Labour Relations Board
Saskatchewan

TIMOTHY JOHN LALONDE v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1985, Respondent,

LRB File No. 222-02; November 5, 2004
Chairperson, James Seibel; Members: Leo Lancaster and Pat Gallagher

The Applicant: Timothy John Lalonde
For the Respondent: Drew Plaxton

Union – Constitution – Natural justice - Content of principles of natural justice varies depending upon nature of dispute and rights alleged to have been violated – Where right to earn livelihood at stake, content of natural justice/procedural fairness will tend toward more complete and formal end of spectrum and will be more strictly interpreted and applied.

Union – Constitution – Natural justice – Applicant not adequately or properly advised of particulars of accusation/charge against him, not afforded hearing with opportunity to present defense and not advised of possibility of or steps for avoiding penalty of expulsion from membership – Board finds violation of s. 36.1(1) of *The Trade Union Act*.

Union – Membership – Applicant expelled from membership in one trade union as a result of membership in another trade union with overlapping jurisdiction – Board concludes that expulsion of applicant from membership based solely on basis of dual union membership and not, by any objective and reasonable standard, for any reason related to the defence or protection of viability or existence of union – Board concludes that union unreasonably denied applicant membership in violation of s. 36.1(3) of *The Trade Union Act.*

Unfair labour practice – Union – Denial of union membership – Union's actions, although taken in good faith, constituted threat with a view to discouraging applicant from exercising right under *The Trade Union Act* in circumstances that cannot be said to have been a defensive measure to protect union's existence – Board finds violation of s. 11(2)(a) of *The Trade Union Act*.

***The Trade Union Act*, ss. 11(2)(a) and 36.1.**

REASONS FOR DECISION

Background:

[1] Pursuant to *The Construction Industry Labour Relations Act, 1992*, S.S. 1992, c. C-29.11 (the *CILRA, 1992*), the United Brotherhood of Carpenters and Joiners of America, Local 1985 (the "Carpenters' Union" or the "Union") is the designated bargaining agent for employees of unionized employers in the construction sector working as journeyman carpenters, apprentice carpenters, carpenters and carpenter foremen. The Applicant, Timothy John Lalonde, had been a member of the Union from April, 1998 until his membership was revoked by the Union in November, 2002. Mr. Lalonde filed an application with the Board on November 6, 2002, alleging that the Union violated ss. 11(2), 36 and 36.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") in threatening to revoke his membership in the Union on the grounds that his subsequent acquisition of membership in the International Union of Operating Engineers, Local 870 (the "Operating Engineers' union"), in May, 2002, while a member of the Carpenter's Union, was in violation of the Carpenters' Union constitution[1]. In its reply to the application, filed on December 2, 2002, the Carpenters' Union confirmed that, by that time, it had in fact revoked the Applicant's membership in the Union pursuant to the Union's constitution on the basis that the Operating Engineers' union was an organization whose jurisdictional claims to work infringed upon those of the Carpenters' Union and that concurrent membership in such an organization was a violation of the Union's constitution.

[2] The first day of the hearing of the present application was March 27, 2003, following which Mr. Lalonde made an application for the recusal of the panel chairperson on the basis of reasonable apprehension of bias. That application was dismissed after a hearing on August 27, 2003, with reasons reported at [2003] Sask. L.R.B.R. 394. The hearing of the present application continued and concluded on April, 19 and 20, 2004.

[3] Prior to receiving evidence at the commencement of the hearing, the chairperson of the Board hearing panel explained the hearing procedure to Mr. Lalonde, who represented himself, including the order of proceeding, the calling of witnesses,

[1] "Constitution of the United Brotherhood of Carpenters and Joiners of America and Rules for Subordinate Bodies under its Jurisdiction", effective December 1, 2000.

examination and cross-examination of witnesses, the entry of documents into evidence and the order of argument, and invited Mr. Lalonde to ask questions regarding procedure during the hearing if he felt it necessary. The parties were provided with the opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses and to present argument.

[4] Although at the time Mr. Lalonde filed his application on November 6, 2002, the purported revocation of his Union membership had not yet become effective – that date being November 19, 2002 – as the summary of evidence which follows discloses, in order to determine "the real questions in controversy in the proceedings"[2] without the necessity of further proceedings being launched, the Board exercised its discretion to consider the application as including a complaint alleging that the actual revocation of membership was in violation of the same provisions of the *Act* as originally alleged in the application. The respondent Union neither objected nor was prejudiced by allowing same and, in fact, evidence was introduced on its behalf of events post-dating the filing of the application.

Evidence:

[5] In addition to testifying on his own behalf, Mr. Lalonde called five other witnesses: Jim Geddes, Joe Taylor, Lee Naylor, Kerry Westcott and Kelvin Goebel. Two witnesses testified on behalf of the Union: Bert Royer and Bob Todd.

[6] The Applicant, Mr. Lalonde, was at all material times a journeyman carpenter and he had been a member of the Union for some years. He testified that he became apprenticed as a crane operator and joined a second construction sector union, the Operating Engineers' union, in May, 2002. Mr. Lalonde then went on the Operating Engineers' "out-of-work board," securing his first work as an operating engineer in July, 2002 on a project at the Co-op Upgrader in Regina. At the time of the events material to this matter, Mr. Lalonde had for some time been working as an equipment operator on that project as a member of the Operating Engineers' union; he worked continuously in that capacity until late December, 2002, when, because of an injury he was off work until

[2] See, *The Trade Union Act*, s. 19(1).

March, 2003, again then returning to work as an operating engineer for the same employer.

[7] Mr. Lalonde testified that he received a letter from the Union dated October 7, 2002 advising him of the opportunity to address the Carpenters' Union Executive Committee at a meeting on October 20, 2002, regarding his alleged membership in the Operating Engineers' union. Mr. Lalonde said that the letter was delivered to him personally at a regular meeting of the Union on October 8, 2002 by Kelvin Goebel, a business agent for the Union. The letter provided as follows:

> *It has come to our attention that you are a member of the International Union of Operating Engineers.*
>
> *Section 42-I of the Constitution of the United Brotherhood of Carpenters and Joiners of America states that:*
>
> > *No member of the United Brotherhood can remain in or become a member of more than one Local Union, or any other organization of carpenters or joiners, or any mixed union of building trades workers, or any organization whose jurisdictional claims overlap or infringe upon those of the United Brotherhood, under penalty of expulsion. Any member who accepts employment under nonunion conditions during the time of a strike or lockout, or being employed as an armed guard during a strike or lockout, shall not be entitled to any donations. If a member is accused of holding membership contrary to this Section, the Executive Committee of the Local Union or District, Industrial or Regional Council shall give the member due notice of the charge, shall afford the accused a hearing and a full opportunity to present a defense. If after hearing the Executive Committee finds that the member holds membership contrary to this Section, the member shall be permitted thirty days in which to resign or withdraw from any conflicting membership and to so notify the Executive Committee. If the member fails to do so, his or her membership shall be revoked.*
>
> *In compliance with this section of our Constitution you are afforded the opportunity to provide any additional information, if you desire, at our Executive Committee meeting at 11:00 A.M., Sunday, October 20th, 2002, at the Davidson Hotel, Davidson, Sask.*
>
> *Fraternally Yours,*
>
> *(signed) "Jim Geddes"*
> *Jim Geddes*
> *President*

[8] The application for membership in the Carpenters' Union made and signed by Mr. Lalonde in 1998 contained a reference to article 42-I of the Union's constitution and asked the question, "Do you hold membership in another labour organization?" and, if so, required the identification of such organization. At that time, Mr. Lalonde accurately answered that he did not. His standard form application for membership also contained a section titled "Obligation" that provided, in part, as follows:

> *I do, of my own free will and accord, solemnly and sincerely promise – on my sacred honor – that I will never reveal – by word or deed – any of the business of this United Brotherhood – unless legally authorized to do so. I promise to abide by the Constitution and Laws – and the will of the majority – observe the By Laws and Trade Rules – established by Local Unions and Councils – affiliated with the United Brotherhood . . . that I am not now affiliated with – and never will join or give aid – comfort – or support to any organization that tries to disrupt any Local Union – District Council – Regional Council – State or Provincial Council or the International Body – of the United Brotherhood of the Carpenters and Joiners of America.*
>
> *Being admitted to membership, I agree to be bound by the above obligation of the United Brotherhood of Carpenters and Joiners of America which I have read. I further agree that if it is found at any time that I have made false statements of any kind in this application, that my membership shall be declared void and all monies paid by me shall be forfeited.*

[9] In cross-examination by counsel for the Union Mr. Lalonde agreed that the "Obligation" obliged him to abide by the constitution and laws of the Union.

[10] Mr. Lalonde testified that he had to work on October 20, 2002 – the day of the Union's Executive Committee meeting. He also testified that his decision to work on October 20, 2002 was voluntary and that he took over a co-worker's shift so that the co-worker could attend to a social engagement. He said he tried to contact the Union's business manager, Bob Todd, to advise him that he could not attend the meeting, but was unable to reach him at the telephone number that he had. He said he spoke to clerical staff in the Carpenters' Union office or hall – Sue Kerling and a "Wendy" (last name unknown) – sometime during the week before October 20, 2002 and asked to have Mr. Todd call him, but he never did speak with Mr. Todd. He was not sure whether he told the staff the reason for his wanting to speak to Mr. Todd. Mr. Lalonde testified that he tried to call Mr. Goebel, at his home, from a pay phone and left a message that

he wanted to speak to him, but did not indicate the reason why. Being unable to reschedule his shift, Mr. Lalonde said that he did not attend the meeting of the Union's Executive Committee in Davidson on October 20, 2002.

[11] In cross-examination, Mr. Lalonde was shown a letter dated October 12, 2002 addressed to the Union purporting to be on his personal letterhead and signed by him. Mr. Lalonde initially testified that he did not recognize the signature as his, nor did he recall sending the letter, but admitted that he "probably did." The letter provided as follows:

> *Recently I have received a letter from Local 1985. It points out section 42-I of the constitution of the United Brotherhood of Carpenters and Joiners of America. I have enclosed a copy of the letter.*
>
> *Under section 36-1 of the trade union act* (sic) *of Saskatchewan I am entitled the application* (sic) *of natural Justice in respect to all disputes between employee and the trade union.*
>
> *Natural justice would pertain to the law of the land.*
>
> *I am therefore enforcing my Canadian Constitutional rights, which were brought in law in this country on April 17, 1982. Section 2(d) of the Canadian Charter of rights and freedoms* (sic) *states that "everyone has the following rights – freedom of association."*
>
> *I am also taking this time to ask for an audit of the expenses submitted by our Business Representative Bob Todd. I would also like to charge the entire executive board for failing to up hold certain aspects of the constitution.*
>
> *There* (sic) *are as follows. 1. Failure to supply every member with written notice of meetings. 2. under section 51 a (1) causing dissension among the members of the united brotherhood. 3. Under section 51 a (5) improper harassment of any member of the united brotherhood.*
>
> *I would also like to charge Bob Todd with section 51 a (2) Advocating division of the funds of the united Brotherhood or any subordinate body thereof.*
>
> *I am also planning on criminal charges against the hall for violating certain labour laws. I would also like to open the door to all members to join me in charging Bob Todd with section 51 a (12) Lumping for any owner, builder, contractor, manufacturer or employer.*
>
> *I myself am going to sue the Local 1985 for potentional* (sic) *loss of wages. My lawyers calculate it will be for thirty-one years of wages at the*

> *industrial agreement wage. Along with cost of living increases. The nearest calculation is somewhere around 4.5 million dollars.*
>
> *Have a nice day.*

[12] Later in cross-examination by counsel for the Union, Mr. Lalonde agreed that the letter referred to certain matters that were within his knowledge, specifically, *inter alia*, the reference to having consulted lawyers and the calculation of alleged damages. Mr. Lalonde then admitted that "obviously [he] wrote it," but that "[he] could have been intoxicated when [he] wrote it" but could not remember.

[13] The minutes of the Union's Executive Committee meeting of October 20, 2002, in relation to this matter, provide as follows:

> *Correspondence was read from the Local President to Tim Lalonde regarding his membership in another Building Trades Union. Bro. Lalonde's response was also read. Discussion was held on overlapping memberships in other Unions. Brother Lalonde did not attend the Executive meeting to respond to the issue. He will be given 30 days to provide written notice of his leaving the other Union. Failing that his membership shall be revoked in accordance with Section 42-I of our Constitution.*

[14] Subsequent to the meeting of the Executive Committee on October 20, 2002, Mr. Lalonde contacted the clerical staff at the Union office who sent him a facsimile copy of the decision of the Executive Committee. The decision, in the form of a letter dated October 21, 2002, provided as follows:

> *In reference to the registered letter sent to you dated October 7, 2002 regarding section 42-I of our Constitution of the United Brotherhood of Carpenters and Joiners of America, and your membership in the International Union of Operating Engineers, please be advised that our Executive Committee dealt with the matter at its meeting on Sunday, October 20, 2002.*
>
> *First of all, you did not take the opportunity to meet with the Executive Committee at its October 20, 2002, meeting, and provide any additional information, if any, that you felt may be applicable.*
>
> *In any case, the Executive determined that you are in violation of Section 42-I.*

> *As a result, unless we receive written confirmation by you from the International Union of Operating Engineers* (sic) *by November 19, 2002 your membership in the United Brotherhood of Carpenters and Joiners of America, Local 1985, shall be revoked.*
>
> *Fraternally yours,*
>
> *(signed) "Jim Geddes"*
> *Jim Geddes*
> *President*

[15] Mr. Lalonde filed the present application with the Board on November 6, 2002. His application provides, in part, as follows:

> *The Carpenters Union Local 1985 is threatening to revoke my membership if I continue to be a member of the International Union of Operating Engineers.*

The application further alleges that the Carpenters' Union violated ss. 11(2), 36 and 36.1 of the *Act*. By the time of the hearing of the application, the purported revocation of his membership, as far as the Union was concerned, had become effective on November 19, 2002.

