SUPREME COURT OF NOVA SCOTIA
Citation: Coates v. Sharp, 2012 NSSC 311

Date: 20120820
Docket: Hfx Nos. 375221 and 375222
Registry: Halifax

Between:

Rosanne Coates

Applicant

v.

Brian Sharp, Nova Scotia Labour Board, and
Nova Scotia Government and General Employees Union

Respondents

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Heard: July 24, 2012

Final Written Submissions: August 16, 2012

Counsel: Rosanne Coates, on her own

Raymond Larkin, Q.C., and Laura Neals, Articled Clerk, for respondents

Moir J.:

Introduction

[1] Ms. Coates took proceedings for judicial review of two decisions, one of a review officer under the *Trade Union Act* who dismissed her complaint that her union failed to provide fair representation and one of the Labour Board who later dismissed her other complaint that her union engaged in unfair labour practices, rather than giving her permission to withdraw the complaint.

[2] The grounds in Ms. Coates' judicial review applications took issue with the reasons underlying the two decisions. They raised no issue of procedural fairness. No such issue was discussed at the motion for directions. Nor was such an issue raised by Ms. Coates' initial briefs.

[3] In a submission filed a week before the hearing, Ms. Coates argued that the Labour Board is obligated to hold a hearing when parties cannot agree whether a complaint should be withdrawn or dismissed. In a letter delivered two weeks after the hearing, Ms. Coates proposed to introduce evidence of something said by Mr.

Gores at the motion for directions, which is supposed to show that the review officer failed to read some of her submissions.

[4] The court has to enforce Rule 38.02 with the cost of litigation in mind. Ms. Coates raises issues that should have been included in her grounds or, long ago, have been the subject of a motion for directions under Rule 7.10(e). Although Ms. Coates does not realize it, her submissions could only be entertained by re-opening the hearing. In all the circumstances, to permit her to make a motion to reopen the hearing, introduce evidence, amend her grounds, and to provide for submissions would be to do an injustice to the other party.

Background to Decisions Under Review

[5] Ms. Coates grieved the termination of her employment as a nurse. An arbitration hearing started in July of 2010 and continued in September of that year. However, the hearing had to be postponed when a conflict between Ms. Coates and union counsel led to counsel's resignation. The arbitrator provided new dates for January, 2011.

[6] The union later advised Ms. Coates that the January dates were being postponed. Then, it gave her notice that the grievance, and several others Ms. Coates had initiated, would be withdrawn "subject to your right to appeal to the Grievance Appeal Committee". No appeal was started. The grievances were withdrawn.

[7] In early 2011, Ms. Coates filed a complaint with the Labour Relations Board. She alleged that withdrawal of her grievances breached the union's duty of fair representation under s. 54A(3) of the *Trade Union Act*.

[8] Section 54A is fairly new: S.N.S. 2005, c. 61, s. 7. It codified a union's duty not to "act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in [the] bargaining unit". It is situate right after the unfair labour practice provisions that have been a part of the *Trade Union Act* for many years: s. 53 and s. 54.

[9] The unfair labour practice provisions include s. 54(f) and s. 54(g). These prohibit discriminatory expulsions, suspensions, denials of membership, disciplinary actions, or disciplinary penalties by unions.

[10] Section 55 establishes procedures for complaints about violations of s. 53, s. 54, or s. 54A. Subsection 55(3) puts conditions on complaints under s. 54(f), s. 54(g), and s. 54A. These require the member to exhaust her rights to appeal internally, if the union has an appeal process and gives the member ready access to it.

[11] Subsection 55(4) provides two exceptions to the appeal conditions for complaints of violations of s. 54(f) and 54(g), but not s. 54A. One exception is a Board discretion to convene a hearing if the Board is satisfied "that the complaint should be dealt with without delay". The other exception seems to reinforce the requirement for ready access to appeal procedures.

[12] The NSGEU has a process for appealing a decision to withdraw a member's grievance. As noted, that avenue was brought to Ms. Coates' attention when she was told of the decision to withdraw her grievances. The union redoubled that effort in January, 2011 and provided Ms. Coates with copies of the policies governing such appeals.

[13] Ms. Coates is hostile toward the suggestion of an internal appeal. In one early piece of correspondence, she wrote:

> … I will not be participating in any appeal. I will not lower myself by becoming a subject of a process that is intended for no other purpose but to further harass and use me to serve the needs and interest of the Union, the employer and their associates.
>
> … I fail to see any merit to any appeal … .

