

## Applying the Order: Foundation Skills Assessment

On February 2, 2009, the Labour Relations Board (LRB) issued a decision in support of the BC Public School Employers' Association (BCPSEA) Application to address the BC Teachers' Federation (BCTF) advice and direction to their members to refuse to perform work related to the Foundation Skills Assessment (FSA). The LRB Order has been filed with the BC Supreme Court and therefore is an Order of the Court.

The Order of the Court states:

I find that administering/supervising the FSA tests is prima facie work which teachers are obligated to perform. Consequently, BCTF is ordered, on an interim basis, to do the following:

1. cancel its direction to members not to administer/supervise FSA tests and to take reasonable steps to communicate that cancellation to its members as soon as possible and no later than 4:00 pm on February 4, 2009; and
2. cease and desist from authorizing or directing its members not to administer/supervise FSA tests.

...This order is intended to revert the parties to 'business as usual' as it existed prior to the BCTF's direction.

Although the Order of the Court was in place and the BCTF was required to comply with the Order by 4:00 pm on February 4, the BCTF elected to hold a vote regarding whether they would comply with the Order. This is not a voting matter. Notwithstanding this, the BCTF have now announced that this vote is complete and they intend to comply with the Order of the Court.

The FSA is an initiative of the Ministry of Education and Boards are obliged to ensure that the FSA test proceeds in accordance with the protocols established by the Ministry and without disruption to the workplace. In addition, the Order requires the parties to conduct "business as usual." This means that both the Board of Education and the local teachers' union must ensure that the administration and supervision of FSA continues to be carried out in the same manner as it has over the years. This also means that districts are not required to issue directions or requests any differently than this has occurred in previous years.

In addition, agreeing to requests from your local teachers' union such as an assurance that teachers will not be required or directed to perform the FSA or that you will direct Principals or other individuals to administer and supervise the FSA where they have not done so in the past would place the Board of Education, its staff, and teachers in a situation where they may not be complying with the *School Act* and would also be contrary to the Court Order.

We have attached a template letter you may wish to use should you receive such a request from your local teachers' union or individual teachers regarding a change from "business as usual." The expectation is that all parties will comply with the spirit, intent and terms of the Order. If this is not the case, please document the issue and contact your BCPSEA labour relations liaison immediately, as it may be necessary to address the issue through further legal channels.

**Letter to Union**

Dear <Union President>

Re: Request Regarding the Foundation Skills Assessment

I am writing further to your request that the Board of Education not direct teachers to prepare for or administer the Foundation Skills Assessment (FSA). As you are aware, the Labour Relations Board issued an order directing the BC Teachers' Federation (BCTF) to rescind its direction to members not to prepare for, administer and mark the FSA. The Labour Relations Board order reads, in part, as follows:

"...the BCTF is ordered, on an interim basis, to do the following:

1. cancel its direction to member not to administer/supervise FSA tests and to take reasonable steps to communicate that cancellation to its members as soon as possible and no later than 4:00 pm on February 4, 2009; and
2. cease and desist from authorizing or directing its members not to administer/supervise FSA tests...

I have deliberately used the words "administer/supervise" to reflect a continuation of the status quo that existed prior to BCTF's direction...."

The Labour Relations Board order has been filed with the BC Supreme Court and therefore is an Order of the Court.

The FSA is an initiative of the Ministry of Education and Boards are obliged to ensure that the FSA proceeds in accordance with the protocols established by the Ministry and without disruption to the workplace. In addition, we have a court order that requires the parties to conduct "business as usual." This means that both the Board of Education and the local teachers' union must ensure that the administration and supervision of FSA continues to be carried out in the same manner as it has over the years.

Agreeing to your request would not be business as usual and would place the Board of Education, its staff, and teachers in a situation where they would not be complying with the *School Act* and would be contrary to the Court Order. In addition, it is inconsistent with the Court Order to advise your members or other parties that your request is permissible under the Order.

While we recognize the issue of FSA has been contentious, I believe it is in the best interests of all to comply with our legal responsibilities. Please contact me if you have any questions.

Sincerely,

Superintendent