ISSN 1195-0226

Ontario Labour Relations Board HIGHLIGHTS

Editors: Voy Stelmaszynski, Solicitor
Leonard Marvy, Solicitor

February 2005

Kelly Waddingham

Kelly Waddingham, originally appointed a part-Time Vice-Chair in the spring of 2004, has been Named a full-time Vice-Chair effective January 2005.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in January of this year. Some of these decisions will appear in the January/February issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Employment Standards – Practice and Procedure - Related Employer – Timeliness – Counsel for the applicant sought by letter to extend the time for filing an application for review to an indefinite date after the Board determined a related employer issue in a different application – The applicant asserted that it did not have the necessary funds to perfect the application and that there was no need for multiple proceedings to resolve the related employer issue – The Board held it does not have the jurisdiction to waive the payment of the outstanding wages and it would not rule on timeliness in advance of having a proper application before it – Matter terminated

1333833 ONTARIO INC.; RE UNNAMED INDIVIDUALS AND DIRECTOR OF EMPLOYMENT STANDARDS; File No. 3559-04-ES; Dated January 24, 2005; Panel: Corinne F. Murray (3 pages)

Health and Safety – Reprisal – The union and several employees brought an application under section 50 of the *Occupational Health and Safety Act* because the individuals were sent home after complaining about the frigid temperatures in their workplace -- The Board held that the union could not be an aggrieved applicant but may act as the agent of the employees -- When the employer gave the employees the option of going home without pay, neither management nor the employees initially considered the Act – The Employer maintained that lack of consideration of the statute negates a finding under section 50 because a reprisal must be grounded in evidence of improper motive and an intention to penalize workers – The Board found no evidence of reprisal – The employment consequence complained of must be imposed because the worker was engaged in protected activity – The loss of pay was a consequence of the employee decision to leave work – Application dismissed

CANAC KITCHENS, A DIVISION OF KOHLER CANADA CO.; RE: VALENTINO LAHOZ, MIKE CHARBIN, KENGATHARAN ARAPAJASINGAM, CHRISTIAN CASTANEDA, PATRICK AQUINO, CHRISTIAN MAYTA GOMEZ, CHEN JIAN LIN, SURESH MARIYATHAS, SERGIO MARAMBIO, YONG ZENG, RAJA SANGRAPILLAI, ROOBAN NAVARATNASAMY, PAUL LOURENCO AND RENATO SILVA; File No. 3847-03-OH; Dated January 5, 2005; Panel: Tanja Wacyk (6 pages)

Construction Industry Grievance – Discharge - Health and Safety - Practice and Procedure – The union grieved the transfer and lay-off of an employee who allegedly lodged an anonymous health and safety complaint about paint fumes in

the workplace -- The parties argued over the applicable onus of proof – The Board held that it was sitting as an arbitrator pursuant to s. 133 of the *Labour Relations Act*, *1995*, therefore the employer's decision to lay off the grievor would not be a proper exercise of management rights if the applicant could establish improper motivation contrary to section 50(1) of the *Occupational Health and Safety Act* – In the Board's view, whether a complaint is pursued through grievance arbitration or under s. 50 of the OHSA, an employee's statutory rights should not be altered by a shifting of the burden of proof to establish an unlawful reprisal – The Board found the employee was seeking the enforcement of the OHSA – A majority of the Board drew an adverse inference from the employer's failure to call its key decision-makers to testify about the grievor's transfer and lay-off – The Board found the transfer was tainted, but the subsequent lay-off was *bona fide* – Grievance allowed

FAB-AIR METAL INDUSTRIES.; RE: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 397; File No.1662-03-G; Dated January 26, 2005; Panel: Caroline Rowan, Alan Haward; John Tomlinson, (Dissenting) (12 pages)

