

The safest course in dealing with an employee who is off on stress leave or some other disability, particularly where there are performance issues, is to wait until the employee is healthy and able to return to work before addressing the performance problems or terminating the employment.

Before such an employee returns to work, you may wish to require a medical certificate indicating that the employee is well and able to resume his or her job duties.

After the employee has returned to work, the more time you can put between the disability leave and the termination or criticism of job performance, the better. A termination or critical performance review immediately upon the employee's return to work could leave you exposed to a possible human rights complaint alleging that the Action with respect to employment was taken because of the disability, whether that is the case or not.

(f) Bereavement Leave

Section 210 of the *Code* provides that, in the event of the death of a member of the employee's immediate family (as defined in the *Regulations*), every employee is entitled to bereavement leave on any of his or her normal working days that occur during the three days immediately following the day of the death. If an employee has completed three consecutive months of continuous employment, the employee is entitled to the bereavement leave with pay at the employee's regular rate of wages for normal hours of work.

For purposes of the bereavement leave provision in the *Code*, "immediate family" means, in respect of an employee:

- a. the employee's spouse or common-law partner;
- b. the employee's father and mother and the spouse or common-law partner of the father or mother;
- c. the employee's children and the children of the employee's spouse or common-law partner;
- d. the employee's grandchildren;
- e. the employee's brothers and sisters;
- f. the employee's grandmother and grandfather;
- g. the father and mother of the spouse or common-law partner of the employee and the spouse or common-law partner of the father or mother; and
- h. any relative of the employee who resides permanently in the employee's household or with whom the employee permanently resides.

This definition appears in section 33 of the *Regulations*. "Common-law partner" means a person who has been cohabiting with an individual in a conjugal relationship for at least one year, or who had been so cohabiting for at least one year immediately before the individual's death.

Employers are free to provide bereavement leave for additional family members, but are not required by the *Code* to pay for the leave.

(g) Court Leave

The *Code* does not require that jury duty be paid.

Sexual Harassment Policy

In the *Code*, “sexual harassment” means any conduct, comment, gesture or contact of a sexual nature (a) that is likely to cause offence or humiliation to any employee, or (b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or any opportunity for training or promotion. Every employee is entitled to employment free of sexual harassment. Employers are required to make every reasonable effort to ensure that no employee is subjected to sexual harassment.

Section 247.4 of the *Code* requires employers, after consulting with the employees or their representatives, “to issue a policy statement concerning sexual harassment.” The employer is required to make each person under the employer’s direction aware of the policy. The *Code* specifies some of the things that must be included in a sexual harassment policy:

- a. a definition of sexual harassment that is substantially the same as the definition above;
- b. a statement to the effect that every employee is entitled to employment free of sexual harassment;
- c. a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment;
- d. a statement to the effect that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer’s direction who subjects any employee to sexual harassment;
- e. a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;
- f. a statement to the effect that the employer will not disclose the name of a complainant or the circumstances related to the complaint to

any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation to the complaint; and

- g. a statement informing employees of the discriminatory practice provisions of the *Canadian Human Rights Act* that pertain to the rights of persons to seek redress under that Act in respect of sexual harassment.

Although the *Code* deals only with sexual harassment, it is prudent to have a harassment policy that covers all the grounds of discrimination covered by the *Canadian Human Rights Act*.

Section 25 of the *Regulations* requires an employer to post copies of the harassment policy.

A harassment policy is a much more useful defence in the event of a complaint if the employees have been educated about what constitutes harassment, the existence of the policy, and how it works. Training should be mandatory for all employees and executives in the organization (e.g., Council members), and the policy should apply to all work-related Activities.

Vacations

In section 183 of the *Code*, “vacation pay” means four per cent or, after six consecutive years of employment by one employer, six per cent of the wages of an employee during the year in respect of which the employee is entitled to the vacation. Generally, every employee is entitled to and must be granted a vacation of at least two weeks with vacation pay, and, after six consecutive years of employment, at least three weeks with vacation pay, in respect of every year of employment by that employer. The vacation must begin not later than ten months immediately following the completion of the year of employment for which the employee became entitled to vacation (i.e., no later than ten months after the employee’s anniversary date).

Section 187 of the *Code* provides that where one or more general holidays occur during a vacation granted to an employee pursuant to Division IV, the vacation may be extended by one day for each such holiday.

Where there is no agreement between the employer and the employee concerning when the vacation may be taken, the employer must give the employee at least two weeks’ notice of the commencement of the employee’s

vacation. The employer must also pay vacation pay to the employee within 14 days before the beginning of the vacation, or on the regular payday during or immediately following the vacation where that is an established practice.

Section 14 of the *Regulations* provides that an employee may, by written agreement with the employer, postpone or waive his or her entitlement to annual vacation for a specified year of employment. In that case, the employer must pay the vacation pay to the employee within 10 months after the end of the specified year of employment. Your policies should not allow employees to carry forward vacation entitlement to a greater extent than is permitted by the legislation.

Generally it is up to the employer to determine when vacation will be scheduled, and the employer has a responsibility to schedule vacations. Not surprisingly, teachers' vacations are typically scheduled during the summer months.

Termination

The *Canada Labour Code* also contains provisions governing the termination of employment and severance pay. These provisions are discussed in greater detail in Part One of this Handbook in the section entitled "Termination."

7.2 WHAT IS THE EMPLOYMENT STANDARDS ACT?

For those organizations subject to provincial regulation in respect of employment matters so that the BC *Employment Standards Act* would apply, please refer to the entire *Act* for more information as it is beyond the scope of this manual.

The *Employment Standards Act* and *Regulations* set minimum standards for wages and conditions of provincially regulated employers in BC.

The provincial *Employment Standards Act* is intended to:

- ensure that employees in BC receive at least basic standards for compensation and conditions of employment;
- promote the fair treatment of employees and employers;

- encourage open communication between employers and employees;
- provide fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*;
- foster the development of a productive and efficient labour force that can contribute fully to the prosperity of BC; and
- contribute in assisting employees to meet work and family responsibilities.

The *Act* does not apply to the following:

a student who is employed by a board as defined in the *School Act* or by an authority as defined in the *Independent School Act*, to work at the secondary school where he or she is enrolled;

a student enrolled at a secondary school under the supervision of a board as defined in the *School Act* or an authority as defined in the *Independent School Act* in a work study, work experience or occupational study class; and

a person receiving benefits under the *Unemployment Insurance Act (Canada)* as a result of working on a job creation project under section 25 of that *Act*.

7.3 HOW DOES THE CHILD, FAMILY & COMMUNITY SERVICE ACT APPLY TO EMPLOYEES OF FIRST NATIONS SCHOOLS?

The *Child, Family and Community Service Act* deals with child protection matters. The *Act* says that a child needs protection in the following circumstances:

- if the child has been, or is likely to be, physically harmed by the child's parent;
- if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
- if the child has been, or is likely to be, physically harmed, sexually abused, sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
- if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;

- if the child is emotionally harmed by the parent's conduct;
- if the child is deprived of necessary health care;
- if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
- if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
- if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
- if the child's parent is dead or adequate provision has not been made for the child's care;
- if the child has been abandoned and adequate provision has not been made for the child's care; and
- if the child is in the care of a Director of Child, Family and Community Services or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

In addition, for the purpose of the *Act*, a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be:

- a. encouraged or helped to engage in prostitution; or
- b. coerced or inveigled into engaging in prostitution.

A child is emotionally harmed if the child demonstrates severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour.

A person who has reason to believe that a child needs protection as set out above must promptly report the matter to a director or a person designated by a director. The duty to report applies even if the information on which the information is based (a) is privileged, except as a result of a solicitor-client relationship, or (b) is confidential and its disclosure is prohibited under another *Act*.

If a person does have reason to believe that a child needs protection, failing to make a report as required means committing an offence punishable by law. A person who knowingly reports false information that a child needs protection

also commits an offence. A person who commits either of these offences is liable to a fine of up to \$10,000.00 or to imprisonment of up to 6 months, or both.

No Action for damages may be brought against a person for making such a report unless the person knowingly reported false information.

Even if the Employer is subject to federal regulation in labour relations matters, the provincial *Child, Family and Community Service Act* will still apply to create obligations on First Nations employers in British Columbia.

7.4 WHAT SHOULD YOU KNOW ABOUT THE CRIMINAL RECORDS REVIEW ACT?

The *Criminal Records Review Act* is provincial legislation that was developed with the intention of protecting children from physical and sexual abuse. The legislation applies to all current employees or applicants for employment in organizations that are operated, licensed or receive operating funds from the provincial government. The Act makes a criminal record check mandatory for anyone who works with children. In the Act, “work with children” means: working with children directly or having or potentially having unsupervised access to children in the ordinary course of employment or in the practice of an occupation.

That legislation covers more than 280,000 British Columbians, including teachers and nonteaching staff in schools, doctors, nurses and hospital staff, dentists, denturists, health care professionals and licensed child care providers. It is the responsibility of each employer or program to carefully determine which of its positions are ones in which the individual “works with children” as defined in the Act. Organizations must review the positions and create defensible criteria for determining which positions “work with children.”

The applicability of the *Criminal Records Review Act* to First Nations schools is discussed in Appendix Four.

Employers should be aware that meeting the requirements of the Act will not necessarily address all of the potential concerns that may arise when dealing with this topic.

7.5 WHAT IF THE INDEPENDENT SCHOOL ACT APPLIES TO YOU?

Sections of the *Independent School Act* apply to certain employment issues, and *Independent Schools* must be aware of these provisions. For example, the *Act* provides that if an *Independent School* Authority suspends or dismisses a certificate holder, or disciplines that person for causing physical harm to a student, sexually abusing or exploiting a student or causing significant harm to a student or minor, the principal or authority must without delay report the matter to the Commissioner appointed under the *Teachers' Act*. Certain other reporting obligations are provided for where the conduct or competence of a certificate holder are also issues.

7.6 PRIVACY LEGISLATION

There are several different statutes – both federal and provincial – that may apply when privacy issues are being considered. In addition, exceptions to privacy requirements may appear in other statutes, such as the *Child, Family and Community Service Act*. Privacy legislation is aimed at protecting the privacy of personal information by imposing restrictions on how such information is collected, used, and disclosed as well as by giving individuals access to information about themselves. The general purpose is to recognize and balance both the rights of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances. That test is really the key.

Personal information may be contained in any format, for example, paper, electronic, audio, photographic or video. Privacy legislation does not affect solicitor-client privilege.

The *Privacy Act (Canada)* is intended to protect the privacy of individuals with respect to personal information about them held by a government institution and provide individuals with a right of access to that information. The purpose of the *Access to Information Act (Canada)* is to provide a right of access to information in records under the control of a government institution and is aimed more at access to government information. The main piece of federal legislation for private organizations is the *Personal Information Protection and Electronic Documents Act*.