[16] In cross-examination by counsel for the Union, Mr. Lalonde agreed that he did not claim that he was somehow prejudiced because he did not attend the meeting of October 20, 2002. He stated that he thought the meeting was "stupid." He made no effort to have anyone attend on his behalf. He agreed that he could have contacted the local Union president, Mr. Geddes, or the recording secretary, Mr. Mills, prior to the meeting but did not.

[17] By letter dated January, 2003, Mr. Lalonde, who had paid his dues to the Carpenters' Union to the end of December, 2002, wrote to the Canadian vice-president of the Union, Jim Smith, inquiring whether he was still a member of then Union. The letter provided, in part, as follows:

> *I am writing to you in concerns to my membership* (sic). *I am enclosing two letters sent to me by the UBC Local, 1985. They were not sent by the recording secretary and they also infringe on Saskatchewan labour laws. I have not received any official notice of my membership being revoked*

> *nor have I received any repayment of the dues I had paid ahead. I am curious as to the situation. I am a little bewildered by this action also.*
> *. . .*
> *In closing I would just like to ask if I am still a member of the UBC? …*

[18] Mr. Lalonde also attempted to attend a regular meeting of the Union on January 18, 2003, but was turned away. Shortly after, the Union's recording secretary, Jim Mills, sent him a letter dated January 18, 2003, explaining certain of the consequences of the revocation of his membership in the Union, including the fact that he was no longer entitled to attend Union meetings or participate in the Union's activities. The letter also stated that, despite Mr. Lalonde's application to the Board disputing the Union's actions, unless or until the Board should determine otherwise, the revocation of his membership in the Union effective November 19, 2002, would continue to stand.

[19] Mr. Lalonde also testified that to his knowledge Mr. Geddes, president of the local Union, and another member, Neil Argue, are members of both the Carpenters' Union and Saskatchewan Government and General Employees' Union ("SGEU"), and that another member, Bernie Eagleson, is also a member of both the Carpenters' Union and the Operating Engineers' union. In cross-examination, Mr. Lalonde agreed that Mr. Geddes was employed as an instructor in carpentry at the Saskatchewan Institute of Applied Science and Technology (SIAST), and that Mr. Argue is employed with the Occupational Health and Safety Branch of Saskatchewan Labour (all or most of the the in-scope employees of both of which institutions are represented by Saskatchewan Government and General Employees' Union).

[20] Initially, in cross-examination by counsel for the Union, Mr. Lalonde stated that he had not brought issue of Mr. Eagleson's alleged dual union membership to the attention of the Union, stating as follows:

> *Question: Well so, you haven't brought Mr. Eagleson to the Union's attention?*
>
> *Mr. Lalonde: Well, why would I? What am I going to say?*

However, later in cross-examination Mr. Lalonde said he thought that Mr. Eagleson mentioned that he had worked as a surveyor as a member of the Operating Engineers'

union on the "Alliance (pipeline) project" in 1999 during a casual conversation between Mr. Eagleson and Mr. Todd that Mr. Lalonde overheard in late spring 2001 while he and Mr. Eagleson were working on a project at the Cory mine near Saskatoon. Mr. Todd had attended at that site to deal with some unrelated problems between Mr. Lalonde and the employer there. Mr. Lalonde testified in part as follows:

> *Mr. Lalonde: …And it got around to a conversation about blueprints and that and other things, and I think Bob [Todd] asked [Bernie Eagleson] who was out at Alliance and Cory. And [Bernie Eagleson] said he was with the engineering firm or something as an [operating engineer]. I believe so.*

[21] In the course of his testimony, Mr. Lalonde indicated that the remedy he was seeking was to be reinstated and to be allowed to maintain his membership in the Carpenters' Union while continuing to hold membership in the Operating Engineers' union. He did not claim to have suffered any monetary loss as a result.

[22] Mr. Lalonde called the Carpenters' Union local president, Jim Geddes, to testify as a witness on his behalf. Despite the fact that his examination in-chief of Mr. Geddes was much like cross-examination, counsel for the Union did not object.

[23] Mr. Geddes testified that the purpose of the Union's actions was to enforce the Union constitution with respect to membership in another building trades union. He described the letters of October 7, 2002 and October 21, 2002, respectively, as inviting Mr. Lalonde to explain his position, and then to advise him of the consequences of maintaining membership in the Operating Engineers' union. Mr. Geddes testified that he had no knowledge of any attempt by Mr. Lalonde to advise the Union in advance of his inability to attend the meeting of October 20, 2002.

[24] Mr. Geddes testified that the basic problem in belonging to both the Carpenters' Union and the Operating Engineers' union at the same time is that jurisdictional disputes over claims to work – that is, as to the members of which union can do certain work on a project – sometimes arise between the two unions on jobsites. Mr. Geddes stated that surveying work is an example of an activity that is a common conflicting work claim between the Carpenters' Union and the Operating Engineers' union. While conflicting claims are often resolved at "pre-job mark-up meetings"

between the various trades and the contractor, problems can arise. He said that it has happened a number of times that workers that are members of the Carpenters' Union holding membership in another construction union must decide if they are going to belong to the Carpenters' Union only, just as Mr. Lalonde was given the option (in the letter of October 21, 2002). Such situations have not proceeded to the Executive Committee hearing stage, as did Mr. Lalonde's, because the member has made a choice one way or the other and the situation therefore resolved itself.

[25] According to Mr. Geddes, the key issue for the Carpenters' Union is in belonging to another union that has conflicting jurisdictional work claims. The Operating Engineers' union is one of those unions. However, in his own case, as a member of Saskatchewan Government and General Employees' Union, Mr. Geddes works as an instructor in the carpentry trade training program at the Saskatchewan Institute of Applied Sciences and Technology. He testified that SGEU is not a construction union and has no jurisdictional work claims that conflict with the Carpenters' Union and his membership therein.

[26] Joe Taylor has been a member of the Union for some 40 years and has been a member of its Executive Committee for 35 years. Mr. Lalonde called him to testify on his behalf. Again, although his examination in-chief by Mr. Lalonde was much like cross-examination, counsel for the Union made no objection.

[27] Mr. Taylor testified that Mr. Lalonde's membership in the Operating Engineers' union was raised in a complaint made by a member at a general meeting regarding Mr. Lalonde's operation, as an operating engineer, of a type of hoisting equipment called a "zoom boom" used to unload scaffolding and materials (among other things), the erection of which is then performed by members of the Carpenters' Union. The operation of such equipment is a long-standing matter of contention between the two unions. Similarly, carpenters are often provided with forklift operation training to perform similar work.

[28] Mr. Taylor testified that, before the October 7, 2002 letter was sent to Mr. Lalonde, there was no discussion by the Union's Executive Committee regarding Mr. Lalonde's being "charged" with anything by the Union or with respect to "kicking him

out." The issue of dual union membership does not come under the "Offenses and Penalties" (Section 51) or the "Charges and Trials" (Section 52) sections of the Union's constitution, but are set out in a discrete section (Section 42-I) entitled "Qualifications for Membership." Mr. Lalonde was simply invited to attend the meeting to give an explanation for his violation of the latter section.

[29] While Mr. Taylor admitted that Mr. Lalonde is the only member that he knows of who has had his membership revoked under s. 42-I of the constitution, he also said that he was not aware that any other member of the Carpenters' Union maintained membership in another union with conflicting jurisdictional claims. To his knowledge, no other member who has been asked to choose between membership in the Carpenters' Union and another construction union with conflicting work claims has refused to make an election.

[30] Lee Naylor has been a member of the Union for some 24 years and is the Union's financial secretary and training co-ordinator. He was called to testify by Mr. Lalonde on his behalf. Although his examination in-chief by Mr. Lalonde was much like cross-examination, counsel for the Union made no objection.

[31] As the Union's training co-ordinator, Mr. Naylor keeps track of apprentices in the trade, organizes courses for apprentices, including scaffolding apprentices, and acts as a liaison between the Union and the provincial Apprenticeship and Trade Certification Board. He said that, although the Union does not itself provide certified training for "zoom boom" equipment operation, the operation of that equipment is taught as part of the carpenter trade training program.

[32] Mr. Naylor could not recall whether he was at the meeting of the Union's Executive Committee on October 20, 2002 (the minutes show that he was). However, he said that the issue of dual union membership earlier arose because of a complaint received about Mr. Lalonde. Mr. Naylor testified that he was not aware that Mr. Lalonde ever contacted the Union to ask for another meeting of the Executive Committee so that he could attend and make a submission.

[33] Kerry Westcott has been an organizer for the Carpenters' Union for the past few years. A cement mason and plasterer by trade, prior to coming to work for the Carpenters' Union he was the business manager of the Operative Plasterers and Cement Masons International Association, Local 442 ("the Cement Masons' union"), the Saskatchewan local union, from 1982 to 1996. He was called by Mr. Lalonde to testify on his behalf.

[34] Mr. Westcott testified as to the potential negative consequences for a building trades union that does not or is not able to protect its work jurisdiction. The Cement Masons' union had conflicting work jurisdiction with several other building trades unions including the general labourers, bricklayers, carpenters and iron workers. However, it did not have a provision in its constitution that prohibited its members from belonging to a union with conflicting jurisdiction. According to Mr. Westcott, construction contractors employed many workers who belonged to both the Labourers' union and the Cement Masons' union. There was a substantial wage differential between a journeyman cement mason and a labourer. In Saskatchewan, over time, the labourers encroached on the work of the cement masons to the point where the Cement Masons' union began to lose even its core work on all but the larger jobs. In Mr. Westcott's words, the Cement Masons' union became marginalized and was unable to maintain enough membership to support its local union in Saskatchewan. Mr. Westcott described dual union membership as a "Trojan Horse" that led to the demise of the Saskatchewan local union, which eventually merged with the Alberta local of the Cement Masons' union.

[35] Kelvin Goebel has been a member of the Carpenters' Union for some 27 years and has been a business agent for the Union since 1991. He is a member of the Union's Executive Committee in his capacity as a trustee of its benefit plans. He was called to testify on behalf of Mr. Lalonde and, while his examination in-chief was more like cross-examination, counsel for the Union did not object.

[36] Mr. Goebel hand delivered the October 7, 2002 letter to Mr. Lalonde at a Union meeting on or about that date. He said that the Carpenters' Union had been contacted by several of its members working on the Co-op Upgrader jobsite regarding Mr. Lalonde's working on the site through the Operating Engineers' union. There were

complaints that Mr. Lalonde was operating a “zoom boom” and forklift equipment – there was no suggestion that Mr. Lalonde was working “on the tools” *per se* of the carpenter trade. He said that, because the Union had no actual evidence in hand regarding whether Mr. Lalonde belonged to the Operating Engineers’ union, the Union sent him the invitation to attend the meeting of the Executive Committee on October 20, 2002. Although he could not specifically recall when the conversation took place – that is, whether it was before or after the October 20, 2002 meeting – Mr. Goebel agreed that he probably had a conversation with an official of the Operating Engineers’ union, Gord Boychuk, wherein Mr. Boychuk confirmed Mr. Lalonde’s membership in that union.

[37] Mr. Goebel did not recall that Mr. Lalonde had left him any message regarding his inability to attend the Executive Committee meeting. Mr. Lalonde queried Mr. Goebel as to whether Mr. Goebel would ordinarily return Mr. Lalonde’s telephone calls. In his response, Mr. Goebel was somewhat vague, but expressed some concern that Mr. Lalonde had told Union officials that he taped his telephone conversations with them and that that made him somewhat reluctant to return his calls. When asked by Mr. Lalonde whether he – Mr. Goebel – had any hostility towards him, Mr. Goebel replied that he thought that Mr. Lalonde was “an individual that had to be dealt with cautiously,” and agreed with Mr. Lalonde’s suggestion that he thought Mr. Lalonde was “a person who can cause trouble.”

[38] Mr. Goebel testified that the Carpenters’ Union regards dual membership in a union with conflicting work jurisdiction as detrimental to its interests and with the potential to result in loss of work for its members. Mr. Goebel agreed that the contractor on the Upgrader job granted the Operating Engineers’ union the zoom boom work at the pre-job mark-up meeting. He also testified that when the Carpenters’ Union signs new members, it requires that they withdraw from any competing construction union.

[39] Mr. Goebel testified that he did not think that, prior to the Union receiving the complaints about Mr. Lalonde’s dual membership, he knew about any allegation that Carpenters’ Union member Bernie Eagleson also belonged to the Operating Engineers’ union.

[40] In cross-examination by counsel for the Union, Mr. Goebel testified that he was present at the meeting of the Executive Committee on October 20, 2002. He stated that the decision of the Committee regarding the revocation of Mr. Lalonde's membership in the Union was not motivated by the personal feelings of anyone towards Mr. Lalonde.

[41] Bert Royer has been a journeyman ironworker for some 28 years. He has been the business manager of the Saskatchewan local of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the "Iron Workers' union") for the past 10 years, and the president of the Saskatchewan Building Trades Council for the past 4 years. He was called to testify on behalf of the Union.

[42] Mr. Royer testified that the Carpenters' Union and the Operating Engineers' union are not the only craft unions with ongoing jurisdictional friction. Apparently, the Iron Workers' union and the millwrights (who belong to a division of the Carpenters' Union) have fought with each other for decades for jurisdiction over "rigging" work. The Iron Workers' union also has disputes from time to time with the unions representing pipe fitters, electricians, painters and boilermakers and with welders who do not have their own construction trade division and are not represented by any single designated union. Mr. Royer said that dual membership in competing unions can lead to a conflict of interest in a member's loyalty, and the potential for the communication of confidential information disclosed in the meetings of one union to the other. The application for membership in the Iron Workers' union contains a question for disclosure of membership in any other labour organization. To ensure that members do not belong to a competing union, it is the practice of the Iron Workers' union to ask persons with membership in a competing union to choose which union they want to belong to. As far as the Ironworkers' union is concerned, however, there is no problem with its members joining or belonging to a non-construction union.

[43] Bob Todd has been a member of the Carpenters' Union for 29 years and its business agent for 24 years. He was called to testify on behalf of the Union.

