Date: 20020103
Docket: SH 169144

IN THE SUPREME COURT OF NOVA SCOTIA
Cite as: Construction and Allied Union, Local 154 v. Nova Scotia (Labour Relations Board Construction Industry Panel), 2002 NSSC 2

BETWEEN:

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

APPLICANTS

- 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

D E C I S I O N

HEARD: Before the Honourable Justice Suzanne M. Hood on July 26, 2001

DECISION: January 3, 2002

COUNSEL: **C. Scott Sterns and Heather Sanford** for the Applicants
W. Dean Smith for the Respondent, Labour Relations Board (Nova Scotia) Construction Industry Panel
Shona Lake-Crossley for the Respondent, 360 cayer ltee *(watching brief only)*
David A. Mombourquette for the Intervenor, Construction Management Bureau Limited
Ronald A. Pink, Q.C. for the Intervenor, Mainland Building and Construction Trades Council

HOOD, J.:

[1] The Construction Industry Panel established pursuant to Part II of the *Trade Union Act*, R.S.N.S. 1989, c. 475 rendered a decision on an application for certification. The panel concluded that the applicant for certification was not a trade union within the meaning of s. 92(i) of the *Trade Union Act*. The applicant seeks to quash the decision of the panel.

ISSUES

1. The standard of judicial review;
2. Applying the appropriate standard of review, should the decision of the Construction Industry Panel be quashed.

FACTS

[2] The Construction and Allied Union (CLAC), Local 154 affiliated with the Christian Labour Association of Canada and the Christian Labour Association of Canada (hereinafter "CLAC") filed three applications for certification.

[3] The first application for certification was for a bargaining unit comprised of employees of Ledcor Communications Limited who were performing work described as "Labouring and working supervision of labour" in the construction and maintenance of fibre optic cables/lines. The second application by CLAC was for a bargaining unit of employees employed as operating engineers in the construction and maintenance of fibre optic cables/lines. The third and final application for certification was for a bargaining unit of all employees involved in the fibre optic cable/lines laying project (a "wall-to-wall certification").

[4] Several parties intervened. These included the Mainland Building and Construction Trades Council and the Construction Management Bureau Limited. Both are interveners on the application to quash. The respondent employer (360 cayer ltee, formerly Ledcor) took no active role on the application. The other respondent is the Labour Relations Board (Nova Scotia) Construction Industry Panel.

[5] By agreement, the Panel dealt first with the preliminary question: whether CLAC "meets the definition of 'trade union' contained in s. 92(i) of the *Trade Union Act*. The Panel held seven days of hearings and heard witnesses from CLAC and from the International Union of Operating Engineers, the Labourers' International Union of North America and from Construction Management Bureau Limited. The Panel concluded CLAC did not meet the s. 92(i) definition and this application to quash results.

JURISDICTION OF CONSTRUCTION INDUSTRY PANEL AND STANDARD OF REVIEW

[6] The applicants say the Panel made "a significant and fundamental jurisdictional error" and "an error of law on the face of the record". They say that the standard is one of reasonableness *simpliciter*. In the alternative, the applicants say that even if I conclude that the standard is the standard of patent unreasonableness, the Panel decision is patently unreasonable.

[7] In *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, Justice Beetz said that a pragmatic or functional analysis is required to determine the jurisdiction of a tribunal. That approach has been confirmed by the Supreme Court of Canada in *Paccar of Canada Ltd. v. Canadian Association of Industrial, Mechanical and Allied Workers, Local 14*,

[1989] 2 S.C.R. 983; *National Corn Growers Association v. Canadian Import Tribunal*, [1990] 2 S.C.R. 1324 and in *Canada (Procureur général) v. Alliance de la Fonction publique du Canada* (1991), 123 N.R. 161 (S.C.C.). That approach has also been adopted by the Court of Appeal in Nova Scotia in *Labourers' International Union of North America, Local 1115 v. International Union of Bricklayers and Allied Craftsmen, Local No. 2 et al* (1990), 98 N.S.R. (2d) 134 and in *United Association of Journeymen and Apprentices of the Plumbing, Steamfitting and Pipefitting Industry of the United States and Canada, Local 682 v. United Steelworkers of America, Local 1064 et al* (1992), 110 N.S.R. (2d) 123 (N.S.C.A.), the *"Sysco"* decision.

[8] In the *Sysco* decision, the Court of Appeal dealt with Part II of the *Trade Union Act*. Two of the issues on that appeal are stated in para. 15 of the decision as follows:

1. Did the Panel have jurisdiction as a Construction Industry Panel under the Act, to enter upon the enquiry raised by the complaint and then to assign the work to the steel workers, an industrial union?

2. Did the trial judge apply the appropriate standard of review to the decision made by the Panel?

[9] In *Sysco*, Clarke, C.J.N.S. said at para. 16:

> The jurisdiction of the Board and the Panel is determined by the authority conferred by Legislature in the Trade Union Act. Excess of jurisdiction, amounting to an error in law, occurs when the tribunal, in this case the Panel, acts beyond or outside the boundaries of the legislation which both confers and limits its jurisdiction.

[10] He then referred to the *Bibeault* decision in para. 17 quoting it as follows:

> It is, I think, possible to summarize in two propositions the circumstances in which an administrative tribunal will exceed its jurisdiction because of error:
>
> 1. if the question of law at issue is within the tribunal's jurisdiction, it will only exceed its jurisdiction if it errs in a patently unreasonable manner; a tribunal which is competent to answer a question may make errors in so doing without being subject to judicial review;
>
> 2. if however the question at issue concerns a legislative provision limiting the tribunal's powers, a mere error will cause it to lose jurisdiction and subject the tribunal to judicial review.

Trade Union Act

[11] *The Trade Union Act of Nova Scotia* is divided into two parts: Part I is entitled "Industrial Relations Generally"; and Part II is entitled "Construction Industry Labour Relations". Section 93 of the *Trade Union Act* provides that Part I of the *Act* applies to

Part II except where inconsistent. Section 94 establishes the Construction Industry Panel. Section 94 (4) provides as follows:

> (4) The jurisdiction, power and authority of the Board shall be vested in and be exercised by the Panel and the duties and functions of the Board shall be performed by the Panel with respect to any proceeding or matter relating to the construction industry.