Similarly, the purposes of the *Freedom of Information and Protection of Privacy Act (BC)* are to make public bodies more accountable to the public and to protect personal privacy by giving the public a right of access to records,

giving individuals a right of access to and a right to request correction of personal information about themselves, specifying limited exceptions to the right of access, preventing the unauthorized collection, use or disclosure of personal information by public bodies, and providing for an independent review of decisions made under the *Act*. The *Act* applies to public bodies, which include provincially regulated educational authorities. Educational authorities are defined to include a board as defined in the *School Act* (i.e., a board of school trustees constituted or continued under the *School Act*). The main piece of provincial legislation for private bodies is the *Personal Information Protection Act*.

A brief summary of some key features of the most relevant privacy legislation for private bodies is provided below.

Personal Information Protection and Electronic Documents Act (Canada)

The federal *Personal Information Protection and Electronic Documents Act (PIPEDA)* came into force on January 1, 2001. The organizations that are bound by *PIPEDA* include those that carry on *Activities* in connection with the “operation of a federal work, undertaking or business.”

“Federal work, undertaking or business” is defined to mean “any work, undertaking or business that is within the legislative authority of Parliament.” This is similar to the language used in the *Canada Labour Code*. All federally-regulated employers are subject to the requirements of *PIPEDA*. *PIPEDA* applies in respect of personal information that:

- a. is about an employee of the organization and that the organization collects, uses, or discloses in connection with the organization’s operation; or
- b. the organization collects, uses or discloses in the course of commercial *Activities*.

“Personal information” means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

“Commercial *Activity*” means any particular transaction, *Act* or conduct that is of a commercial character, as well as a regular course of conduct that is of a commercial character. In other words, even where an organization’s *Activities* are largely non-commercial, i.e., not for profit, any one *Act* or *Activities* that

might be found to have a primarily commercial purpose, and which involves the collection, use, or disclosure of personal information, may be subject to *PIPEDA*.

What are PIPEDA's Main Requirements?

Schedule 1 to *PIPEDA* sets out the obligations with which every organization is required to comply. A copy of Schedule 1 can be reviewed on the web.

These obligations and recommendations are based on ten privacy principles: accountability; identifying purposes; consent; limiting collection; limiting use, disclosure and retention; accuracy; safeguards; openness; individual access; and challenging compliance. As noted above, the key obligation is to collect, use or disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

Consent

Except in limited circumstances, an organization may not collect, use or disclose personal information about an employee without his or her prior knowledge and consent. Similarly, organizations may not collect, use or disclose personal information of a person other than an employee in the course of commercial Activity without obtaining the prior knowledge and consent of that individual. These requirements apply to any new personal information acquired and any personal information already in possession of the organization.

The consent obtained must be meaningful. That means that individuals must be advised of the purposes for which their personal information will be used or disclosed. All purposes for which the personal information being collected is used must be identified at the time of collection. An organization may only collect information for purposes a reasonable person would consider appropriate in the circumstances.

PIPEDA does provide certain exceptions to the need to obtain consent. These include situations such as where obtaining consent would interfere with the investigation of a violation of the law, emergencies, where the personal information is necessary to deal with threats of life, health or security of an individual, or where disclosure to a third party is required by law.

PIPEDA provides for the possibility of obtaining implied consent, such as by notifying individuals that their consent will be assumed unless they take certain steps by a certain time.

However, where the personal information is considered to be sensitive, *PIPEDA* suggests that express consent will be required. *PIPEDA* also requires that organizations destroy personal information once it is no longer required to fulfill the purpose for which it was collected.

Policies

Under *PIPEDA*, an organization must have in place policies and practices regarding the management of personal information and must make information about those policies and practices readily available. One of the obligations is for the organization to train staff and communicate to staff information about the organization's policies and practices.

Organizations must also have a mechanism by which an individual can obtain access to his or her personal information, including the right to request details regarding its use and disclosure.

Privacy Officer

Every organization bound by *PIPEDA* must have an individual designated to be responsible for the organization's compliance with *PIPEDA*.

Security

PIPEDA requires that personal information be protected by security safeguards appropriate to the sensitivity of the information. This might mean physical measures, such as locked filing cabinets and/or the use of computer passwords.

More information about *PIPEDA* can be found at www.privcom.gc.ca.

Personal Information Protection Act (BC)

The *Personal Information Protection Act (PIPA)* came into force on January 1, 2004. *PIPA* applies to “organizations, which are defined as including persons, unincorporated associations, trade unions and not for profit organizations. It does not apply to individuals Acting in a personal or domestic capacity or Acting as an employee. Nor does it apply to public bodies or the Nisga’a Government. The *Freedom of Information and Protection of Privacy Act (BC)*, which is similar to the *Freedom of Information Act (Canada)*, applies to public bodies, including school boards under the *School Act* and the Nisga’a Government.

If *PIPEDA* or the *Freedom of Information and Protection of Privacy Act (BC)* applies, then

PIPA does not apply. As mentioned above, *PIPEDA* applies to First Nations schools in the employment context, i.e., information about employees. *PIPEDA* will also apply to commercial Activity by a First Nations school. However, information about students or parents may be subject to *PIPA*.

Organizations subject to *PIPA* must designate one or more individuals to be responsible for compliance with that *Act*. The name or title of the designated individual and contact information for the individual must be made available to the public. An organization must:

- a. develop and follow policies and practices that are necessary for the organization to meet its obligations under the *Act*;
- b. develop a process to respond to complaints that may arise respecting the application of the *Act*;
- c. make information available on request about (i) the policies and practices under the *Act*, and (ii) its complaint process.

Under *PIPA*, an organization must not collect, use or disclose personal information about an individual unless the individual consents, the *Act* authorizes it without the individual’s consent, or the individual is deemed to consent under the *Act*. On or before collecting personal information about an individual from the individual, an organization must disclose to the individual verbally or in writing (writing is better) (a) the purposes for the collection of the information, and (b) on request by the individual, the position name or title and the contact information for an officer or employee of the organization who is able to answer the individual’s questions about the collection.

On or before collecting personal information about an individual from another organization without the consent of the individual, an organization must provide the other organization with sufficient information regarding the purpose of the collection to allow the other organization to determine whether the disclosure would be in accordance with the *Act*.

An organization subject to *PIPA* is required to notify an individual if it will be disclosing employee personal information about the individual and the purposes of the disclosure before the organization may disclose employee personal information without consent. If, for example, a First Nations school is checking references on an applicant who was previously employed by a provincially-regulated employer, that former employer will be subject to *PIPA* or FOIPPA. The First Nations school will need to obtain from an applicant the consent to disclosure required under *PIPA* or FOIPPA in order to obtain personal information about the applicant.

In contrast to *PIPEDA*, *PIPA* contains a definition of “employee personal information”, which is personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual’s employment. Employment includes volunteer work under *PIPA*.

“Personal information” means information about an identifiable individual and includes employee personal information but does not include contact information or work product information.

PIPA also applies to access to personal information. On the request of an individual, an organization must provide the individual with:

- a. the individual’s personal information under the control of the organization (control being broader than information in the custody of the organization);
- b. information about the ways in which the personal information has been and is being used by the organization; and
- c. the names of the individuals and organizations to whom the personal information has been disclosed.

The *Personal Information Protection Act* Regulations provide that the guardian of a minor may exercise the rights of a minor to make a request if the minor is incapable of exercising his or her rights. The guardian may also request that

information be corrected and may give or refuse consent to the collection, use and disclosure of personal information of the minor if the minor is incapable of exercising that right.

An organization must not disclose personal information and other information if:

- a. the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;
- b. the disclosure can reasonably be expected to cause immediate or grave harm to the safety or physical or mental health of the individual who made the request;
- c. the disclosure would reveal personal information about another individual;
- d. the disclosure would reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to the disclosure of his or her identity.

Certain information, such as information subject to solicitor-client privilege, is not required to be disclosed. However, if the information that is not required to be disclosed can be removed, then the organization is required to remove it and disclose the rest of the information.

Unless an extension is appropriate for reasons provided in the *Act*, an organization has 30 days to respond to a written request for information.

If an organization uses an individual's personal information to make a decision that directly affects the individual, the organization must retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it. Otherwise, an organization must destroy its documents containing personal information or remove the means by which the personal information can be associated with particular individuals as soon as it is reasonable to assume that the purpose for which that personal information was collected is no longer being served by retention of the personal information, and retention is no longer necessary for legal or business purposes.

7.7 THE CRIMINAL CODE

Effective March 31, 2004, the *Criminal Code* was amended to:

- expand the circumstances under which corporations and other organizations may be held criminally responsible for the Acts of their representatives;
- establish a legal duty for all persons directing work to take reasonable steps to ensure the safety of workers and the public;
- set out factors for courts to consider when sentencing an organization; and
- provide optional conditions of probation that a court may impose on an organization.

Criminal liability of an organization for the Actions of its employees could arise in the area of health and safety. Sections 219-221 of the *Criminal Code* deal with criminal negligence causing death or bodily harm. The new section 217.1 of the *Criminal Code* provides:

Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

If that duty is breached, and a person is injured or killed as a result, both the person who violated the duty and that person's employer may be charged with the offence of criminal negligence causing death or bodily harm. The person's conduct must have constituted a "marked departure" from the norms with respect to ensuring workplace safety. An organization may also be held criminally negligent for the Actions of its representatives and senior officers taken as a whole.

The organization's due diligence in establishing training, safety and enforcement systems to prevent injury to employees or students will be its best defence in the event of criminal charges arising from an accident causing injury or death. Although the provisions regarding criminal liability are aimed at industrial accidents such as the Westray mine disaster, it is not difficult to think of examples of accidents causing injury or death that could happen in a school setting. In addition to the provisions establishing liability for organizations, the *Criminal Code* was amended effective September 15, 2004 to protect "whistleblowers": employees who report unlawful Activity. Section 425.1 provides:

425.1(1) No employer or person Acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall take a disciplinary measure against, demote, terminate or otherwise adversely affect the employment of such an employee, or threaten to do so;

- (a) with the intent to compel the employee to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed contrary to this or any other federal or provincial Act or regulation by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors; or
- (b) with the intent to retaliate against the employee because the employee has provided information referred to in paragraph (a) to a person whose duties include the enforcement of federal or provincial law.

(2) Any one who contravenes (1) is guilty of:

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

The Supreme Court of Canada's decision in *Merk v. International Assn. of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, [2005] 3 S.C.R. 425, suggests that generally the employee's duty of loyalty and the public's interest in whistle-blowing is best reconciled with an "up the ladder" approach. In other words, the employee is generally required first to bring unlawful Activity within the organization to the attention of those who can correct such wrongdoing. Public criticism or reporting to outside authorities will likely be justified where reasonable attempts to resolve the matter internally are unsuccessful. Although it makes labour relations sense to require employees to report matters internally as a first step, section 425.1 of the *Criminal Code* is narrower and does not contain that requirement.