[44] Mr. Todd testified that, in the past, members of the Carpenters' Union who also belonged to a union with competing jurisdictional work claims have always

opted to withdraw from one union or the other when put to an election and the Union has not had to take steps to revoke their membership.

[45] Mr. Todd described the common disputes between the Carpenters' Union and the Operating Engineers' union as concerning jurisdiction over the operation of "zoom boom," bobcat and forklift equipment for the offloading of scaffolding, forms, beams and materials, surveying and layout work for site elevations and the placement of forms.

[46] When it was brought to the Union's attention that Mr. Lalonde was working under the aegis of the Operating Engineers' union on the Upgrader project, the Carpenters' Union afforded him the opportunity to provide any information he chose to regarding the situation and, when he failed to do so, it provided him with thirty days to rectify the situation by withdrawing from the Operating Engineers' union. Mr. Todd testified that an official of the Operating Engineers' union, John Petersen, confirmed that Mr. Lalonde was a member of that union.

[47] Mr. Todd testified that it only came to the Union's attention as a result of the present proceedings that Mr. Eagleson may also hold membership in the Operating Engineers' union and that the Union is waiting for the outcome of this application before taking action on the matter.

[48] When asked by Mr. Lalonde whether he – that is, Mr. Todd – had replied to Mr. Lalonde's several messages left on his cell phone voicemail regarding this situation, Mr. Todd said that he did not, because he did not recall that Mr. Lalonde asked him to call back, but rather just stated his opinions about the matter.

[49] When asked by Mr. Lalonde whether he – Mr. Todd – had a "vendetta" against him, Mr. Todd replied that he did not and pointed out that he had acted on Mr. Lalonde's behalf on several occasions in the past – securing his reinstatement when he was suspended from the Union for non-payment of dues; dealing with a harassment allegation on a work site; and securing his reinstatement to employment when he was fired from a jobsite – and that he had, in fact, appointed Mr. Lalonde as a Union job steward from time to time.

[50] When Mr. Lalonde queried Mr. Todd as to why he was "charged" by the Union with respect to the present dispute, Mr. Todd explained that Mr. Lalonde was not "charged." He explained that the Union's constitution lists the kinds of offences that are "chargeable" and may result in an internal "trial," but that the matter of dual membership is not such a matter. Section 42-I of the constitution, which is separate from the charges and trials provisions, separately requires a "hearing" be held in respect of such matter.

[51] Mr. Todd also testified with respect to the conduct of pre-job mark-up meetings, the assignment of work by contractors and a procedure for the resolution of inter-union jurisdictional disputes in the A.F.L. – C.I.O. Building and Construction Trades Council "Green Book."

[52] Mr. Todd testified that dual membership in a competing union may lead to a conflict in confidentiality regarding such matters as finances, organizing, and the potential disclosure to other unions of "voluntary recognition" jobs where the Carpenters' Union supplies nearly "wall-to-wall" labour for a project (i.e., to the exclusion of other construction unions).

Statutory Provisions:

[53] Relevant provisions of the *Act* include ss. 2(f), 3, 5(d) and (e), 11(2)(a), 36 and 36.1.

Provisions of the Union's Constitution:

[54] Relevant provisions of the Carpenters' Union constitution include the following, copies of which are attached to these Reasons for Decision:

DUTIES OF RECORDING SECRETARY OF LOCAL UNION
Section 35-A.
QUALIFICATIONS FOR MEMBERSHIP
Section 42-I.
OFFENSES AND PENALTIES

Section 51-A, B, C & D
CHARGES AND TRIALS
Section 52-A, C,J, K, L & M
APPEALS AND GRIEVANCES
Section 53 A

Arguments:

[55] The Applicant, Mr. Lalonde, argued that the evidence showed that there was no problem with his maintaining membership in both the Carpenters' Union and the Operating Engineers' union. He asserted there was jealousy on the part of members of the Carpenters' Union because they had seen him on the "zoom boom" relaxing while they had to work. He maintained that he never had a good relationship with Mr. Todd or Mr. Goebel, that they "jumped on it," and that Mr. Todd bears a grudge against him. He argued that Union's concerns regarding dual membership were hypothetical.

[56] Mr. Lalonde argued that the Union has unlawfully tried to restrain him from belonging to another union and that Section. 42-I of the Union's constitution violates the *Act*. He asserted that his income, pension and future have been affected by the Union's actions, which violate s. 11(2) of the *Act*.

[57] Mr. Lalonde asserted that the evidence showed that other members of the Carpenters' Union hold membership in another Union and that Mr. Goebel knew that Mr. Eagleson belonged to the Operating Engineers' union prior to November 6, 2002. Although Mr. Lalonde did not specifically express it as such, we have accepted this as an argument on his part that the Union has discriminated against him in its application of Section 42-I of the Union constitution by reason of which he has been unreasonably denied membership in the Union contrary to s. 36.1(3) of the Act.

[58] Similarly, during the course of the hearing, Mr. Lalonde intimated that the Union had violated Section 35-A of the Union constitution in the course of its dealings with him in that some of the correspondence with him was sent under the signature of the local Union president rather than the local Union recording secretary. We have

accepted this as an argument on his behalf that the Union's actions are therefore vitiated or otherwise unlawful, such that the revocation of his membership is void or voidable.

[59] Mr. Lalonde concluded his argument by making the somewhat startling admission that that he is in fact a "troublemaker" and that one must "be cautious around [him]." More will be said of these statements at the end of these Reasons for Decision.

[60] Mr. Plaxton, counsel for the Union, argued that the procedure used by the Union in relation to Mr. Lalonde's dual union membership was fair and in accordance with its constitution. He asserted that there is a sound labour relations basis for the Union's constitutional prohibition on belonging to another union with a conflicting work jurisdiction, which is different from a general ban on dual membership in any other union whatsoever.

[61] Mr. Plaxton argued that the Union's actions did not constitute a violation of s. 11(2)(a) of the *Act*. Asserting that the Union is entitled to enact and enforce reasonable restrictions on membership, he argued that ss. 36 and 36.1 of the *Act* expressly recognize that a person may be expelled from or denied membership in a union. Also, he said, if a union cannot enforce its constitution and bylaws to discipline or expel members it could not maintain solidarity in a strike.

[62] In the course of his argument, Mr. Plaxton forthrightly brought to the Board's attention several decisions with respect to the issues in this case, two of which, decided by the same tribunal on nearly identical facts, came to ostensibly opposing conclusions. While these cases are briefly described here, some of them are dealt with in more detail later in these reasons.

[63] In *Johnston, et al. v. Amalgamated Transit Union and B.C. Hydro and Power Authority* (1976), No. 14/76, the British Columbia Labour Relations Board heard a complaint by three members that the union expelled them from membership, which would have resulted in loss of their jobs under the union security clause in the collective agreement. The union had brought charges against the three members alleging that they had violated the constitution by engaging in certain actions designed to achieve replacement of the union as bargaining agent by a rival union (i.e., a "raid"). The British

Columbia Board found that the union was not in violation of the *Labour Code* of British Columbia. Counsel cited the decision for the proposition that a union has the right to protect its own existence and to discipline, suspend or otherwise deal with a member acting contrary to the interests of the union.

[64] In *Matus v. International Longshoremen's and Warehousemen's Union, Local 502*, [1980] 2 Can. L.R.B.R. 21, the Canada Labour Relations Board determined that a section in the union's constitution which stipulated that a member could not belong to any other union violated several provisions of the *Canada Labour Code*, including one guaranteeing employees the right to join and participate in lawful activities of trade unions[3] and that that included the right to belong to more than one union. An application for judicial review of the decision was dismissed by the Federal Court of Appeal at [1982] 2 F.C. 549.

[65] In *Garrett, et al. v. United Brotherhood of Carpenters and Joiners of America, Local Union 452* (1988), No. C281/88, a decision of the British Columbia Industrial Relations Council, the applicants alleged that they were expelled from the union, which represented tradespersons employed in the traditional carpentry craft, for joining a rival general construction union that represented multiple trades and organized "wall to wall" bargaining units. Interestingly, at issue in the case was the same section of the Carpenters' Union constitution, Section 42-I, as is at issue in the present case. The B.C. Council held that the union had acted lawfully, fairly and reasonably, had not discriminated against the applicants, and that its actions were not coercive or intimidating and did not constitute an unfair labour practice. However, some eighteen months later, in *Ollesch, et al. v. United Brotherhood of Carpenters and Joiners of America, Local Unions 452 and 1251* (1990), No. C75/90, a different panel of the British Columbia Industrial Relations Council determined, on facts nearly identical to those in *Garrett*, *supra*, that the union's actions were not fair and reasonable, were discriminatory, and were in violation of the provision of the British Columbia *Labour Code* prohibiting coercion or intimidation that could have the effect of inducing a person to refrain from becoming or continuing to be a member of a trade union.

[3] R.S.C. 1970, c. L-1, s. 110(1).

[66] Finally, counsel referred to the decision of the New Brunswick Industrial Relations Board in *Hasson v. International Association of Heat and Frost Insulators and Asbestos Workers, Local 131*, [1993] N.B.I.R. No. 19. In that case the applicant alleged that the union committed an unfair labour practice in expelling him from membership for belonging to another trade union in admitted violation of the respondent union's internal rules forbidding dual union membership. The evidence indicated that a rival union (i.e., one which claimed the same insulating work jurisdiction) was "siphoning off" members of the respondent union. In dismissing the application, the New Brunswick Board held that the New Brunswick *Industrial Relations Act* recognized the right of trade unions to establish rules of membership, including exclusivity of membership, and was entitled to take steps which it deemed necessary to protect its organization and membership in terms of preserving and maintaining work for the future.

Analysis and Decision:

[67] The issues raised in the present case include the following:

(1) Whether the Union violated s. 36.1(1) of the *Act* by failing to apply the principles of natural justice in respect to matters in its constitution and the Applicant's membership in the Union;

(2) Whether the Union violated s. 36.1(3) of the *Act* by unreasonably denying (expelling) the Applicant from membership in the Union by reason of dual union membership, including whether the Union acted in bad faith in allegedly treating the Applicant differently from other members of the Union holding dual union membership; and,

(3) Whether the Union unlawfully interfered with, restrained, intimidated, threatened or coerced the Applicant with a view to discouraging membership in a labour organization and thereby committed an unfair labour practice in violation of s. 11(2)(a) of the *Act*.

1. The Jurisdiction of the Board

[68] Neither party to the application questioned the jurisdiction of the Board to determine any of the issues raised by them and on the evidence. However, given the increasing frequency of challenges to the Board's jurisdiction we deem it appropriate and expedient to explain the basis for the Board's acquisition of jurisdiction in the present case.

[69] In 1983, s. 36.1 of the *Act* was enacted (along with s. 25.1 regarding the duty of fair representation) and changes were also made to s. 36[4]. These provisions are an apparent codification of common law developments with respect to the duties of trade unions to their members. In *Alcorn and Detwiller v. Grain Services Union*, [1995] 2nd Quarter Sask. Labour Rep. 141, LRB File No. 247-94, the Board considered the purpose and effect of the provisions regarding the jurisdiction of the courts and the Board in supervising internal trade union affairs. The Board observed at 151:

> *The introduction of a legislative regime which conferred exclusive representational rights on trade unions, however, led the courts to deviate increasingly from this "club model" to a view which acknowledges the considerable powers which unions enjoy over the employment conditions and economic future of the employees they represent. They have scrutinized union constitutions and internal union proceedings with greater care, on the basis that there are important considerations of public policy at stake. Though the constitution of a trade union is still described as creating a relationship of a contractual nature between a trade union and its members, the courts have imposed restrictions on the possible character and content of such an agreement. In Lee v. Showmen's Guild of Great Britain, [1952] 2 Q.B. 329, for example, the English Court of Appeal made the following comment:*
>
> > *Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. The tribunal must, for instance, observe the principles of natural justice. They must give the man notice of the charge and a reasonable opportunity of meeting it. Any stipulation to the contrary would be invalid.*

[70] At 153, the Board stated:

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[4] S.S. 1983, c. 81, ss. 12, 13 and 8.

