

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Canadian Union of Public Employees, Local 3912 v. Nickerson*,  
2017 NSCA 70

**Date:** 20170726  
**Docket:** CA 458993  
**Registry:** Halifax

**Between:**

The Canadian Union of Public Employees, Local 3912  
Appellant (Cross-Respondent)

-and-

Shannon Nickerson  
Respondent (Cross-Appellant)

-and-

Nova Scotia Labour Board  
Respondent

**Judge:** The Honourable Justice Joel E. Fichaud

**Appeal Heard:** May 12, 2017, in Halifax, Nova Scotia

**Subject:** Labour relations – duty of fair representation – administrative law – standard of review

**Summary:** Ms. Nickerson was in a bargaining unit represented by CUPE, Local 3912. Ms. Nickerson filed two grievances against her employer, Saint Mary's University. The grievances alleged harassment from a disciplinary letter, and termination without cause. The Union held the view that the harassment grievance likely would fail, but the termination grievance might succeed, and the best option would be a settlement of both grievances, provided the terms of settlement were favourable. Ms. Nickerson opposed settlement. She wanted to be vindicated

by an arbitral award. She said she had a depressive mental disability that the Union was required to accommodate, and only vindication in arbitration would accommodate her disability.

The Union and the employer reached a settlement agreement, conditional on Ms. Nickerson's approval, that would have reinstated Ms. Nickerson with compensation and returned seniority, and withdrawal of the disciplinary letter. Ms. Nickerson rejected the settlement.

Ms. Nickerson filed a complaint with the Labour Board that the Union had breached its duty of fair representation under s. 54A of the *Trade Union Act*, R.S.N.S. 1989, c. 475.

Section 56A of the *Act* provides that a Review Officer screens complaints of unfair representation, and is to dismiss those that could not succeed before the Labour Board. The Review Officer dismissed Ms. Nickerson's complaint.

Ms. Nickerson applied for judicial review. The judge of the Supreme Court of Nova Scotia set aside the Review Officer's Decision. The judge held that the Review Officer's findings of fact were unreasonable. In the judge's view, Ms. Nickerson had a viable complaint that the Union had breached its duty of fair representation by delaying the processing of the grievances in bad faith.

The Union appealed to the Court of Appeal. Ms. Nickerson cross-appealed.

**Issues:** On the Union's appeal, did the reviewing judge misapply the reasonableness standard of review to the Review Officer's findings of fact? On Ms. Nickerson's cross-appeal, is there a basis for Ms. Nickerson's proposition that the Union was required to take her grievances to arbitration as an accommodation for her mental disability?

**Result:** The Court of Appeal allowed the Union's appeal. The Review Officer's findings, on the causes for the delay, were clearly expressed and supported by the evidence. The judge misapplied the reasonableness standard of review. The Court of Appeal dismissed Ms. Nickerson's cross-appeal. The Review Officer had concluded that, given the

risk the grievances might fail, the favourable terms of settlement achieved by the Union were a viable alternative to vindicate Ms. Nickerson's position. It is the bargaining agent's function to balance risk and opportunity and determine the strategy for processing a grievance in the interests of the bargaining unit. The Review Officer's conclusion was reasonable under the standard of review.

*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 24 pages.*