APPENDIX**1****Personnel Policies****1.1 WHY ESTABLISH PERSONNEL AND EMPLOYMENT POLICIES?**

Personnel and employment policies are objectives and rules that provide a foundation for a school's employment practices. They are tools that can help an organization manage its day-to-day operations. Personnel and employment policies can help to ensure that employees and prospective employees are treated consistently and fairly, adding to an efficient workplace. They also can establish an organization's and employee's rights, and can provide guidance for resolving any disputes that might arise. Policies can also be developed to reflect and reinforce the long-term vision and goals of a school and community. Generally, employment policies can:

- set out clear organizational standards;
- support good employee relations; and
- reduce or avoid litigation.

Personnel policies can range from a broad set of principles to a detailed set of instructions outlining the steps to be taken in each stage of the hiring and employment process. Employers should bear in mind that the more detailed the policy is, the less flexibility the employer may have. Once an employer establishes a personnel policy, the employer needs to comply with the policy and apply it consistently in order to be able to rely on it.

In many cases, detailed employment policies are quite useful. Detailed policies will ensure consistency in the way in which staff and potential staff are treated. In addition, with a detailed policy in place, the group of people responsible for the governance of a school can delegate a greater level of responsibility for its day-to-day operations. Ideally, the people responsible for governing a school will only have to be

involved with the recruitment, hiring, supervision and evaluation of senior staff members. Those senior staff members can then be responsible for hiring and supervising the other staff members.

A note of caution about personnel policies:

If your personnel policies are included as terms and conditions of employment, it may be difficult to change them without employees' consent and without providing considerable advance notice or some consideration (such as money) to the employees in exchange for accepting the changed terms. Instead, it may be preferable to have employees enter into a written contract of employment at the time of hiring, with one of the terms being that the employees agree to abide by the policies of the employer, as amended from time to time. See also Appendix Three for more information about written employment agreements.

Who Should Develop Personnel and Employment Policies?

Fundamentally, the school governing body is responsible for approving personnel and employment policies and for ensuring that they are implemented.

Ideally, however, personnel and employment policies will be developed more collaboratively.

Ultimately, school staff will be responsible for enforcing and will be affected by the policies. Therefore, involving staff in the development of policies will increase the likelihood of their effectiveness.

It may also be useful to seek technical advice from people experienced in designing personnel and employment policies. Doing so may involve contacting other schools and communities that have effective policies in place.

A Personnel Committee may be established to facilitate the design of personnel policies, including people with a range of responsibilities and perspectives. The size of the Committee will vary depending upon the size of the school, the number of staff people, and the range of viewpoints and issues to be considered.

While a Personnel Committee may draft the policies, the governing body should ultimately review and approve the policies produced. Then the Personnel

Committee can be instrumental in implementing the policies created; the schools' governing body may consider delegating to the Personnel Committee the authority to carry out most personnel related activities.

It is clearly very important to select members of a Personnel Committee carefully; if the Committee is not able to implement the policies consistently and clearly, your employment policies will be ineffective and possibly unenforceable.

What Considerations Are Important When Developing Personnel and Employment Policies?

The personnel and employment policies of a school cannot be considered in isolation. The policies will exist within a context of federal and provincial laws relating to employees and work place obligations.

In Canada, both the federal and provincial governments have the power to make laws dealing with employment practices. The key federal legislation related to employment issues is the *Canada Labour Code*, which is described in Section 7 of this Handbook. The main provincial legislation in BC is the *Employment Standards Act*.

First Nations schools are likely subject to federal legislation, but different laws will apply depending upon whether the employer is subject to federal or provincial jurisdiction. This Handbook has been prepared on the assumption that employers consulting it will be subject to federal jurisdiction over labour matters. However, **each employer should seek its own legal advice on that point.**

The *Canadian Human Rights Act* also has some implications for employers. For federally regulated employers, the *Canadian Human Rights Act* protects against discrimination based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, and conviction for which a pardon has been granted. For provincially-regulated employers, the *BC Human Rights Code* prohibits discrimination because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age of a person, or because a person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or intended employment of that person.

It is imperative that employment policies are designed such that they are not in conflict nor inconsistent with applicable federal and provincial legislation.

In addition, several suggestions are important to consider when developing and implementing personnel policies. These suggestions include the following.

- Make the policies reasonable, be aware of the legal context, and consider the school's existing policies, practices, and needs.
- Include what makes sense for your school.
- Only include policies you thoroughly understand so that you can consistently and properly administer them.
- Make sure that employees know about the existence and content of any employment policies.
- Refer to the policies in offers of employment, such as indicating that the policies will be an aspect of each employee's conditions of employment, as amended from time to time.
- Include a reference to employment policies in each new employee's orientation.
- Consistently follow the policies you create.
- Have a plan for reviewing and revising your employment policies. Reviews can take place on a regular, scheduled basis, or they can be done if it becomes clear that an aspect or aspects of the policies are not working.
- Finally, all employees should have full access to the policy manual. It is usually best to give a copy to each employee, and to have the employee sign a form acknowledging receipt of the manual. This form will serve as documentation should an employee ever deny being aware of a policy.

1.2 NON-DISCRIMINATION IN EMPLOYMENT

The first issue that is crucial for employment practices and policies relates to non-discrimination. As discussed above, according to Canadian human rights legislation, discrimination on certain grounds is prohibited. Employment policies must be consistent with this legislation. The nondiscrimination requirements of the *Canadian Human Rights Act* apply.

In human rights law, harassment is a form of discrimination. The *Canada Labour Code* requires that federally-regulated employers have a sexual harassment policy. Because harassment based on any of the prohibited grounds is discrimination, it is a good idea to have a harassment policy that covers all of them. You should seek advice about whether to cover harassment generally.

Quebec has been the first jurisdiction to address psychological harassment specifically in its human rights laws. So far neither BC nor Canada has followed suit.

Further information regarding the *Canadian Human Rights Act* is outlined below.

1.3 FURTHER INFORMATION ABOUT THE CANADIAN HUMAN RIGHTS ACT

Section 3 of the *Canadian Human Rights Act* says that prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, and conviction for which a pardon has been granted. Both mental and physical disabilities are covered. Alcoholism and addiction to illegal substances have been found to be disabilities for human rights purposes. Discrimination based on pregnancy or child-birth is deemed to be discrimination based on sex. Harassment based on any of the prohibited grounds, including sex, is also considered to be discrimination.

Where an employee suffers discrimination on the basis of a prohibited ground, the employer may have a duty to accommodate the employee to the point of undue hardship. Just what is undue hardship depends on the circumstances. It may be a defence for the employer if the requirement that has a discriminatory effect is a bona fide occupational requirement. To establish such a requirement as a defence, the employer must show (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job; (2) that the employer adopted the standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose; and (3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristic of the claimant without imposing undue hardship upon the employer.

Examples include certain physical strength requirements for police officers or fire fighters. The employee also has a duty to facilitate the accommodation.¹ The scope of the employee's duty may vary depending on relevant factors, including whether the employee is in denial or unaware of the addiction or disability.²

Under section 7 of the Act, it is a discriminatory practice to refuse to employ or continue to employ an individual, or in the course of employment to differentiate adversely in relation to an employee on a prohibited ground of discrimination. It is also a discriminatory practice to use or circulate any form of application for employment, or in connection with employment or prospective employment to publish any advertisement or to make any written or oral inquiry that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.

An exception is made for special programs under section 16 of the Act. Section 16 of the *Canadian Human Rights Act* provides in part:

16. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.

To take advantage of the exemption in section 16 of the *Canadian Human Rights Act*, it is advisable to have a written policy clarifying that one of the school's purposes is to prevent, eliminate or reduce disadvantages suffered by First Nations people. The policy could go on to state that because increasing employment opportunities for First Nations people is one way of accomplishing that objective, the school has a special program of giving preference in employment to First Nations people. Where applicants for a position are equally suitable (for example, based on skills, education, experience and other qualifications) preference could be given to First Nations people.

The Canadian Human Rights Commission has adopted an *Aboriginal Employment Preferences Policy*. According to that policy, it is the Commission's

1 This point that was confirmed by the British Columbia Court of Appeal in *Health Employers Assn. of B.C. (Kootenay Boundary Regional Hospital) v. B.C. Nurses' Union*, 2006 BCCA 57.

2 See *Kemess Mines Ltd. v. International Union of Operating Engineers, Local 115*, 2006 BCCA 58.

view that it would be inappropriate to apply its Special Programs Policy (regarding the application of exemptions in section 16 of the *Canadian Human Rights Act*) to Aboriginal employment preferences. The policy provides that employers can require job applicants to have knowledge and/or experience with the language, culture, history and customs of a particular First Nation, band or tribe when such requirements are directly related to the job requirements. Note, however, that the policy does not allow for preference to be given to members of a particular First Nation, band or tribe. Adequate measures must also be taken to ensure that non-Aboriginal employees or candidates for employment are treated fairly and reasonably.

According to the *Aboriginal Employment Preferences Policy*, measures that can be implemented by employers to ensure fair treatment of non-Aboriginal employees or candidates for employment include:

- having clear written policies regarding the employer's application of Aboriginal employment preferences;
 - indicating in all job postings and advertisements whether Aboriginal people will be given preference;
 - making all employees aware of and required to acknowledge as part of their terms and conditions of employment that Aboriginal people will be given preference in accordance with the relevant policy;
 - where non-Aboriginal employees have accepted, as a term of their employment, that they may be displaced in preference to an Aboriginal candidate, the employer must still treat the non-Aboriginal employee in a fair and reasonable manner, e.g., by giving adequate notice of termination.
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Hiring Responsibility Sample Policy

Reason for the Policy

To recruit and hire the best qualified Aboriginal individual available for employment in the organization.

Job Postings

Prior to any recruitment and hiring, the principal will develop a job description: outlining the level of responsibility; defining the salary range; and identifying the knowledge, skill requirements, and personal suitability required for the position.

Procedure

The principal will be responsible for leading the process to: determine the need for the position; define the term of the position (continuing, term, or casual); establish the functions required for the position; identify the level of responsibility; identify the qualification requirements; define the salary range; identify and secure the budget; and post the positions available.

Hiring

All continuing positions will be filled by a hiring committee appointed by the Board and reporting to the Board. The number of members of the committee and criteria for selection will be determined by the principal. This committee will recruit and hire the best qualified individual available for the position.