[12] By virtue of s. 93, s. 19 of the *Trade Union Act* applies to the Panel. Section 19 (1) provides:

> 19 (1) If in any proceeding before the Board a question arises under this Act as to whether
>
> ...
>
> (b) an organization or association is an employers' organization or a trade union, or a council of trade unions;
>
> ...
>
> the Board shall decide the question and the decision or order of the Board is final and conclusive and not open to question, or review, ...

[13] Part II goes on to deal with issues of certification and accreditation in the construction industry.

Bibeault

[14] In *Sysco,* Chief Justice Clarke said in para. 37:

> When interpreting the sections of the Act which confer jurisdiction upon the Panel, the Supreme Court of Canada in *Bibeault, supra,* indicates that initially, a pragmatic or functional analysis is required. Mr. Justice Beetz stated at p. 207 (95 N.R.):
>
> > At this stage, the Court examines not only the wording of the enactment conferring jurisdiction on the administrative tribunal, but the purpose of the statute creating the tribunal, the reason for its existence, the area of expertise of its members and the nature of the problem before the tribunal. At this initial stage a pragmatic or functional analysis is just as suited to a case in which an error is alleged in the interpretation of a provision limiting the administrative tribunal's jurisdiction: in a case where a patently unreasonable error is alleged on a question within the jurisdiction of the tribunal, as in a case where simple error is alleged regarding a provision limiting that jurisdiction, the first step involves determining the tribunal's jurisdiction.

[15] According to Justice Beetz in *Bibeault*, there are five things the court is to examine when interpreting the sections of a statute which confer jurisdiction upon a tribunal. These are: the wording of the enactment conferring jurisdiction, the purpose of the statute, the reason for its existence, the area of expertise of its members and the nature of the problem before the tribunal.

i) Wording of the Trade Union Act

[16] As mentioned above, s. 94 (4) of the *Trade Union Act* gives the Panel the jurisdiction, power and authority of the Labour Relations Board "with respect to any proceeding or matter relating to the construction industry." The Panel's decisions are protected by a strong privative clause set out in s. 19 of the *Act*. That section, in conjunction with ss. 93 and 94 (4), specifically gives to the Construction Industry Panel the authority to determine any question as to whether an organization or association is a trade union (s. 19 (1) (b)). However, according to *Bibeault*, the inquiry by the court does not end here. The other factors must be considered.

ii) Purpose of the Trade Union Act Part II and Reason for its Existence

[17] The applicants say that the purpose of Part II of the *Trade Union Act* is set out in the *Sysco* decision. They refer specifically to para. 43 of *Sysco* where Chief Justice Clarke says:

> Part II was enacted by the Legislature to address special circumstances that had developed in the construction industry in Nova Scotia which were not contemplated when Part I was passed. ... Part II was designed and intended to bring about procedures whereby disputes in the construction industry could be speedily resolved. To accomplish this objective, a Construction Industry Panel was constituted by the Act, composed of three members of the Board. Part II also provided for a process of speedy arbitration to resolve contract disputes.

[18] The applicants say that, flowing from this statement, it is clear that the Construction Industry Panel's purpose is to resolve disputes in the construction industry. They say that Part II was not enacted to create a monopoly for the Washington based unions. They also say that barring CLAC does not further the purpose of the *Act*.

[19] The respondent and intervenors (hereinafter "the respondents") say that it is clear that the purpose is not so limited. They say that the overall purpose of the *Trade Union Act* and of Part II is not just dispute resolution but also the right to form a trade union.

(iii) Area of Expertise

[20] The applicants say that the issue before the Panel deals with freedom of choice of union. They say that this issue under the *Trade Union Act* is not something the Panel has dealt with previously. They therefore say this is not within their area of expertise. The respondents say that it is within the expertise of the Construction Industry Panel to determine what is a trade union pursuant to Part II of the *Act*. They say that the Panel is

in the best position to determine what are "established trade union practices" which pertain to "the construction industry".

iv) Nature of the Problem

[21] The applicants say that the nature of the problem is to resolve disputes in the construction industry, not to bar unions or create a monopoly.

[22] The wording of the *Trade Union Act* gives to the Panel jurisdiction to determine if a group or organization is a trade union. This is by virtue of the combination of wording of ss. 19, 93 and 94 of the *Act*. *Bibeault*, however, requires that I look at more than just the wording of the statute as part of the functional and pragmatic analysis of the *Trade Union Act* sections which confer jurisdiction upon the Panel. I agree that the purpose of the *Trade Union Act* and, in particular, Part II is more than dispute resolution. Section 95 deals with certification and s. 97 deals with accreditation of an employers' organization.

[23] The reason for the existence of Part II of the *Trade Union Act* is set out in para. 43 of the *Sysco* decision by Chief Justice Clarke. To paraphrase, he said that special circumstances existed in the construction industry in Nova Scotia which had to be addressed and which were dealt with by the enactment of Part II of the *Trade Union Act.* I do not interpret his words "Part II is designed and intended to bring about procedures whereby disputes in the construction industry could be speedily resolved" as being a statement of the sole purpose or reason for existence of Part II of the *Trade Union Act*. In this regard, I note the terms of reference for the Woods Report as set out in para. 25 of the Panel decision as follows:

> (1) inquire into the reasons for the illegal work stoppages in the construction industry in Cape Breton;
>
> (2) inquire into the whole labour-management relationship in the construction industry throughout the province;
>
> (3) make such findings and recommendations as the Commission in its discretion deems proper to make for more harmonious labour-management relationships in the construction industry in Nova Scotia.

[24] The Construction Industry Panel was established by Part II of the *Trade Union Act* in 1972. It has authority to determine whether an organization or association is a trade union. The definition of trade union in Part II is set out in s. 92(i):

> (i) 'trade union' or 'union' mean a trade union that according to established trade union practices pertains to the construction industry;

[25] The applicants say that the Panel is dealing with an issue of freedom of association or a right to choose membership in a union. They say these are not issues which are within its expertise because they have not been before the Panel previously.