Employment Standards – Settlement – The employee complained that she was coerced or influenced to enter into a settlement by the employment standards officer who allegedly advised her to accept the employer's offer and pursue the balance in small claims court -- The Board found that the officer's efforts at persuasion did not violate s. 112(8) of the *Employment Standards Act, 2000* – Furthermore, the Board was not convinced that the officer provided the advice as alleged – Application dismissed

FLOWERS BY THE DOZEN INC.; RE LYNN HUDSON AND DIRECTOR OF EMPLOYMENT STANDARDS; File Nos.1791-04-ES; Dated January 20, 2005; Panel: Brian McLean (4 pages)

***Bankruptcy and Insolvency Act* – Employment Standards – Related Employer – Sale of Business – Stay –** This is a referral from an arbitrator pursuant to section 101(3) of the *Employment Standards Act, 2000* as well as an application for a declaration of relatedness or a sale of business pursuant to sections 1(4) or 69 of the *Labour Relations Act, 1995* – The responding parties brought a motion to stay the proceedings pursuant to s. 69.3(1) of the *Bankruptcy and Insolvency Act* – The applicant union argued that the proceedings were not for the recovery of a claim provable in bankruptcy, therefore they should be allowed to continue – Further, the applicant submitted that it was not seeking an order against any of the protected entities, but rather against the solvent companies – The Board, relying on *Page Flooring Enterprises Inc.* [2000] O.L.R.D No. 4262, held that these matters were indeed proceedings for the recovery of a claim, and adjourned them to allow the applicant to seek leave of the bankruptcy court to pursue the claims – Matter adjourned *sine die*

GEORGE HANCOCK TEXTILES LIMITED; RE UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES AND ITS LOCAL 1938; GEORGE HANCOCK TEXTILES INTERNATIONAL INC.; HANTEX HOLDINGS LTD.; LABELNET INC.; GEORGE HANCOCK AND GILLIAN BROOKE; File Nos. 1968-03-R; 2582-03-ES; Dated January 24, 2005; Panel: Peter F. Chauvin (13 pages)

Bargaining Rights – *Public Sector Labour Relations Transition Act* – Related Employer – Sale of Business – A number of different building trades unions sought a declaration that the Greater Essex County District School Board was either related to the Board of Education of the City of Windsor or was its successor – At issue was the interpretation of a regulation (promulgated under the *Public Service Labour Relations Transition Act*) which purported to limit the bargaining rights with the successor to those employees within the geographic jurisdiction of the predecessor, effectively trumping the operation of the *Labour Relations Act, 1995* – The Board traced the legislative evolution of the GECDSB through various enactments and held that the impugned regulation did not constrain the provisions of the LRA – While the School Board conceded that it was a successor employer for purposes of the PSLRTA, its status under the LRA would only be determined at the conclusion of the instant matter – Hearing continues

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE BOARD OF EDUCATION FOR THE CITY OF WINDSOR; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 773; UNITED ASSOCIATION OF

JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 552; INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 6; INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1494; LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625; File Nos. 1702-04-R; 3120-04-R; 3172-04-R; 3173-04-R; 3173-04-R; Dated January 18, 2005; Panel: David A. McKee (9 pages)

Bargaining Rights – Construction Industry – Employer -- Practice and Procedure – Termination – The School Board applied for a declaration of non-construction employer status, seeking to rely on a similar finding in an earlier application (see: *Greater Essex County District School Board* [2003] OLRB Rep. January/February 74) – The Board rejected the employer's preliminary motion, reasoning that status (other than trade union status) must be determined on a case-by-case basis - The principle of *res judicata* cannot apply where there are different parties to the proceedings – Hearing continues

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 773; INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTSMEN, LOCAL 6; UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 552; INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1494; LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 625; File Nos. 1776-04-R; 1778-04-R; 1794-04-R; 1796-04-R; 1797-04-R; Dated January 28, 2005; Panel: David A. McKee (5 pages)