Procedure

1. The qualification requirements for a position, together with a detailed job description (which will be written and kept on file), shall be posted and filed in the workplace when a position is advertised.
2. The principal will first consider promotion from within the organization to determine if an existing employee can fill the position.
3. If no internal promotion is appropriate, the position will be advertised throughout BC.
4. The personnel committee will go through the process of short listing and interviewing.
5. The final hiring decision is the responsibility of the principal.
6. All employees are required to read and abide by the "Code of Ethics."
7. Depending upon the position, it may be a condition of employment that the individual provide a satisfactory criminal record check.



Internal Applicants Policy Sample 1:

This school believes that our staff should have the first opportunity to fill vacant positions for which they are qualified. It will therefore be the practice to inform staff of vacant positions. Anyone interested can submit an application to the personnel committee. That applicant will then be considered along with and according to the same criteria as all others received.

Internal Applicants Policy Sample 2:

This school believes that the best candidates to fill our job openings may well be some of our present employees. Therefore, prior to any outside recruitment, we will announce all new positions within the school for five working days. All applicants must have completed at least one full year in their current position prior to applying for another position.



Probationary Period Policy Sample:

All new employees, as well as existing employees assuming a new position, will serve a three month probationary period. After the completion of this period, employees rated with a satisfactory (or better) "Employee Performance Review" shall be retained on a contract of such term as deemed appropriate by the principal.

Procedure

The employee is requested to carry out a "self-assessment" based on mutually agreeable work plans. The employee's supervisor carries out the same review. A meeting between the employee and the supervisor is called to compare the two reviews. If the employee is rated with a satisfactory performance, they are no longer on probation; if the employee is rated with an unsatisfactory assessment then the probationary period may be extended, the employee returned to their former position, or the employee may be dismissed.



Code of Ethics Sample 1:

Code of Ethics

This organization is dedicated to serving our clients. It is important that all employees be aware of their responsibilities to the clients, the organization, fellow employees, and to the Board. Therefore, the following guidelines pertaining to conduct and ethics shall be respected by all employees.

1. During work hours, employees must: devote themselves to their duties of employment; be prompt, courteous, and temperate in their performance; and adhere to the policies and procedures of the organization.
2. Employees shall carry out the duties of their positions conscientiously, loyally, and honestly, remembering that the primary work task is to serve our clients and meet the goals of the organization.
3. Employees shall respect the integrity and dignity of the organization, its programs, staff, and all other affiliated agencies.
4. Employees shall conduct themselves, while on duty and in public, in a manner that will bring credit to themselves and the organization.
5. Employees shall work continually towards self-improvement through self-evaluation and training.
6. Employees shall use information obtained on the job for the intended purpose only, and not for their own personal interests or those of other persons.
7. Employees shall be on the job punctually each day unless there is a valid reason for absence or lateness, in which case the employee will contact his/her immediate supervisor at the start of the working day and give an indication of when s/he expects to return to work.
8. Employees shall use their own initiative to find ways of doing their work more efficiently and economically.
9. Employees shall follow instructions attentively and cooperate with their supervisor.
10. Employees shall maintain a satisfactory standard of dress and general appearance appropriate to their duties.
11. Employees shall use equipment, property or supplies that are owned, leased or rented by the organization for authorized purposes only.
12. Employees shall protect and care for all property entrusted to them and report to their relevant supervisor any faulty equipment that requires repair.



13. Employees shall not engage in public criticism of other employees or the approved policies of the organization.
14. Employees may recommend to their supervisor, within their sphere of responsibility, changes of policy that s/he believes appropriate.
15. Employees shall not be under the influence of alcohol or non-prescriptive or medicinal drugs while on duty.
16. Employees shall respect the confidentiality of all records, materials, and communication concerning clients and disclose official information only when their supervisor has authorized publication.
17. Employees shall refuse any fees, gifts, or other tangibles offered to them in a reward for duties performed by virtue of their appointment, with the exception of cultural offerings.
18. Employees shall serve clients with loyalty, determination and the maximum application of professional skill and competence.

Orientation Policy Sample

All new employees will be provided with an orientation within their first week of employment, which is intended to establish good communications, reduce the anxiety related to working in a new environment with new responsibilities, provide information about the school and its goals, and assist with the adaptation to a new job.

Educational Leave Policy Sample

Employees may be granted up to one year of educational leave without pay, for purposes of professional development/education or skills upgrading.

Procedure

An employee must submit in writing to his or her supervisor a request for educational leave, outlining all the details of the leave including the training institute, courses, etc.

The principal approves the leave by signing the request. If the request is granted, the principal will decide if the employee's position will be held open or filled with a term appointment.



Professional Development Policy Sample

Employees are encouraged to take advantage of courses, workshops, training programs and professional development available that directly relates to their employment. Whenever possible, the principal will attempt to create in-service opportunities for employees to develop and upgrade their skills for the positions they occupy.

If an employee wishes to take short courses or workshops during regular working hours, s/he must apply in writing to the principal. The principal shall grant such requests, if at all possible, within fiscal and organizational restraints.

Training/professional development not provided by the school will normally be at the employee's time and expense.

Workshops and Conferences Policy Sample

Employees are to receive prior approval from the principal in order to attend workshops and conferences.

Procedure

An employee must seek prior approval for attending a workshop or conference. The employee is expected to give a written report to the principal within five working days following the workshop / conference.



Safety Policy Sample 1

Safety is the responsibility of all employees in the school and will be the responsibility of a Health and Safety Committee. The school will also strive to:

- provide a healthy and safe work and study environment;
 - provide health and safety training for employees;
 - set up a system for monitoring health and safety standards, for the filing of serious accident reports with the appropriate authorities, and for investigating serious accidents;
 - properly care for and maintain schools, school property and equipment;
 - take action to correct unsafe working conditions; and
 - provide emergency first aid equipment.
-

Hours of Work Policy Sample

All employees are required to work thirty-five (35) hours per week, normally from 8:30 am to 4:30 pm., Monday to Friday, with one (1) hour for lunch.

From time to time, employees may be required to maintain flexible schedules to meet operational requirements. Employees must seek prior approval from the Principal for establishing a flexible schedule.

Dress Code Policy Sample

All employees are required to dress appropriately for their respective positions. The dress code does not instruct employees to dress in a specific manner, it only limits the types of clothing which are not acceptable for in-office work: ball caps or similar caps; non-dress shorts; sweat pants; t-shirts with inappropriate slogans or designs; worn out sneakers or runners; worn out or ragged style jeans; worn out t-shirts.



Annual Leave Policy Sample

All permanent employees are entitled to annual leave. Annual leave will be negotiated and written into their employment contract. For holidays that exceed three consecutive working days, the employee must submit a 'Request for Leave' form to the principal, preferably one week prior to leave. For any leave less than three days in length, the form is to be submitted as soon as possible prior to the time off. An employee may take one week of their entitled vacation time after successfully completing six months of employment at the organization. Annual leave will be based on the fiscal year and cannot be carried over into the next year.

Sick Leave Policy Sample

All permanent employees are entitled to accrue 1.25 days per month of sick leave with pay. An employee must contact his/her supervisor no later than thirty minutes after the start of the working day if the employee is going to be absent due to illness. An employee must produce a Doctor's certificate after three consecutive days' absence due to illness. The school reserves the right at all times to demand proof of illness.

**** Note:** Other issues to consider in a sick leave policy include whether an employee will be paid for unused sick days at the time of termination of employment and whether the number of paid sick days relates to a waiting period for short-term disability benefits.

Compassionate/Bereavement Leave Sample

In the event that a life-threatening illness or death occurs in an employee's immediate family*, the employee is entitled to three days of leave with pay, with an additional two days' leave without pay if required.

**** Note:** Immediate family is defined as mother, father, spouse of father or mother, including common-law spouse, sister, brother, child, grandmother, grandfather, aunt, uncle, niece, nephew, stepmother, stepfather, mother-in-law, father-in-law, spouse of father-in-law or mother-in-law, including common law spouse, sister/brother-in-law, foster parent, spouse (including common law), child of spouse (including common law), and any person who resides permanently in the employee's household or with whom the employee permanently resides.



Cultural Leave Sample

Employees may be granted up to six weeks of leave to enrich their spirituality and identity through cultural activities in their communities. An employee must submit a written letter of request to the principal to request cultural leave. The principal will negotiate with the employee the terms and conditions of cultural leave.



APPENDIX

2

FNSA Standards for Teachers and Principals

FNSA STANDARDS FOR TEACHERS IN FIRST NATIONS SCHOOLS LAST UPDATED JULY 2012

Preamble

The following First Nations Schools Association (FNSA) Teaching Standards, Competencies, and Performance Indicators are intended to support First Nations school principals and teachers in providing the highest quality education to students. The materials are based upon the following assumptions.

Teachers in First Nations schools:

- promote high expectations and academic achievement for all students in a safe and nurturing environment
- help all students achieve their full potential in the context of relationships that are based on trust, respect, and positive regard
- recognize that students are best understood and supported in the context of their culture, traditions, extended family, and community
- respect the dignity, worth, and uniqueness of each individual (student, family member, and colleague)

Teachers in First Nations schools are primarily responsible for providing safe, healthy, and responsive settings for students. The teachers are committed to supporting students' holistic development, respecting students' individual differences, dignity, contributions, and unique

potential. They strive to promote students' positive self-identity, competence, self-worth, and resiliency. They recognize the special and critical role of families and communities in First Nations schools. Teachers in First Nations schools are committed to effective practice, a focus on high levels of learning, contributing to a collaborative culture, and striving for continuous growth in order to contribute as effective professionals.

The following materials outline a concept of professional responsibilities in the following standard sections.

- Valuing all students
- Implementing effective teaching practices
- Involving families and communities
- Applying principles of assessment
- Understanding and conveying critical issues associated with First Nations, Canada, and the world
- Engaging in effective professional development
- Acting ethically and professionally

In each of those areas, the Standards, Competencies, and Performance Indicators describe a set of ideals for exemplary practice.

Guiding Questions are also available, which elaborate on those ideas and describe the FNSA's expectations in further detail. The goal of the questions is to assist practitioners in thinking about their own teaching practice and areas for improvement. While the questions provide direction and suggestions, teachers and principals are encouraged to combine the guidance of these materials with their own professional judgment and the spirit that informs the overall work.

These materials present the FNSA's concept of professional responsibility that reflects our commitment to the core values of our schools and profession. The FNSA intends that this work will celebrate the work of our teachers and promote excellent practice within our schools.

Standard 1: Educators in First Nations schools value and care for all students, acting at all times in the best interest of students.

Competency 1.1: Educators in First Nations schools ensure the physical, intellectual, and emotional security of all students.

Performance Indicators: the teacher ...

- 1.1.1: demonstrates an understanding that all students should receive an education, regardless of location, ethnicity, or academic abilities.
 - 1.1.2: demonstrates an understanding of and respect for the community's mission and vision for the school and for the education of their children.
 - 1.1.3: ensures that the classroom physical environment is well maintained, clean, safe, and appropriate for a variety of learning needs.
 - 1.1.4: implements effective classroom rules / behavioural expectations with students to ensure their safety.
 - 1.1.5: promotes students' self-esteem and positive self-identity.
-

Competency 1.2: Educators in First Nations schools treat all students with dignity, respect, warmth and freedom from domination.