[26] It was in this context that the applicants raised an issue about the *Charter of Rights and Freedoms*. They do not challenge the validity of provisions of the *Trade Union Act*.

They say, however, that the interpretation the Construction Industry Panel gave to s. 92(i) infringes upon freedom of association as guaranteed by s. 2(d) of the *Charter*. They say that the Panel's interpretation prevents workers from choosing CLAC as its union because it is not a trade union under Part II of the *Trade Union Act.*

[27] However, the Supreme Court of Canada has dealt with s. 2 (d) in the area of labour relations in a group of cases known as the "trilogy: Reference *Re Public Sector Employee Relations Act*, *Labour Relations Act* and *Police Officers Collective Bargaining Act* (1987), 38 D.L.R. (4th) 161 ("the *Alberta Reference*"); *Saskatchewan v. Retail, Wholesale & Department Store Union* (1987), 38 D.L.R. (4th) 277 (the "*Dairy Workers case*"); *Public Service Alliance of Canada v. The Queen* (1987), 38 D.L.R. (4th) 249 ("PSAC"). In the "trilogy", the Supreme Court of Canada concluded that s. 2 (d) of the *Charter* does not guarantee a right of collective bargaining.

[28] The Supreme Court of Canada re-visited the issue in *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)* (1990), 72 D.L.R. (4th) 1 ("PIPSC"). Mr. Justice Sopinka wrote at para. 78:

> The above propositions concerning s. 2(d) of the Charter lead to the conclusion, in my opinion, that collective bargaining is not an activity that is, without more, protected by the guarantee of freedom of association. Restrictions on the activity of collective bargaining do not normally affect the ability of individuals to form or join unions.

[29] Following these decisions, I conclude that, in this case, the interpretation by the Panel of s. 92(i) of the *Trade Union Act* does not restrict the ability of workers to join a union, in this case the CLAC, although it does affect the activities of that union in the Nova Scotia construction industry. It affects the ability of that union to be certified but does not prevent any individual from joining that union. The latter is the freedom of association guaranteed by s. 2 (d) of the *Charter*. For that reason, the *Charter* has no relevance to the Panel's decision. Therefore, this is not a reason to question the expertise of the Panel.

Reasonableness Simpliciter

[30] The applicants say that the standard of review to be applied is that of reasonableness *simpliciter*.

[31] *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748 provides for a standard of review between that of correctness and patent unreasonableness in some cases. In *Southam, supra,* Justice Iacobucci said in para. 54:

> In my view, considering all of the factors I have canvassed, what is dictated is a standard more deferential than correctness but less deferential than 'not patently unreasonable'. Several considerations counsel deference: the fact that the dispute is over a question of mixed law and fact; the fact that the purpose of the

> Competition Act is broadly economic, and so is better served by the exercise of economic judgment; and the fact that the application of principles of competition law falls squarely within the area of the Tribunal's expertise. Other considerations counsel a more exacting form of review: the existence of an unfettered statutory right of appeal from decisions of the Tribunal and the presence of judges on the Tribunal. Because there are indications both ways, the proper standard of review falls somewhere between the ends of the spectrum. Because the expertise of the Tribunal, which is the most important consideration, suggests deference, a posture more deferential than exacting is warranted.

[32] In *Kimberly-Clark Nova Scotia v. Nova Scotia Woodlot Owners and Operators Assn.* (1998), 175 N.S.R. (2d) 134, MacAdam, J. referred to *Southam* and concluded that the standard of review was one of reasonableness simpliciter. He said in para. 67:

> Absent any form of privative clause and in view of the mixed law and fact involved in determining whether the term 'pulpwood' as used in the registration order included 'pulpwood chips' or was sufficiently broad to later include 'pulpwood chips', the appropriate standard of review requires less deference than incorporated in the patent unreasonable standard. On the other hand, the obvious intention of the legislature to invest the Board with wide discretionary powers to effect the purposes of the Act, including in respect to registering bargaining agents, the marketing of 'pulpwood' products, the hearing of complaints and the making of orders to give effect to collective agreements and ensure compliance with the Act, the standard is not one of correctness. The specialized nature of the tribunal, together with its expertise, also mandates a degree of deference to decisions made within its jurisdiction.

He then quoted *Southam, supra,* with respect to "indications both ways" and concluded that the appropriate standard was one of reasonableness *simpliciter*. The decision of MacAdam, J. was appealed to the Nova Scotia Court of Appeal ([2000] N.S.J. No. 35). The Court of Appeal did not address the issue of whether the standard of review to be applied was that of reasonableness *simpliciter*. At para. 45, Flinn, J.A. said:

> The Chambers judge dismissed the appellant's certiorari application, and I agree with that result, although I have arrived at that result for different reasons.

[33] In *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890, Justice Sopinka said at para. 16:

> To determine the standard of review, I must first decide whether the subject matter of the decision of the administrative tribunal was subject to a privative clause having full privative effect. If the conclusion is that a full privative clause applies, then the decision of the tribunal is only reviewable if it is patently

unreasonable or the tribunal has made an error in the interpretation of a legislative provision limiting the tribunal's powers.

[34] In *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, the correctness standard was applied. Bastarache, J. said at para. 37 of that decision:

> The creation of a legislative 'scheme' combined with the creation of a highly specialized administrative decision-maker, as well as the presence of a strong privative clause was sufficient to grant an expansive deference even over extremely general questions of law.

He continued at para. 38:

> Without an implied or express legislative intent to the contrary as manifested in the criteria above [the *Bibeault* criteria], legislatures should be assumed to have left highly generalized propositions of law to courts.

[35] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, upon which the applicants rely heavily, the Supreme Court of Canada dealt with an administrative decision made by a senior immigration officer. Justice L'Heureux-Dubé described the issue before the court in para. l as follows:

> Regulations made pursuant to s. 114(2) of the Immigration Act, R.S.C., 1985 c. I-2, I empower the respondent Minister to facilitate the admission to Canada of a person where the Minister is satisfied, owing to humanitarian and compassionate considerations, that admission should be facilitated or an exemption from the regulations made under the Act should be granted. At the centre of this appeal is the approach to be taken by a court to judicial review of such decisions, both on procedural and substantive grounds. It also raises issues of reasonable apprehension of bias, the provision of written reasons as part of the duty of fairness, and the role of the children's interests in reviewing decisions made pursuant to s. 114(2).

