

WHAT'S NEW

ISSUE 9 - September 2012

In an effort to keep the Labour Relations Community informed on an ongoing basis of happenings at the Labour Relations Board, the Board produces a monthly newsletter - "What's New." The following is Issue 9 for 2012.

NEWS AROUND THE BOARD

Board Officer Position – The Board has commenced a search for a new Board Officer in the Edmonton office. Please see the Board's website at www.alrb.gov.ab.ca for more information.

New Calgary Board Officer - As previously mentioned, Bridget Oliveira commenced work as the Board's newest Board Officer in our Calgary office at the beginning of September, 2012. Bridget reports she is immersing herself in the work of the Calgary office and looks forward to the challenge of learning the work of a Board Officer.

Labour Board Conference - Chair Asbell is Co-Chairing the Lancaster House Canadian Labour Board Law Conference being held in Toronto on October 16 and 17, 2012. Vice-Chair Schlesinger is also attending the conference as a panel member on the topic *Who's Who and What's What?: Cutting Through Complex Employment Structures*.

RECENT CASES

Association of Justice Counsel v. Attorney General of Canada 2012 Ont. C.A. 530 (CanLII)

The Ontario Court of Appeal recently became of the first appellate court to uphold the constitutionality of the federal *Expenditure Restraint Act*. In the Court's view, the legislation which imposed wage increase limits on federal government employees including government lawyers does not violate the freedom of association rights of lawyers working for the federal government.

At the time the legislation came into force, the parties had engaged in a long process of bargaining including 16 sessions of face-to-face negotiations and five days of mediation. The Association had made full representations to the Treasury Board having rejected Treasury Board's last offer at the time the legislation became effective. The legislation effectively limited any pay increases to those contained in Treasury Board's last offer.

In reaching its conclusion, the Court relied specifically on comments made by the Supreme Court of Canada in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20. In

particular, the Court noted that while s.2(d) protects good faith bargaining on important workplace issues, it does not impose a particular process, does not require the parties to conclude an agreement and does not guarantee a legislated dispute resolution mechanism.

The Court also referenced its own recent decision in *Ontario v. Canada (Attorney General)*, 2012 ONCA 363 where the Court concluded *Fraser* should be interpreted as meaning s.2(d) is only infringed where the legislation, or in some cases the lack thereof, makes the pursuit of collective goals “effectively impossible”.

Relying on these and other statements of law, the Court concluded the process the parties engaged in allowed the Association to voice its demands and required and resulted in the Treasury Board considering these demands in good faith. Although the legislation in question did not allow the issue of wages to be arbitrated, this was not an infringement of the *Charter*. According to the Court’s interpretation of *Fraser*, s.2(d) only protects collective bargaining in the minimal sense of good faith exchanges but does not protect a particular process and does not guarantee a legislated dispute resolution mechanism in the case of impasse.

CONFERENCES:

- Canadian Labour Board Law Conference: October 16-17, 2012 at the Park Hyatt, Toronto, Ontario
- Alberta Congress Board’s Annual Workplace Conference: October 25-28, 2012 at the Fairmont Jasper Park Lodge, Jasper, Alberta