



**ALRB Cite:** Timeu Forest Products Inc. v. IWA, Local 1-207  
[1997] Alta.L.R.B.R. 430

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**TIMEU FOREST PRODUCTS INC., Applicant INDUSTRIAL, WOOD & ALLIED WORKERS OF CANADA, LOCAL 1-207, Respondent. Board File: GE-02534. September 11, 1997.**

*Gerald A. Lucas, Q.C., Vice Chair, Robin Campbell and William Kondro, Members*

For the Employer: Dwayne W. Chomyn (Counsel), Ben Sawatzky

For the Union: Robert A. Philp (Counsel)

**Reconsideration - s. 11(4) - Number of signatories in support of certification application not released - Union witness gave false testimony at hearing regarding signatories - Number relevant - Error of law to not provide number to employer - Reconsideration hearing ordered.**

**Evidence - s. 13(6) - Restricted information - Board policy to not release number of signatories in support or opposition to certification application - Section applies only to names of signatories - Number of signatories to be provided where relevant.**

*The Industrial, Wood & Allied Workers of Canada, Local 1-207 (the “Union”) applied to be certified as bargaining agent for a unit of employees at Timeu Forest Products Inc. (the “Employer”). In keeping with Board policy, the Employer was notified that at least 40% of employees in the unit supported the application. The Board ordered a representation vote be held, with ballots to remain sealed until the Board ruled on unfair labour practice complaints filed by the parties. In a letter decision, the Board upheld the complaints, vacated the representation vote and ordered the holding of a second vote. Subsequently, a Union witness advised the Employer that he gave false testimony at the hearing regarding the number of signatories in support of certification. The Employer applied for a reconsideration of the letter decision.*

*Although employees voted against certification in the second vote, a hearing was held to determine whether sufficient grounds for reconsideration existed. The Employer argued the false testimony made relevant the number of signatories, and that failure of the Board to provide it with the correct number was a breach of natural justice. The Union argued that, regardless of the false testimony, the application to certify was supported by 40% of employees in the unit. It submitted the Employer was not prejudiced by the nondisclosure of the number of signatories and reconsideration was academic.*

*The Board found there were sufficient grounds for reconsideration. It found the false testimony regarding the number of signatories made that number relevant and the correct number should have been provided to the Employer. It found the failure to provide this information to the Employer was an error of law. It ordered a reconsideration hearing be held and the Employer be advised of the number of signatories in support of the application to certify.*

## **REASONS FOR DECISION**

**Gerald A. Lucas, Q.C., Vice-Chair:**

### **I. Background**

The Industrial, Wood & Allied Workers of Canada, Local 1-207 (the “Union”) had applied for certification of a unit of employees of Timeu Forest Products Inc. (the “Employer”) described as “all employees except office and clerical personnel”. The application was supported by petition evidence of certain employees and was processed by the Board in the usual manner. An Officer’s report was issued on June 18, 1997 that recommended a representation vote. The Union responded to the report, on June 25th, objecting to the inclusion of one employee and to the proposed voting arrangements. Its letter also raised certain unfair labour practices allegedly committed by the Employer.

At a hearing on July 2nd, the Board was satisfied with respect to the matters required by section 32(1) and ordered a vote be held on July 4th. The ballots were to be sealed pending a determination of the Union’s unfair labour practice complaint. In that complaint, the Union alleged the Employer’s mill manager had held a captive audience meeting and threatened to shut down the mill if the Union’s petition was not immediately handed over. This resulted in an anti-Union petition being circulated and employees were promised that if they signed it they would not be fired. The relief sought by the Union was to have the vote vacated, that it be allowed to conduct its own meeting of the employees at the mill without the Employer’s representatives being present, and that a new vote be conducted.

On July 9th, the Employer filed its own unfair labour practice complaint alleging the Union’s organizers, Ed Clarke (“Clarke”), and Calvin Alkestrup (“Alkestrup”), had circulated the Union’s petition for certification at the Employer’s mill, during working hours, contrary to section 149(d).