[36] The applicants say that the Panel is setting its own jurisdiction and closing the door to CLAC which results in a lower standard for judicial review, notwith-standing the privative clause. They say that the Panel's decision is more jurisdic-tional than within its jurisdiction.

[37] The applicants also say that, because the decision limits the freedom of persons to associate with the trade union of their choice, lesser deference should be shown because of the effects upon *Charter* rights of individuals. They also reiterate their position that this issue is not within the Panel's expertise because it has not been previously dealt with by the Panel. I have dealt with this argument above.

[38] The applicants say that by this standard the decision of the Board can be reviewed if it is not reasonable. They submit that it is not a reasonable decision because it prevents the CLAC from ever becoming certified.

Conclusion: Standard of Review

[39] Section 19 of the *Act*, when read in conjunction with s. 93, clearly sets out in paragraph (b) that whether an organization is a trade union or not is within the Panel's jurisdiction and protected by the privative clause in s. 19.

[40] The applicants say that in *Sysco* it was recognized by the Court of Appeal that construction work could be given to unions other than the 14 Washington-based unions. They say that these unions must have been accepted as s. 92(i) unions in that decision.

[41] However, *Sysco* was not a certification application. It was a jurisdictional dispute. To resolve the jurisdictional dispute it was not necessary to decide if the United Steel Workers was a s. 92(i) union. It was decided only that the jurisdictional dispute provisions of the *Act* (ss. 50-52) could be used by the Panel to resolve a dispute between Part I and Part II unions.

[42] A high degree of deference is to be shown to a specialized tribunal like the Construction Industry Panel under the *Trade Union Act*. This is also consistent with the purpose of the *Trade Union Act*, the reason for its existence and the nature of the problem before the Panel. The decisions of the Panel are protected by a strong privative clause.

[43] All the factors present in this case point to a high degree of deference to be accorded to the Panel decision.

[44] The dispute involves both law and fact. The Panel must interpret the *Trade Union Act* but must also determine as facts what are "established trade union practices" and whether CLAC has them.

[45] The overall purpose of Part II of the *Trade Union Act* calls for a body with experience in and knowledge of the construction industry in Nova Scotia.

[46] There is a clear and very strong privative clause protecting the decisions of the Panel and no right of appeal, unlike *Southam*. Also, unlike *Southam*, the Panel does not include judges.

[47] In this case, there are not "indications both ways" as there were in *Southam*.

[48] The Court of Appeal in *Kimberly-Clark* upheld the decision of MacAdam, J. without dealing with the reasonableness *simpliciter* standard. Furthermore, in *Kimberly-Clark*, there was no privative clause. That is an important distinguishing factor from this case.

[49] That this is so is emphasized by the Supreme Court of Canada decision in *Pasiechnyk* in the quote above. In that case, because there was a "full privative clause", the standard applied was that of patent unreasonableness.

[50] In *Pushpanathan*, the standard applied was that of correctness. The quote above from para. 37 of that case could equally apply to this case.

[51] In my view, the decision in *Baker* is inapplicable here. The decision under review was an administrative one. Its description by Justice L'Heureux-Dubé makes it clear to me that it was an entirely different type of decision from that of the Panel in this case.

[52] Nor do I conclude that the freedom of association provision of the *Charter* is a factor which calls for a lesser degree of deference . The passages to which the applicants refer are, as they point out, from the dissenting opinions in the Supreme Court of Canada. Although there were dissents, the "trilogy" clearly established that there is no *Charter*

right to collective bargaining or other "associational activities" pursuant to s. 2(d). The Supreme Court of Canada confirmed its decision in this regard in *PIPSC*.

[53] After quoting extensively from the dissenting opinions in all four decisions, the applicants say at para. 76 of their brief:

> The debate among the justices in the proceeding [sic] cases illustrate clearly that interference with the rights of employees to associate and with the rights of trade unions is a matter to be scrutinized closely. It is respectfully submitted that to restrict these rights, such as the right to choose, the legislation must be explicit. That is not the case of the Nova Scotia *Trade Union Act*. There is no explicit, and arguably, no implicit restriction.

[54] I do not agree that the fact of dissenting opinions in the Supreme Court of Canada means that a tribunal decision, such as that of the Construction Industry Panel, should be given less deference and reviewed on the reasonableness *simpliciter* standard. The majority decisions of the Supreme Court of Canada continue to stand for the proposition that there is no *Charter* right which is infringed by a prohibition on the right to strike (*Alberta Reference*); or a restriction on collective bargaining (*PSAC and PIPSC*).

[55] To answer the question whether the legislature intended that the Construction Industry Panel would have jurisdiction to determine whether CLAC is a s. 92(i) trade union, I have considered the five "*Bibeault* factors". The wording of ss. 94(4), 94(5), 93 and 19 of the *Act* on its face gives this jurisdiction to the Panel. The reason for the existence of Part II of the *Act* is the state of the construction industry in Nova Scotia in the 1960's. The purpose of Part II is not a narrow one. It establishes much more than a dispute resolution process. It establishes a scheme of certification and accreditation which is peculiar to the construction industry in Nova Scotia. The Panel has operated for more than twenty-five years dealing with matters involving the construction industry. Furthermore, the nature of the problem before the Panel was whether a union was a trade union which is defined in s. 92(i) in terms of "established trade union practices" pertaining to the construction industry. What better body could there be to embark upon such an inquiry than the very one established to deal with "any proceeding or matter relating to the construction industry"? (s. 94(4)) What could be more fundamental to the construction industry in the labour relations context than the determination of whether a union is a Part II trade union?

[56] In the words of Chief Justice Clarke in *Sysco, supra*, "... there is no other *Act* or Board or Tribunal that could have more appropriately resolved this issue."