> *In these and other decisions, the courts have made it clear that the basis of the jurisdiction of a trade union over its members and the obligation of those members to recognize that jurisdiction is the union constitution. They have also indicated that trade unions will be required to observe principles of natural justice in conducting their internal proceedings.*
>
> *Issues arising from internal trade union proceedings have come before this Board relatively infrequently. This was especially true prior to 1983, at which time amendments to The Trade Union Act were introduced which made specific reference to the obligation of trade unions to observe the principles of natural justice, and also to the duty of trade unions to represent bargaining unit employees fairly. In a decision in Saskatchewan Union of Nurses v. Prairie Health Care Centre and Holy Family Hospital, LRB Files No. 190-92 and 191-92, this Board made the following comment:*
>
> > *Those amendments, which from one point of view are arguably a codification of common law developments on these issues, appear to have originated in a lack of confidence in the ability of trade unions to conduct their internal proceedings with adequate fairness or respect for due process. The limitations placed on union disciplinary procedures in the amendments to Section 36 bear some logical relationship to such a premise.*
>
> *As this comment suggests, these provisions may merely have articulated specifically obligations which the common law already imposed upon trade unions, and though the role of the Board in this regard was traditionally a peripheral one, we have always interpreted The Trade Union Act as containing certain requirements and prohibitions related to the conduct of trade unions with respect to their members. An example may be found in the provisions of Section 11(2), which have been included in the Act from the outset.*

[71] As a result of the 1983 amendments to the *Act*, the Board was provided with the exclusive jurisdiction to determine certain matters with respect to the internal workings of trade unions. In *Alcorn*, *supra*, at 154, the Board interpreted its supervisory role regarding internal trade union matters as being fairly narrow:

> *In this context, if the terms of a trade union constitution purport to lead to some different result than the provisions of the Act, it is difficult to see how the constitution could prevail. In Quale v. Saskatchewan Registered Nurses Association (1970), 16 D.L.R. (3d) 550, at 555, the Saskatchewan Court of Appeal commented as follows on this point.*
>
> > *Secondly, notwithstanding that the provisions of the constitution of the union may constitute contractual obligations which a member of the union has with all other members of the union, the Court will not give effect to those provisions of the constitution which, if enforced,*

> *may defeat, abrogate or vary the rights guaranteed and the duties imposed by the specific provisions of the statute.*
>
> *Our stance continues to be one of considerable deference to the internal decision-making of trade unions. We have concluded, nonetheless, that the specific limitations placed by the statute on their authority to make certain kinds of decisions must be taken seriously.*

[72] A short while later in the decision in *Stewart v. Saskatchewan Brewers' Bottle & Keg Workers, Local Union No. 340*, [1995] 2nd Quarter Sask. Labour Rep. 204, LRB File No. 029-95, where the Board reviewed a union's decision to refuse membership to temporary employees, the Board outlined its general approach to s. 36.1 of the *Act* as follows, at 213:

> *Employees and trade union members have traditionally been able to pursue some of these questions in the common law courts, although this is not a feasible avenue for many individual employees. The significance of Section 36.1, in our view, is that it gives employees recourse to the Board to express concerns about their status or treatment within the trade union which represents them. As we have indicated in the decisions quoted earlier, the Board has no intention of becoming a body of appeal or of routine review from every decision made pursuant to a trade union constitution or internal procedural rules. Where an allegation is made, however, that a violation of The Trade Union Act has occurred, the Board must be prepared to scrutinize the internal workings of the trade union to the extent necessary to determine whether the Act has been breached.*

[73] In *Theriault v. Saskatchewan Government Employees' Union,* [1996] 7 W.W.R. 84, the Saskatchewan Court of Queen's Bench commented upon the purpose and intention of ss. 36 and 36.1 (and s. 25.1), of the *Act,* and the intention of the legislature to provide the Board with jurisdiction to decide certain matters regarding the internal workings of trade unions, stating as follows, at 92-93:

> *I agree with SGEU that the effect of the enactment of subsection 36.1(1) in 1983 would be to take away the jurisdiction of the superior court over internal union disputes. In my opinion the 1983 amendments to The Trade Union Act and, in particular ss. 25.1, 36 and 36.1, make it clear that the legislature intended that the Labour Relations Board take a more direct interest in the internal procedures and practices of a trade union.*

[74] More recently, in *Staniec v. United Steelworkers of America, Local 5917 and Doepker Industries Ltd.*, [2001] Sask. L.R.B.R. 405, LRB File No. 205-00, the Board

commented on the scope of its jurisdiction pursuant to s. 36.1 of the *Act* as follows, at 420:

> *The case law concerning s. 36.1(1) of the Act, and analogous provisions in other jurisdictions, indicates that a union's duty to apply the principles of natural justice in respect of disputes between employees and the union has generally been restricted to matters of membership and internal discipline. The provision is not intended to constitute the Board as a body for the routine review of every decision no matter how picayune made by a union pursuant to its constitutional structure and procedures.*

[75] This issue was recently considered by the Saskatchewan Court of Appeal in *McNairn v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179* [2004] S.J. No. 249 (reversing [2003] S.J. No. 492 (Q.B.)), which recognized that the line between the jurisdiction of the courts and that of the Board in relation to the scrutiny and supervision of internal union matters is not always clear. The Court stated, at paragraphs 23-26:

> *23 Since the question posits a choice between the jurisdiction of the Court of Queen's Bench and that of the Labour Relations Board, it invites comment on the relationship between the two. How is it that the Court rather than the Board, or the Board rather than the Court, might have jurisdiction to entertain Mr. McNairn's claim? And upon what basis does this fall to be resolved?*
>
> *24 The Queen's Bench Act, 1998 endows the Court of Queen's Bench, as the superior court of record in Saskatchewan, with all-embracing original jurisdiction in civil matters. Section 9 states: "The court has original jurisdiction throughout Saskatchewan, with full power and authority to consider, hear, try and determine actions and matters", including by definition all civil proceedings commenced by statement of claim. In addition to this express jurisdiction, the Court is possessed of inherent jurisdiction to entertain a civil cause of action. This emanates from the principle that if a right exists, the presumption is that there is a Court which can enforce it, and if no other mode of enforcing it is prescribed, that alone is sufficient to afford jurisdiction to the Court of Queen's Bench: Board v. Board, [1919] 2 W.W.R. 940; [1919] A.C. 956 (P.C.), affirming [1918] 2 W.W.R. 633 (Alta. C.A.).*
>
> *25 Although all-embracing, this jurisdiction of the Court is nevertheless subject to limit by other legislation within the constitutional competence of the Legislature and by common law principle restraining the exercise by the Court of its jurisdiction in some instances and in relation to some matters. These forms of limit extend to most labour relations disputes, the resolution of which the Legislature, in enacting The Trade Union Act,*

> *committed to the Labour Relations Board to the implied exclusion of the Court of Queen's Bench: Noranda Mines Ltd. v. The Queen and The Saskatchewan Labour Relations Board, [1969] S.C.R. 898; St. Anne Nackawic Pulp & Paper Co. Ltd. v. Canadian Paper Workers Union, Local 219, [1986] 1 S.C.R. 704; Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057, [1990] 1 S.C.R. 1298; and Weber v. Ontario Hydro, [1995] 2 S.C.R. 929. In general, then, the Court lacks jurisdiction, or is restrained from exercising it, in relation to disputes arising out of collective bargaining agreements or the provisions of The Trade Union Act.*
>
> *26 Even on this account of the relationship between the jurisdiction of the Court and the Board, it is sometimes difficult to tell where jurisdiction lies. A claim may be framed in tort so as to appear to lie within the jurisdiction of the Court, for example, yet be grounded in a provision of The Trade Union Act so as to lie within the jurisdiction of the Board, leaving behind uncertainty about where the claim is to be heard and determined. This was the case in Moldowan v. Saskatchewan Government Employee's Union et al. (1995), 126 D.L.R. (4th) 289 (Sask. C.A.) and Floyd v. University Faculty Association et al. (1996), 148 Sask.R. 315 (Sask. C.A.).*

[76] The Court of Appeal defined and applied a test to assist in resolving uncertainty as to jurisdiction in such cases. The proper approach is to determine the "essential character" of the dispute. Cameron, J.A., for the Court, stated, at paragraph 27:

> *27 As these cases demonstrate, uncertainties of this nature fall to be resolved by examining the "essential character" of the dispute, having regard for its substance rather than its form. Thus in Floyd v. University Faculty Association et al., Bayda C.J. said this on behalf of the Court:*
>
> > *[2] Our task then is to determine the "essential character" of the dispute between [the parties]. In going about our task we are not to concern ourselves with labels or with the manner in which the legal issues have been framed-in short with the packaging of the dispute. We must proceed on the basis of the facts surrounding the dispute. …*

[77] And further, at paragraph 30, the Court stated as follows:

> *30 It remains true, however, that if the dispute between the parties arises out of or is governed by sections 25.1 or 36.1 of The Trade Union Act, . . . then that would be its essential character and it would fall to the Labour Relations Board to entertain it to the exclusion of the Court of Queen's Bench.*

[78] The issue in *McNairn* concerned the union's application (or misapplication) of its internal work referral rules. The Court of Appeal agreed with the earlier determination of the Board in a case (but not the same case) between the same two parties[5] in which the Board declined to hear the issue as it did not come within the purview of s. 25.1 of the *Act*, the provision under which the particular application to the Board was made. Applying the "essential character" analysis, the Court of Appeal held that neither did the issue arise from nor engage s. 36.1 of the *Act*, and was not, therefore, within the jurisdiction of the Board to determine. In the course of its analysis, the Court of Appeal provided the following instructive comments regarding the purpose of s. 36.1, at paragraphs 37-39:

> *37 In significant part, the purpose of [s. 36.1] lies in protecting a member of a union from abuse in the exercise of the power conferred on unions by the preceeding section – section 36 – and in particular subsections (4) and (5) thereof. These subsections empower a union to fine any of its members who has worked for a struck employer during a strike, provided the constitution of the union made allowance for this before the strike occurred. The purpose also lies in protecting an employee, employed in a unionized shop and required to maintain union membership as a condition of employment, not to be deprived of membership by the union except, according to subsection (3), for failure to pay the dues, assessments, and initiation fees uniformly required of all members.*
>
> *38 Thus subsection 36.1(1) imposes a duty upon a union (again correlative to the right thereby conferred upon an employee), to abide by the principles of natural justice in disputes between the union and the employee involving the constitution of the trade union and the employee's membership therein or discipline thereunder. As such, the subsection embraces what may be characterized as "internal disputes" between a union and an employee belonging to the union, but it does not embrace all manner of internal dispute. For the subsection to apply, the dispute must encompass the constitution of the union and employee's membership therein or discipline thereunder. And when it does apply, it requires that the principles of natural justice be brought to bear in the resolution of the dispute.*
>
> *39 Seen in this light, and in light of the allegations of fact made in the statement of claim, subsection 36.1(1) has no effective bearing on the essential character of the dispute between the parties. The Union is not alleged to have breached the duty imposed upon it by this subsection,*

[5] *McNairn v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179*, [2001] Sask. L.R.B.R. 874, LRB File No. 278-99.

> *and nothing material to the action and its determination turns on this duty. The Union's duty to place the names of its unemployed members on the unemployment board in prescribed sequence, which lies at the heart of the dispute posited by the statement of claim, is not to be found in subsection 36.1(1) of The Trade Union Act but in Article 11(d) of the Union's Working Rules and Bylaws. And on the facts of the matter, the complaint is not about Mr. McNairn having been deprived of natural justice by the Union, contrary to section 36.1(1) of the Act. It is about his having been deprived of work, for which he was qualified, because the Union, contrary to Article 11(d) of Working Rules and Bylaws, moved his name to the bottom of the unemployed board following his job-related experience at Burstall.*

[79] In the present case, we are of the opinion that the Board has jurisdiction to determine the issues raised by the application and the evidence. The Applicant's main complaint concerns the revocation of his membership in the Union. The essential character of the dispute arises directly out of and engages s. 36.1 of the *Act* as it fundamentally concerns the application and interpretation of the Union's constitution with respect to the Applicant's membership therein and the procedure adopted to arrive at its determination. The issues raised directly engage ss. 36.1(1) and 36.1(3) – the procedure adopted by the Union in dealing with the matter and whether the Applicant was unreasonably denied (or expelled from) membership.

[80] With respect to s. 36.1(3) of the *Act*, we are cognizant that the wording of the provision refers to the jurisdiction of the Board to make a determination as to whether one has been "unreasonably *denied* membership" in a trade union, and does not expressly refer to termination or revocation of or expulsion from membership. However, in *McNairn*, *supra*, the Court of Appeal observed, at paragraph 31, that the scope of s. 36.1 is a matter of interpretation to be considered in light of s. 10 of *The Interpretation Act, 1995*, S.S. 1995, c. I-11.2 and the principles enunciated by the Supreme Court of Canada in *Re Rizzo and Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27:

> *31 Whether this is so depends in part on the scope of these sections, which is a matter of interpretation. The provisions of The Trade Union Act, no less than any other, fall to be interpreted along the lines laid down by section 10 of The Interpretation Act, 1995 [See Note 4 below] and by the decision of the Supreme Court of Canada in Rizzo and Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27. Section 10 states that every enactment is to be interpreted as remedial and "given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects." The decision in Rizzo and Rizzo Shoes states that words of an enactment are*

> *to be read in their entire context and in their grammatical ordinary sense harmoniously with the scheme of the enactment, the object of it, and the intention of the Legislature.*

[81] And also, in *McNairn*, *supra*, at paragraph 37, the Court of Appeal posited that a significant purpose of s. 36 of the *Act* is to protect an employee, employed in a unionized shop and required to maintain union membership as a condition of employment, not to be deprived of membership by the union except, according to s. 36(3), for failure to pay the dues, assessments and initiation fees uniformly required of all members, and that the fundamental purpose of s. 36.1 is to protect a member of a union from abuse in the exercise of the power conferred on unions by s. 36.

[82] In our opinion, considering s. 36.1(3) as remedial, giving it a fair, large and liberal construction and interpretation that best ensures the attainment of its object and purpose and reading it in its entire context and in its grammatical ordinary sense harmoniously with the scheme and object of the *Act* and the intention of the legislature (as expressed in s. 3 of the *Act, supra*), "denial" of membership includes revocation or termination of, or expulsion from, membership. That is, pursuant to the scope of s. 36.1(3) the Board has the jurisdiction to determine whether a union member has been unreasonably denied membership or expelled from membership in the union, or has had their membership unreasonably revoked, terminated or withdrawn.

[83] The purpose of s. 36.1 as a whole is to codify the common law developments indicating a trend towards increased supervision of internal union decision-making respecting certain types of matters, specifically regarding membership and discipline. There are competing interests at stake between the rights of individual union members and the need for collective action and discipline among members to achieve collective bargaining goals.[6] As the Board observed in *Alcorn*, *supra*, at 151, ss. 25.1, 36, and 36.1 of the *Act* acknowledge the power held by unions over the employment conditions and economic future of the employees they represent, and the trend has been towards closer scrutiny of their internal proceedings given the important public policy considerations involved. However, as the Board observed in *Schreiner v. Canadian Union of Public Employees, Local 59*, [2001] Sask. L.R.B.R. 444, LRB File No.

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[6]See, Lynk., M., "Dennings Revenge: Judicial Formalism and the Application of Procedural Fairness to Internal Union Hearings" (1997), 23 Queen's L.J. 115.