Both complaints were heard by the Board on July 11, 1997, following which a decision was made orally that was confirmed in writing by letter dated July 14, 1997. In that decision, the panel of the Board (now referred to as the “Original Panel”), decided that although the Employer had established a violation of section 149(d), only one signature on the petition had been tainted, which was not sufficient to disturb the earlier finding that the petition had the support of 40% of the employees in the unit. The Original Panel also found that the Union had established a breach by the Employer of section 147(c) but, because the Employer had attempted to later assure the employees that the mill manager had no authority to threaten them as he had, the relief sought by

the Union would not be granted in its entirety. As a result, the Original Panel ordered the first vote to be vacated; ordered a second vote to be taken; and, directed there be a voluntary meeting of the employees the day before the new vote at which the Employer and the Union could state their respective positions.

## **II. The Reconsideration Application**

On July 14, 1997, the Employer filed this reconsideration application and a hearing of the Board was scheduled for August 15, 1997 at which it would be determined if there were sufficient grounds to reconsider the decision of the Original Panel.

The Employer's request for reconsideration was based on its allegation that after the July 11th hearing, the Union's witness, Clarke, voluntarily revealed to the Employer that he had provided false evidence to the Original Panel relating to the number of employees who had signed the petition. This was accompanied by the Employer's insistence that the Board disclose the numbers of employees who had signed the petition supporting the certification application.

After filing the reconsideration application, the Employer learned that the outcome of the second representation vote was 25 to 3 against the Union's certification. However, the fact the Union was unsuccessful in its attempt to be certified did not cause the Employer to withdraw this application.

At the Board's hearing on August 15th, the Employer outlined the nature of the evidence it intended to call should the Board decide to reconsider and presented its submissions in favour of granting its application. The Union did not take issue with the Employer's assertions of what had occurred at the hearing before the Original Panel and confined its submissions to the issue of whether the Board should reconsider the previous decision.

### *(a) The Employer's Argument*

In summary, the Employer asserted the following occurred in connection with the Union's certification application and regarding the hearing into the unfair labour practice complaints on July 11th:

(i) The Union had filed its certification application on June 18, 1997 and, in accordance with its usual practice, the Board provided the Employer with the heading of the employees' petition but not the numbers of employees who signed, nor their names. The Officer's report included the comment that at least 40% of the 29 employees in the unit had signed the petition supporting the Union's application.

(ii) On July 9th, during a telephone conversation with Clarke, the Employer's president, Ben Sawatzky ("Sawatzky"), was told by him that he had obtained 7 employees' signatures on the petition at his home and another 17 signatures at the mill during working hours. This led to the Employer filing its complaint about the violation of section 149(d).

(iii) At the Original Panel's hearing on July 11th, the Union proceeded first with its complaint. The Employer did not dispute the substance of this complaint and the only issue was as to the remedy that should be imposed.

(iv) Clarke gave evidence in support of the Union's complaint and during the Employer's cross examination, Clarke admitted he obtained the signatures of 7 employees at his home. But when asked how many signatures he had obtained at the plant during working hours, the Union's counsel objected to the question on the basis of section 13(6). Although counsel for the Employer argued against the objection, he did not obtain a ruling from the Original Panel and, instead, proceeded to ask Clarke if it was true that he had stated on July 9th that he obtained 7 signatures at this home and 17 signatures at work during working hours. Clarke answered that this was true but he was not certain if it was exactly 17 signatures that he got at the plant, it might have been a couple more or a couple less.

(v) On re-examination, the Union's counsel confined his questions, on this issue, to asking Clarke whether the information he provided on July 9th was true and Clarke said to the best of his knowledge it was. He was then asked if the answer he had given today (i.e. July 11th) was true and Clarke confirmed it was true.

The Employer asserted that, based upon this evidence, it would have been apparent to all concerned that the Employer was of the impression the petition contained 24 signatures, or approximately that number. As a result of this, the Employer said it decided not to call any further evidence in support of its complaint. Thereafter, the Original Panel gave its decision indicating that only one signature on the petition was tainted and that did not affect the support of 40% of the employees for the certification application.