[57] As Justice Chipman said in *Labourers' International Union of North America, Local 1115 v. International Union of Bricklayers and Allied Craftsmen, Local No. 2 et al* (1990), 98 N.S.R. (2d) 134:

> ... administrative tribunals exist to provide solutions to disputes that can best be solved by a decision making process other than that available in the courts. Often, too, the administrative 'judge' is better trained and better informed on the area of his jurisdiction, and has access to information which more often than not does not find its way into the record submitted to the court.

[58] The Panel therefore had the jurisdiction to decide the question before it. The standard of review for a question of jurisdiction is that of correctness. The Panel correctly assumed jurisdiction

[59] Although, following *Southam*, it is clear there is a standard of review between that of correctness and that of patent unreasonableness, I am not satisfied that reasonableness *simpliciter* is the appropriate standard to apply in this case. Therefore, patent unreasonableness is the appropriate standard of review.

IS THE PANEL DECISION PATENTLY UNREASONABLE?

[60] The question for this court on judicial review is whether the interpretation given to s. 92(i) of the *Trade Union Act* by the Panel is patently unreasonable, not whether it is correct or whether I agree with it.

[61] In determining whether the interpretation is patently unreasonable, the court, on a judicial review of a tribunal decision, is to look at whether the interpretation is clearly irrational or whether there is no evidence to support the findings of fact made by the tribunal.

[62] In *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Limited* (1993), 102 D.L.R. (4th) 402, Sopinka, J. said at pp. 418-19:

> Once it has been determined that curial deference to a particular decision of a tribunal is appropriate, the tribunal has the right to be wrong, regardless of how many reviewing judges disagree with its decision. A patently unreasonable error is more easily defined by what it is not than by what it is. This Court has said that a finding or decision of a tribunal is not patently unreasonable if there is any evidence capable of supporting the decision even though the reviewing court may not have reached the same conclusion ((*W.W. Lester) (1978) Ltd. v. U. A., Local 740* (1990), 76 D.L.R. (4th) 389 at pp. 418-19, [1990] 3 S.C.R. 644, 48 Admin. L.R. 1), or, in the context of a collective agreement, so long as the words of that agreement have not been given an interpretation which those words cannot reasonably bear (*Bradburn, supra, per* Laskin C.J.C., at p. 162). What these statements mean, in my view, is that the court will defer even if the interpretation given by the tribunal to the collective agreement is not the 'right' interpretation in the court's view nor even the 'best' of two possible interpretations, so long as it is an interpretation reasonably attributable to the words of the agreement. Or, as stated by Dickson J. in *CUPE*. at p. 425: '... was the Board's interpretation so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands intervention by the court upon review?'

[63] The applicants say there are four key components of the decision of the Construction Industry Panel which are patently unreasonable. They submit they are as follows:

1) Established trade union practices in Nova Scotia;
2) One union per trade;
3) Accreditation scheme;

4) Chaos.

1. Established Trade Union Practices in Nova Scotia

[64] In para. 4 of its decision, the Panel says:

> ... with the agreement of all counsel, the appropriate way to deal with the applications for certification was to hear evidence and argument on the Section 92(i) issue first and await the decision of the Panel.

The Panel continued in para. 4:

> Our decision was that CLAC does not qualify as a trade union within the meaning of Section 92(i) of the Act.

[65] The Panel concluded that CLAC was a trade union within the meaning of s. 2(1)(w) of the *Act* and then said at para. 11:

> 11. As we interpret Section 92(i) of the Act, it is not enough for a construction trade to fit either the requirements for Section 2(1)(w) or of Section 92(i). It must fit both sets of requirements. Thus, in our judgment, CLAC meets the first part of the Section 92(i) definition, ie., 'trade union', or 'union' means a trade union that ... .

The Panel concluded that the established trade union practices to which it must have regard are construction trade union practices. None of the counsel appearing before the Panel disagreed with that. The Panel continued in para. 13:

> Where they do disagree is over what evidence we should consider in determining these 'established trade union practices'.

The Panel concluded in para. 15:

> 15. In the result the only relevant 'established trade union practices' within the meaning of Section 92(i) are those found in Nova Scotia. This being our conclusion, and given Sterns' quite appropriate concession that CLAC has no such 'established trade union practices' in Nova Scotia, it is not a trade union within the meaning of Section 92(i). We so find.

[66] The question for this court is whether that interpretation is patently unreasonable. The Panel's reasoning is set out in para. 14. The Panel said:

> 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.

[67] In para. 16, the Panel reviews definitions of the words of s. 92(i) and then says:

> Thus it seems to us that what we are looking for is evidence of the settled role of construction industry unions in Nova Scotia, of their settled, ie., established customary actions and customary code of behaviour.

The Panel continues in para. 17:

> 17. In our opinion, the evidence we must consider in deciding whether a particular trade union falls within Section 92(i) is not only the established practices and code of behaviour, ie., the role of construction industry trade unions in Nova Scotia in relation to a triangle comprised of union, union members and employer, but also and equally of significance the established practices and code of behaviour, ie., the role of construction industry unions in relation to each other, to employers, generally in the industry and to the statutory scheme of the Act as it applies to the construction industry.

[68] The Panel refers to the submissions of Mr. Pink on behalf of the Mainland Building and Construction Trades Council that sixteen indicia must be present in order for a trade union to have 'established trade union practices' pursuant to s. 92(i). The Panel says in para. 20:

> ... However, we do not believe that a Section 92(i) union must possess even a majority of these characteristics provided that above all else it has obtained certifications or Voluntary Recognition Agreements and has negotiated collective agreements.

[69] In para. 21 the Panel refers to the history of the Section 92(i) definition and its substantial conformity with the Ontario phrase, except for the addition of the letter "s" to trade union "practice" to become trade union "practices" in Nova Scotia. The Panel says in para. 21:

> ... it seems to us that having one certification or Voluntary Recognition Agreement and only one (1) collective agreement signed yesterday hardly demonstrates 'established trade union practices'! Our word is 'practices' - plural.

The Panel continues in that paragraph:

> ... To be precise, in our opinion but subject to a crucial disentitling qualification set out in paragraphs 22 et seq., if CLAC had been able to demonstrate a history inside Nova Scotia comparable to what its evidence demonstrates are its practices in Ontario, Alberta and British Columbia, then it would have status as a Section 92(i) union.