015-01, at 458, the maintenance of solidarity among a union's members is crucial to ensuring effective collective bargaining and collective agreement administration:

> *[44] In approaching the supervision of internal union matters, the Board should be mindful of the overall purpose of the Act which is to foster and encourage effective collective bargaining. This requires an appreciation of the need for trade unions to develop solidarity among their members to ensure effective collective bargaining and effective collective agreement administration. The discipline provisions contained in a union constitution are primarily aimed at maintaining and reinforcing the need for such solidarity. The provisions are not a substitute for civil action, nor are they intended as a means for addressing all wrongs or for solving all political debates among union members.*

[84] But, in the present case, in the context of the nature of employment in the construction industry (i.e., generally of short duration), the nature of acquiring employment (i.e., the hiring hall work referral system) and the structure of union representation (i.e., sectoral bargaining), as compared to other sectors, the practical effect of expulsion from the union for reasons other than non-payment of dues is essentially the same as if one is denied membership to begin with – if one is not employed steadily by a single employer one cannot work in the trade that one has trained for in the unionized construction sector as one will be denied access to the union's work referral system. There is no indication that the legislature intended that the protection against loss of employment available under s. 36 of the *Act* to all other employees does not apply to persons working in the construction industry.

[85] According to the *Concise Oxford English Dictionary*, a narrow definition of "denial" is the "refusal of a request." Its broader definition is "a statement that a thing is not true or existent" or a "disavowal." In the present case, the broader definition is to be preferred. To limit the scope of s. 36.1(3) to cases of refusal of admission to membership could lead to obvious absurdity, for example, where one is admitted to membership only to immediately have one's membership unreasonably revoked. There is a presumption against a construction that leads to such absurdity. Therefore, we are of the opinion that s. 36.1(3) of the *Act* enables the Board to examine whether, in the circumstances of the present case, the Applicant's membership in the Union was unreasonably revoked.

[86] With respect to the issue of alleged discriminatory treatment or action in bad faith, while the Applicant did not expressly use either of the terms “discrimination” or ”bad faith” in the course of adducing evidence or presenting argument at the hearing, there is no question that, on the evidence adduced before the Board on his behalf and his cross-examination of witnesses called to testify on behalf of the Union, the Applicant attempted to demonstrate that he was subject to differential treatment by the Union in relation to his dual union membership as compared to other members in allegedly similar circumstances. Moreover, evidence adduced on behalf of the Union was clearly intended to defend against such a contention. It is our view that the scope of s. 36.1(3) also enables the Board to determine whether a union has unreasonably denied or revoked membership in the sense of discriminatory treatment in the sense of “bad faith.”

[87] Finally, in our opinion, it is beyond dispute that the Board has exclusive jurisdiction to determine disputes alleging breach of s. 11(2)(a) of the *Act*; a union’s actions that constitute a denial of rights provided to employees under the *Act* may constitute coercion or intimidation within the meaning of the provision.

2. Whether the Union failed to apply the principles of natural justice in violation of s. 36.1(1) of the *Act*

(a) The Right to the Application of the Principles of Natural Justice

(i) *The Content of the Principles of Natural Justice*

[88] Section 36.1(1) of the *Act* confines the Board’s supervision to disputes between union members and a union relating to matters in the union’s constitution and the member’s membership therein or discipline thereunder. The Board’s supervision of those matters is further confined to determining whether the member has been afforded the right to the application of the principles of natural justice, as opposed to considering the merits or perceived correctness of the decision by the union.

[89] Labour relations boards are generally reluctant to interfere with the right of a trade union to demand solidarity and compliance from its members, as long as the union acts within the bounds of the its constitution and applies same in accordance with

the rules of natural justice. The content of the principles of natural justice is not rigid. It is variable, depending upon the nature of the dispute and the rights alleged to have been violated: See, *Staniec*, *supra*, and *Ward v. Saskatchewan Government Employees' Union*, [1994] 4th Quarter Sask. Labour Rep. 94, LRB File No. 173-94. Quite recently, the Saskatchewan Court of Appeal carefully and extensively reviewed the jurisprudence supporting this proposition in *Saskatoon District Health Board v. Rosen* (2001), 213 Sask. R. 61, 202 D.L.R (4th) 35. At paragraphs 59 and 60, Vancise, J.A., on behalf of the majority, stated:

> *59 Having found that there is a duty of procedural fairness both at common law and under the statute and the regulations, one must determine the scope or the extent of that duty in the present circumstances. The scope or content of the duty to act fairly is succinctly set out in Knight. Madam Justice L'Heureux-Dubé writing for the majority stated that like the principles of natural justice the contents of procedural fairness are extremely variable and its content is to be determined in the specific context of each case. The Supreme Court of Canada had previously adopted the famous passage of Lord Morris of Borth-Y-Gest in Furnell v. Whangarei High Schools Board that:*
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> > *Natural justice is but fairness writ large and juridically. It has been described as "fair play in action". Nor is it a leaven to be associated only with judicial or quasi-judicial occasions. But as was pointed out by Tucker L.J. in Russel v. Duke of Norfolk [1949] 1 All E.R. 109, 118, the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration.*
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> *60 The Supreme Court pointed out in Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission that the rules of natural justice are variable standards and the content will depend on the circumstances of each case, the statutory provisions and the nature of the matter to be decided. There is no fixed content. The court will decide the approach to be adopted by reference to all the circumstances under which the tribunal operates*

[90] In *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 (referred to in the passage above), a case involving termination of employment, L'Heureux-Dube, J., on behalf of the majority, described the common law duty of fairness as depending upon three factors, as follows, at paragraph 24:

> *24 The existence of a general duty to act fairly will depend on the consideration of three factors: (i) the nature of the decision to be made by the administrative body; (ii) the relationship existing between that body and the individual; and (iii) the effect of that decision on the individual's rights.*

[91] In *Schreiner*, at 458 (as cited *supra*), the Board advocated a restrained approach to the exercise of its jurisdiction under s. 36.1 of the *Act*, at least as concerns matters of internal discipline, as being necessary to further the interests of the union in maintaining solidarity in support of effectively achieving collective bargaining objectives.

[92] And recently, in *Hill and Rattray v. Saskatchewan Government and General Employees' Union*, [2003] Sask. L.R.B.R. 371, LRB File Nos. 002-03 & 011-03, at 372-373 (application for judicial review dismissed [2004] S.J. No. 502, July 26, 2004 (Sask. Q.B.)), the Board commented that:

> *[7] The Board is the monitor of union membership disputes within a unionized setting only to the extent of determining if the processes used to discipline union members meet the basic contextual requirements of natural justice. The Board's role is not to provide definitive interpretations of a union's constitution, which is a fluid, political document, subject to change at each annual convention of the union.*

[93] However, in our opinion, the degree of "restraint" exercised by the Board in matters of union membership and internal discipline is variable and also depends upon a consideration of the three factors referred to by Madam Justice L'Heureux-Dube in *Knight*, *supra*. For example, a more restrained approach may be exercised where a union is dealing with matters that may bear upon its very survival, and a less restrained approach may be appropriate where the effect of the union's actions on individual rights weighs more heavily in the balance.

[94] The nature of unionization in the construction industry in this province places it in a unique position relative to unionized employment in other sectors. In the present case, the nature of the decision undertaken by the Carpenters' Union was whether to expel the Applicant from membership in the Union should he refuse to withdraw from the Operating Engineers' union. The seriousness of the consequences of the decision for the Applicant cannot be overstated – it had the potential to foreclose his right to earn a livelihood as a carpenter in unionized construction and, in fact, it did.

[95] Pursuant to the scheme mandated by *The Construction Industry Labour Relations Act, 1992*, the Carpenters' Union is the sole union representing persons working in the carpenters' trade division in the unionized construction sector. A carpenter that is not a member of (or is otherwise "permitted" by) the Carpenters' Union cannot claim a position on the Union's hiring hall out-of-work referral or dispatch list or otherwise work in the trade for a unionized employer. This could obviously have devastating economic consequences for the individual. That is, while there is no inherent right to join the Union (construction unions may establish reasonable membership requirements – such as the ability to perform the work of the trade – and may suspend new admissions to membership when there is little chance of available work), if an existing member is expelled, he or she will be in the same position as a non-member.

[96] Ostensibly, this situation is in some conflict with s. 36(3) of the *Act*, *supra*, which provides that where membership in a union is a condition of employment and an employee's membership therein is terminated for a reason other than non-payment of dues, the employee is deemed to maintain their membership so long as they tender payment of dues to the union, and they shall continue to remain employed. This leads to an anomaly in the case of unionized construction, where employment is obtained through the union designated to represent a certain craft which sends out its members from its hiring hall according to their place on the out-of-work referral board or dispatch list (or as a "name-hire" where same is permitted by the collective agreement or project agreement), to be employed by a succession of various employers for variable and uncertain periods of time. Accordingly, the concept of remaining an employee of one's employer when one is expelled from the union is not sensible or feasible in such circumstances. It also begs the question as to whether one is an "employee," for the purposes of the section, if one is expelled from the union at a time when the member is unemployed and waiting for a work referral or dispatch.[7]

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[7] In *Arsenault, et al. v. International Longshoremen's' Association, Local 375,* [1982] 3 Can. L.R.B.R. 425, the Canada Labour Relations Board held that in hiring hall systems of employment the status of "employee" is acquired through admission to membership in the union and not through hiring by the employer. In *Lien v. Chauffers,Teamsters and Helpers' Union, Local 395,* [2001] Sask. L.R.B.R.---, LRB

[97] In previous decisions regarding s. 36.1 (1) of the *Act*, the Board has not had much occasion to comment on or determine the content of the principles of natural justice applicable to various situations regarding union membership or internal discipline much beyond ensuring that there was reasonable notice of a hearing and a full and fair hearing according to the terms of the union constitution in the context of the particular matter in issue; and certainly the Board has not considered a situation like the present one. In the present circumstances, where the right to earn a livelihood is at stake, the variable content of the rules of natural justice, including procedural fairness, will tend towards the more complete and formal end of the spectrum, and will be more strictly interpreted and applied. For example, in *Meade, et al. v. International Brotherhood of Electrical Workers, Local 2330*, [1992] Nfld. L.R.B.D. No 15, at paragraph 74, in considering an application regarding alleged unfair expulsion from union membership, the Newfoundland Labour Relations Board observed that adherence to the union's trial procedure guidelines "becomes more of a duty in these cases which directly affected the livelihood of each of the accused."

[98] This Board has not prescribed a set of guidelines as to the content of natural justice as referred to in s. 36.1 of the *Act*, but the British Columbia Labour Relations Board has done so with respect to its analogous legislation. In British Columbia, the responsibility of the British Columbia Board to supervise internal union affairs regarding membership and discipline did not arise until 1993 with the enactment of s. 10 of the British Columbia *Labour Relations Code*[8], which is somewhat more expansive than our s. 36.1, ostensibly extending to the determination of whether or not a union has complied with the principles of natural justice with respect to any and all matters in its constitution. In *Coleman and Leaney v. Office and Technical Employees' Union, Local 378*, [1995] BCLRB No. 282/95, the British Columbia Board acknowledged the balancing of interests inherent in the application of the legislative provisions regarding review of internal union actions, stating as follows at paragraphs 110-114:

> *110 Trade unions have emerged as significant social and political forces in our society. They have statutory rights unlike any other voluntary unincorporated association. Throughout the workplace they*

File No.203-00, the Board held that "employee" in s.-s. 36.1(3) of the *Act* included "permit" workers allowed to work by a construction union through its hiring hall system.

[8] R.S.B.C. 1996, c. 244.

embody the principle of freedom of association; and the collective agreements they negotiate set out what has often been described as "the rule of law" in the workplace.

111 The new Section 10 moves the review of the internal affairs of a trade union in regard to natural justice from the Courts to the Board. The courts are the final arbiter of natural justice and the jurisprudence that it has developed in this area is now a matter of legislative policy. We do not see this transfer of jurisdiction as premised upon an increased concern about the abuse of democratic rights within trade unions, but rather premised upon an increased public interest in the political and social role of trade unions. Further, the Board's tripartite administrative structure, and its experience and expertise in the area of labour relations, will allow it to develop a more complete public policy in regard to the internal affairs of trade unions.

112 There are different, and indeed higher, social expectations of trade unions. No matter now efficient authoritarian decision making may be in other legal or organizational settings, trade unions are accepted (statutorily and socially) for the purpose of employees fulfilling their desire for freedom of association at the workplace. Therefore trade unions are expected to reflect this principle in the manner in which they conduct themselves.

113 Individual members of a trade union must be permitted to pursue their own trade or profession, earn a living, participate in the internal affairs of their union, and not be interfered with in any manner other than a lawful one. Conversely, trade unions find their greatest strength in their collective nature and this may involve compromises between the interests of individual members and the collective interests. It is the enforcement of these trade-offs and the requirement of a strong and united front that may involve a degree of control or discipline over those who may be seen to threaten that collective good.

114 It is clear that the democratic tradition, which trade unions uphold, is strengthened not weakened by the fair balance which they strike in the administration of these trade-offs. It is this view of the nature and role of trade unions in our society that will inform the framework for our interpretation and administration of Section 10 of the Code.

