

Contract Law Fundamentals

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Topics to Be Covered

- The Basic Elements of a Contract
- Verbal Contracts
- Cancelling a Contract
- Breach of Contract Remedies
- Relevant Legal Principles
- Relevant Sources of Law
- Things to Consider Before You Sign a Contract

The Basic Elements of a Contract

- Parties and Obligations
- Intention
- Offer and Acceptance
- Terms
- Consideration
- Capacity and Authority

Parties and Obligations

It must be clear who the people or entities entering into the contract (the **parties**) are, and what they must do under the contract (their **obligations**).

An individual can enter into a contract for themselves personally, or as a representative of a company or organization.

Intention

All parties to the contract must have the **intention** to enter into a legal agreement.

They must understand that the agreement will affect their rights. A formal written contract helps make this clear.

Offer and Acceptance

Offer: one party identifies something they will provide or do in exchange for something in return.

An offer should include a price and a readiness to move forward.

Merely indicating that you are interested in negotiating about an agreement is not a legally binding offer.

Acceptance of an offer does not necessarily require verbal or written communication (though, this is the best way to accept an offer). Actions or inaction, such as accepting delivery of goods or services, can also indicate acceptance of an offer depending on the circumstances.

If the offeror revokes the offer, then it cannot be accepted. The offeree must be made aware that the offer is being revoked.

If there is no expiry date, the offer lapses after a reasonable amount of time. What constitutes a reasonable amount of time depends on the nature and circumstances of the contract.

If a reply to an offer changes the offer in any way, it is a rejection of the offer and is considered a counteroffer.

Terms

In order for a contract to be binding, there must be **certainty of terms**.

If the parties to the contract disagree what a part of the contract means, there must be some objective way of determining the meaning. Otherwise, that part of the contract is treated as though it is missing.

If an essential part of the contract is uncertain, the whole contract may be incomplete. In that case, there would be no contract.

Consideration

Consideration is something of value being exchanged with the other party under the contract.

Generally, all parties to a contract must offer some form of consideration to be bound by it.

If you get someone to sign a contract where they don't receive anything of value, the other party is likely not bound by it. This can also apply to amending, updating or replacing contracts – highly relevant for long term contracts, such as for employees.

Capacity and Authority

In order to enter into a contract, a person must have the **capacity and authority** to do so.

Capacity usually means being of legal age and having sufficient mental capacity. Parents, not children, sign contracts and waivers for those children.

Authority means having the ability to affect someone else's rights through contracts.

Verbal Contracts

While verbal contracts can be legally binding, there are major advantages to having a written agreement.

Written agreements make it easier to:

- ensure that the terms of the agreement are clearly set out, understood and followed;
- prove that the agreement exists and is enforceable; and
- reduce the risk of misunderstandings between the parties.

Cancelling a Contract

A contract cannot be cancelled once it has been signed and becomes binding, regardless of whether a party no longer wishes to be a part of the agreement.

Sometime a party can cancel the contract by relying on the terms of the contract itself or a statutory right to cancel the contract, such as a “cooling off” period.

Breach of Contract Remedies

Parties to a contract must perform their obligations under the agreement, otherwise they will be in breach of the contract.

Where there is a breach of contract, a legal claim can be brought against the party which breached the contract and a court may make an order for a remedy.

Remedies can range from specific performance (requiring the party which breached the contract to fulfill their obligations under the contract) to requiring one party to pay damages to the other. Determining the appropriate remedy in the circumstances is up to the discretion of the court.

Damages will try to put the innocent party in the position they would be in, had the other party performed the contract as expected.

Additional Topics in Contract

There are many legal issues which go beyond the basics of contract law that may be relevant specifically to school administration, including:

- Ostensible authority
- Requests for Proposals
- Liability Waivers
- Disclosure of contracts in freedom of information requests

Ostensible Authority

Regardless of whether a representative has legal authority, outside parties can enter into binding agreements with them if it is reasonable for them to believe they have sufficient authority.

So: if person A enters into an agreement on behalf of person B, person B may be bound to the agreement.

Even if person A did not have the authority to enter into the agreement, if the party who entered into the agreement with person A believes they had the authority, that is enough to bind person B to the contract.

Requests for Proposal (RFP)

RFPs are another method for entering into a contract. Instead of dealing with offers one at a time, the RFP invites a group of offers to be assessed fairly all at once.

An organization will reach out to vendors or contractors to request that they submit a proposal for a specific and defined project. The winning proposal will usually be turned into a binding contract.

RFPs do not create a contract on their own- they streamline the negotiation process and encourage fairness. However, the RFP process is fairly complex and detailed.

A school district can protect itself by ensuring that the terms of RFP provide it with maximum flexibility to respond to the proposal.

Some methods for creating flexibility are:

- Ensuring that the district is not obligated to proceed with the project, just because it received a proposal
- Reserving the right to request clarifications from bidders, or disqualify bidders
- Having the ability to define the "best" proposal or waive certain requirements for the project
- Making clear that the district will not be liable to any bidders as a result of the RFP process

Liability Waivers

Although sometimes ignored, liability waivers are an important example of a contract. In exchange for some form of consideration (such as participation in an event), the signer agrees to release a specific organization and related individuals from potential liability and claims.

To be enforced, the document must show clear **intention** to affect legal rights, and must clearly define the **terms** of what is being released (*e.g.* "loss, damages, injuries or death, including those caused by negligence"). Signer must have **capacity** and **authority**, so parents of children must sign for them, rather than the children, an older sibling or a teacher.

Freedom of Information Requests

A member of the public can make a freedom of information request under the *Freedom of Information and Protection of Privacy Act*, requesting access to a contract.

Just because a request is made does not mean a contract must be disclosed. A person's request may be refused for a number of reasons.

If the disclosure of the contract would:

- disclose deliberations, advice, or recommendations developed for or by a public body,
- disclose information subject to solicitor client privilege,
- reasonably be expected to harm the financial or economic interests of a public body,
- reasonably be expected to threaten anyone else's safety or mental or physical health, or interfere with public safety,
- reveal trade secrets of a third party, or
- be an unreasonable invasion of a third party's personal privacy,

the request may be denied.

Many school district RFPs are publicly posted so a request would probably not be necessary.

Relevant Sources of Law

In addition to the above principles, there are sources of law which should be considered when entering into contracts as a part of school administration.

This includes policies, legislation, and legal cases.

Policies and Legislation

Some examples of policies and legislation to consider include the following, where applicable:

- School district policies and administrative procedures
- *Sale of Goods Act*, RSBC 1996, c 410 – purchase of goods/materials
- *Labour Relations Code*, RSBC 1996, c 244 – union employment
- *Employment Standards Act*, RSBC 1996, c 113 – non-union employment

Please note, this is not an exhaustive list. There are many other policies and pieces of legislation which may be applicable to contracts being entered into as a part of school administration.

Things to Consider Before You Sign a Contract

- Do you have a clear understanding of who the parties to the contract are and what each party's obligations are?
- Are you prepared to be legally bound by the agreement?
- Are the terms of the contract clear?
- Do you have the proper authority to sign the contract?
- Are you certain you will you be able to perform your obligations under the contract?
- Does this contract comply with all relevant policies and laws?

Questions?

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