[70] In coming to this conclusion, the Panel interpreted s. 92(i). It assessed the characteristics of a s. 92(i) trade union in Nova Scotia. It concluded that not all the characteristics put forward by the intervenor need be present. It concluded instead what were the essential characteristics. In doing so, the Panel referred to the decision in Ontario Hydro, [1997] O.L. R.D. No. 583 (O.L.R.B.). The Panel carefully looked at the distinction between the Ontario and Nova Scotia wording. The Panel also referred to CLAC's history in other provinces.

[71] In my view, it is not an unreasonable interpretation of s. 92(i) of the *Trade Union Act* to say that it refers to established trade union practices in Nova Scotia. The Panel, in para. 14, sets out its reasoning for that conclusion and, in my view, it does not give to s. 92(i) a meaning that its words cannot reasonably bear, nor is that conclusion unsupported by the evidence before the Panel.

2. <u>One Union Per Trade</u>

[72] The Panel's conclusions with respect to this issue are set out in paras. 22 and 23 as follows:

> 22. Despite paragraph 21, however, 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.
>
> 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.

[73] The applicants say that the Panel read words into the *Act* to come to this conclusion. The applicants say that s. 13 of the *Trade Union Act* gives every employee the right to be a member of a trade union but that the decision of the Panel in effect over-rides this right by preventing those unions from certification under Part II of the *Act*. They say that the use of the words, "even though it did not explicitly say so", means that the conclusion of the Panel is patently unreasonable.

[74] The Panel says it is "mandated" by s. 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235:

> ... to delve into the history of construction industry labour relations prior to 1972, the governmental response thereto, the report of the Commission of Enquiry Into Industrial Relations in The Nova Scotia Construction Industry, H.D. Woods, September 29, 1970 (hereafter called "the Woods Report"), the legislative response to the Woods' Report recommendations ie., the Trade Union Act, S.N.S. 1972, C-19 ...

[75] The Panel reviewed all of these in coming to its conclusion that the *Act*, properly interpreted, calls for one union per trade.

[76] The applicants refer to *QE II Health Sciences Centre v. Nova Scotia Government Employees Union* (1998), 165 N.S.R. (2d) 193 (N.S.S.C.). In that case, Goodfellow, J. quotes at para. 25 from *Bishop-Beckwith Body et al v. Wolfville (Town)* (1996), 151 N.S.R. (2d) 33 (N.S.C.A.) where Hallett, J.A. quotes from the foreward to Driedger on the Construction of Statutes (3rd ed., 1944) as follows:

> There is only one rule in modern interpretation, namely, courts are obliged to determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of proposed interpretations, the presumptions and special rules of interpretation, as well as admissible external aids. In other words, the courts must consider and take into account all relevant

> and admissible indicator of legislative meaning. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of the legislative purpose; and (c) its acceptability, that is, the outcome is reasonable and just.

[77] The applicants say that the Panel did not follow the "one rule" of modern interpretation. They also refer to *Thomson v. Canada (Deputy Minister of Agriculture*, [1992] 1 S.C.R. 385. In that case, Justice Cory said (p. 9 QL version):

> ... it is accepted that when the words used in the statute are clear and unambiguous, no other step is needed to identify the intention of Parliament.

[78] The Applicants also refer to *TNL Industrial Contractors Ltd. (Re)*, [1996] Alta. L.R.B.R. 497 (QL) (Alta. L.R.B.). In that case, the Board said at para. 26:

> 26. It is one thing to conclude that a collective bargaining regime which restricts representation within an industry to a particular class of trade unions, regardless of the desire of other labour organizations to participate in that industry and of employees to choose them as their bargaining agents, is not a wildly improbable public policy choice. It is quite another to conclude that the Legislature has in fact made that policy choice. In order for us to conclude that the Legislature has made such a choice, we would expect it to be communicated in the clearest of language.

The Board continued at para. 30:

> For this Board to decide that it ought to preclude representation in the construction industry by unions other than the traditional building trades unions, we think clear language is required. We do not find language in the Code which clearly mandates that result.

[79] The applicants say, accordingly, that the interpretation of s. 92(i) by the Panel in this case is patently unreasonable because the words in the *Act* do not clearly and unambiguously say that no union other than the 14 Washington-based unions can ever be certified in Nova Scotia. They also point out that, when the same issue arose before the Alberta Labour Relations Board, the Board refused to entertain the interpretation adopted by the Panel in this case.

[80] The applicants also say that, when Woods prepared his report, there was an independent trade union. Therefore, they say independent trade unions were in the contemplation of the Legislature when it enacted the 1972 amendments to the *Trade Union Act.* The applicants also say that, when the Panel referred to other groups whose employees must be represented by one union, they did not refer to the fact that the statutes establishing those unions say that is to be the case and the *Trade Union Act* does not. An example is the *Teachers' Collective Bargaining Act*.

[81] The respondents on the other hand say that the legislative scheme and the function of the *Trade Union Act*, Part II as a whole results in there being one union per trade. They also say that, although there may have been an independent union at the time the Woods inquiry began, it was no longer in existence when the 1972 amendments to the *Trade Union Act* were made. Accordingly, they say, such an independent union would not have been in the contemplation of the Legislature at the time the amendments were enacted.

[82] The Panel, in coming to its conclusion, referred to the *Interpretation Act*, as does the appellant. The Panel also referred to the Woods report and the history of the construction industry before 1972. Included in the terms of reference for Commissioner Woods was the mandate to make for more harmonious labour/management relationships in the construction industry.

[83] The Panel reviews a long list of major problems in the construction industry in Nova Scotia in the period 1965 to 1972. The Panel says in para. 28:

> 28. It is not our intention to review this now ancient history for its own sake, but rather as reinforcement for our conclusions in this case which anticipate a return to a similar past if CLAC is certified.