[99] After reviewing a number of judicial decisions and noting that the rules of natural justice are “context dependent,” that internal union hearings are not usually conducted by persons with legal training, and that such hearings are not bound by strict rules of evidence, the British Columbia Board delineated a number of procedural requirements for such hearings. At paragraph 118, the British Columbia Board stated:

> *118 From these cases we can draw the following requirements which the courts have implied into the constitution of trade unions, but which must now form a part of the legislative policy of this province with the enactment of Section 10 of the Code:*
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> *(1) Individual members have the right to know the accusations or charges against them and to have particulars of those charges.*
> *(2) Individual members must be given reasonable notice of the charges prior to any hearing.*
> *(3) The charges must be specified in the constitution and there must be constitutional authority for the ability to discipline.*
> *(4) The entire trial procedure must be conducted in accordance with the requirements of the constitution; this does not involve a strict reading of the constitution but there must be substantial compliance with intent and purpose of the constitutional provisions.*
> *(5) There is a right to a hearing, the ability to call evidence and introduce documents, the right to cross-examine and to make submissions.*
> *(6) The trial procedures must be conducted in good faith and without actual bias; no person can be both witness and judge.*
> *(7) The union is not bound by the strict rules of evidence; however, any verdict reached must be based on the actual evidence adduced and not influenced by any matters outside the scope of the evidence.*
> *(8) In regard to serious matters, such as a suspension, expulsion or removal from office, there is a right to counsel.*

[100] With respect to the last requirement – the right to be represented by counsel in certain circumstances – the British Columbia Board noted that such a requirement had the imprimatur of the British Columbia Court of Appeal in *Boe v. Hamilton*, [1988] 33 B.C.L.R. (2d) 49, leave to appeal to the Supreme Court of Canada refused [1989] 1 S.C.R. ix, 101 N.R. 252n, where the court stated at 58:

> *. . . the winds of change have blown with some force in this area. The cases are numerous and by no means all consistent. There is much support to be found in them for the view acted upon by Huddart J. that the emphasis now is upon the seriousness of the consequences facing the individual subjected to disciplinary proceedings so that, where the potential consequences are serious enough, there is a right to counsel.*

[101] However, recognizing the danger that its enunciation of these requirements might be interpreted as countenancing more formalization of internal union proceedings, the British Columbia Board stated in *Coleman*, *supra*, at paragraph 120:

> *120. . . . The natural justice requirements which we have listed should not be seen as imputing an undue increase in the procedural and evidentiary requirements such as exists in civil litigation. Rather, in any hearing the procedural emphasis (which may vary) is on the underlying value of fairness. In regard to serious matters, however, close attention must be paid to the requirements set out above.*

[102] The British Columbia Board has since approved of the decision in *Coleman*, *supra*, in *Goy v. International Brotherhood of Electrical Workers, Local 213*, [2000] BCLRBD No. 3. We are in agreement with the requirements enunciated by the British Columbia Board in *Coleman* and *Goy*, but wish to emphasize further that the list of requirements set out above is neither exhaustive nor will it necessarily apply in its entirety to every internal union hearing – the context dependent nature of the principles of natural justice will dictate its content in a given case.

[103] The present case is one that involves serious consequences for the individual. Loss of membership affects the Applicant's ability to earn a livelihood as a carpenter in the unionized construction sector. The Carpenters' Union took the position in the present case that the proceedings regarding the Applicant under Section 42-I of the Union's constitution, *supra*, were not disciplinary – that is, they did not fall under any of the offences specified in Section 51 of its constitution, *supra* – and, therefore, the trial procedure and its express attendant safeguards set forth in Section 52, *supra*, did not apply. We are of the opinion, however, that, given the potential seriousness to the Applicant of the result of the proceedings, all of the procedural requirements enumerated in *Coleman*, *supra*, are applicable to the present case. We are further convinced of the propriety of this opinion in that Section 42-I under which the proceedings took place uses language, such as "charge," "accused," and "full opportunity to present a defense" that is similar to that used in the case of charges brought against members for alleged violation of Section 51 resulting in trials according to the procedure under Section 52. Furthermore, after a member is found guilty of a violation after a trial under Section 52, no penalty may be levied by the Trial Committee itself: it may only make recommendations as to penalty which must be approved by a majority of the general membership at a meeting before becoming effective.[9] There is no such intermediate step regarding the imposition of the consequence of membership revocation under Section 42-I. And, while a member found guilty of a violation under section 52 may avail

himself of several levels of appeal – to an Appeals Committee and then to the General Executive Board and to the General Convention of the Union in cases involving expulsion from membership[10] – the Union's position in the present case is that there is no right of appeal from a finding of a violation of Section 42-I of the Union's constitution and the consequence of expulsion. This lack of express procedural safeguards in the proceedings and of avenue of appeal from the findings after proceedings under Section 42-I of the constitution, demands that the full panoply of procedural safeguards enumerated in *Coleman*, *supra* should apply in the present case.

(ii) *Whether there was a failure to apply the appropriate principles of natural justice in the present case*

[104] With respect to the present case and the issue as to whether the appropriate principles of natural justice were applied in the proceedings by the Union against the Applicant, we find that they were not. In these Reasons, we shall deal only with those requirements of procedural fairness that were not applied.

[105] Firstly, we find that the Applicant was not properly or adequately advised of the accusation or charge against him or of the particulars of the charge. The only correspondence or communication from the Union to the Applicant before the hearing of October 20, 2002, regarding the matter in issue, was the letter dated October 7, 2002. It is that document, therefore, that must evidence compliance with the elements of procedural fairness applicable before the hearing itself. Whether or not the letter evidences such compliance is essentially an objective determination. In our opinion, the letter is deficient in that it simply states, "It has come to our attention that you are a member of the International Union of Operating Engineers," and then sets out verbatim Section 42-I of the Union's constitution. The letter does not allege that the Applicant is in violation of Section 42-I or any other provision of the Union's constitution. To use the words of Section 42-I itself, the letter does not contain an allegation to the effect that the Applicant "is accused of holding membership contrary to [the] Section." Furthermore, even if it was accepted that that is reasonably implied, the letter does not specify which part of Section 42-I it is that the Applicant is alleged to have violated. The letter does not

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[9] See, sub-section 52-L of the Union's constitution, *supra*.
[10] See, sub-section 53-A of the Union's constitution, *supra*.

state that the Operating Engineers union is alleged to be an "organization whose jurisdictional claims overlap or infringe upon those of the [Carpenters' Union]", which, it was clear at the hearing before the Board, was an essential element of the Union's case against the Applicant. That is, at any hearing of the allegations against the Applicant, it would have be open to him to challenge the evidence not only of his membership in the Operating Engineers' union, but whether that union does, in fact, have infringing jurisdictional claims or that to belong to it is a "conflicting membership" (in the words of Section 42-I) such that a finding against the Applicant was warranted. In the present case, the consequences for the "accused" Applicant of a finding against him are too severe or disastrous – that is, loss of membership and the ability to earn a livelihood – that these are not merely formal deficiencies in the charge or allegation of violation, but go to the heart of the procedural fairness requirement that one is entitled to know the case against them with sufficient particularity to allow for a full defence. Accordingly, the Union also did not provide the Applicant with reasonable notice of the charge or allegation of violation against him.

[106] Secondly, we find that the Union did not properly apply the principle that the Applicant ought to have been afforded the right to a hearing with the ability to call evidence, introduce documents, cross-examine on the evidence adduced against him and to make submissions. In our opinion, the entitlement to this procedural safeguard must necessarily include that one is aware of these rights. Again, whether this is the case is essentially an objective determination. While Section 42-I of the Union's constitution, as set out in the letter of October 7, 2002, states that an accused shall be afforded "a hearing and a full opportunity to present a defense," the last paragraph of the letter merely advises the Applicant that, "In compliance with this section of our constitution you are afforded the opportunity *to provide any additional information*" (emphasis added). In our opinion, the latter statement in the letter is not in compliance with Section 42-I. It advises the Applicant that he may provide "additional information" at the meeting on October 20, 2002, not that there will be "a hearing and a full opportunity to present a defense." And, the letter certainly gives no inkling that he would be allowed at the meeting to call witnesses or cross-examine those providing evidence against him.

[107] Thirdly, the letter of October 21, 2002, purporting to advise the Applicant of the decision of the Executive Committee, merely states that the Committee

"determined that [the Applicant was] in violation of Section 42-I." Again it does not specify just what violation was found. While this in and of itself may not void the decision, it certainly is not curative of the fact that, as determined above, objectively, the Applicant was not advised prior to the "hearing" of the violation of which he was ultimately found guilty. However, the real objection to the sufficiency of the letter, in our opinion, is that it is insensible as to what the Applicant might do to avoid the penalty of expulsion from membership. In this regard, the letter of October 21, 2002, provides that unless "written confirmation by you from the International Union of Operating Engineers" is received by the Carpenters' Union by November 19, 2002, the Applicant's membership in the Union will be revoked. That is, the letter is confusing and ambiguous, if not insensible, with respect to a condition that is crucial to the decision by the Applicant as to what action to take. The letter does not clearly state what it is that the Applicant must do to avoid revocation of his membership. It does not indicate that the notice to be provided is of withdrawal of membership in the Operating Engineer's union and seems to advise that the confirmation (of just what is not clear) must come from the Operating Engineers' union itself. Certainly, if there is a condition that one might fulfill in order to avoid a penalty of expulsion or revocation of membership, objectively, that must be clearly communicated in order for one to make an informed decision as to how to proceed. In such serious circumstances, it is not enough to say that the Applicant must have known what was required – it was incumbent on the union to be clear. In this case that was not done.

[108] In our opinion, in the context of a serious situation such as that in which the Applicant found himself, the principles of natural justice additionally require that the individual be advised of the decision of the disciplinary body in order to avail himself of any opportunity of appeal in a timely fashion.[11] By January, 2003 the Applicant had not been advised whether he was or was not still a member of the Union; the Union had not returned the dues that he had prepaid to the end of the year, nor communicated with him beyond the letter of October 21, 2002.

[109] For these reasons we find that the Union violated s. 36.1(1) of the *Act*.

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[11] Without deciding the issue, we are of the opinion that it is at least arguable that the Applicant might have had a right to appeal the decision of the Executive Committee to the General Convention of the Union under Section 53-A of the Union's constitution as a case involving expulsion from membership.

3. Whether the Applicant was unlawfully or unreasonably denied membership (expelled) from the Union for dual union membership in violation of s. 36.1(3) of the *Act*.

[110] Nothing in the *Act* expressly authorizes or approves the expulsion of union members for holding membership in another union; conversely, nothing expressly forbids it either. As noted earlier in these Reasons, the statutory regime for unionized construction embodied in the present *CILRA*, *1992*[12], essentially existed, at the time of the enactment of s. 36.1 of the *Act* and the amendments to s. 36 in 1983[13] in the former *The Construction Industry Labour Relations Act, S.S. 1979, c. C-29,* which was repealed in the following legislative session.[14] Employees in the unionized construction sector were not excluded from the protection of s. 36(3) of the *Act* and it must be assumed that such protection also applies to such workers today employed pursuant to the sectoral bargaining regime established by the *CILRA*, *1992*. Pursuant to ss. 9 and 9.1 of the *CILRA, 1992*, the Minister of Labour has designated certain appropriate trade divisions in the construction industry, each comprising the unionized employers in the trade, and designating a representative employers' organization to act as the exclusive agent to bargain collectively on behalf of all unionized employers in the trade division. In like manner, certain unions, or union locals, have established the right to act as the sole collective bargaining representative on behalf of the unionized employees of unionized employers in a trade division. The Carpenters' Union is the sole representative for such workers employed by unionized employers in the carpenter trade division. Organization and representation of such workers by general construction unions representing employees in multiple construction trades is not allowed.[15]

[111] However, as noted earlier in these Reasons, the deemed continuation of membership (and, therefore, employment) when expelled by their union – the only union with the right to represent employees in the trade in the construction sector – for reasons other than non-payment of dues, as provided by s. 36(3), is not fully effective for workers

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[12] See, s. 4 of the *CILRA, 1992*.
[13] See, f.n. 4, *supra*.
[14] S.S. 1983-84, c. 2.

in the construction sector who are referred for work by the union representing workers in their trade division and who work for a succession of employers for indeterminate periods. Expulsion from union membership for such workers results in ineligibility for work referral or dispatch by the union and, essentially, the inability to earn a living by their trade in the unionized sector. Accordingly, the spectre of expulsion from membership for such workers may be economically devastating and potentially career-ending.

[112] Earlier in these Reasons we determined that s. 36.1(3) of the *Act* included a prohibition against not only unreasonable denial of membership in a union, but also against unreasonable expulsion from membership in a union. The serious consequences of expulsion from membership for workers earning their living in the unionized construction sector must be considered when balancing the representative unions' interest in maintaining loyalty and solidarity, and in dealing with internal dissension.

[113] The issue of expulsion from membership in a union for holding membership in another union has generated a seemingly inconsistent jurisprudence. For example, as noted earlier in these Reasons, in the cases of *Garrett*, *supra*, and *Ollesch*, *supra*, the British Columbia Industrial Relations Council came to different conclusions on ostensibly similar facts in decisions made only a few months apart.

[114] In *Garrett*, *supra*, the applicant employees were expelled by Local 452 of the Carpenters' Union ("Local 452") in British Columbia, because they had become members of the General Workers Union of British Columbia (the "GWU"), a non-building trades union representing all-employee bargaining units including some in the construction sector. While Local 452 had been certified in 1969 to represent carpenters employed by a certain construction company and the applicant members of Local 452 were employed by or referred to work for the employer company by the union for some years, when the GWU became certified for an all-employee unit of the company the applicants joined the GWU. Local 452 took action to expel them from its membership

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[15] See, *Canadian Iron, Steel and Industrial Workers Union, Local 3 v. Emerald Oilfield Construction Ltd., et al.*, [1994] 2nd Quarter Sask. Labour Rep. 105, LRB File Nos. 019094, 020-94 & 021-94 (application for judicial review dismissed, [1995] S.J. No. 316 (Sask. Q.B.)).

under the same section of its constitution, Section 42-I, as is under consideration in the present case. The applicants applied to the British Columbia Council alleging that their expulsion violated the then extant *Industrial Relations Act* because it was not "fair and reasonable" and constituted coercion or intimidation to induce them to cease being members of GWU. At issue in the case were provisions of the British Columbia legislation providing that "every employee is free to be a member of a trade union and to participate in its lawful activities" (s. 2(1)) and empowering the Council to determine whether the union used "coercion or intimidation" to induce the applicants to cease being members of the GWU (s. 4(3)). At the hearing, Local 452 took the position that the GWU was a threat to its continued existence as a trade union given that both organizations competed for the same membership and the same scarce work. Because there was no opportunity for Local 452 members who worked for a GWU employer to organize the operation wall-to-wall, it represented a loss of work for the union. The applicants argued that the provisions of the British Columbia legislation referred to above made their expulsion unlawful, and also that the union's actions were discriminatory because the same action was not taken against members who worked for non-union employers or who were members of other industrial unions not engaged in new construction.