Construction Industry Grievance – The union named two companies, Hi Tech and Globe, as responding parties in this grievance referral – The companies filed a single notice of intent to defend – The Board found Hi Tech liable for breaching the collective agreement and awarded damages and a penalty – The union then sought to enforce a damages claim against Globe resulting from the settlement of an earlier grievance under which Globe would pay the union if it violated the collective agreement – The Board held that absent a declaration of relatedness, the two companies would be treated as separate entities (as indeed the union had considered them) and no damages would flow from Globe – Grievance against Hi Tech allowed

HI TECH INSULATION CO. INC.; RE GLOBE INSULATION CO. LIMITED; INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS LOCAL 95; File No. 1875-04-G; Dated January 12, 2005; Panel: Harry Freedman (4 pages)

Construction Industry Grievance – Discharge – Practice and Procedure – The applicant requested that the Board take a view of the workplace to enhance the understanding of the context and circumstances giving rise to the employee's discharge - The Board determined that it would not accede to the applicant's request: the worksite was now an operational manufacturing facility and no longer a construction site; the grievor was uncertain about his physical location in the workplace; financial and temporal costs (the need for safety training for all persons entering the workplace) also militated against taking a view – Motion denied

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353; RE MID SOUTH CONTRACTORS/DAIMLERCHRYSLER LIMITED; File No. 3190-03-G; Dated January 11, 2005; Panel – Jack J. Slaughter (4 pages)

Health and Safety – *Prima Facie* Motion – OPSEU sought to appeal a health and safety inspector's refusal to issue an order dictating the composition of the Joint Health and Safety Committee – AMAPCEO brought a preliminary motion for dismissal for OPSEU's failure to disclose a *prima facie* case for the remedy it was seeking - Sometime after OPSEU had withdrawn from the JHSC (and for policy reasons it refused to sit jointly with AMAPCEO on the employee side of the committee), it asserted a right to have both employee members be its own members – The Board found that there is nothing in section 9(8) of the Act that mandates that OPSEU, by reason of

its majority position in the workplace, be able to unilaterally appoint both representatives – Section 9(8) does not address proportional representation – Motion granted and application dismissed

MINISTRY OF COMMUNITY AND SOCIAL SERVICES.; RE RICK TAGGART/ DENNIS MUNDY, INSPECTORS; MINISTRY OF LABOUR; ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO; File No. 3936-03-HS; Dated January 5, 2005; Panel: Patrick Kelly, J.A. Rundle, H. Peacock (7 pages)

Duty of Fair Representation – Discharge – Following the applicant's discharge for allegedly falsifying doctors' notes and forms, the employer discovered that the applicant had falsified a mortgage application – At her grievance arbitration, the Union, concerned about the grievor being subjected to cross examination on the falsified mortgage document, declined to call her as a witness – When the arbitrator ruled that the mortgage application had limited admissibility, the union did not change its decision and called the grievor's doctor instead of the grievor - The Arbitrator found the doctor not credible and dismissed the grievance – The Applicant argued that, in not calling her, the Union had violated the Act – The Board found that the union did make a serious mistake in not revisiting the decision not to call the grievor; the mistake was an error of judgment, but not so serious as to be arbitrary – Application dismissed

PARMJIT MAN; RE FORD MOTOR COMPANY CANADA , LIMITED C.A.W. LOCAL 707 NATIOMAL AUTOMOBILE, AEROSPACE, TRANSPORTATION RE GENERAL WORKERS UNION OF CANADA File No. 1392-03-U; Dated January 14, 2005; Panel – Brian McLean (8 pages)