Also, the Employer alleges that, later that night, Sawatzky received a telephone call from Clarke who said he did not have 24 signatures on the petition, but only had 17. Clarke repeated that information during a meeting with the Employer on July 12th. The Employer could not reasonably have known or be expected to have known that Clarke would give false testimony. The Board's practice in not disclosing to the Employer the numbers of employees who signed the petition meant that both the Union and the Board knew, but the Employer did not, that the witness was lying about the numbers of employees who signed the petition.

The Employer's reconsideration application had also raised the allegation that the Original Panel should have drawn an adverse inference from the fact that Alkestrup, the other Union organizer, who was present throughout the hearing, did not testify. In particular, this inference should have been drawn from Clarke's testimony that Alkestrup had the ability to solicit signatures during working hours because he was engaged in mill maintenance and moved around the plant and he thought Alkestrup obtained some signatures during working hours.

Accordingly, the Employer argues that it is entitled to a reconsideration of the decision of the Original Panel on the following grounds:

- A. The Employer should be given the opportunity to call new evidence, to correct the false evidence given by Clarke at the July 11th hearing, which new evidence is significant, on point and was not reasonably available at that prior hearing as it only came to the Employer's attention on July 12th when Clarke admitted he had given false evidence.
- B. It is entitled to know the case it has to meet and, therefore, the Board should have disclosed to it the numbers of employees who signed the petition. This is especially so when the Original Panel is relying upon, or impliedly relying upon, the number of employees signing the petition to reach its decision that the certification application continued to be supported by 40% of the employees. The Board's failure to make this disclosure is a breach of natural justice, giving rise to an error of law that requires correction.
- C. In the absence of knowing the number of employees who signed the petition, the Employer is obliged to rely upon the Board to look after its interests, and it puts its faith in the Board to do so. If the Board assumes the obligation of ensuring the petition has the support of 40% of the employees, it has undertaken a fiduciary duty and must act carefully. If it fails in its task, the Board breaches the trust obligation it owes the Employer, which constitutes a breach of natural justice and is an error of law the Employer should be allowed to have corrected.

Section 13(6) of the *Code* is not relevant to the Employer's request to have disclosed the number of employees who signed the petition, as that section only requires that information relating to the names of persons who are union members or applicants for membership or signatories to petitions be kept in confidence. The Employer does not seek disclosure of the names of such persons and there is no other provision of the *Code* that relieves the Board from supplying the numbers.

Consequently, as the Employer has met the threshold tests entitling it to a reconsideration, it should be allowed the opportunity to lead evidence and present submissions on the merits of its application. As well, the Board should provide it with the number of employees who signed the petition.

*(b) The Union's Argument*

The Union argues that the Employer has not established a sufficient basis to cause the Board to grant a reconsideration. The Employer has not been prejudiced by any alleged nondisclosure of the numbers of employees who signed the petition. As for its suggestion that the Original Panel should have drawn an adverse inference against the Union for Alkestrup's failure to testify, there was no obligation on the Union to call further evidence relating to the Employer's complaint. If the Employer wanted Alkestrup's evidence to support its allegation that section 149(d) was breached, it could have called him to testify. It was the Employer's decision to rely only upon its cross-examination of Clarke to prove its complaint.

Further, the Union argues that the Board has a discretion under section 11(4) as to whether it will reconsider a previous decision and in exercising that discretion it ought to take account of the context of the matter that was before the original panel. In this case, the Union lost its attempt to be certified for the Employer's employees and, therefore, nothing is to be gained by a reconsideration. This is not to suggest the Board cannot reconsider when the original matter may be moot, but in this case there is no point in the Board proceeding to do so.

Finally, the Union argues that the Board has a policy or practice of not releasing the numbers of employees supporting a trade union's certification application and this is of importance to the trade union movement. A reconsideration in this case would be academic and would not make labour relations sense. Even if an error may have been made by the Original Panel, this case should not be used to support a change in the Board's past practice. If the Board does decide to reconsider, it should confine itself to the facts of this case and grant only such relief as may be necessary to correct the particular error.