[115] In *Garrett*, *supra*, the British Columbia Council recognized that the right to join a union is not unqualified: for example, a union may deny membership to a person who crossed its picket line during a strike, or a craft or professional union may restrict membership to persons in the craft or profession. It then held that it was incumbent on the applicants to show that their inability to join the union of their choice was not only a violation of the British Columbia legislation providing the freedom to belong to a trade union, but also that the provision was violated in a manner protected by the unfair labour practice provisions of the legislation (i.e., that the union used "coercion or intimidation" to prevent the exercise of the right). In determining that the union had not acted unlawfully, the British Columbia Council observed that the applicants had not been expelled from Local 452 solely because they joined another trade union, but that, aware of the consequences, they joined a rival union, the prosperity of which was at the expense of Local 452; the union had the right to protect its institutional interests and the right to require the loyalty of its members to ensure the ability to function as an effective bargaining agent. Finding that the conduct of Local 452 was prima facie lawful, the

Council also determined that the conduct was not unfair, unreasonable, intimidating or coercive, given that the applicants were not simple victims of the GWU's raid, but were in active support of it. The Council stated, at 13, that:

> *. . . the evidence before the Panel does not support a conclusion that Local 452 intended to prevent the complainants from joining or maintaining their membership in the GWU; Local 452 merely required the complainants to choose between membership in its organization or in the GWU.*

[116] In contrast, in *Ollesch*, *supra*, a different panel of the British Columbia Council found that Local 452 had violated the legislation in that its actions in revoking the complainants' memberships in the circumstances of the case were unfair and unreasonable and that it had coerced the complainants to cease being members of another union. While the Council acknowledged that the intense and continuing rivalry between the GWU and Local 452 went a long way to satisfying the panel that dual membership in the two organizations was unworkable, it found that the alleged legal impediments to the ability of Local 452 to compete with the GWU "were not persuasive." The Council expressed the opinion that the purpose of the legislative provision empowering it to determine whether expulsion from a union is "for a cause which is fair and reasonable" was to ensure that the "penalty fits the crime" and that the rights of individuals are appropriately balanced with those of the trade union. It stated its task as follows, at 20-21:

> *. . . the loss of trade union membership is a significant penalty and justifies a careful review of a union's reasons and the impact the penalty has on the individual. Therefore, in this case we must examine all the circumstances to assess the complainants' conduct as well as the union's motives for revoking their membership. What was the gravity of their conduct? What are the consequences to the complainants of membership revocation? Was the union's response motivated by an objective to maintain the organizational integrity of the union or other legitimate institutional interests of the union? Is revocation of the complainants' membership reasonably related to accomplishing such an objective?*

[117] The Council accepted that the complainants became members of the GWU as condition of their with the particular employer and not out of any motivation that could be interpreted as "disloyalty" to Local 452, concluding, at 24-25, that Section 42-I

of the Union's constitution was "overbroad" if applied strictly with no regard to its purpose of enforcing loyalty within its ranks:

> *In our view, it is unfair and unreasonable to characterize the complainants as disloyal to the union, merely because they were required to join the GWU as a condition of employment under the Micron/GWU collective agreement, particularly given that they joined at a time when there was widespread unemployment and no work was available to them through the union hiring hall. While they have breached Section [42-I] of the union's laws, we find that section to be overbroad insofar as it contemplates membership expulsion for joining a "rival" union per se, as a means of ensuring loyalty within union ranks. That this is so becomes evident from the fact that there are members who join other unions with jurisdictional interests that compete with the union, such as the IWA or CUPE, and the union does not proceed against them under Section [42-I]. This selective enforcement of Section [42-I] supports our view that belonging to another union with competing interests does not per se indicate disloyalty to the union.*

[118] While accepting, at 25-26, that, "[c]learly a trade union has the right to take action which can be characterized as defensive measures reasonably related to the necessary protection of its institutional interests," the British Columbia Council stated that, "to establish disloyalty, a union must point to evidence of a member's conduct which actually harms the union's institutional interests," and that, "[r]ather than hypothetical possibilities, it is concrete evidence of support and sabotage which would alert a danger to the union's institutional interests." The Council's decision was predicated upon finding that the actions of Local 452 were not in the nature of such "defensive measures" and, therefore, were unfair and unreasonable. The Council stated, at 26-27, as follows:

> *In this case the union argues that because the GWU is a rival union, union members who join the GWU in order to fulfill a condition of employment under their employer's collective agreement, are engaging in conduct detrimental to the union's interests. We disagree. …<u>the union's actions in this case cannot be characterized as defensive measures necessary to protect its integrity as an organization or its role as a bargaining agent</u>.*
>
> *As discussed earlier, there was no evidence that the union needed to protect itself from leaks of confidential information …The evidence is that [the complainants] are disinterested in union politics and organizing strategies and did nothing to actively assist the GWU to damage the union's interests.*

(Emphasis added.]

[119] Finding the consequences of membership revocation to be greatly out of proportion to the actions of the complainants, the Council found the conduct of Local 452 to be an act of aggression against the rival union rather than a response to hostile action by the complainants, whose decision to join the GWU was strictly a consequence of taking work with the particular employer and the requirements of the collective agreement. At 28, the Council stated:

> *Assessing the union's motivation for its actions, the complainants' reasons for joining the GWU, and the consequences to them of loss of union membership, we find the union's action in revoking their membership to be unfair and unreasonable.*

[120] With respect to the issue of coercion or intimidation, the Council found the union's threat to revoke the applicants' memberships and the actual revocations to be an unfair labour practice intended to coerce the complainants into abandoning their membership in the GWU, rather than an attempt "to preserve its own existence by taking defensive action to resist aggressive conduct by the applicants."

[121] The British Columbia Labour Relations Board had occasion to revisit the issue in *Graham v. International Union of Operating Engineers, Local 882*, [1998] B.C.L.R.B.D. No. 302. In that case, the union fined Graham and sought his expulsion from the union for participating in an aborted raid on its membership by another union. There was no issue that Graham joined the rival union and encouraged others to do so. However, he argued that the exercise of the right to change unions was a lawful activity under the B. C. *Labour Relations Code*[16], and that other provisions prevented the union from imposing penalties for exercising protected rights under the *Code*. As such, he argued, the imposition of the alleged "disciplinary action" by the union was coercive and intimidating. The union argued that the right under the *Code* to join a trade union was not unlimited and must yield to legitimate and reasonable discipline of union members, arguing that the British Columbia *Code* equivalent of s. 36(3) of the Saskatchewan *Trade Union Act*, whereby one's employment cannot be terminated due to expulsion from union membership (for reasons other than non-payment of dues), implies that the union

has the power to so discipline because employees are provided protection from loss of employment as a consequence of expulsion.

[122] In *Graham*, the British Columbia Board accepted the core principle enunciated in *Ollesch*, *supra*, that expulsion from union membership in response to dual unionism is lawful only when used as a purely as a defensive measure in circumstances where the very existence of the union is threatened. At paragraphs 88 and 89, the British Columbia Board determined that, under the provisions of the British Columbia *Code* affording persons the right to join a trade union, and proscribing discriminatory treatment with respect to employment or union membership of persons exercising rights under the *Code* and the use of coercion or intimidation to induce a person to refrain from becoming or continuing to be a member of a union[17] (which provisions are very roughly equivalent to the respective rights and protections afforded by ss. 3 and 11(2)(a) of the Saskatchewan *Trade Union Act*), there is an implied right to dual unionism, and that discipline imposed by a union on the basis of actions *prima facie* protected by the legislation is illegal. However, the British Columbia Board stated that the inclusion of the British Columbia *Code* s.15(2)[18] (which is roughly equivalent to but narrower than s. 36(3) of the Saskatchewan *Act*), required that it carefully examine and consider what legislative intent can reasonably be inferred from the latter provision that is consistent with the rights afforded by the former provisions. While the British Columbia Board concluded that trade unions enjoy an implicit, but not unqualified, right to suspend or expel members for exercising dual unionism rights and while finding that the British Columbia *Code* s. 15(2) acknowledges that expulsion from membership may occur, it held that the provision does not suggest, nor does it follow, that such action may not be coercive or intimidating. Indeed, noting that expulsion from a union may result in economic disaster for a member, the British Columbia Board stated, at paragraph 91, that "in almost all circumstances, expulsion … will be inherently coercive and intimidating."

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[16] S.B.C., 1992, c. 82.
[17] *Labour Relations Code*, *supra*, ss. 4, 5 and 9.
[18] *Labour Relations Code*, *supra*, s.15(2), provides as follows:

> *Despite [a union security clause in a collective agreement], a trade union …shall not require an employer to terminate the employment of an employee due to his or her expulsion or suspension from that trade union on the ground that he or she is or was a member of another trade union.*

[123] In *Graham*, *supra*, the British Columbia Board reasoned that, because the *Code* provides for the right to belong to more than one union, it would be absurd if a trade union could deem the exercise of such right to be unlawful and attract discipline. The Board stated as follows at paragraph 92ff.:

> *[92] …First, since members have been given dual unionism rights by the Code, then the exercise of such rights cannot be conduct justifying punishment, chastisement or correction. Moreover, section 5 prohibits the application of coercive or intimidating measures in response to an exercise of Code rights. It would be nonsensical to conclude that the Legislature intended to permit the exercise of express statutory rights given under the Code to be deemed unlawful by a union and treated as a disciplinable offence.*
>
> *[94] …What is made lawful by statute cannot be made unlawful by a private organization. …there is no authority to imply an ability to use coercion or chastisement through the tangential reference to suspension found in section 15(2) of the Code. Correction, chastisement and punishment are not permissible responses to the exercise of Code rights in cases of dual unionism.*
>
> *[95] The second reason I have reached this conclusion is that section 15(2) preserves the expelled member's employment and, thus pre-empts the most severe potential consequence of loss of membership (termination through enforcement of a union security clause in a collective agreement) from occurring. With employment protection, the coercive and punitive effect of an expulsion or suspension from membership is minimized if not entirely eliminated. …Consequently, the conclusion that suspension or expulsion for dual union ism is not coercive or intimidating and therefore not contrary to sections 5and 9 of the Code comes not from its mere inclusion by reference in section 15(2), but from the fact that its most serious coercive impact has been removed.*
>
> *[96] …the union interest implicitly acknowledged by section 15(2) of the Code is the right to take defensive action in order to cleanse itself of internal dissension which presents a threat to the union's existence. The condoned objective is not correction, chastisement or punishment, but rather survival and self-preservation. The case law has emphasized the defensive nature of an expulsion or suspension from membership in circumstances where such action removes a member with divided loyalties from the union's ranks without impairing that person's right to join another union and pursue related rights under the Code …or bringing about consequential job loss. …When undertaken as a truly defensive act, expulsion or suspension is neither corrective (i.e., not "discipline"*

within the dictionary meaning set out above) nor, by virtue of s. 15(2), punitive (i.e., will not cause job loss).

[97] Further, an expulsion or suspension for dual unionism may only be imposed in circumstances that can objectively and reasonably be considered defensive action. The mere fact that a union alleges that an expulsion or suspension was imposed in response to a member's exercise of dual unionism rights, will not terminate the Board's inquiry. Expulsion or suspension imposed in response to dual unionism may be found to be intimidating and coercive contrary to sections 5 and 9 of the Code or retaliatory contrary to section 5 of the Code, if the Board is not satisfied that a union's actions served a legitimate defensive purpose: Ollesch, supra. The Board will examine all of the surrounding circumstances to determine whether the suspension or expulsion of a member by a union was a legitimate defensive measure (and therefore permissible under section 15(2) of the Code), or whether it was a retaliatory act designed to curtail the exercise of rights under the Code and restrict access to the Board: Ollesch, supra. If it is the latter, the union's conduct will be found to breach sections 5 and 9 of the Code, and thus discriminatory (sic) contrary to section 10(2)(a), irrespective of the absence of consequential job loss.

[98] Also, suspension or expulsion can also be grounded in the underlying theory that a person exchanges loyalty for the right of inclusion in and the benefits of membership. If the member elects to join another union with the avowed purpose of unseating the present as the bargaining agent, it can fairly be said that the member has (and, indeed, should be considered as having) undermined the very consideration exchanged for the benefits of his or her membership. Expulsion or suspension then becomes no more than an administrative act confirming what effectively may be viewed as a "constructive" resignation. A member should not be surprised when that happens. …

[100] Thus, expulsion and suspension for dual unionism, when viewed as a defensive act with the most serious consequences abated, and not an act of chastisement, correction or punishment …can be harmonized with the protection found in section 5 of the Code.

(Emphasis added.)

