

NOVA SCOTIA COURT OF APPEAL

Citation: Cape Breton-Victoria Regional School Board v. Canadian Union of
Public Employees, Local 5050,
2011 NSCA 9

Date: 20110125
Docket: CA 325296
Registry: Halifax

Between:

Cape Breton Victoria Regional School Board

Appellant

v.

Canadian Union of Public Employees, Local 5050
on behalf of the Grievor, H.D.

Respondent

Judge: The Honourable Justice Fichaud

Appeal Heard: November 23, 2010

Subject: Judicial review of labour arbitration award

Summary: The School Board terminated the grievor's employment as a school caretaker because the grievor had a sexual relationship with a 15 year old girl. The girl was a student at a school operated by the Board, but not a school where the grievor worked. The arbitrator reinstated the grievor. The Supreme Court judge dismissed the Board's application for judicial review. The Board appealed to the Court of Appeal.

Issue: Did the Supreme Court Judge err and should the arbitration award be set aside?

Result: The girl was over the *Criminal Code*'s age of consent. The relationship was consensual and conducted without any connection to the schools which the girl attended or where the grievor worked. The arbitrator applied arbitral principles that balance the employee's privacy interest in his off duty conduct with the employer's reputational interest. The arbitrator found that, on balancing the factors, the continued employment of the grievor was tenable, which was the test under arbitral principles. The arbitrator's findings of fact

and application of the facts satisfied the reasonableness standard of review. The Court of Appeal dismissed the Board's appeal.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 21 pages.