To this day, Ms. Coates has difficulty seeing that an internal appeal would have had at least one merit. It would have satisfied a condition that stood in the way of her complaint.

[14] Ms. Coates did take steps to try to avoid the condition. First, she wrote to Board staff suggesting that her complaint be exempted under s. 55(4). She suggested that the "aborted arbitration process … thwart[s] my ability to become employed and earn a viable living consistent with my nursing practice".

[15] A member of staff pointed out to Ms. Coates that the exception about delay applies only to discriminatory membership or disciplinary actions under s. 54(f) and (g). If she were to present her complaint as being about an unfair labour practice, she might circumvent the need to exhaust her internal appeal rights.

[16] So, Ms. Coates filed a second complaint. It is a "Complaint of Unfair Labour Practice" and it refers to s. 54(g) as well as s. 54A(3). The Board declined to exercise its discretion to convene a hearing, and it put the unfair labour practice complaint on hold until the duty of fair representation complaint was determined.

[17] Section 56A of the *Trade Union Act* is also fairly new: S.N.S. 2005, c. 61, s. 10 as amended by S.N.S. 2006, c. 48, s. 2. It provides for screening of a s. 54A complaint by a review officer. Later, I shall discuss the provisions in detail.

[18] Mr. Brian Sharp was appointed to be the review officer for Ms. Coates' s. 54A complaint. He had before him the complaint, the union's response (as amended), and a lengthy book of documents (also, as amended). Last October he dismissed the complaint. He provided extensive written reasons.

[19] After Mr. Sharp's decision, Board staff asked Ms. Coates whether she wanted to withdraw her unfair labour practice complaint. She agreed. However, the union wanted the complaint formally dismissed.

[20] The Board wrote, "This is one of those rare cases where the Labour Board feels constrained to give reasons for its decision to dismiss a complaint …" rather than to permit withdrawal.

Decision of Review Officer

[21] *Standard of Review Analysis*. The requirement for a standard of review analysis, and guidance for conducting it, are found in *Dunsmuir v. New Brunswick*, 2008 SCC 9 as refined by *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. See also, *Police Assn. of Nova Scotia Pension Plan (Trustees of) v. Amherst (Town)*, 2008 NSCA 74; *Casino Nova Scotia v. Nova Scotia (Labour Relations Board)*, 2009 NSCA 4; *Communications, Energy, and Paperworkers' Union v. Maritime Paper Products Ltd.*, 2009 NSCA 60, and; *Royal Environmental Inc. v. Halifax (Regional Municipality)*, 2012 NSCA 62.

[22] In the *Police Association* case at paras. 41 and 42, our Court of Appeal summarized the standard of review analysis under *Dunsmuir*:

> The first step is to determine whether the existing jurisprudence has satisfactorily determined the degree of deference on the issue. If so, the SOR analysis may be abridged (para. 62, 54, 57).
>
> If the existing jurisprudence is unfruitful, then the court should assess the following factors to select correctness or reasonableness (para. 55):
>
> (a) Does a privative clause give statutory direction indicating deference?
>
> (b) Is there a discrete administrative regime for which the decision maker has particular expertise? This involves an analysis of the tribunal's purpose disclosed by the enabling legislation and the tribunal's institutional expertise in the field (para. 64).
>
> (c) What is the nature of the question? Issues of fact, discretion or policy, or mixed questions of fact and law, where the legal issue cannot readily be separated, generally attract reasonableness (para. 53). Constitutional issues, legal issues of central importance, and legal issues outside the tribunal's specialized expertise attract correctness. Correctness also governs "true questions of jurisdiction or vires", ie. "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter". Legal issues that do not rise to these levels may attract a reasonableness standard if this deference is consistent with both (1) any statutory privative provision and (2) any legislative intent that the tribunal exercise its special expertise to interpret its home statute and govern its administrative regime. Reasonableness may also be warranted if the tribunal has developed an expertise respecting the application of general legal principles within the specific statutory context of the tribunal's statutory regime (para. 55-56, 58-60).

[23] As I said, s. 56A of the *Trade Union Act* is fairly new. Enacted in 2005, and amended in 2006, it brought in a new process for screening complaints. So far, no judge has determined whether a review officer's decision is owed deference.