***Bankruptcy and Insolvency Act* – Employment Standards – Related Employer – Stay –** PlateSpin Ltd. (the "Applicant") appealed an employment standards officer's assessment against it for wages and vacation pay; one former employee also appealed the Officer's findings – The Officer's order was against three companies – Prior to the issuance of the Order, PlateSpin Canada Inc. and PlateSpin Inc. were put into interim receivership by court order – While the proceedings were stayed against the two companies in receivership, the Director of Employment Standards maintained that there was no impediment to the proceedings involving the Applicant company, which the Officer had ruled was a related employer – The Board considered whether or not the corporate arrangements were created with the "intent or effect" of defeating the true purposes of the *Employment Standards Act, 2000* – The Board found that the Applicant had only a minority interest in PlateSpin Inc. and the two other companies were not under common control and direction, despite having two common directors – There was no evidence that the receivership was not *bona fide* or that the purchase of the assets was not arm's-length -- The fact that the minority shareholders chose to abandon a failing company that they did not have the resources to save, but were able to secure the assts and start up a new company, does not alone result in a finding that the intent of the Act has been defeated – Employer application for review granted; employee application dismissed

PLATESPIN CANADA INC., PLATESPIN INC., PLATESPIN LTD; RE MARK VERDUN AND DIRECTOR OF EMPLOYMENT STANDARDS; File Nos. 0001-04-ES; 0298-04-ES; Dated January 13, 2005; Panel: Tanja Wacyk (14 pages)

Certification – Representation Vote - The applicant sought leave to withdraw this certification application without a bar even though a representation vote had been taken – The ballot box was sealed because the employer gave notice under section 8.1 – A majority of the Board declined to allow the applicant to withdraw, but ordered the application dismissed without a bar pursuant to section 8.1

RONA HOME AND GARDEN; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION & GENERAL WORKERS UNION OF CANADA (CAW-CANADA); File No. 3203-04-R; Dated January 28, 2005; Panel: J.A. Ronson, R.R. Montague, Ian Anderson (Dissenting) (3 pages)

Certification – Construction Industry – Related Employer– In this application for certification, the union claimed that Viewmark was the true employer of workers operating under a subcontract with M.S. Contracting - A principal of M.S. ("S") was formerly a site-supervisor for Viewmark - The Board found that the employees

were employed by M.S.; however S was found to be an employee of Viewmark – S's employment through M.S. was closely analogous to his employment with Viewmark and the monetary arrangement between the two parties did not change the substance of what S did - This was not a true subcontracting arrangement, but rather a means to have labour and supervision provided to Viewmark in a manner that was in essence the same as an employee-employer relationship, without having to bear the consequences of such a relationship – Viewmark was therefore the employer

VIEWMARK HOMES AND/OR IVORY GATE CONSTRUCTION LTD., RE: UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183; 800838 ONTARIO INC. O/A M.S. CONTRACTING; 1005163 ONTARIO INC.; 1100261 ONTARIO INC. O/A AROMI GROUP/CONTRACTING; AROMI CONTRACTING CORPORATION; File Nos. 3550-01-R; 2104-02-R Dated January 14, 2005; Panel: Marilyn Silverman, John Tomlinson, George McMenemy (9 pages)

Court Proceedings

Duty of Fair Representation – Judicial Review – The applicant sought judicial review of the Board's decision (and reconsideration) dismissing her complaint that the trade union had acted unfairly when it failed to pursue an untimely accommodation grievance on her behalf -- Application for judicial review dismissed

COLLIER CECILA v. THE AMALGAMATED TRANSIT UNION, LOCAL 113 File No. 706/03 (Then, Ground, Pitt, JJ) January 5, 2005

