

Court of Appeal Dismisses BCTF Appeal

In a [decision](#) released today, the BC Court of Appeal has dismissed the appeal of the BC Teachers' Federation (BCTF) in respect to the [decision](#) of Arbitrator John Hall on the preliminary issue of whether the union's grievance pertaining to student code of conduct requirements under Ministerial Order 276/07 is arbitrable.

Although the BCTF has frequently characterized this as an anti-homophobia issue, the appeal actually pertained to the issue of whether the grievance arbitration process is the appropriate forum to deal with disputes or questions of interpretation about legislative provisions related to student conduct, as opposed to terms and conditions of employment for teachers.

Arbitrator Hall decided on February 25, 2011 in favour of the BC Public School Employers' Association (BCPSEA) position that the BCTF grievance was not arbitrable. He concluded on pages 39 of his award:

The Employer's preliminary objection is sustained. I do not have jurisdiction to arbitrate the merits of the Union's grievance alleging a failure by school boards to comply with the Ministerial order.

In its decision, the BC Court of Appeal held that:

"the fact that the Ministerial Order benefits teachers by fostering a safe, caring and orderly school environment and providing for the prohibition of certain types of discrimination does not make the Ministerial Order employment-related legislation so as to vest enforcement authority in a grievance arbitrator appointed pursuant to a collective agreement."

Background: Code of Conduct — Arbitrator Determines Ministerial Order 276/07 Not Arbitrable

The BCTF grievance was in respect to whether codes of conduct for students had been developed and implemented across BC schools in compliance with Ministerial Order 276/07. The union grieved an alleged failure of school districts to comply with s. 6(a) of the Ministerial Order which provides, in part, that boards of education must ensure their codes of conduct include "one or more statements that address the prohibited grounds of discrimination set out in the *BC Human Rights Code*."

BCPSEA raised a preliminary issue as to whether this grievance was arbitrable or not. BCPSEA's position was that the "code of conduct" legislation, as it pertains to codes of conduct for students in school, is not an employment-related statute for which an arbitrator has jurisdiction. BCPSEA argued that the matter is not grievable or arbitrable as the grievance does not arise out of the interpretation, application, operation, or alleged violation of the collective agreement, nor does it create a substantive right and obligation for teachers or form a part of their employment relationship. The BCTF took the position that the matter was grievable.

Questions

Should you have any questions regarding this award, please contact Brian Chutter at brianc@bcpsea.bc.ca or your BCPSEA labour relations liaison.