

# Essential Services

## UPDATE



**2011-17**

December 20, 2011

By E-mail: Two pages plus attachment

### **Labour Relations Board Confirms BCPSEA Position that the Current Essential Services Order is Ineffective**

On December 13, 2011 BCPSEA applied to the Labour Relations Board (LRB) for reconsideration of BCLR No. [B214/2011](#). In that decision, the LRB denied the BCPSEA application to require the BCTF, on notice from BCPSEA, to reimburse school districts for an amount equivalent to the duties that teachers are not performing due to the strike.

The LRB has now released its decision regarding the reconsideration application (BCLR No. B236/2011 attached). In that decision the LRB has explicitly confirmed that the current Essential Services Order in the public education sector (where teachers do not do the full scope of their jobs but continue to receive full pay) is ineffective and has not resulted in the balanced or effective pressure necessary in an essential services dispute.

While the LRB dismissed the reconsideration application, finding that asking the LRB to make the determination regarding reimbursement sought to have the LRB “directly intervene in the dispute between the parties in a manner well beyond the Board’s established approach to essential services designations,” the LRB directed that the remedy lies in re-addressing the fundamental approach to essential services designations in the education sector.

The LRB observed:

“...as noted, the approach adopted by the parties in Phase 1 simply has not worked. It has not been balanced or effective in putting pressure on both parties.”

“In our view, the remedy for this problem is not found in the suggested Reimbursement Variance. The remedy lies in addressing the root of the problem, which is the unusual approach the parties have taken to the designation of essential services in their area...”

The LRB concluded its decision with the following:

“....the ineffective essential service designations which were agreed to by the parties in the form of what is called Phase 1, have now three times been recognized by the Board to be ineffective (B161/2011, B214/2011 and the present decision). If the parties are interested in having effective essential services designations, they will need to readdress the current situation and very likely their fundamental approach to those designations: in that regard, see B161, 2011, in particular paras 51-61.

In summary, the Board has long had an established and proven approach to essential services designations which has been applied in many sectors, including the critical services in the health care sector. The present parties chose not to follow that approach in reaching their Phase 1 agreement in respect to essential services designations. The Board allowed that, given the parties’ experience in education. The approach the parties have taken has now proven beyond any doubt to be ineffective. In our view, the remedy for that lies in the parties adopting the Board’s established approach to essential services designations, not the Reimbursement Variance requested by BCPSEA.”

BCPSEA will be considering its response to this decision.

### **Questions**

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