### **III. The Decision**

This application presents allegations of two somewhat unusual circumstances as justification for the Board granting a reconsideration; first, the Board's failure to have disclosed, prior to the earlier hearing, a relevant fact that prejudicially affected the Employer; and, second, a witness presenting false evidence at the previous hearing of a fact that was relevant and material to the outcome of the Employer's application.

As for the Employer's suggestion that the Original Panel should have drawn an adverse inference, this was not argued during the Board's hearing on August 15th, perhaps, because the Union's written response to the reconsideration application had sufficiently answered this matter. The decision of the Original Panel adequately explained why no such inference was being drawn and the Union's argument sets out why this cannot be a successful basis for reconsideration.

*(a) Is the Board obliged to disclose the number of signatories to a petition?*

An appropriate starting point in a discussion of what the Board ought to disclose to an employer in advance of or at a hearing is section 13(6) of the *Code*, which provides:

*13(6) The Board is not required to divulge any information as to whether a person*

*(a) is or is not a member of a trade union,*

*(b) has or has not applied for membership in a trade union, or*

*(c) has or has not indicated in writing his selection of a trade union to be, or his opposition to the trade union's being, the bargaining agent on his behalf.*

Although this provision has not been the subject of many decisions of the Board, those in which it has been mentioned make clear that it relates only to evidence that would divulge whether specific persons were or were not supporters of a particular trade union; see, for example: *Carpenters, Local 1569 v. Canyon Engineering et al*, November 26, 1982, 82-064 (Canning); and *Plumbers, Local 496 v. Triple L Investments Ltd.* [1987] Alta.L.R.B.R. 598 (Canning). This requirement, that union membership evidence not be revealed to other persons, is not unique to Alberta and is found in labour relations legislation applicable in other jurisdictions in Canada. The thrust of such legislation is to protect the secrecy or confidentiality of employees' membership in trade unions.

Under most circumstances, revealing the number of employees who support a trade union's application for certification that is brought in any one of the three ways provided by the *Code*, will not result in a disclosure of information as to whether an individual is a union supporter or not. An exception might exist in the case of bargaining units comprised of only two or three employees.

In the past, questions relating to the number of employees in a proposed bargaining unit who supported an application for certification or an application for revocation did not arise. The reason was that those numbers were always provided to the employer and other interested parties, either in correspondence from the Board or as part of the Officer's report. On April 26, 1995 the Board discontinued its former practice and since then the number of employees supporting a certification or a revocation application has not been included in the Officer's report, nor is that number otherwise available to an employer from the Board.

Whether the Board ought to have adopted that new policy is not a question that is presently before us and we do not intend our comments to be construed as applying to the advisability of continuing that policy. Our decision only deals with the specific factual circumstances outlined to us by the parties.

Administrative law has long recognized that a tribunal, such as the Board, must in exercising its jurisdiction, adhere to principles of natural justice. This is sometimes expressed as a duty to be fair. Among the natural

justice principles is the requirement that parties have a fair hearing which, in turn, means they be advised of the case against them. This duty of disclosure is expressed by Jones and de Villars, *Principles of Administrative Law*, 2nd ed., 1994 (Carswell) in these terms, at p. 251:

The courts have consistently held that a fair hearing can only be had if the persons affected by the tribunal's decision know the case to be made against them. Only in this circumstance can they correct evidence prejudicial to their case and bring evidence to prove their position. Without knowing what might be said against them, people cannot properly present their case.

This same principle is expressed by Blake, *Administrative Law in Canada*, 2nd ed. 1997 (Butterworths), at p. 29, as follows:

Fairness requires that a party to be affected by a decision have an opportunity to make representations. To do so, the party must first be informed of the case to be met. Without knowledge of the matters in issue one cannot effectively exercise one's right to be heard. "An opportunity which cannot be used is no opportunity at all". Disclosure of the facts upon which the decision will be based enables a party to review the facts, to prepare to challenge them, to obtain evidence that rebuts them or reduces their impact and to prepare submissions concerning them.

