

NOVA SCOTIA COURT OF APPEAL

**Cite as: Canadian Union of Public Employees, Local 1183 v.
Breton Bay Nursing Home Ltd., 1999 NSCA 181
Flinn, Hart and Hallett, J.J.A.**

BETWEEN:

CANADIAN UNION OF PUBLIC)	N. Blaise MacDonald
EMPLOYEES LOCAL 1183 (hereinafter)	for the appellants
referred to as the "UNION") and)	
UNNAMED PERSONS)	
)	
Appellants)	
)	
- and -)	
)	
BRETON BAY NURSING HOME)	
LIMITED)	Guy LaFosse, Q.C.
)	for the respondent
Respondent)	
)	
)	
)	Appeal heard:
)	June 11, 1999
)	
)	Judgment delivered:
)	June 11, 1999
)	
)	

THE COURT: Leave to appeal denied per oral reasons for judgment of Flinn, J.A.;
Hart and Hallett, J.J.A. concurring.

FLINN J.A.: (Orally)

[1] The appellant Union applies for leave to appeal, and, if granted, appeals an interlocutory injunction granted by Justice Edwards of the Supreme Court on April 8th, 1999. The purpose of the injunction was to restrain certain picketing activities of the Union who were engaged in a legal strike against the respondent.

[2] The Notice of Application for Leave to Appeal, and the Notice of Appeal, were filed with this Court on April 19th, 1999. On May 12th, 1999, the parties reached an agreement on the matters which led to the strike. The agreement was ratified by the Union membership, and the Union members went back to work on May 15th, 1999.

[3] Since the strike has been settled, we must first decide if this appeal is moot; and, even if it is, whether we should exercise our discretion and hear this appeal on its merits.

[4] In our opinion this case does not meet the “live controversy” test as that is enunciated by Justice Sopinka in **Borowski v. Canada (Attorney General)**, [1989] 1 S.C.R. 342 (see also **Children’s Aid Society of Halifax v. L.H.** (1989), 90 N.S.R. (2d) 44). The appeal is, therefore, moot.

[5] Further, while the appellants raise some interesting issues concerning the extent of the restraint which the trial judge placed on certain of the Union’s activities in this specific situation, no practical benefit can flow from using the resources of this court

to deal with those issues. The Court is not prepared to exercise its discretion so as to adjudicate upon the merits of this moot appeal.

[6] Leave to appeal is denied, under the circumstances, without costs.

Flinn, J.A.

Concurred in:

Hart, J.A.

Hallett, J.A.