Performance indicators: the teacher...

- 1.2.1: interacts in a positive, friendly and respectful manner while maintaining a professional stance.
- 1.2.2: incorporates First Nations cultural understandings and practices in relationships with students and in teaching interactions.
- 1.2.3: promotes polite, respectful, and caring student-to-student interactions.
- 1.2.4: communicates information from an anti-bias perspective.

Competency 1.3: Educators in First Nations schools act within ethical and legal boundaries for the benefit and protection of all students.

Performance Indicators: the teacher ...

1.3.1: demonstrates an understanding of Child Protection legislation, as well as school / community protocols regarding referrals and child safety.

Standard 2: Educators in First Nations schools implement effective teaching practices.

Competency 2.1: Educators in First Nations schools create an environment that promotes high levels of learning for all students.

Performance Indicators: the teacher ...

2.1.1: demonstrates a broad knowledge base as well as an in-depth understanding of the subject areas they teach.

2.1.2: sets high and realistic expectations for all students and implements programs accordingly.

2.1.3: includes evidence of cultural values and concepts in the classroom.

2.1.4: learns about students' previous learning strengths and needs.

2.1.5: encourages feedback, questioning, and experimentation.

2.1.6: provides learning opportunities that help students understand and develop their own roles and responsibilities in the learning process and as lifelong learners.

Competency 2.2: Educators in First Nations schools design, implement, and monitor learning experiences to benefit student achievement.

Performance Indicators: the teacher ...

2.2.1: effectively prepares lessons and long term plans to meet appropriate Learning Outcomes that facilitate seamless transitions between education systems.

2.2.2: uses instructional time in an effective, purposeful, focused way.

2.2.3: creatively uses and develops resources and materials.

Competency 2.3: Educators in First Nations schools understand and apply relevant theories of human development, including individual learning differences.

Performance Indicators: the teacher ...

2.3.1: applies knowledge of how students develop and learn physically, socially, and cognitively.

2.3.2: differentiates curriculum expectations and teaching strategies to meet the needs of all students.

Competency 2.4: Educators in First Nations schools show a commitment to the principles of inclusion by treating all students equitably.

Performance Indicators: the teacher ...

2.4.1: demonstrates a commitment to inclusiveness.

2.4.2: supports learners with special needs through the development and implementation of Individual Education Plans.

Competency 2.5: Educators in First Nations schools use current technology in their teaching practices and professional duties.

Performance Indicators: the teacher ...

2.5.1: models and promotes the appropriate use of technology to enhance student learning.

2.5.2: uses current technology to improve efficiency and effectiveness in planning, instructional delivery, reporting, and assessment.

Competency 2.6: Educators in First Nations schools collaborate with educators, support staff, parents, and others to improve student achievement.

Performance Indicators: the teacher ...

- 2.6.1: works effectively with other stakeholders for the benefit of students.
 - 2.6.2: supports an effective and appropriate sharing of information to benefit students, always respecting the need for confidentiality.
-

Standard 3: Educators in First Nations schools demonstrate an understanding of the role of parents, extended family, and the community in the life of students.

Competency 3.1: Educators in First Nations schools communicate openly, effectively, sensitively, and in a timely manner with parents and the extended family.

Performance Indicators: the teacher

- 3.1.1: demonstrates a positive, professional attitude when communicating with parents and the extended family.
 - 3.1.2: ensures that parents / extended family members are fully informed about and involved in school activities and issues related to student performance.
-

Competency 3.2: Educators in First Nations schools understand and support the important connection between the school and the community.

Performance Indicators: the teacher ...

- 3.2.1: creates meaningful connections to the community to contribute to student learning.
- 3.2.2: works collaboratively with the community to support students and families in a comprehensive way.

Standard 4: Educators in First Nations schools apply principles of assessment, evaluation and reporting to ensure high levels of student learning.

Competency 4.1: Educators in First Nations schools understand the strengths and limitations of assessment, evaluation and reporting.

Performance Indicators: the teacher ...

- 4.1.1: understands the appropriateness of various assessment tools' usefulness, comprehensiveness, and cultural relevancy.
- 4.1.2: understands the teachers' responsibility for effectively using and responding to assessment results.

Competency 4.2: Educators in First Nations schools effectively utilize appropriate assessment and reporting for the benefit of their students.

Performance Indicators: the teacher ...

- 4.2.1: ensures the use of assessment: as learning (student self-assessment), for learning (to guide instruction), and of learning (evaluation).
- 4.2.2 uses assessment to assist with short-term and long-range planning to ensure high levels of learning for all students.
- 4.2.3: uses a variety of assessment strategies and measures to monitor and report on individual student progress.
- 4.2.4: contributes to school-wide efforts to use data to monitor program effectiveness and school growth.

Standard 5: Educators in First Nations schools are knowledgeable about First Nations peoples.

Competency 5.1: Educators in First Nations schools have general knowledge of First Nations' histories, cultures, and government practices.

Performance Indicators: the teacher ...

- 5.1.1: can articulate critical First Nations issues – national, regional, and local.
 - 5.1.2: demonstrates an understanding of the community's perspectives, diversity, and values.
 - 5.1.3: ensures that his or her knowledge of First Nations issues and the community is respectfully reflected in his or her practice.
-

Standard 6: Educators in First Nations schools model their interest in, commitment to, and enthusiasm for learning.

Competency 6.1: Educators in First Nations schools participate in relevant professional development opportunities and actively share / use the information acquired through those opportunities.

Performance Indicators: the teacher ...

- 6.1.1: maintains a continual focus on learning.
- 6.1.2: contributes to a collaborative culture with a focus on high levels of learning for all.
- 6.1.3: actively participates in inquiry into best practice and current reality.
- 6.1.4: is committed to an action orientation (learning by doing).
- 6.1.5: focuses on continuous improvement.
- 6.1.6: demonstrates a results orientation.

Standard 7: Educators in First Nations schools have a responsibility to self, students, parents, extended family, the community, and the public.

Competency 7.1: Educators in First Nations schools understand that they are viewed as role models by students, parents and the community.

Performance Indicators: the teacher ...

7.1.1: acts in an exemplary manner at all times.

7.1.2: understands that he/she is accountable to students, parents, the community, the employer, the profession and the public.

FNSA STANDARDS FOR PRINCIPALS IN FIRST NATIONS SCHOOLS LAST UPDATED SEPTEMBER 2011

Preamble

The First Nations Schools Association (FNSA) Standards for Principals in First Nations Schools are founded upon the FNSA's belief that the effectiveness of our principals is fundamental to the effectiveness of our schools.

While support from parents and the community, and of course the important work of teachers, are essential for student success, the ability of the principal to establish positive direction, lead change, mobilize involvement, and focus the entire educational community on student learning is critical if all students are to achieve at their full potential.

The FNSA knows that the role of principal in a First Nations school can be extremely challenging, but equally rewarding. Our principals must continually promote a recognition and celebration of the uniqueness of our schools, communities, and learners. They are responsible for ensuring that the school is a reflection of each Nation's vision for its learners and the future of the community. Principals must work in partnership with parents, family members, and the Nation to create an inclusive, respectful, and engaged educational community in which students are supported and encouraged to grow in all aspects of their intellectual, cultural, spiritual, and personal development.

Our principals shape the environment in which teachers and students succeed or fail. As the instructional leader, the principal affects every factor that encourages student learning in the school, and is also responsible for consistently and meaningfully assessing the school's operations and programs to ensure that they are meeting the expectations of students, staff, parents, and the Nation. Ultimately, principals in First Nations schools act as unrelenting advocates for high achievement, encouraging a focus on excellence and instilling a common belief that **all** students will succeed, and that anything less is unacceptable.

The following standards are intended to complement and reinforce the FNSA's beliefs about principals. The standards are meant to assist principals in considering their important role, assessing their efforts, celebrating their strengths, and continually striving for improvement in their own effectiveness and that of their school.

The following FNSA Standards and Performance Indicators assert that principals in First Nations schools should:

- guide the school community in determining a shared mission for the school, sustaining a broad commitment to high expectations and relevant support for all students;
- ensure quality teaching and the achievement of essential outcomes, leading a commitment to students' needs as the central consideration in all activities and decision-making;
- support teachers so that they are effective in creating inclusive classrooms that meet the diverse needs of all learners;
- build their school's capacity and lead innovative change to sustain continual improvement;
- work positively and inspire others to support learning for all; and
- acquire and demonstrate appropriate knowledge and personal qualities that enable them to fulfill their responsibilities effectively and respectfully.

The following Standards and Performance Indicators present an expanded description of those characteristics, articulating the fundamental skills, abilities, and understandings that are common to excellent principals. The FNSA intends that this work will acknowledge the central role of principals in promoting quality and culturally appropriate educational opportunities within our schools. The document provides a framework upon which the FNSA can build its support for principals, including efforts to facilitate the identification of professional growth priorities for principals in all First Nations schools. The Standards are not meant to be used in a prescriptive or evaluative way; they are meant to represent aspirations, promising practice – goals that principals can reflect upon and internalize into their practice in ways that are valuable for them and, ultimately, for learners, schools and the learning communities they create.

As with all of its efforts, the FNSA welcomes feedback about these Standards and Performance Indicators. It is expected that the document will evolve to reflect new ideas, advances in research and knowledge about school leadership, and most importantly the wide spectrum of experiences of the principals who use these standards as a tool for continued growth.

Standard 1: Principals in First Nations schools guide the development and implementation of a shared mission, vision, goals, and values to support high levels of learning and achievement for all students.

Performance Indicators: the Principal ...

- 1.1 facilitates a collaborative process with the First Nation and school community to develop a shared mission for the school.
 - 1.2 leads an inclusive process for articulating the school vision that supports and sustains the shared mission.
 - 1.3 models the moral courage to defend the mission, vision, and values of the school.
 - 1.4 recognizes and celebrates individual and collective accomplishments that support the mission, vision, and values.
-

Standard 2: Principals in First Nations schools ensure quality teaching and learning opportunities to support all students learning at a high level.

Performance Indicators: the Principal ...

- 2.1: ensures that First Nations values, cultures, languages, and concepts are embedded throughout the school and all its classrooms.
- 2.2: ensures that students' educational needs are central to all decision-making.
- 2.3: ensures a consistent commitment to high expectations for all students on the part of all school staff.
- 2.4: ensures alignment among curricula, instructional practices, student needs, and assessment.
- 2.5: understands, communicates, encourages, and supports the use of current educational research and promising practices.
- 2.6: ensures the use of assessment: as learning (student self-assessment), for learning (to guide instruction), and of learning (evaluation).