The obligation to make full disclosure can, of course, be limited by specific provisions in a statute, like section 13(6). However, as mentioned in Blake's text, at p. 37, statutory provisions that exempt information from being disclosed will be strictly construed. A strict construction of section 13(6) would support the Board's previous interpretation of it, that it only obliges the Board to hold the names of employees in confidence.

In arguing what information the Board should have disclosed, the Employer relied upon the following statement in Jones and de Villars' text, at p. 267:

Generally fairness requires that all information relied upon by the tribunal when making its decision should be disclosed to the individual. Failure to do so deprives the tribunal of jurisdiction and renders the decision void. The information to be disclosed includes reports prepared by the tribunal's staff or any other report which the tribunal has relied upon in making its decision.

Blake expresses a similar view in her text, at p. 34, as follows:

The gist of the case law is that any information that will be taken into account in making the decision should be disclosed. To be safe, disclosure should be made of any information that will be put before the decision maker.

However, accepting the general proposition that the Board ought to disclose the information on which it relies in making a decision, is not always helpful in providing the Board with needed guidance when considering whether specific information should be provided in advance of the Board's hearings into a certain complaint or application. Of more assistance are the following comments in Blake's text, at pp 33-34:

Where the highest level of disclosure is required, a party is entitled to be informed of any information that is relevant and prejudicial to the party's interests. Any information that might work to the prejudice of a party must be disclosed to that party. Actual prejudice need not be established. If there is a reasonable likelihood of prejudice, the information must be disclosed. While failure to disclose prejudicial information may be fatal to a decision, failure to disclose non-prejudicial information may not.

This comment is based, in part, upon a decision of our Court of Appeal in a matter that involved the Board: *U.A. Local 488 v. Board of Industrial Relations* (1976) 69 D.L.R.(3d) 74. That was a case in which individual union members had accepted employment with non-union contractors during times when the union could not provide work with a union contractor. As a result, they had been charged under the union's constitution and substantial fines had been levied. They complained to the Board, under the equivalent of what is now section 15, regarding the union's breaches of provisions similar to the present sections 149(i) and 150(1). The Board found in favour of the individual complainants and the union unsuccessfully sought to quash that decision, in part, on the basis of the Board's failure to disclose material that was prejudicial to it. Moir, J.A. delivered the judgment of the court and at p. 89 said:

...I am of the view that in respect of the material before the Board it is only relevant material prejudicial to the position of Local Union 488 that has to be disclosed.

He also said, at p. 91:

In considering whether or not there was a denial of natural justice here, I am bound to see whether there was anything relevant that came to the attention of the Board that was prejudicial or anything irrelevant that they took into account.

Thus, it appears the Board's obligation to the Employer would be to disclose relevant information of a nature prejudicial to the Employer's interest. In the context of the Employer's complaint regarding the Union's breach of section 149(d), the number of employees who had signed the petition supporting the certification application would seem to be a relevant factor. But was it prejudicial? At the outset, the number who signed the petition may not have been prejudicial to the Employer's interest, however, it could become prejudicial if a witness began to give false evidence regarding the number of signatories.

At this stage of our proceedings, evidence has not yet been heard by the Board to support the Employer's assertion the witness gave false testimony. However, the Union did not dispute that the Employer would be able to adduce such evidence if given an opportunity to do so.

It is not apparent from the decision of the Original Panel why the number of signatories on the petition had not been disclosed to the Employer. Perhaps the Employer did not ask, believing that the information given to it by Clarke in advance of the hearing, that 24 employees signed, was correct and seemed to be in accord with the testimony he provided at the hearing. As we understood the submissions of the Employer's counsel, when the question as to the number of employees who signed the petition at the mill during working hours was posed to Clarke, during cross-examination, the Union's counsel objected, but before the Original Panel ruled on the objection, the Employer's counsel thought there was another way of putting the same information before the Board. This was done by asking Clarke if the information he had voluntarily given to the Employer a few days before was true.

