

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia Teachers Union v. Nova Scotia Community College
2005 NSSC 98

Date: 20050504

Docket: S.H. No. 233084

Registry: Halifax

IN THE MATTER OF: The Arbitration Act, R.S.N.S. 1989, c. 19

- and -

IN THE MATTER OF: An Arbitration between: The Nova Scotia
Teachers Union and the Nova Scotia Community
College

- and -

IN THE MATTER OF: An Application by the Nova Scotia Teachers
Union for an Order to set aside the award of Bruce
P. Archibald, Q.C. dated August 9, 2004

Between:

Nova Scotia Teachers Union

Applicant

v.

Nova Scotia Community College

Respondent

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Judge: The Honourable Justice Frank Edwards

Heard: April 21, 2005 in Halifax, Nova Scotia

Subject: Judicial Review: Application to have Arbitrator's award
set aside; Burden of Proof

**Factual Background
and Issue:**

This case involves an analysis of an Arbitrator's decision
in order to ascertain whether he correctly applied the

onus of proof. The factual background is a "she says/he says" allegation of inappropriate sexual touching.

Result:

Application allowed. The Arbitrator inadvertently shifted the burden of proof to the Grievor by employing an either/or approach in selecting the Complainant's version of the event over that of the Grievor. The Arbitrator should have employed a three step test similar to that set out in ***R. v. W.(D.)*** (1991), 63 C.C.C. (3d) 397 (S.C.C.). An example of the formulation of the W.(D.) analysis for a civil standard is set out in ***L.S.U.C. v. Neinstein*** (2005) ONSLAP 1.

Cases Noted:

Faryna v. Chorney, [1952] 2 D.L.R. 354 (B.C.C.A.)
R. v. B.(R.W.) (1993), 40 W.A.C. 1 (B.C.C.A.)
R. v. Strong, [2001] O.J. No. 1362
R. v. W.(D.) (1991), 63 C.C.C. (3d) 397 (S.C.C.)
Law Society of Upper Canada v. Neinstein, 2005 ONSLAP 1

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