[24] So, I must turn to the three *Dunsmuir* factors.

[25] On the first factor, the review officer's decision is protected by s. 56A(7), a strongly worded privative clause: "A decision of a review officer under this Section is final and conclusive and not open to question or review."

[26] A person, such as Ms. Coates, may well question why s. 56A(7) does not put an end to the review. If legislative supremacy is a fundamental principle of our constitution, by what right do we persist in reviewing a decision "not open to … review"? It does no harm to remind ourselves of the basics.

[27] The answer is that the courts have long been willing to supervise the quality of statute-based decisions to see that the rule of law prevails. The supervisory jurisdiction has constitutional protection: *Crevier v. Québec (Attorney General)*, [1981] 2 S.C.R. 220. Therefore, the supervisory jurisdiction can withstand a privative clause. But, that does not mean that the court can take over the statutory decision-making.

[28] The *Dunsmuir* approach to judicial review results from a long evaluation. Starting with *Canadian Union of Public Employees v. New Brunswick Liquor*

Corporation, [1979] 2 S.C.R. 227, the courts searched for a middle way between staying out of, and intruding into, statutory decision-making to which the court's attention was not invited, between doing nothing about procedural unfairness or unreasonable decision-making and taking over the decision-making process.

[29] The need for that balance is a partial explanation of the reasonableness standard. It may seem peculiar to Ms. Coates that, with most statutory adjudications, we cannot interfere just because we think the decision is wrong. The court reviews many statutory decisions only for reasonableness, and otherwise defers to the decision-maker's right to be wrong, because of the tension between supremacy of the legislature and protection of the rule of law.

[30] So, the first factor tends toward deference to a review officer's decision under s. 56A of the *Trade Union Act*.

[31] There are authorities that can help with the second factor. A long line of cases, of which both the *C.U.P.E.* case and *Casino Nova Scotia* are examples, "emphasized the importance of deference to the decisions of the Labour Relations

Boards on core issues under industrial relations legislation" (*Casino Nova Scotia*, para. 26).

[32] As he is part of the same legislative regime, one sees that the question of "a discrete administrative regime for which the decision-maker has particular expertise" may well be answered in the same way for the review officer as it is for the Labour Relations Board.

[33] With s. 54A, the Board was given a new responsibility, one previously with the courts. Its jurisdiction to remedy a breach of the duty of fair representation is so closely related to the Board's established functions that the case law on deference is analogous.

[34] A review officer is appointed by the Board: s. 56A(1). A review officer's first responsibility is to dismiss, without notice to the union, a complaint about which the officer "is not satisfied on initial review that there is sufficient evidence of a failure to comply with" the duty of fair representation: s. 56A(2). The dismissal is mandatory.

[35] If the complaint survives initial review, notice is given to the union and it is requested to make a response: s. 56A(3). Once again, the review officer must ask himself, as Mr. Sharp did, whether he is satisfied there is sufficient evidence of a failure to provide fair representation, and he "shall" dismiss the complaint if he is not satisfied.

[36] It was at that point that the process ended for Ms. Coates, but we have to look at the whole process to assess the second factor. A review officer who "believes" that there has been a breach of the duty to provide fair representation must "effect a settlement, if possible": s. 56A(5)(a) or "where not possible, refer the complaint to the Board for disposition": s. 56A(5)(b).

[37] Breach of the duty of fair representation is a core issue for the Labour Relations Board, now that the subject has been incorporated into the *Trade Union Act*. The review officer is not a mere administrator of complaints. His function is to make determinations on the very same core issue. His satisfaction determines whether a complaint goes forward.

[38] At that, the review officer does much more than screen complaints. He has to try to settle the complaints he believes to be founded on evidence.

[39] Both the screening function and the settlement role suggest that the review officer must use specialized knowledge when interpreting the duty of the procedural and substantive provisions on fair representation.

[40] The review officer falls under the general purposes of the *Trade Union Act*, as well as the specific screening and settlement purposes of s. 56A.

[41] With the 2005 amendments, the review officer became an integral part of a discrete legislative regime in which the Board has long been recognized as having special expertise to interpret and administer the home statute, the *Trade Union Act*. In light of the review officer's function and role, he cannot be treated differently than the Board under the second *Dunsmuir* factor.

