

# WHAT'S NEW

## ISSUE 5 – July 2011

In an effort to keep the Labour Relations Community informed on an ongoing basis of happenings at the Labour Relations Board, the Board produces on a monthly basis “What’s New.” The following is Issue 5 for July 2011.

### NEWS AROUND THE BOARD

**A New Staff Member!** – Commencing August 15, 2011, Janice Smith will be joining the Board as our new Manager of Administrative Services. As many of you know, Bob Poburan recently retired leaving this position vacant. Some of you may know Janice as she was the Board’s Director of Administration from 1990 to 1993. Janice also worked as the Manager of Operations with the Appeals Commission for Alberta Workers’ Compensation for more than seven years and most recently was the Office Manager at Ackroyd LLP.

Janice has a wealth of management experience, knows her way around the ins and outs of budget and business planning, and is very familiar with the Board’s business and our database.

Congratulations Janice and welcome!

**Congratulations!** – Andy Sims is the 2011 recipient of the Bora Laskin Award for Outstanding Contributions to Canadian Labour Law. The award was established by the University of Toronto to honour those who have made an outstanding contribution to labour law in Canada. The award is named after the late Chief Justice Bora Laskin (1912–1984) who, before joining the Supreme Court of Canada, was a pre-eminent labour law scholar and arbitrator.

Previous recipients include Harry Arthurs, Pierre Verge, Paul Weiller, Roy Heenan, Mel Myers, Warren Winkler, Innis Christie and Justice Rosalie Abella.

The award will be presented at Bora Laskin Award Dinner on the evening of October 18, 2011. Details can be found at [www.lancasterhouse.com](http://www.lancasterhouse.com).

**Board Caucus** – A second Board caucus meeting has been scheduled for the 2011 calendar year. It will take place on November 8 and 9, 2011 in Calgary at the Sheraton Cavalier. Further details to follow.

## OTHER HAPPENINGS

Canadian Bar Association – 12<sup>th</sup> Annual National Administrative Law, Labour and Employment Law Conference – November 25 and 26. The Conference will be held in Ottawa. Topics will include:

- The Year in Review in Labour and Employment and Administrative Law
- Fireside Chat with Right Hon. Beverley McLachlin, Chief Justice of Canada
- Experts and Tribunal Expertise
- Workplace Investigations
- Real and Nominal Litigants
- Flavours and Layers of Privilege
- A View from the Bench, with justices from the B.C. Supreme Court, Quebec Court of Appeal, Federal Court of Canada and Supreme Court of Newfoundland and Labrador
- The Changing Supreme Court of Canada

Further information can be found at: [www.cba.org](http://www.cba.org).

Lancaster House – Canadian Labour Board Conference – October 18 and 19, 2011. Topics include a case law and legislative update, a discussion of the S.C.C. recent decision in *Fraser*, and a presentation on essential services. The Bora Laskin award being presented to Andy Sims is being awarded in conjunction with this conference. Further details can be found at: [www.lancasterhouse.com](http://www.lancasterhouse.com)

## RECENT CASES

### ***International Union of Painters and Allied Trades, Local Union 1891 v. Finn Way General Contractor Inc.***

In a recent decision, the Ontario Labour Relations Board addressed the legitimacy of “salting”, the practice of trade unions directing their members or supporters to obtain employment with a non-union employer and, in turn, using their position as employees to launch a certification application. The employer argued these individuals did not qualify as employees for the purposes of the Ontario *Labour Relations Act* because of their status as “salts”.

Relying on past Ontario Board jurisprudence generally confirming “salting” as a legal and legitimate organizing tactic, the Board concluded the individuals in question were employees for the purposes of the *Act*. In reaching this conclusion, the Board made a number of statements including: 1) it is immaterial whether a “salt” is receiving pay from the union at the same time as receiving compensation from the employer; 2) the

Board does not consider the value or motives of a person in determining who is an employee; and 3) participating in “salting” in no way impacts on credibility as witness.