Date: 20020524
Docket: CA 177004

**NOVA SCOTIA COURT OF APPEAL**
**[Cite as: Construction and Allied Union, Local 154 v. Nova Scotia (Labour Relations Board), 2002 NSCA 73]**

**Bateman, Cromwell and Hamilton, JJ.A.**

**BETWEEN:**

CONSTRUCTION AND ALLIED UNION (CLAC), LOCAL 154
affiliated with THE CHRISTIAN LABOUR ASSOCIATION OF CANADA and THE CHRISTIAN LABOUR ASSOCIATION OF CANADA

Appellants

- and -

LABOUR RELATIONS BOARD (NOVA SCOTIA)
CONSTRUCTION INDUSTRY PANEL

Respondent

- and -

360 CAYER LTEE

Respondent

- and -

CONSTRUCTION MANAGEMENT BUREAU LIMITED

Intervenor

- and -

MAINLAND BUILDING AND CONSTRUCTION TRADES COUNCIL

Intervenor

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REASONS FOR JUDGMENT

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Counsel: Scott Sterns and Heather L. Sanford for the appellants
Malcolm D. Boyle for the respondent Cayer Ltee (Watching Brief only)
Ronald A. Pink, Q.C. and Gordon N. Forsyth for the Intervenor Mainland Building and Construction Trades Council
David A. Mombourquette for the Intervenor Construction Management Bureau
Kimberly Franklin for the Labour Relations Board (Nova Scotia) (Watching Brief only)

Appeal Heard: May 24, 2002

Judgment Delivered: May 24, 2002

THE COURT: Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Bateman and Hamilton, JJ.A. concurring.

**CROMWELL, J.A.:** (Orally)

[1] On an application for *certiorari* in the Supreme Court, the appellants unsuccessfully sought to quash a decision of the Construction Industry Panel of the Labour Relations Board ("Panel"). The Panel had ruled that the appellant, CLAC Local 154, is not a "trade union" within the meaning of s. 92(i) of the **Trade Union Act** ("**Act**"). This appeal is from the dismissal of the *certiorari* application.

[2] The Panel reached its decision on what I would refer to as both a "narrow" and a "broader" approach to the issue. Section 92(i) requires that, for the purposes of the construction industry provisions of the **Act**, a trade union must be one that "... according to established trade union practices pertains to the construction industry." The Panel's "narrow" decision, which was sufficient to dispose of the certification applications before it, was that such "trade union practices" must be those which are found in Nova Scotia. On this point the Panel said as follows:

> 14. In our opinion, while evidence of CLAC's status elsewhere may be relevant in the sense that it may corroborate or reinforce a conclusion about Nova Scotia "established trade union practices", it cannot be used to prove them. In the first place, the Legislature of Nova Scotia cannot be assumed to have, in effect, delegated or waived its constitutional jurisdiction over labour management relations to another Legislature in Canada or indeed to the labour relations board of some other province. It would require unequivocal, unambiguous, explicit language in the Act to achieve this result. In the end, in our opinion, the Legislature of Nova Scotia would be concerned with trade union practices established by trade unions in the construction industry in Nova Scotia. To give one illustration: while it might be unusual to do so, nothing in law prevents the Legislature of Alberta or any other province from redefining the trade jurisdiction of some one or more or all of the building trades such that the "new" trade jurisdictions, for example, for the O.E. Union and the Carpenters Union, differed from that contained in the constitutions of such unions, or, to take another example, from redefining, statutorily, what trade practices will constitute a trade union as a construction trade union. If this occurred in Alberta, for example, are we to believe that the Legislature of Nova Scotia, or the Panel, is bound to accept these changes to what historically had been the trade jurisdiction of the O.E. Union and the Carpenters Union or the trade practices in Nova Scotia? The answer is obviously in the negative. Similarly, the Panel could, through a series of cases, so alter the trade jurisdiction of all fourteen (14) building trade unions as to lead to, for example, the elimination of the Labourers' Union by dividing its historical trade jurisdiction among some or all of the other thirteen (13) building trade unions. Admittedly, the likelihood of the Panel doing this is so remote as to

> be far-fetched but it could be done just as the Legislature could define statutorily what trade practices were needed to be constituted a "construction trade union".

[3] As noted, this was sufficient to dispose of the matters before the Panel as it was conceded by the appellants that if evidence of practices in Nova Scotia was required, they could not succeed.

[4] The Panel then turned to what I have called its broader basis for decision. After an in-depth review of relevant provisions in the **Act** and their legislative history, the Panel determined that the construction industry provisions of the **Act** contemplated that there would be one union per skilled trade or craft. It further decided that those unions are the 14 international skilled trade or craft trade unions which currently "occupy the field" with the result that there is "... no room for CLAC." As the Panel put it:

> 22. ... CLAC is doomed to indefinite failure in Nova Scotia because of another characteristic of a union that pertains to the construction industry according to established union practices. In our judgment, the statutory scheme reflected in Part II of the Act, ie., the Part dealing only with construction industry labour relations, when read in light of and in the context of the factual history of the industry prior and subsequent to the original enactment of the Act in 1972, leads inexorably to the conclusion that the Legislature of the Province of Nova Scotia devised a statutory scheme that called for, (even though it did not explicitly say so), a construction industry in which employers bargained with one (1) or more of fourteen (14) international skilled trade or craft trade unions all with headquarters in Washington, D.C. that, cumulatively, had the trade jurisdiction to perform all of the work defined by the phrase "construction industry" in Section 92(c) in all of the possible sectors described in Section 92(h) of the Act, and on the footing that there could and would be only one (1) union per skilled trade or craft.
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> 23. On our analysis, therefore, the field has been totally co-opted by the fourteen (14) existing unions - the Traditional Unions - which do fall within Section 92(i) so that there is no room for CLAC. We so find.

[5] On the *certiorari* application, Hood, J. found that the applicable standard of review was patent unreasonableness and that the decision of the Panel was not patently unreasonable.

[6] In this Court, the appellants concede, in our view correctly, that the applicable standard of review is patent unreasonableness. The Panel's decision on the very question which it decided is protected by a full privative clause: see ss. 93, 94(4) and 19(1)(b) of the **Act**. Moreover, the Panel is a specialized labour relations tribunal which, when interpreting the definition

of the term trade union in the context of certification applications as in this case, operates at the very core of its specialized functions and expertise.

[7] With respect to the Panel's narrow holding, the appellants say in essence that it is unreasonable to "read into" the **Act** a limitation that the trade union practices must be within Nova Scotia. We reject this submission. The reasons given by the Panel for its interpretation (quoted in part earlier) are substantial and its interpretation, in our view, cannot be said to be "clearly irrational".

[8] Just as the Panel's narrow basis for its decision was enough to dispose of the certification applications before it, so too is our conclusion that that aspect of the Panel's decision is not patently unreasonable sufficient to dispose of this appeal. In our view, it is generally better for this Court to address only matters which must be decided in order to finally determine the specific matter before it. We also think it would be preferable, if it becomes necessary in a future case to address the wide-ranging contextual analysis conducted by the Panel in the course of its broader consideration, to do so in light of specific, rather than as in this case, hypothetical facts.

[9] The appellants abandoned their grounds of appeal numbered 9 and 10 which raised certain **Charter arguments**.

[10] The appeal is dismissed. Counsel agreed that costs should follow the event. We therefore order the appellants to pay to each of the intervenors $2,000.00 plus disbursements. There will be no costs for or against the other parties.

Cromwell, J.A.

Concurred in:

Bateman, J.A.

Hamilton, J.A.