[42] The third factor has often been summed up as "What is the nature of the question?"

[43] It is here that Ms. Coates makes her strongest case for the correctness standard. She complains that she made a s. 54A complaint, a complaint of breach of the duty of fair representation and, instead, she got a decision about the need to exhaust appeals under s. 55. She contends that Mr. Sharp did not have jurisdiction to decide a s. 55 issue.

[44] We need to look a little more closely at s. 56A(4) and s. 54A(3). Subsection 56A(4) reads:

> Where a review officer has received a response from a trade union to a request made pursuant to subsection (3) and is not satisfied that there is sufficient evidence of a failure to comply with subsection (3) of Section 54A, the review officer shall dismiss the complaint.

Subsection 54A(3) reads:

> No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee's rights under a collective agreement.

[45] So, Mr. Sharp had to be satisfied, on the basis of the complaint and the response, that there was sufficient evidence that the NSGEU had acted, in the

course of representing Ms. Coates, in a manner that was arbitrary, discriminatory or in bad faith.

[46] Did that include considering whether Ms. Coates had exhausted the internal appeal procedures? That was the question. What was 'its' nature?

[47] In my view the question is a straight one of law. It is not a true question of jurisdiction. Mr. Sharp's jurisdiction arose when Ms. Coates' complaint was filed with the Board and the Board appointed him to be the review officer for that complaint. See the discussion at paras. 26 and 27 of *Canadian Union of Public Employees, Local 2434 v. Port Hawkesbury (Town)*, 2011 NSCA 28.

[48] We have here a question of statutory interpretation about the home statute of the regime of which the review officer is an integral part. An administrative decision that determines such a question usually deserves deference: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 34.

[49] Each of the three factors points to deference. Therefore, a decision of a review officer under s. 56A of the *Trade Union Act* on a subject of this nature is reviewable only for its reasonableness.

[50] *Review*. On a review for reasonableness, we are required to refer to the decision-maker's "process of articulating the reasons" and to "outcomes": *Dunsmuir*, para. 47. The two are not discrete: *Newfoundland and Labrador Nurses' Union*, para. 14. (Inadequate reasons will not necessarily undermine a rational outcome.)

[51] In this case, the decision-maker provided extensive reasons. In my assessment they demonstrate clearly a reasonable path of thought.

[52] In its reply, the union contended that Mr. Sharp had no jurisdiction to determine the complaint. It argued that, because of s. 55(3)(a) of the *Trade Union Act*, Ms. Coates' failure to exhaust her internal appeal rights (and the union's effort to give her full access to that process) precluded her filing a complaint.

[53] Mr. Sharp provides helpful subheadings for his reasons. In Part 1.2 "Does the Review Officer have jurisdiction to review this complaint?", he refers to Professor Sullivan's theory of the basics of statutory interpretation, which was rejected by the Supreme Court of Canada in favour of Professor Driedger's original basic theory: *Rizzo & Rizzo Shoes Ltd.*, [1998] S.C.J. 2, a stance the Court has repeated on many occasions since.

[54] In Part 1.3, Mr. Sharp concludes his discussion of the review officer's role with three points about legislative intent underlying s. 56A: provision of a formal screening process for duty of fair representation adjudications, the review officer as sole and final arbiter in the screening, passing along to the Board only those complaints "that raise a satisfactorily supported, arguable case that the DFR may have been breached".

[55] Under "DFR Notice Structure", Mr. Sharp compares the two-stage notice procedure with the practice in other provinces. This too is "unique". Assisted by the points of comparison with procedures outside Nova Scotia, Mr. Sharp concludes that our notice provisions are "to minimize the disruption DFR complaints can cause within workplaces and bargaining units." This is nothing

more, or less, than understanding legislative text in light of what Professor Driedger called the external context.

[56] Part 1.5, which repeats the issue "Does the Review Officer have jurisdiction to review this complaint?", begins with a recognition of something often missed in exercises in statutory interpretation, that legislative purpose is seldom singular. Mr. Sharp identifies four purposes.

[57] The first two purposes are very specific to the text "include a formal screening procedure" and "give the Review Officer sole and final jurisdiction". Often legislative purposes are layered. Mr. Sharp's third purpose over-arches the more specific ones: "ensure that the Board only adjudicates ... a satisfactorily supported, arguable case". And the fourth over-arches that: "minimizing the disruption DFR complaints can cause within workplaces and bargain units".