***Education Act* – Judicial Review - Jurisdictional Dispute –** Both OSSTF and ETFO claimed the work of teaching the "Learning Life Skills" (LLS) program to pupils above thirteen years of age – The dispute arose as a result of the amalgamation of two former boards and the parties agreed that only one federation should have the work -- The Board noted that this decision was only necessary because there is no single teachers' federation with bargaining rights for all public school teachers in Ontario, that both federations' teachers can teach the LLS program, both are qualified for the task and there is mixed practice provincially – The Board began its analysis by finding that there was no impediment in the *Education Act* to the teaching of LLS students in secondary schools by teachers in either federation nor does it prescribe one over the other -- Next the Board turned to its usual jurisdictional dispute criteria which were not helpful especially given that the employer had shown no preference – The Board examined other labour relations considerations and found that a clear line of demarcation between the elementary and secondary bargaining units was important and this was best accomplished by looking to the nature of the school where the work was being performed -- Since it was at a secondary school, the secondary panel should teach LLS – The core criterion in section 277.3 of the *Education Act* for the determination of a bargaining unit is the school, not the program taught in the school – This view is also supported by organizational considerations which support the work being done by OSSTF – instead of ETFO – School Board directed to assign the work to members of the OSSTF – On judicial review the Divisional Court held that the Board had asked itself all the appropriate questions and had properly analyzed the established criteria for determining a jurisdictional dispute – The Court concluded, however, that there was only one possible outcome to the inquiry, contrary to the Board's suggestion that the *Education Act* could bear a finding that Life Learning Skills teachers could belong to either the elementary or the secondary school bargaining unit – Application for judicial review dismissed

KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD; RE OSSTF, DISTRICT 14; RE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO, ON ITS OWN BEHALF AND ON BAHALF OF ITS KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD TEACHERS' LOCAL ("ETFO"); File No. 0797-01-JD (Lane, Brockenshire, Ferrier, JJ) January 28, 2005

Contempt – Discharge – Health and Safety – Judicial Review – The Board found that the applicant's work refusal was not *bona fide* and that his termination was not a reprisal for acting in compliance with or seeking the enforcement of the

Occupational Health and Safety Act – The Board also declined to substitute a lesser penalty for the discharge under s. 50(7) of the OHSA – The Board further declined to state a case for contempt to Divisional Court based on the allegation that the applicant had distributed documents received in another Board proceeding, in breach of an implied undertaking that such documents are to be used only in the litigation for which they were produced – On judicial review, the Divisional Court held that the Board had denied the applicant's right to a fair hearing when it consolidated the reprisal and contempt matters into one proceeding – At the Court of Appeal, the ruling of the Divisional Court was overturned – The Court of Appeal held that the lower court had misapprehended the nature of both the OHSA reprisal and the SPPA contempt proceeding – On the reprisal, the Divisional Court misapplied the burden of proof and incorrectly restricted the parameters of the evidence the employer sought to adduce – With respect to the contempt, the Divisional Court failed to bifurcate the Board's role in determining whether to state a case from the Court's role to determine whether a person should be punished for contempt – Appeal allowed, Board decision restored

MCNAUGHT, WILLIAM; RE TTC AND ITS SUPERVISORS, CHIEF GENERAL MANAGER DUCHARME, GENERAL MANAGER G. WEBSTER, S. QUIGLEY, HUMAN RESOURCESDEPARTMENT AND SUPERINTENDENT J. HAFFEY, DANFORTH BUS DIVISION AND OLRB; File Nos. 3616-99-U; 3297-99-OH (Simmons, Gillese and Hennessy, JJA) January 27, 2005

Some of the decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Library, now located on the 7th Floor, 505 University Avenue, Toronto.