[84] This led the Panel into its consideration of what it said was "the definitive, ultimate reason why CLAC is not a trade union within s. 92(i) of the *Act*, and cannot be, by necessary implication, for reasons we shall make clear." (para. 30)

[85] The applicants say that when the Panel refers to something being "implied" or "not explicitly" stated it offends the rules of statutory interpretation. They say that the Panel added words to the *Trade Union Act* which give a monopoly to the Washington-based unions and prohibit any other union from ever being certified. They say that, if it was the intent of the legislature to have that result, it would have been and must be explicitly stated.

[86] In the Driedger quote above, it is said that courts must "determine the meaning of legislation in its total context ...". In my view, that is what the Panel did in interpreting s. 92(i). That is quite different from what the applicants say it did. They equate doing so with adding words to a statute. That is not what the Panel did nor is it what it said it was doing. The Panel used phrases such as "even though it did not explicitly say so" (para. 22) and "implicitly ..." (para. 38). In para. 30, the Panel said, as quoted above, "... CLAC is not a trade union within Section 92 (i) of the *Act*, and cannot be, by necessary implication, ..." (emphasis added)

[87] The Panel was not bound to follow the *TNL* decision. Nor does it having reached one conclusion mean that another conclusion is patently unreasonable. There can be a number of interpretations of a statutory provision. It is only those which are patently unreasonable which are subject to review by this court.

[88] The Panel considered in some detail the background to the 1972 amendments, the Woods report, the construction industry in Nova Scotia prior to the amendments and the entire scheme of Part II of the *Act.* In doing so, it concluded that "by necessary implication" a union like CLAC could never be a s. 92(i) trade union. The Panel also said that these things lead "inexorably to the conclusion ..." This is not adding words to the *Act* but interpreting its meaning.

[89] The Panel had ample evidence to support its conclusion. Its interpretation was not one that "cannot be rationally supported by the relevant legislation and demands intervention by the court upon review" (quoting from Dickson, J. in *CUPE,* as quoted in *Bradco, supra*.

3. Accreditation Scheme

[90] The Panel went on to discuss the system of accreditation which now exists in the *Trade Union Act* and that proposed in the Woods report. In para. 31 the

[91] Panel said:

> 31. The Woods Report proposed a model of accreditation that is dramatically different from the one actually adopted in the 1972 Act. Its concept involved the accreditation of unionized employers in a sector, [defined in Section 89(h) of the 1972 Act (now Section 92(h))], vis-à-vis a particular trade union and if a different union represented the employees of an employer (than was the union named in the accreditation order), that employer would be free to bargain directly with that 'second', ie., different union, (See the Woods Report at pp. 55-59 particularly at p. 58). Obviously, such an approach, had it been adopted here, would allow for independent unions, like CLAC, ie., a union within the meaning of section 92(i) of the Act, other than the fourteen (14) international building trades unions of which the Labourers' Union and the O.E. Union are examples. However, that is not the model adopted by the government of Nova Scotia in enacting the 1972 Act.

[92] The Panel quotes the relevant sections of Part II of the *Trade Union Act* dealing with accreditation. The Panel says in para. 35:

> 35. It will be noticed that the Bureau is accredited as sole bargaining agent for the unionized employers to bargain with all Section 92(i) trade unions and no provision whatsoever is made for separate bargaining by the 'accredited employers' organization', [Section 92(a)], with a different trade union, (which had been part of the Woods' Report proposals). In our opinion, for reasons we shall give shortly, the absence of such a provision is fatal to the claim of CLAC to be a Section 92(i) 'trade union'.

The Panel then says: - "To understand our conclusion it is necessary to consider also the effect of accreditation." (para. 36)

[93] The Panel quotes s. 95 of the *Trade Union Act* and, in para. 37, discusses the effect of accreditation under the 1972 *Act*. The Panel concludes that upon accreditation "... all bargaining rights, duties and obligations under the statute of employers for whom the Bureau then ... or later becomes the bargaining agent pass to the Bureau."

The Panel continues in that paragraph:

> It is not some bargaining rights, etc., but all of these, and it is not just for some but for all employers ... ."

[94] The Panel continues (para. 37):

> This section makes it clear that the class or category of 'future' employers comprises those employers which are subject to a certification order pursuant to Section 92 of the 1972 Act or which entered into a voluntary recognition agreement pursuant to Section 28 of the 1972 Act.

[95] The Panel continues in para. 38:

> 38. It seems reasonably clear that had CLAC applied for certification of Ledcor under the 1972 Act, Ledcor would have been bound by 'any collective agreement in effect or subsequently negotiated between' the Bureau 'and a trade union ... in that sector' [Section 95(3)].

The Panel continues in that paragraph:

> How then could CLAC ever gain the right also to bargain collectively for labourers' or operating engineers in the face of the Labourers Union and the O.E. Union and their collective agreements with the Bureau? In our judgment, it could not because it would be illogical and utterly inconsistent with the clear meaning of Section 95(3) to have that language say that Ledcor is bound by existing and subsequent agreements made by the Bureau with the two (2) named unions whilst also intending that CLAC have a right to negotiate another agreement with Ledcor through its bargaining agent, the Bureau.

[96] Then comes the sentence to which the applicants take exception:

> Implicitly, then the accreditation provisions mandated one (1) trade union per craft not two (2) or even more - and the Traditional Unions had co-opted the sectors either in 1976 or thereafter.

[97] The applicants say that the accreditation sections of the *Act* do not prevent CLAC from negotiating with the Bureau. They say that CLAC's rights do not flow to one of the Washington-based unions, but the Panel's decision says they do.

[98] However, the respondents say that is the effect of s. 100 of the *Act*. That section centralizes in the Bureau all relations of employers with unions.

[99] The Panel sets out the accreditation provisions of the *Trade Union Act*, Part II, analyzes them and gives its interpretation to those sections, including the effect of accreditation. The Panel's reasoning is set out in paras. 35, 37 and 38. The applicants say that the use of the word "implicitly" in para. 38 leads to the conclusion that the Panel was adding words to the *Trade Union Act*. They say that makes the interpretation by the Panel patently unreasonable.

[100] In my view, the reasoning of the Panel set out in these paragraphs leads to a conclusion which is not patently unreasonable. Furthermore, the use of the word "implicitly" does not mean that the Panel was adding words to the *Trade Union Act* but interpreting the words that were there in the context of the *Act*. As long as the Panel gave to the words an interpretation they could reasonably bear, the interpretation is not patently unreasonable and cannot be interfered with on review. I am satisfied that the Panel's interpretation is not patently unreasonable. There was evidence before the Panel to support its conclusion.