Standard 3: Principals in First Nations schools create a system and structures for effective instructional supervision to maximize student learning and achievement.

Performance Indicators: the Principal ...

- 3.1: consistently monitors the learning environment and its impact on student learning.
 - 3.2: engages classroom teachers in data collection, analysis, and dialogue about student learning and instruction.
 - 3.3: leads teachers in collective inquiry and promotes joint responsibility for appropriate action in response to evidence and ongoing dialogue.
 - 3.4: supports teachers in their design and achievement of plans for professional growth.
-

Standard 4: Principals in First Nations schools build the organizational capacity of the school to support safety, student learning, and achievement.

Performance Indicators: the Principal ...

- 4.1: ensures that roles, duties, and responsibilities are clearly defined, understood, and purposefully interconnected.
- 4.2: ensures that effective decision-making models are in place.
- 4.3: develops and maintains an effective system of communication.
- 4.4: aligns financial, human and material resources with the school goals.
- 4.5: ensures that effective structures and processes are in place to support safety, school operations and facilities management.
- 4.6: uses technologies to enhance school operations.
- 4.7: fulfills and manages legal and contractual obligations.

Standard 5: Principals in First Nations schools lead school-wide planning and change processes to promote increased student achievement and sustain school growth over time.

Performance Indicators: the Principal ...

- 5.1: leads the use of student achievement data and other appropriate measures to evaluate student learning, monitor program success, and plan for improvement.
- 5.2: leads school-wide assessment and planning processes in order to promote quality programming and growth in student achievement.

Standard 6: Principals in First Nations schools develop and sustain a positive, collaborative culture and climate with staff, parents, extended families, and the community.

Performance Indicators: the Principal ...

- 6.1: models and develops a positive climate of trust, risk-taking, and optimism.
- 6.2: recognizes and builds the leadership capacity of staff, parents, extended families, and community members.
- 6.3: builds collaborative teams, structures, and processes that support learning for all.
- 6.4: supports an effective and appropriate sharing of information to benefit students, always respecting the need for confidentiality.
- 6.5: respects the role of and works effectively within community decision-making processes and governance structures.
- 6.6: supports meaningful connections with the community to contribute to student learning.
- 6.7: mobilizes community resources, creates networks, and works collaboratively with other community agencies for the benefit of students and families.

Standard 7: Principals in First Nations schools have an appropriate understanding of First Nations' histories, cultures, and government practices.

Performance Indicators: the Principal ...

- 7.1: can articulate critical First Nations issues – national, regional, and local.
 - 7.2: understands and applies knowledge of local and global issues and trends that affect teaching and learning in First Nations schools.
 - 7.3: demonstrates an understanding of the community's perspectives, diversity, values, and policies.
 - 7.4: is aware of and makes effective use of services available to support First Nations schools and students.
-

Standard 8: Principals in First Nations schools demonstrate personal qualities that enable them to fulfill their responsibility to themselves, students, parents, extended families, the community, the public, and the profession.

Performance Indicators: the Principal ...

- 8.1: demonstrates self-awareness, self-management, and social and situational awareness.
- 8.2: sets professional goals to remain current with educational practice.
- 8.3: models ethical practice and decision-making.
- 8.4: protects the rights and confidentiality of students, families, and staff.
- 8.5: establishes and maintains the boundaries of professional relationships.
- 8.6: consistently models and promotes the importance of maintaining a focus on personal health and well being.

APPENDIX**3**

Further Information Regarding Written Job Offers

COMMON PROVISIONS

There is no particular written employment agreement that will cover all situations – written employment agreements must be drafted to cover the specific concerns of the parties involved.

Although it is not possible to provide an exhaustive list of the provisions that should be in an employment agreement, a comprehensive written employment agreement should cover at least the following points.

1. Parties

The written employment contract should start by identifying the parties to the contract. The correct legal name of both parties should be used.

2. Definitions

The written employment contract should contain a section defining important terms used in the agreement. For example, instead of repeating the full name of the school throughout the agreement, you may want to define “Employer” as representing the name of the school. You can then refer to the Employer throughout the agreement.

3. Employment

The written employment agreement should contain a provision briefly describing the nature of the employment, stating, for example, that the Employer offers and the Teacher accepts the employment in accordance with the terms and conditions set out in the contract.

4. Term of the Agreement

For how long does the agreement apply? Is the agreement for a definite or indefinite term? Can the agreement be renewed? If so, how and on what terms? Is a satisfactory performance evaluation a prerequisite to renewal? What about a probationary period? If the agreement is for a definite term, is there automatic renewal or termination in the absence of notice? Is the employment conditional upon a certain number of students enrolling for the next school year? Is continued employment dependent upon funding?

5. Probationary Period

If there is a probationary period, then the agreement should define exactly what this means. For example, the agreement may state that the teacher will be on probation for a period of three months. The agreement should also clarify if the intention is that, during this probationary period, the teacher can be dismissed at any time for any reason by giving the teachers a specified number of days' written notice or pay in lieu of notice or a combination of the two.

The agreement should also be clear about what happens after the probationary period has been successfully completed. It should not state that the employment will become permanent or that the employee will have tenure. For example, the agreement could indicate expressly that employment may be terminated without notice or compensation, except as required by statute, if performance during the probationary period is not satisfactory. Can the probationary period be extended?

Because of the unjust dismissal provisions of the Canada Labour Code (which make it much more difficult to terminate employment after employees have more than one year's service), it is strongly recommended that all new employees have their performance evaluated prior to the completion of the probationary period, and again about one month before the first anniversary of employment.

A Word of Caution About Tenure

In drafting a written employment agreement, it is important to choose your words carefully. For example it is recommended that you do not use the term tenure. The court considered the use of the word in the case of *Greenwood v. Chilliwack Christian School Society*, (1994) B.C.J. No. 2852.

In that case, Greenwood, a teacher, had an employment contract that contained the following provision:

Employment With Tenure:

After the designated probationary period, you are employed with tenure as long as you perform your duties satisfactorily and in accordance with the terms outlined herein.

Termination by the Board:

The school board shall notify you by February 1 if your status is in jeopardy, for the following school year, due to unsatisfactory performance. Both your deficiencies and the expected improvements shall be stated in writing.

The school board will give you written notice, prior to April 1, stating the reasons, if your employment will not be extended beyond the end of the current school year.

Your employment may be terminated for cause at any time.

In Greenwood, the teacher knew that the employer was unhappy with her performance. However, as of February 1, 1992, she had not received a letter indicating that her status was in jeopardy due to poor performance, as required by the contract.

On March 30, 1992, she received a letter of dismissal that informed her that her employment contract would not be extended beyond the end of the current school year.

On April 6, 1992, she received a letter telling her that her employment would be terminated forthwith, rather than at the end of the school year, but that she would continue to be paid until the end of August.

The Society argued that all that was required to terminate the contract was written notice prior to April 1, 1992, regardless of whether notice of unsatisfactory performance had been given on February 1 or not. The court disagreed, concluding that the term in the Letter of Appointment requiring notice on February 1 was a clear precondition to termination on April 1.

In calculating the damages to which the plaintiff was entitled, the court considered the effect of the use of the word "tenure," stating at para. 45:

Given the nature of a teacher's employment, which falls in increments of one year, the plaintiff was justified in expecting, after February 1 had passed, that she would be employed for the following year, even without the guarantee of "tenure." In the private school context, the guarantee of tenure changes the nature of the contract from a year-to-year position to long-term employment and provides additional security and expectations. The plaintiff is entitled to have the unique nature of this contract recognized in an assessment of damages, but the realities of the teaching profession and the fact that jobs become available on a yearly basis must also be taken into account. In my view the plaintiff is entitled to damages in the amount of one and one half year's salary. The amount paid to her from termination to the end of her 1992 contract should not be deducted from this amount.

Thus the use of the word "tenure" resulted in a finding that a longer notice period was required than would have been if that word was not used. The notice period was quite significant – she was terminated on April 6, 1992 and was paid until August. On top of that, she was held to be entitled to an additional amount equivalent to 1.5 years' salary.

6. Teacher Qualification

(a) Certified Teacher

Certification of teachers in British Columbia is covered by the Teachers Act. For First Nations schools, certification requirements may also depend on the terms of funding agreements and could be affected by other agreements entered into as part of the transfer of jurisdiction to the First Nations Education Authority.

Depending upon the certification requirements applicable to the particular school, the written employment agreement should include a provision stating that the teacher shall have and maintain, for example, a certificate of qualification or an independent school teaching certificate under the Teachers Act, or a letter of permission which has been issued by the director of certification under the Teachers Act.

(b) Criminal Record Checks

Pursuant to the Criminal Records Review Act, all persons hired to work with children must undergo a criminal record check. The written agreement should, therefore, include a provision indicating that the agreement is offered subject to a satisfactory criminal record check being completed. Although the Criminal Records Review Act does not purport to prevent a person from commencing

employment where the record check has not been provided, it is more prudent for a school not to allow a person to begin working with children until a satisfactory criminal record check has been provided.

The requirement of a satisfactory criminal record check should be mentioned in any posting or advertisement for positions where it applies.

7. Duties of the Teacher

The written employment agreement should contain a provision that sets out at least a general statement of duties. The duties set out in section 4 of the School Regulation, made pursuant to the British Columbia School Act, could serve as a guideline. That section includes the following duties:

- (a) providing teaching and other educational services, including advice and instructional assistance, to the students assigned to the teacher, as required or assigned by the board or the minister;
- (b) providing such assistance as the board or principal considers necessary for the supervision of students on school premises and at school functions, whenever and wherever held;
- (c) ensuring that students understand and comply with the codes of conduct governing their behaviour and with the rules and policies governing the operation of the school;
- (d) assisting to provide programs to promote students' intellectual development, human and social development and career development;
- (e) maintaining the records required by the minister, the board, and the school principal;
- (f) encouraging the regular attendance of students assigned to the teacher;
- (g) evaluating educational programs for students as required by the minister or the board;
- (g.1) evaluating each student's intellectual development, human and social development, and career development, including, as required by the minister, administering and grading Required Graduation Program Examinations;

- (g.2) ensuring the security of Provincial examinations, including retaining completed Provincial examinations for any period of time set by the minister;
- (h) providing the information in respect to students assigned to the teacher as required by the board or, subject to approval of the board, by a parent;
- (i) when required to do so by the minister, verifying the accuracy of the information provided to the minister under paragraph (h);
- (j) regularly providing the parents or guardians of a student with reports in respect of a student's school progress;
- (k) attending all meetings or conferences called by the principal or superintendent of schools for the district to discuss matters the principal or superintendent of schools considers necessary unless excused from attending the meeting or conference by the principal or superintendent of schools; and
- (l) admitting to his or her classroom, to observe tuition and practise teaching, student teachers enrolled in a university established under the University Act or in an institution for training teachers established under any other Act, and rendering the assistance to the student teachers, and submitting the reports on their teaching ability or on other matters relating to them or to their work, considered necessary for the training of teachers by the university or institution.