[58] Having identified these layered purposes, Mr. Sharp turns to the text of s. 55(3)(a). He points out that the provision is silent on who determines "whether the necessary preliminary actions have been completed". This situation contrasts

with s. 55(2). Thus, "there is nothing that precludes the Review Officer from applying s. 55(3)(a) ...".

[59] One wants to ask, what permits the review officer to do so? Mr. Sharp answers that question in three paragraphs that combine his appreciation of the legislative purposes with his understanding of the text. In doing so, he provides the kind of analysis described by Driedger's principle of contextual interpretation.

[60] The three paragraphs read:

> Since the *Act* requires the Board to appoint a Review Officer when it receives DFR complaints, there are potentially two entities that could consider compliance with s. 55(3)(a) - the Review Officer and the Board. In my view, the nature of that analysis is more consistent with the adjudicative role the Legislature has assigned to the Review Officer than the Board.
>
> As I noted above, the Legislature designed a statutory scheme that limits the Board's role in DFR adjudication to hearing satisfactorily supported, potentially valid complaints. The Board's responsibility therefore is to determine DFR complaints on the merits of individual complaints. Compliance with s. 55(3)(a) is a preliminary matter that has nothing to do with the merits of a complaint. Therefore, deciding compliance with s. 55(3)(a) is inconsistent with the role the Board otherwise plays in DFR adjudication.
>
> In contrast to the Board's role of determining complaints on the merits, the Review Officer's role is to screen complaints. The *Act* requires the Review Officer to examine the evidence and determine if there is a sufficient body of potentially believable evidence to raise a possibility that the Board could find that s. 54A(3) has been breached. It is consistent with the *Act's* scheme to have the Review Officer include compliance with s. 55(3)(a) amongst the factors the Officer considers when he or she reviews complaints. By reviewing compliance

> with s. 55(3)(a), the Review Officer screens out complaints that the Board need not determine on the merits. If there is insufficient evidence to raise a possibility that a complainant has complied with s. 55(3)(a), there is also insufficient evidence to raise a possibility place that the Board could find that s. 54A(3) has been breached. There would be no point to include a screen in the DFR scheme, if the Board was required to determine such preliminary issues that are not connected to the merits of complaints.

[61] Mr. Sharp then records, and explains, his fact findings on the failure to comply with s. 55(3)(a). He deals with the union's appeal procedure, Ms. Coates' access to the procedure, Ms. Coates' appeal, and her later disavowal of it. He concluded:

> Since the Complainant did not comply with s. 55(3)(a) of the *Act*, I am not satisfied that there is sufficient evidence to permit the Board to find a DFR complaint in her favour.

[62] In my assessment, Mr. Sharp provided extensive reasons in a manner that makes his reasoning clear.

[63] Ms. Coates made submissions on outcomes that referred to the serious affects upon her of the actions of Capital Health, the union, and the Labour Board. As I explained to her, the requirement that a decision reviewable for reasonableness fall within a range of rational outcomes has to do with the

conclusion reached by the decision-maker, not the affects of that conclusion on a party.

[64] Mr. Sharp helped us to see the range of rational conclusions when he pointed out that s. 55(3) is silent on who enforces "no complaint shall be made to the Board" unless internal appeals are exhausted or access to them is thwarted. Are commission staff to refuse to file the complaint? Is the review officer to intervene? Or, does the Board need to be convened?

[65] Because of the silence, the answers depend on implication from the internal context of the *Trade Union Act* as a whole and related legislation, and the external context. As I see it, there are rational interpretations of s. 56A of the *Trade Union Act* and its relation to s. 55(3) that would answer any one, any combination, or all three of the questions positively. Thus, Mr. Sharp's conclusion is within the range of rational outcomes as required on a reasonableness review according to *Dunsmuir*.

Decision of the Board

[66] *Facts*. After Mr. Sharp released his decision, Board staff wrote to Ms. Coates inquiring whether she wished to withdraw her unfair labour practice complaint. Ms. Coates responded affirmatively.

[67] Then Board staff sought the union's position. It opposed permission to withdraw and insisted on dismissal.