4. Chaos

[101] The Panel addressed CLAC's alternate argument beginning at para. 39 of its decision. This argument is based upon what are called "The Steen Amendments" to the *Trade Union Act* made in 1994 as a result of the decision in *International Association of Heat and Frost Insulators and Asbestos Workers, Local 116 v. Nova Scotia (Minister of Labour and Manpower) and Steen Contractors* (1993), 121 N.S.R. (2d) 225 (N.S.C.A). The Panel's conclusion was that chaos would result if CLAC was a trade union under Part II and could be certified.

[102] The Panel summarizes the appellant's argument in para. 40 as follows:

> Sterns argues that if we certify CLAC there is no collective agreement between it and the Bureau. Consequently, the Bureau would be obligated by Section 99(1) of the Act to bargain collectively with CLAC.

[103] The Panel explains in para. 41 why it is dealing with this alternative argument. In essence, it is to respond to the possibility that CLAC might obtain a voluntary recognition agreement and use it to build up a "history" as a s. 92(i) union.

[104] The Panel went on to refer to the Steen Amendment and to how membership in the Construction Management Bureau is obtained, its effect and how the Bureau organizes itself to conduct collective bargaining.

[105] In para. 55, the Panel poses the question:

> How could the Bureau do so [bargain for Ledcor] without finding itself in a position either of actual conflict of interest or of the reasonable perception of conflict?

[106] In answering that question, the Panel reviews the so called "CLAC advantage" which is set out in an exhibit, Appendix B, to the Panel decision. The Panel says in para. 55:

> A perusal of these reveals that while many elements of the 'CLAC advantage' would be of interest to some contractors, perhaps many of them, a significant number of these advantages are antithetical to or, at least, dramatically different from the positions of the Traditional Unions ...

The Panel goes on to refer to a number of these "antithetical" or "dramatically different" advantages.

[107] The Panel agrees with Mr. Pink that wall to wall bargaining units are not one of the "established trade union practices" of a union "pertaining to the construction industry" in Nova Scotia. The Panel also agrees with him that the notion of "Employee Specific Collective Agreements" is not something that can be achieved in Nova Scotia. The Panel agrees too that the fact that CLAC does not require a "no subcontracting out" article in its collective agreement is not an "established trade union practice" in Nova Scotia. The Panel also agrees that the way in which professional representatives are assigned to each contract to deal with problems as they arise is not an "established trade union practice" in Nova Scotia either.

[108] The Panel continues in para. 57:

> The relevance of our discussion of the 'CLAC Advantages' ... and of the views of Pink on them and on why they are not 'established practices', etc., of a construction trade union pursuant to Section 92(i) is what it tells us about the problems the Bureau would face in negotiating an agreement with CLAC on behalf of Ledcor ... .

[109] The Panel poses the question in para. 57:

> Could the Bureau provide a fair process for Ledcor in a process that largely operates by majority vote?

[110] In answering this question, the Panel refers to the problems with such a proposition. In para. 57, it refers to the problems of negotiating; in para. 58, the problems with respect to appointments to the Board and the result being either a "race to the bottom" or an "unfair process"; in para. 59, the Panel refers to the solution which would result in "two different versions of the Bureau"; and in paras. 60 and 61 the Panel then refers to the chaos that would result. The Panel says in para. 60:

> In theory, we could have fourteen (14) trade classifications for the Traditional Unions' employers, an identical number for CLAC - employers, and the same number for each of these employers who were 'caught' by Section 98(6) in a relationship - a non traditional one - with one of the Internationals.

[111] The Panel goes on at para. 61 to refer to more chaos:

> ... some Part I unions also might find the lure of large numbers of new members in a booming construction industry very enticing. ... It would not be a difficult move for it to form construction locals, gain a voluntary recognition agreement, create a CLAC-type 'history' in Nova Scotia and then claim to be a Section 92(i) union either under Sterns' main argument (paragraph 13) or under his alternative argument we have just been addressing. (Paragraph 39 et seq.). Chaos within the Bureau would be piled upon chaos.

[112] The Panel concludes by referring to the difference between the Ontario situation and that in Nova Scotia. In Ontario, a CLAC-type union can bargain separately. In Nova Scotia, however, the Panel concludes that such a practice would not work like it does in Ontario and would cause chaos.

[113] On the analysis the Panel has done, that is not a patently unreasonable conclusion. The Panel's reasoning is clear and not unsupported by the evidence before it. The Panel specifically refers in para. 60 to:

> In short, the kind of 'chaos' to which Macleod testified.

I cannot conclude that this conclusion by the Panel is patently unreasonable.

Voluntary Recognition Agreements

[114] The Panel addresses this final issue in para. 63 of its decision where it says:

> 63. CLAC might argue that, by using a voluntary recognition from Ledcor, it could become a Section 92(i) union. We want to foreclose that argument too. It is true that this Panel does not become involved in such agreements - unlike certifications. However, a precondition to coming within Part II is that the union is a Section 92 (i) union and, for reasons above given, it is not.

[115] The Panel repeats its previous conclusion that CLAC could not come within Part II by using a voluntary recognition agreement with Ledcor because CLAC is not a s. 92 (i) union.

CONCLUSION

[116] The Panel went through a detailed analysis of the Act and its context. It reviewed the state of labour relations in the 1960's before the enactment of the 1972 amendments to the *Act*. It referred to the Woods' report and its recommendations and, in particular, to the differences between what was recommended and what was enacted. The Panel looked carefully at the effect of Part II of the *Act*.

[117] There was evidence to support the Panel's findings. The Panel's reasoning was set out and it was both logical and rational.

[118] Accordingly, I cannot conclude that the decision of the Construction Industry Panel is patently unreasonable. It is therefore not to be interfered with on review. The application to quash is therefore dismissed

COSTS

[119] The respondents and intervenors are entitled to their costs. If the parties cannot agree upon costs, I will accept written submissions.

Hood, J.