In First Nations schools, the written agreement could also mention specifically that the teachers' duties include promoting the culture of the Nation and incorporating customs and traditions of the Nation into the curriculum. If the objectives of the school are to advance particular interests such as rebuilding community (in addition to education of the students), then those objectives can be included in the written employment agreement in order to clarify the responsibilities for the principal, teachers and staff for meeting those objectives.

The statement of duties can be as general or specific as the parties feel is necessary, but it should specifically mention any duties that are requirements of a funding agreement, for example.

It is always wise to state who will provide directions to the employee or the person to whom the employee reports.

There is a risk of being too specific. The employer needs flexibility so that it can adapt its operations to meet changing conditions. If the duties are too specifically described, and a unilateral change to these duties is made by the employer, then the employee may be able to claim that he or she was constructively dismissed.

8. Confidential Information

You may wish to clarify what information is considered confidential. It should be a term of the contract of employment that confidential information is not to be disclosed except as required in the course of one's duties, and that the duty to keep information confidential continues even after employment ends.

9. Compensation

Again, the provisions on compensation can be general or specific. What are the forms of compensation? Amount of salary? Frequency of payments? Is there a procedure or formula for increases? Are the hours of work defined? Will the employee receive overtime? Is authorization from the principal required before overtime can be worked?

10. Benefits

Is the employee entitled to benefits? Are health, dental, life and disability insurance provided generally to employees? Is there a pension plan? What happens upon termination? If applicable, the agreement should specify that the only obligation of the employer is to pay premium contributions and not to provide the benefit itself. It should also state that benefits will be provided in accordance with the terms of the insurance policies.

11. Vacations

How many days does the employee get for vacation? Can an employee carry over unused vacation into future years? (This should be consistent with the term of the contract. For example, if it is a one-year contract that may or may not be renewed, then it should not contemplate vacation being carried forward). Are there restrictions on when vacation can be taken? Generally, the employer has authority to determine when vacation will be scheduled.

12. Sick Leave

How many paid sick leave days are available? Is money paid for accumulated sick days at the time of termination of employment? Does the number of

paid sick days relate to a waiting period for short-term disability benefits? Is a doctor's certificate needed for an illness that lasts longer than a certain number of days?

13. Medical Fitness

The employer may want a provision that would allow it to require the teacher to undergo an examination by a doctor and to submit a medical certificate setting out the doctor's conclusions regarding the physical, mental, or emotional health of the employee and whether there is any problem or condition that may endanger the health of the students or staff of the school. Such a provision should provide that if there is such a danger, the employee can be suspended from duties without compensation until the employee delivers to the employer a satisfactory medical certificate. Employees should not be subject to unpaid suspensions without clear contractual terms allowing them.

Issues of medical fitness and disability also raise privacy and human rights concerns.

14. Suspension from Duties

The employer may want a provision that would allow it to suspend a teacher in certain circumstances. For example, a paid suspension may be in order to investigate an allegation of assault. After the investigation is completed, if the employer is satisfied that the teacher committed a serious act such as an assault, the next step could be an unpaid suspension or dismissal.

Generally speaking, outside of the unionized context, an employer does not have the right to suspend an employee without pay, either for disciplinary reasons or to protect the employer's interest while an investigation is being undertaken. In *Cabiakman v. Industrial Alliance Life Insurance Company*, [2004] 3 S.C.R. 195, the Supreme Court of Canada held that unless unpaid suspensions are part of the employment contract, an employee who is suspended because of an investigation or pending criminal charge to protect the employer's interests must be paid for the time during which the employee is expected to be available to the employer even if the employee is not reporting to work. Although the case dealt with Quebec law, it is relevant to considering suspensions in British Columbia.

15. Termination

The method by which employment can be terminated is often the most important aspect of the contract and the most poorly documented. A provision dealing with termination should cover both termination for cause

and termination without cause. It is critically important to specifically define the consequences (i.e., amount of severance) that may be paid on a without cause termination, as well as including a provision requiring the employee to mitigate and reducing the amount of severance by the amount of any other earned income during the notice period. A provision dealing with termination should include a requirement that on termination or expiry of the agreement, the employee shall return to the school all property, records, keys, and so forth belonging to the school, along with any copies.

(a) Termination for Cause

Under the common law, where the written contract says nothing about termination, it is an implied term of the employment contract that an employee can be terminated for cause without notice or pay in lieu of notice. Case law helps explain what constitutes “cause.” The employer may want to rely on this common law notion of cause, or it may want to define cause. Both parties should be aware that if such a provision is included, they may be giving up rights that they would have at common law. “Cause” is a very high standard in law and does not simply mean unsatisfactory performance, but rather relates to a fundamental breach of the employment relationship.

(b) Termination Without Cause

Similarly, where the written contract says nothing about termination, it is an implied term of the employment contract that an employer can terminate an employee without cause if the employer provides reasonable notice or pay in lieu of notice. Again, the common law has developed a body of case law that sets out what will constitute reasonable notice in certain circumstances. However, determining what constitutes reasonable notice is not a scientific matter – it depends on a large number of factors.

It is preferable, therefore, to specify in the written employment agreement exactly how a contract can be terminated when no cause exists. This can resolve a great deal of uncertainty. Another reason for including such a provision is to ensure that you can easily terminate the contracts of those teachers who have poor job performance. Without such a provision, it may be difficult to terminate such teachers as it is quite difficult to prove cause on the ground of poor work performance.

The provision should set out how much notice or pay in lieu of notice is required to terminate the contract without cause. It may also be preferable to include a provision indicating that the employer can give notice or pay in lieu of notice, or a combination of the two.

Careful wording is required, but an employer and employee generally can reach a binding agreement in advance regarding the length of notice or compensation required to terminate without cause.

For such an agreement to be valid and enforced by the courts, it must not violate the minimum standards of the Canada Labour Code. The employee must have fully understood the effect and term and must not have been pressured, however subtly, to agree to such a term. It is also helpful if the employee is given the opportunity to obtain legal advice before accepting the terms of the agreement.

(c) Notice

It may be preferable to set out clearly how notice of termination of the agreement can be given.

Can it be mailed or does it have to be hand delivered? If mailed, when will it be deemed to have been received?

16. Entire Agreement and Modification

The written employment agreement should contain a provision clarifying the scope of the agreement. For example, it may state that the agreement represents the full agreement between the parties and that it supersedes any prior agreements. If you want your personnel policy to be part of the employment contract, and it has not been specifically referred to, then you may not wish to have this type of provision.

The agreement should also contain a provision indicating the manner in which the agreement can be modified. In this regard, it is important to consider the effect of your written policies. If these policies may change from time to time it is important to have a reference in the employment agreement to the employee accepting these changes. Otherwise, the employer may not be able to rely on the changed policies or, worse, a substantial change to the policies may be considered as termination without cause.

17. Waiver

The written employment agreement should contain a provision stating that a waiver of a breach or failure to assert a claim shall not constitute a waiver of any subsequent or continuing breach of such terms.

18. Severability

The written employment agreement should contain a provision stating that if any part of the agreement is deemed to be invalid, the remaining portions are to remain in force and effect.

19. Acknowledgement of Agreement

The written employment contract should contain a provision whereby the employee acknowledges having read and understood all terms of the agreement.

20. Additional Points

A written agreement should also provide that if it provides for a lesser benefit than that to which the employee would be entitled under applicable legislation, then the legislation will apply instead of the applicable term of the agreement.

It is possible to customize policies, organizational charts, and employment agreements so that they reflect some of the unique aspects of First Nations culture. For example, the statutory definition of immediate family may be broadened for purposes of bereavement leave.

N.B. This represents only general information and does not constitute legal advice. Readers are encouraged to obtain advice to understand how the general issues noted above apply to their particular circumstances.

APPENDIX

4

Criminal Records Checks

The human rights provisions regarding criminal convictions are different in the *BC Human Rights Code* and in the *Canadian Human Rights Act*. Although the *Canadian Human Rights Act* only prohibits discrimination based on convictions for which a pardon has been granted, the *BC Human Rights Code* prohibits discrimination based on a person's conviction of a criminal or summary conviction offence that is unrelated to the employment or intended employment of that person. As described in Section 7, this Handbook has been written based upon assumption that the federal law will apply.

Section 8 of the *Criminal Records Review Act* says that an employer must ensure that every individual who is hired for employment involving work with children and every employee who works with children undergoes a criminal record check. The *Act* defines "work with children" as working with children directly or having or potentially having unsupervised access to children in the ordinary course of employment or in the practice of an occupation. For purposes of this *Act*, "employees" include independent contractors. An employer must not require an applicant for employment to authorize a criminal record check unless the employer has offered employment to the applicant. The employer must also inform individuals of the requirements of the *Criminal Records Review Act* if those individuals are employed by or are applicants for employment with the employer in a job that involves working with children.

According to the *Act*, when an individual is offered employment that involves working with children, the individual must provide a criminal record check authorization to the employer.

Although the *Act* only says that an employer must not employ an applicant in a job working with children if the applicant has not provided an authorization, employers should not employ applicants until after

the satisfactory criminal record check has been obtained (and not simply the authorization). (There could be a delay between the applicant providing the authorization and the employer receiving the results of the criminal record check.) Offers of employment should, therefore, not only be subject to the individual providing a criminal record check authorization, but they should also be conditional upon the employer receiving a satisfactory criminal record check. The authorization must (a) be in the form provided by the registrar under the Act; (b) be signed by the individual; and (c) include the individual's authorization to submit his or her fingerprints if necessary to verify the results of the criminal record check.

It should also be a term or condition of employment that employees promptly report to the employer if they have been charged or convicted of one of the offences listed in Schedule I to the Act and provide to the employer an authorization for a further criminal record check. An employer who becomes aware that an employee who works with children has an outstanding charge for, or has been convicted of, one of the listed offences must require the employee to provide an authorization for a further criminal record check. If an employee is also registered with the Teacher Regulation Branch, the employer must take reasonable steps to notify the Branch that the employer is obtaining a further criminal record check.

APPENDIX

5

The FNSA Recommended Teacher Evaluation Policy

The <name of school or authority> recognizes that individual teachers are a critical element in delivering sound educational programs. It is also the belief of the <name of school or authority> that teacher evaluation will assist teachers in the realization of their full potential and result in the improvement of instruction.

The <name of school or authority> has adopted this Teacher Evaluation Policy in the belief that a comprehensive evaluation process will enhance professional growth and confidence and will mutually benefit both teachers and students.

The <name of school or authority> believes in an evaluation process that is fair and just. The evaluation of a teacher's performance shall be conducted in an atmosphere of trust, confidence, and support to the greatest extent possible.