[68] The Board took submissions from the parties. It found, as a fact, that there were special circumstances against permitting withdrawal, such that dismissal was warranted under Board policy. The panel dismissed the complaint. The chief executive officer produced the Board's reasons on behalf of a three member panel.

[69] *Standard of Review*. Reasonableness is the standard for reviewing a decision of a Labour Board panel made within the Board's jurisdiction: *Casino Nova Scotia*, cited above. (I also note that the decision is in exercise of the Board's discretion and it turns on a finding of fact.)

[70] *Review*. The Board's reasoning path is simple and clear:

- The unfair labour practice complaint had been put on hold pending determination of the duty of fair representation complaint.

- In the decision that put the unfair labour practice complaint on hold, the Board had said that the fair representation determination might show constructive dismissal from the union or constructive denial of access to the appeal process.

- The determination showed neither.

- The Board's policies provide that "the Panel may reject a request to withdraw and insist on dismissal if in its opinion special circumstances merit such an approach".

- The reasons for putting the complaint on hold, coupled with the determination of the duty of fair representation complaint, supplied

> special circumstances. Especially, to continue the complaint would duplicate the review officer's adjudication.

[71] As for the range of reasonable outcomes, the panel had a discretion to permit withdrawal or to insist on dismissal. Either could rationally be justified.

Loose Ends

[72] The foregoing does not respond to each of Ms. Coates' criticisms of Board staff, the review officer, or the Board panel. She deserves a response on some points that do not affect the review, but that are important to her.

[73] Ms. Coates is insulted by the panel's reference to "the unnecessary and vexatious nature of the ULP Complaint", which characterization it found to be "highly plausible". She says that she worked hard on her complaints, as I must say she did on the review. She was not acting vexatiously.

[74] Two points need to be understood.

[75] First, it is unfortunate that the register of the legal profession includes a specialized meaning for "unnecessary and vexatious" and its Victorian ancestor "frivolous and vexatious". These phrases were once reserved for cases so hopeless that they amounted to abuses of the court's processes. The panel's decision just means that it was highly plausible that Ms. Coates' unfair labour practice complaint was hopeless. It was.

[76] Second, Ms. Coates herself sets a strong tone for discourse. Her characterization to the panel of the union's position in favour of dismissal as "unusual and bizarre" is an example.

[77] Another criticism Ms. Coates often advances is that suggestions made by Board staff led to waste or were ungenuine. If the Board knew that her unfair labour practice complaint was hopeless, why did staff point out that as an avenue not requiring exhaustion of internal appeals? And, why propose a withdrawal? And, why, if the failure to appeal was such an obvious block to her duty of fair representation complaint, did the Board let the matter go so far?

[78] Three points need to be understood.

[79] First, Board staff is not the decision-maker and the decision-makers did not make their decisions on what Board staff knew. Courts and tribunals decide based on the evidence parties place before them, to the knowledge of, often only in the presence of, both parties, not on the basis of what a member of staff knows or does not know.

[80] Second, often what seems in hindsight to have been obvious is not so obvious before a hearing convenes, concludes, or leads to enlightening reasons. Lawyers are skilled at predicting the outcomes, and if consulted may well have advised against one or both complaints, but even lawyers will often suggest odds, rather than predict with certainty. Which takes us to the third point.

[81] Third, in the name of access to justice, we have a great tolerance for and provide some encouragement to those who want to be heard without a lawyer. Law is not simple. Having neither the science nor the art leaves the person acting on their own in an extremely difficult position. Ms. Coates said as much herself. To try to use staff in the place of lawyers is always to be unfair to the helpful staff member and will often be unfair to the other party.

[82] Finally, I want to address Ms. Coates' criticism that the Board offered withdrawal as its idea for dealing with the unfair labour practice complaint, and after she accepted the offer, the Board went to the union.

[83] One point needs to be repeated and a new point needs to be understood.

[84] To repeat, the Board is not like a hospital or a commercial corporation. It does not make decisions corporately. The decision-maker on withdrawal versus dismissal was the panel. It was not even constituted when a member of Board staff referred to the possibility of withdrawal.

[85] Second, hearing from both parties is an ingrained fundamental of courts and tribunals. Conferral with the union was necessary and to be expected.

[86] *Conclusion*. The application is to be dismissed with costs in the amount of $2,500 payable by Ms. Coates to the union.

J.