It is not often that the Board panel hearing a matter is going to be possessed of information that makes it apparent that a witness is lying. Of course, it is hoped that perjured testimony is rarely presented to the Board and, in the event of a witness giving false testimony, that counsel will, as mentioned below, deal with that situation in the appropriate manner. But in the rare instance when the Board's hearing panel is possessed of information from which it is apparent, or capable of being ascertained, that a witness is lying, and counsel do not deal with the matter, a number of unacceptable alternatives might arise:

- a. the Board never looked at the contrary evidence it had on file and accepts the witness' evidence as truthful;
- b. the Board previously looked at the contrary evidence but forgets about it by the time the witness testifies and so accepts the witness' evidence as truthful; and,
- c. the Board realizes the witness is lying but does not disclose this and errs in the conclusion it draws from that fact, as it did not receive submissions relating to the false testimony.

We have no way of knowing if, and do not suggest that, any of these alternatives arose in the matter heard by the Original Panel. But the possibility of these kinds of circumstances arising serves to illustrate that the safe course for the Board to follow would be to make disclosure of facts, when it becomes apparent those facts are relevant, and simply assume the prejudicial effect, or potential prejudicial effect, of them.

In this case, as the number of employees who signed the petition would be a fact relevant to a consideration of the issue of whether those signatures were obtained at the place of employment during working hours, it should have been disclosed once the Employer filed its section 149(d) complaint. That information is not of the sort that is protected by section 13(6). In our view, making this disclosure prior to the hearing, and without waiting to see if counsel first tries to elicit the information from a witness, avoids the kind of problem arising

over which the Employer now complains. It prevents the possibility of a witness lying about the number of signatories and overcomes the reasonable likelihood of the Employer being prejudiced. As well, it ensures the Board is not placed in the position of having to guess or assume what effect perjury, or the possibility of perjury, might have upon the Employer's case or the tactics it employs in presenting that case. The Board could have avoided that situation arising by having made a disclosure of the number of signatories to the petition. In our opinion, the failure to have disclosed that fact to the Employer after it filed the section 149(d) complaint constituted an error of law and justifies a reconsideration.

***(b) Does the Board owe a fiduciary obligation to the employer?***

The Employer also argued that because the Board chose not to disclose the number of employees who signed the petition it thereby assumed certain unspecified trust obligations toward the Employer. The Employer's argument went on to place the Board in the position of a fiduciary and to complain of the Board's breach of its fiduciary duty.

We appreciate this aspect of the Employer's submission was not extensively argued and no authorities were provided in support of it. However, based upon our understanding of the argument being raised, we do not believe the Board can be considered a fiduciary with respect to its relationship with either the Employer or the Union, in the exercise of its powers and duties under the *Code*. In the Supreme Court of Canada's decision in *Guerin v. R.*, (1984) 13 D.L.R.(4th) 321, Dickson, J. said, at 341:

It should be noted that fiduciary duties generally arise only with regard to obligations originating in a private law contract. Public law duties, the performance of which requires the exercise of discretion, do not typically give rise to a fiduciary relationship.

The Board exercises a quasi-judicial or administrative function in carrying out the "public law duties" imposed upon it by the *Code*. Because the duties owed by the Board are public in nature, it would be inconsistent to argue that the Board also assumes a private duty or obligation to just the Employer. If the Board is in breach of its public duties, the *Code* restricts the means of obtaining a remedy to a judicial review proceeding or, perhaps, through an exercise of the Board's reconsideration power. These are not the kind of proceedings in which a remedy for a breach of trust could be obtained.

Consequently, it is our opinion the Board does not owe the Employer any trust or fiduciary obligations.

(c) *What obligations to the Board arise when false evidence is given?*

The Board is a decision making body and like other such bodies it often must rely upon evidence presented to it by parties who are adverse in interest. In such circumstances it is vital the evidence be as accurate and truthful as can reasonably be presented through the adversarial process. In order for the Board to properly exercise its role, it relies upon counsel for the parties, be they lawyers or non-lawyers, to ensure the evidence is of the expected standard.