The principal is responsible for the implementation of the Teacher Evaluation Policy.

The principal shall ensure that each teacher being evaluated is made aware of the evaluation process and criteria prior to the evaluation occurring.

The overall performance of the teacher, including classroom performance, shall be considered in the evaluation. The outcome of the evaluation may be considered in making decisions regarding the teacher's employment.

GUIDELINES

The teacher evaluation process is intended to be flexible to allow the evaluator to obtain the best information to assess the teacher's performance. However, the following guidelines provide a framework for teacher evaluation. These are intended to be guidelines only and can be modified as the evaluator thinks appropriate in any particular situation.

1.0 All teachers will participate in an evaluation of their performance that may be conducted.

1.1 Teachers may request, in writing, an evaluation of their performance if the request is made by February 1.

1.1.1 When a request is received from a teacher that an evaluation be conducted, the evaluation shall commence within one month of receipt of the request.

1.2 The principal may initiate an evaluation of any teacher's performance at any time.

1.2.1 A teacher who is to be evaluated will be notified by the Principal in writing prior to the evaluation occurring.

2.0 Each teacher who is to be evaluated shall be apprised of the process and criteria for the evaluation prior to the evaluation occurring.

2.1 The evaluator shall hold an introductory meeting with the teacher to review the evaluation process and to ensure the teacher understands the expectations for their performance.

2.2 The evaluator and teacher shall endeavor to establish a climate of trust and respect.

3.0. An evaluation of a teacher's performance may include the following:

3.1 Classroom observations and post-conferences. Typically at least three classroom observations should occur.

- 3.1.1 Whenever possible, periods chosen for observation should occur during typical learning situations (i.e., not immediately prior to winter or spring break, or immediately prior to the end of the school year).
- 3.1.2 The teacher should be advised of the first visitation date in advance and may be advised in advance of the remaining visits.
- 3.1.3 The evaluator should observe the teacher through a minimum of one complete lesson during each visit.
- 3.1.4 The evaluator should complete an observation report to be discussed with the teacher promptly at a post-conference. This report should summarize the observations made in respect of the evaluation criteria and may include suggestions for improvement.
- 3.2 *The evaluator should complete a final report on the teacher's performance. The report should identify the following.*
 - 3.2.1 The teacher's assignment, professional experience and training.
 - 3.2.2 All observation dates.
 - 3.2.3 A summary of observed performance.
 - 3.2.4 A summary of any other relevant information gathered during the evaluation process, including comments from parents or students, as well as the evaluator's observations, if any, as a result of working with the teacher.
 - 3.2.5 The evaluator's opinion of the teacher's overall performance with a statement indicating that the teacher's performance is either less than satisfactory or satisfactory.
 - 3.2.6 This report shall be presented to the teacher as a draft at least 48 hours in advance of the completion of the final report, and the teacher and principal shall discuss the draft report, in the company of a third person if the teacher chooses.
 - 3.2.7 A final report shall be signed by the teacher indicating both receipt and acknowledgement of placement on her/his personnel file. The teacher shall have the right to submit to the evaluator written commentary on the report, which shall be filed with the report in his or her personnel file.

4.0 Supervisory support should be provided to a teacher whose performance is not meeting expectations or requires improvement.

4.1 *Where a teacher whose performance is not meeting expectations or requires improvement, the principal and teacher may meet to discuss a plan for improvement, which may include, for instance, supervisory visits (composed of pre-observation conferences followed by classroom observations and post-observation conferences), observation of other teachers or classrooms, mentorship, or in service opportunities.*

4.2 *An unsatisfactory evaluation may result in the termination of the teacher's employment.*

5.0 An evaluation of a teacher's performance shall be informed by the Standards for Teachers in First Nations Schools prepared by the First Nations Schools Association, as outlined below.

Standard 1: Educators in First Nations schools value and care for all students, acting at all times in the best interest of students.

Competency 1.1: Educators in First Nations schools ensure the physical, intellectual, and emotional security of all students.

Performance Indicators: the teacher ...

1.1.1: demonstrates an understanding that all students should receive an education, regardless of location, ethnicity, or academic abilities.

1.1.2: demonstrates an understanding of and respect for the community's mission and vision for the school and for the education of their children.

1.1.2: ensures that the classroom physical environment is well maintained, clean, safe, and appropriate for a variety of learning needs.

1.1.3: implements effective classroom rules / behavioural expectations with students to ensure their safety.

1.1.4: promotes students' self-esteem and positive self-identity.

Competency 1.2: Educators in First Nations schools treat all students with dignity, respect, warmth and freedom from domination.

Performance indicators: the teacher...

1.2.1: interacts in a positive, friendly and respectful manner while maintaining a professional stance.

1.2.2: incorporates First Nations cultural understandings and practices in relationships with students and in teaching interactions.

1.2.3: promotes polite, respectful, and caring student-to-student interactions.

1.2.4: communicates information from an anti-bias perspective.

Competency 1.3: Educators in First Nations schools act within ethical and legal boundaries for the benefit and protection of all students.

Performance Indicators: the teacher ...

1.3.1: demonstrates an understanding of Child Protection legislation, as well as school / community protocols regarding referrals and child safety.

Standard 2: Educators in First Nations schools implement effective teaching practices.

Competency 2.1: Educators in First Nations schools create an environment that promotes high levels of learning for all students.

Performance Indicators: the teacher ...

2.1.1: demonstrates a broad knowledge base as well as an in-depth understanding of the subject areas they teach.

2.1.2: sets high and realistic expectations for all students and implements programs accordingly.

- 2.1.3: includes evidence of cultural values and concepts in the classroom.
 - 2.1.4: learns about students' previous learning strengths and needs.
 - 2.1.5: encourages feedback, questioning, and experimentation.
 - 2.1.6: provides learning opportunities that help students understand and develop their own roles and responsibilities in the learning process and as lifelong learners.
-

Competency 2.2: Educators in First Nations schools design, implement, and monitor learning experiences to benefit student achievement.

Performance Indicators: the teacher ...

- 2.2.1: effectively prepares lessons and long term plans to meet Learning Outcomes that are substantially comparable to those of the BC Curriculum.
 - 2.2.2: uses instructional time in an effective, purposeful, focused way.
 - 2.2.3: creatively uses and develops resources and materials.
-

Competency 2.3: Educators in First Nations schools understand and apply relevant theories of human development, including individual learning differences.

Performance Indicators: the teacher ...

- 2.3.1: applies knowledge of how students develop and learn physically, socially, and cognitively.
 - 2.3.2: differentiates curriculum expectations and teaching strategies to meet the needs of all students.
-

Competency 2.4: Educators in First Nations schools show a commitment to the principles of inclusion by treating all students equitably.

Performance Indicators: the teacher ...

2.4.1: demonstrates a commitment to inclusiveness.

2.4.2: supports learners with special needs through the development and implementation of Individual Education Plans.

Competency 2.5: Educators in First Nations schools use current technology in their teaching practices and professional duties.

Performance Indicators: the teacher ...

2.5.1: models and promotes the use of technology to enhance student learning.

2.5.2: uses current technology to improve efficiency and effectiveness in planning, instructional delivery, reporting, and assessment.

Competency 2.6: Educators in First Nations schools collaborate with educators, support staff, parents, and others to improve student achievement.

Performance Indicators: the teacher ...

2.6.1: works effectively with other stakeholders for the benefit of students.

2.6.2: supports an effective and appropriate sharing of information to benefit students, always respecting the need for confidentiality.

Standard 3: Educators in First Nations schools demonstrate an understanding of the role of parents, extended family, and the community in the life of students.

Competency 3.1: Educators in First Nations schools communicate openly, effectively, sensitively, and in a timely manner with parents and the extended family.

Performance Indicators: the teacher

- 3.1.1: demonstrates a positive, professional attitude when communicating with parents and the extended family.
- 3.1.2: ensures that parents / extended family members are fully informed about and involved in school activities and issues related to student performance.
-

Competency 3.2: Educators in First Nations schools understand and support the important connection between the school and the community.

Performance Indicators: the teacher ...

- 3.2.1: creates meaningful connections to the community to contribute to student learning.
- 3.2.2: works collaboratively with the community to support students and families in a comprehensive way.
-

Standard 4: Educators in First Nations schools apply principles of assessment, evaluation and reporting to ensure high levels of student learning.

Competency 4.1: Educators in First Nations schools understand the strengths and limitations of assessment, evaluation and reporting.

Performance Indicators: the teacher ...

- 4.1.1: understands the appropriateness of various assessment tools' usefulness, comprehensiveness, and cultural relevancy.
- 4.1.2: understands the teachers' responsibility for effectively responding to assessment results.
-

Competency 4.2: Educators in First Nations schools effectively utilize appropriate assessment and reporting for the benefit of their students.

Performance Indicators: the teacher ...

- 4.2.1: ensures the use of assessment: as learning (student self-assessment), for learning (to guide instruction), and of learning (evaluation).
 - 4.2.2 uses an assessment of student performance to assist with short-term and long-range planning to ensure high levels of learning for all students.
 - 4.2.3: uses a variety of assessment strategies and measures to monitor and report on individual student progress.
 - 4.2.4: contributes to school-wide efforts to use data to monitor program effectiveness and school growth.
-

Standard 5: Educators in First Nations schools are knowledgeable about First Nations peoples.

Competency 5.1: Educators in First Nations schools have general knowledge of First Nations' histories, cultures, and government practices.

Performance Indicators: the teacher

- 5.1.1: can articulate critical First Nations issues – national, regional, and local.
 - 5.1.2: demonstrates an understanding of the community's perspectives, diversity, and values.
 - 5.1.3: ensures that his or her knowledge of First Nations issues and the community is respectfully reflected in his or her practice.
-

Standard 6: Educators in First Nations schools model their interest in, commitment to, and enthusiasm for learning.

Competency 6.1: Educators in First Nations schools participate in relevant professional development opportunities and actively share / use the information acquired through those opportunities.

Performance Indicators: the teacher ...

- 6.1.1: maintains a continual focus on learning.

- 6.1.2: contributes to a collaborative culture with a focus on high levels of learning for all.
 - 6.1.3: actively participates in inquiry into best practice and current reality.
 - 6.1.4: is committed to an action orientation (learning by doing).
 - 6.1.5: focuses on continuous improvement.
 - 6.1.6: demonstrates a results orientation.
-

Standard 7: Educators in First Nations schools have a responsibility to self, students, parents, extended family, the community, and the public.

Competency 7.1: Educators in First Nations schools understand that they are viewed as role models by students, parents and the community.

Performance Indicators: the teacher ...

- 7.1.1: acts in an exemplary manner at all times.
 - 7.1.2: understands that he/she is accountable to students, parents, the community, the employer, the profession and the public.
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