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Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Wabco Standard Trane Co. v. UA Local 787 Divisional Court No. 11/05	0194-03-G	Pending
Benjamin Blasdell v. UFCW Local A.F.L.-C.I.O.-C.L.C. Local 1000A; Loblaws Supermarkets Ltd. Divisional Court No. 74010/04 NEWMARKET	1431-03-M; 1341-03-U	Pending
Gerald Thomas v. SEIU Local 1.ON; Toronto East General & Orthopaedic Hospital Inc. Divisional Court No. 638/04	0281-04-U	Pending
Hardev Kumar v. USWA, Local 13571, et al Divisional Court No. 574/04	0151-04-U	Pending – May 25, 2005
Naseem Jamal v. OPSEU, et al Divisional Court No. 56704	2464-03-U	Pending
Christopher Kabala v. Attorney General of Canada, Ombudsman Ontario, et al Divisional Court No. 575/04	0458-00-ES	Pending
Premier Fitness Clubs Inc. & 992434 Ontario Inc. v. Hopeton Bailey, et al Divisional Court No. 537/04	0341-03-ES	Pending
Assurant Group v. Ignacia Menor Fillion, et al Divisional Court No. 528/04	2999-03-ES	Pending
Maurice Leblanc v. TTC, and ATU, Local 113 Divisional Court No. 468/04	2326-00-U	Pending
Autoland Chrysler (1981) Ltd., Michael Leahey v. Teamsters Union, Local 879 Divisional Court No. 463/04 Divisional Court No. 554/04	1151-03-R	Pending – June 17, 2005
Joseph S. Rooke v. Stelco Hamilton, OLRB & Ministry of the Attorney General for Ontario Divisional Court No. 404/04	1584-02-OH; 2647-02-OH	Pending – Stay (by order of Bankruptcy court)
Dr. Nicholas Hawrylyshyn, et al, o/a **Square One Dental Centre.** v. Queen in Right of MOL, et al Divisional Court No. 343/04	1721-02-ES	Pending – March 11, 2005
OPSEU v. PIPS, **The Ottawa Hospital**, OLRB Divisional Court No. 378/04	0372-04-R	Pending
UBCJA, Local 494 v. **Build Force Construction Ltd.**, 1404406 Ontario Ltd., Unicor Construction Inc. (Stated Case) Divisional Court No. 368/04	1190-03-R; 1189-03-G	Pending – June 1,2005
Alistair McEachran v. The Society of Energy Professionals and **Ontario Power Generation Inc.** Divisional Court No. 298/04	0179-03-U	Dismissed - Jan. 19/05 (reasons to follow)
Sheet Metal Workers' Int'l Assoc. Local 30 v. **Crossby-Dewar Projects Inc**., Int'l Assoc. Heat &	1643-03-JD	Pending

Case name & Court File No.	Board File No.	Status
Frost Local 95 Divisional Court No. 144/04		
Vincent Borg v. OPSEU, The Crown in Right of Ontario et al Divisional Court No. 83/04	1208-02-U	Pending – June 9/05
Grantley Howell v. OLRB Divisional Court No. 04/178	0933-01-U; 1273-01-U; 3552-00-U	Pending
Association of Professional Ambulance Employees v. City of Toronto, Toronto Emergency Medical Services et al Divisional Court No. 44/04	2456-01-R	Pending
Labourers' International Union of North America v. **Universal Workers Union**, et al Divisional Court Nos. 22/04	2320-03-M 2049-03-U	Pending – Feb. 7/05
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Pending – Feb. 23,24,25/05
Elementary School Teachers' Federation v. OSSTF, Dist. 14 Kawartha Pine Ridge DSB et al Divisional Court No. 17/04	0797-01-JD	Dismissed – Jan 28/05
Canadian Pacific Railway Co. v. Milk & Bread Drivers, Dairy Employees, Caterers, Local 647 Divisional Court No. 9/04	2864-03-R	Pending
Cecilia Collier v. TTC Divisional Court No. 706/03	0632-02-U	Dismissed – Jan 5/05
Electrical Power Systems Construction Association and **Comstock Canada Ltd.** v. Sheet Metal Workers' International Association, Local 30 Divisional Court No. 679/03	1894-02-G	Abandoned January 5, 2005
Dawit Tuquabo v. USWA L 9597, Securitas Canada Ltd. Court File No. 03-DV-000935 – OTTAWA	2377-02-U	Pending – Feb.14/05
William McNaught v. TTC, et al Divisional Court No. 254/02 Court of Appeal No. C41584	3616-99-U; 3297-99-OH	Application allowed Nov. 6/03; leave to appeal granted Mar. 26/04 Appeal Allowed – Jan 27/05