What then does the Board expect of counsel when false testimony is, to the knowledge of counsel, being given by a witness. In the case of counsel who are lawyers, the answer is relatively simple. the Board expects them to act in accordance with the terms of their Code of Professional Conduct. As stated in *U.F.C.W. Local 401 v. Ferraro's and the Law Society* [1992] Alta.L.R.B.R. 578 (Sims), at p. 592:

...Alberta lawyers, when appearing before the Board, are customarily doing so as part of their practices as barristers and solicitors. As such, they do not leave their professional status, and more importantly their professional obligations, behind them at the Board's door.

The Alberta Code of Professional Conduct sets forth certain principles that are applicable to the members of the Law Society of Alberta in order to ensure, among other reasons, that those members will be aware of the need for a lawyer to "observe the highest standards of conduct on both a personal and professional level so as to retain the trust, respect and confidence of colleagues and members of the public."

Included among the Rules in Chapter 10 are the following:

14. A lawyer must not mislead the court nor assist a client or witness to do so.
15. Upon becoming aware that the court is under a misapprehension as a result of submissions made by the lawyer or evidence given by the lawyer's client or witness, a lawyer must (subject to confidentiality -- see Rule #7 of Chapter 7) immediately correct the misapprehension.

For purposes of these Rules, the Professional Conduct Code, defines a "court" to mean any decision-making body, which would include the Board.

The relevant portion of the Commentary upon those Rules states the following:

- 14.2 Rule #14 -- Misrepresentation by client or witness: A lawyer has a duty to refuse to offer evidence provided by a client or other person that the lawyer knows to be false based on personal knowledge or the client's admission...If it becomes apparent after the fact that evidence submitted by the lawyer is false, then Rule #15 applies.

- 15.1 Rule #15 -- General:...A lawyer has a duty to correct a misapprehension of the court arising from an honest mistake on the part of counsel or from perjury by the lawyer's client or witness. It may be a sufficient discharge of this duty to merely advise the court not to rely upon the impugned information....
- 15.2 Rule # 15 -- "Subject to confidentiality": This condition is the subject of a rule and commentary in Chapter 7, Confidentiality. Briefly, if correction of the misrepresentation requires disclosure of confidential information, the lawyer must seek the client's consent to such disclosure. If the client withholds consent, the lawyer is obliged to withdraw.

The enforcement of these Rules is a matter for the Law Society and not the Board. But they outline a common sense approach that the Board should be able to expect of anyone acting as counsel in proceedings before the Board, namely, if a witness is knowingly giving false evidence, counsel should tell the Board to ignore the evidence that is false. If necessary, counsel could first seek a short adjournment to point out to the witness that certain evidence is false and must be corrected or counsel will be telling the Board to ignore the evidence.

The matter of false evidence is a serious matter and an allegation that evidence of material and relevant facts given at a previous hearing were untrue can, by itself, constitute a ground for granting a reconsideration hearing. This was the case in *Bordeaux Maintenance Services and C.U.P.W.* (1987)15 CLRBR (NS) 309, where the New Brunswick Industrial Relations Board faced a situation similar to that now before this Board. There, a union's certification application and unfair labour practice complaint had been dismissed and the union sought reconsideration on the basis that an employer's witness had disclosed to the union, after the hearing, that his evidence had been untrue. The N.B Board decided the union could not have known the evidence given by the witness would be perjured and the new evidence, if proven, would be relevant and material to the outcome of the original proceedings. Therefore, it was decided that the union should be given the opportunity to establish the allegations, so the reconsideration was allowed and a new hearing ordered.

We, too, are of the opinion that the allegations of false testimony at the earlier hearing, relating to a factual matter that appears to be relevant and material to the outcome of the Employer's unfair labour practice complaint, should result in the Employer being given the opportunity of proving its allegations. In this instance, the allegations constitute an adequate ground for reconsideration.

In view of the foregoing, we have decided the Board should reconsider the decision of the Original Panel. We request the Director of Settlement to make the usual arrangements to schedule a new hearing to inquire into the merits of the Employer's application. In advance of that hearing we also direct that the Employer be advised of the number of employees who signed the petition supporting the Union's certification application.