[124] By way of contrast, in its 1993 decision in *Hasson*, *supra*, the New Brunswick Industrial Relations Board held that s. 8(3) of the New Brunswick *Industrial Relations Act*[19], acknowledges that a trade union may make rules requiring exclusivity of

[19] R.S.N.B. 1973, c. I-4, s. 8(3), provides as follows:

> *8. (3) No trade union that is party to or bound by a collective agreement, containing a [union security] provision, shall require the employer to discharge an employee where*

membership. In that case, the complainant alleged that the union committed an unfair labour practice in expelling him from membership for belonging to another trade union in admitted violation of the respondent union's internal rules forbidding dual union membership. The evidence indicated that a rival union (i.e., one which claimed the same insulating work jurisdiction) was "siphoning off" members of the respondent union. In dismissing the complaint, the Board stated, in oral reasons, as follows:

> *It is our view that the statute itself recognizes the right of trade unions to establish rules of membership and that these can include exclusivity of membership. Indeed the Board in certifying indicates that it wants evidence that members of trade unions have undertaken their obligations when they apply for membership to comply with the constitution, constitutional requirements and by-laws of the association. It is our view that section 8 of the statute clearly recognizes the right of exclusivity, but prohibits however, employers from dismissing individuals from employment in the case of expulsion because of internal union rules requiring or forbidding dual membership. In our view the statute recognizes the legitimacy of such rules. It is our view that it is for the trade union to determine whether it is or is not in its interest to maintain exclusivity and here we are satisfied with the good faith of the trade union.*
>
> *In this case the evidence is that all of those individuals who have breached the exclusivity or the no dual unionism rule, were dealt with by the respondent trade union and were given an opportunity to determine whether or not they wished to maintain membership or not. In this case, it is our view that the complainant has elected, for whatever reasons, to maintain membership in the rival trade union. It is our view that it was legitimate for this trade union to then take the action which it did take. Finally with respect to this, it is our view that although this is not what one would call, in the classic sense, a representation case involving raiding or what have you, the facts indicate that what has occurred here is that two trade unions which both claim the same work jurisdiction - namely, that of the trade of insulation - are vying with each other for members in order to satisfy demand for their skills. The evidence indicates that this is being done by siphoning off members from the respondent local 131 into membership in local 3, International Union of*

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such employee has been expelled or suspended from membership, or denied membership in the trade union where

> *(a) The reason for expulsion, suspension or denial of membership is that the employee was or is a member of another trade union, or has engaged in activity against the trade union or on behalf of another trade union, or*
>
> *(b) The employee has been discriminated against by the trade union in the application of its membership rules in circumstances where the employee is qualified to engage in the trade or work and is otherwise eligible for membership.*

> *Marine and Shipbuilding Workers of Canada. The respondent is entitled to take steps which it deems to be necessary to protect its own organization, its own membership in terms of preserving and maintaining work for the future for its members even though it may appear to the individuals affected that this is somewhat harsh on their own economic status. A union is entitled to measure what one would call its own institutional interests against those individual interests to come to this conclusion.*

[125] In later written reasons that followed, the New Brunswick Board expanded on the basis for its decision as follows:

> *7 In its Oral Reasons for Decision the Board noted that the statute addresses the question of dual unionism and of discriminatory conduct in its membership rules at section 8(3). These prohibit a union, by relying on a close shop provision in a collective agreement, to require an employer to discharge an employee where that employee has been expelled from membership or denied membership on the basis that the employee either is a member of another trade union or has engaged in activity against the trade union, or has been discriminated against by the trade union in the application of its membership rules. Here, on the evidence the Board finds no discriminatory conduct by the respondents inasmuch as every member of Local 131 who joined Local 3 was put to the same election as was the grievor.*
>
> *8 It is our view, that the provisions of section 8(3) make it clear that the legislature did not guarantee the right of membership in any particular trade union but rather the right to continued employment notwithstanding exclusion from membership for specified reasons if such would result otherwise in loss of employment. Implicit in the subsection, as is indicated in the oral reasons for decision, is a recognition of the right of a trade union to establish in its constitution and by-laws, inter alia rules which prohibit dual unionism if membership is to be maintained. The only limitation on such a provision is that it may not be used as the basis to require the discharge of an employee who violates that rule under the terms of a collective agreement requiring trade union membership for all persons so employed. The provisions of section 8(3) would be redundant were the reading of section 5(2) urged by the complainant to be accepted by the Board, namely that expulsion from the trade union for engaging in dual unionism i.e. joining another trade union of an employees choice, is ipso facto a violation of the Act.*
>
> *9 Since the earliest days of the statutory entrenchment of collective bargaining, the right of a trade union to insist on compliance by its members with its constitution, by-laws and other rules has been recognized, for these are the contractual terms upon which the relationship to other members is governed: see Orchard v. Tunney (1957) 8 DLR (2d) 273 (SCC). Naturally the Rules and Regulations governing membership cannot be contrary to the Act, and if so, must give*

> *way to its superior authority. See e.g. Orenda Engines Ltd. and Machinists (1958) 8 LAC 116 (Laskin). In its oral reasons for decision, the Board stressed that the situation confronting the respondent here is similar to that of a raid, as both trade unions claim the same work jurisdiction and are vying with each other for members in order to satisfy demand for their skills. The Respondent Local 131 perceived its members as being siphoned off by the rival union, Local 3, and its opportunity for ensuring work for its own members accordingly diminished. Whether or not this is the case is not for us to decide.*

[126] A close review of the decisions in *Graham*, *supra*, and *Hasson*, *supra*, discloses that the respective bases for the two decisions are not so substantially dissimilar as appears at first glance. In *Hasson*, the New Brunswick Board relied upon the unique wording of its legislation, which unlike both the British Columbia legislation and the Saskatchewan *Act*, makes specific reference to expulsion for dual unionism, to find that a trade union may make and enforce rules of exclusive membership. However, although the New Brunswick Board did not refer in its reasons to the decision of the British Columbia Board in *Graham*, its oral reasons at least disclose that its view of the issue was predicated upon the notion that the expulsion was taken "to protect its organization" and was, therefore, defensible because the legislation ensured that the complainant would not lose his employment as a result.

[127] Nonetheless, the more detailed approach and analysis made in *Graham*, *supra*, recommends itself to us. In our opinion, the acquisition of membership in more than one union involves the exercise of a right recognized under s. 3 of the *Act* and protected under s. 11(2)(a). This is not to say that an employee has a guaranteed and unrestricted right to acquire membership in a particular trade union, but merely that an employee has the right to acquire membership in more than one union if they should choose to do so. As explained in *Graham*, expulsion from one union for the sole reason of concurrent membership in another is prima facie coercive and intimidating. However, such action will be defensible when it is undertaken objectively and reasonably for the purposes of defending and protecting the existence of the union – for example, a union may legitimately enforce solidarity during a strike or a raid.

[128] There are several differences between the situation in *Hasson*, *supra*, and that in the present case. Unlike the New Brunswick legislation under consideration in that case, s. 36 of the *Act* contains no express acknowledgment of expulsion from

membership for dual unionism. Although, arguably, the breadth of the language of s. 36(3) includes such action by reason that it is not expressly excluded. But, while s. 36(3) expressly ensures that an employee will not suffer termination of employment as a result of loss of union membership for reasons other than non-payment of dues (including, necessarily, by reason of dual union membership), thereby nullifying the most potentially devastating consequence to the individual, in the construction sector, where work is most often acquired through the trade union hiring hall in accordance with its out-of-work rules, termination of employment – or at least the inability to acquire further employment – will be the practical result for employees not steadily employed by a single employer, for example, in industrial plant maintenance work. In such circumstances, in the construction sector, the spirit and intent of s. 36(3) would be undermined were expulsion to be allowed for dual unionism simpliciter. That is, in the present case, upon being expelled from membership in the Union, the Applicant is now unable to engage in further work in the carpentry trade in unionized construction, because he will not be referred for work by the Union and is not in any event a member or eligible to become a member (according to its rules) pursuant to a union security clause in a collective agreement.

[129] Furthermore, in *Hasson*, *supra*, the overlap of the work jurisdiction claimed by the two unions in question was complete – the evidence was that the second union was engaged in a concerted effort to "siphon off" members from the first union. In the present case, despite the dire comments of certain witnesses – specifically, Mr. Westcott, Mr. Royer and Mr. Todd – of the potentially corrosive effect of dual unionism, there is no evidence that the Applicant engaged in any activity contrary to the Union's interests, attempted to persuade existing members to so act, attempted to undermine the Union's authority as bargaining agent, or did anything to harm the Union's claim to a certain work jurisdiction. Indeed, on the only construction site where he has been engaged as an operating engineer rather than as a carpenter, the site owner or general contractor had assigned any work in the "grey area" of contested jurisdiction between the Carpenters' Union and the Operating Engineers' union to the Operating Engineers' union, and the Carpenters' Union, as it was entitled to do, took no steps to challenge or dispute the assignment. In our opinion, in any event, the overlap of work jurisdiction between the two unions, as described in the evidence, is not great, restricted mainly to the operation of certain minor equipment, surveying and layout work. The evidence

adduced regarding the “creeping” deleterious effect of dual unionism upon the Cement Masons’ union in Saskatchewan, does not appear to us to be a substantive danger as between the Carpenters’ Union and the Operating Engineers’ union – the overlap of work between the Cement Masons’ and the Labourers (and other unions) is much more complete. To restrict a person in their ability to earn a living because of a fairly minor overlap of jurisdiction as in the present case is simply unreasonable. And, despite the fact that this dispute as to jurisdiction has existed for many years, for reasons that were not explained, the Carpenters’ Union has not sought to resolve the issue pursuant to the procedures apparently provided for in the A.F.L.-C.I.O. “Green Book” referred to earlier in these Reasons.

[130] Furthermore, it is a fact of modern life that many, and an ever increasing number of, workers find it necessary to work at more than one job in order to attempt to remain fully and steadily employed in order to make ends meet in a society that relentlessly encourages consumption. The social wisdom of this modern zeitgeist aside, a worker should not be disadvantaged from seeking additional skills training or for working at more than one job where it is necessary to acquire membership in another union in order to do so and it does not objectively and reasonably threaten the existence of the first union.

[131] In the present situation, we find that the expulsion of the Applicant from membership in the Carpenters’ Union will result in his inability to earn a living in the carpentry trade in the unionized construction sector. We also find that, because of the unique situation in the construction sector, s. 36(3) of the *Act* will not operate to prevent the resulting inability to secure employment in the trade. Therefore, we find that the expulsion of the Applicant from membership in the Carpenters’ Union was made solely on the basis of dual union membership, and not, by any objective and reasonable standard, for any reason related to the defence or protection of the viability or existence of the Union. Accordingly, we find that the Union unreasonably denied the Applicant membership in the Union in violation of s. 36.1(3) of the *Act*.

4. Whether the Union’s actions were a violation of s. 11(2)(a) of the *Act*

[132] The Applicant alleged that the Union committed an unfair labour practice in violation of s. 11(2)(a) of the *Act* in that in threatening to revoke his membership, and then in actually doing so, it attempted to interfere with, intimidate or coerce him with a view to discouraging membership in a labour organization, namely, the Operating Engineers' union.

[133] The Board has seldom had occasion to make a determination under s. 11(2)(a) of the *Act*. In *Alcorn*, *supra*, at 161, the Board noted as follows:

> *This Board has had relatively few occasions to consider the interpretation of this provision. In a decision in Alexander Spalding v. Federal Pioneer Limited and United Steelworkers of America, LRB Files No. 408-80, 002-81 and 001-81, the Board made the following comment:*
>
> > *It would, in the opinion of the Board, be wrong for the Board to permit a union to punish a member for exercising a right given to him under The Trade Union Act. The Board will not permit the enforcement of any provision in the union constitution which might defeat, abrogate or vary any rights given by the statute. Any attempt to enforce such rights by a union amount, in the opinion of the Board, to a violation of Section 11(2)(a) of the Trade Union Act and the Board finds the union guilty of an unfair labour practice accordingly.*
>
> *In that case, the Board interpreted The Trade Union Act as permitting an employee to attempt to persuade other employees that they should support an application for rescission of a certification order, and found that for the union to subject an employee to a penalty for such activity was an unfair labour practice under Section 11(2)(a). A similar conclusion was reached in a decision in the case of Diane Pyne v. Saskatchewan Government Employees' Union, LRB File No. 056-86.*

[134] However, the Board recognized that s. 11(2)(a) should be interpreted and applied with reference to the nature of trade unions and competing interests between the individual and the trade union similar to those referred to earlier in these Reasons. In *Alcorn*, *supra*, the Board further stated as follows:

> *As these decisions indicate, Section 11(2)(a) must be understood in the context of the trade union as a democratic organization. In this respect, the interpretation of Section 11(2)(a) cannot be quite parallel to that of Section 11(1)(a), for the relationship of an employee to a trade union is somewhat different than the relationship with the employer. In the case of*

the relationship with the trade union, the statute seeks to protect the right of employees to challenge the actions or objectives of the trade union, to take part in union decision-making, and even to take the position that they do not wish to be represented any longer by the trade union or any trade union. It is not open to a trade union to punish dissidents for legitimately raising issues for debate, no matter how unpopular they are, for seeking to unseat the union leadership or attempting to overturn the union altogether.

There is a distinction, however, between engaging in vigorous debate at an appropriate time, and defying a decision legitimately taken by the majority, such as the decision in this case to go on strike. In those circumstances, the fact that the Union took steps to discipline the employees is not in itself coercive, anymore than when an employer legitimately disciplines an employee.

. . . .

Earlier in these Reasons, we addressed the status of the decision to continue to work during the strike. We stated our view that the decision to work in defiance of the strike call is not neutral in nature, and it can be legitimately treated by the Union as an infraction of union rules, aside from the absence in this case of constitutional foundation for such proceedings. A corollary of this, in our opinion, is that the decision to work is not entitled to the kind of protection given to the right to persuade employees to support a rescission application, as in the Alexander Spalding case, supra, or the right to take part in a strike vote, as in the Diane Pyne case, supra.

Although we have earlier found the imposition of the fines by the Union to be flawed, in a constitutional sense, this does not mean that the Union committed any unfair labour practice under Section 11(2)(a) by proceeding as it did.

There is no evidence here that any of the applicants were directly threatened or intimidated. The Union did undertake disciplinary proceedings against them, but in our view these proceedings were entered into in good faith. The fact that the employees themselves felt discomfort about facing their fellow employees at Union meetings or at the disciplinary hearings is not surprising, given their admission of making a decision which the majority of employees would naturally regard as unacceptable. This discomfort and unease is not, in our view, suggestive of unlawful coercion or interference from the Union, but of the tension which would be expected to arise between striking employees and other employees who had made a decision which was understood to be an infraction of the rules of the Union. Indeed, the witnesses themselves, although they may have taken comfort in what they regarded as their right to make the decision to go to work, conceded that they expected the Union to be unhappy with that decision and to take some action against them.

> *For these reasons, we have concluded that the allegation of an unfair labour practice against the Union must be dismissed.*

[135] In the *Spalding* and *Pyne* cases, both *supra*, the issue was whether the union could legitimately and lawfully penalize a member for attempting to persuade other employees to support an application for rescission of the certification order granted to the union. The Board held that to do so was an attempt to discourage activity directed to unseating the union as bargaining agent, and in violation of s. 11(2)(a) of the *Act*. In contrast, in *Alcorn*, *supra*, the issue was whether the union could lawfully discipline and fine members who worked during a strike. The Board held that this was not a violation of the provision.

[136] In our opinion the present case is more analogous to *Spalding* and *Pyne* than to *Alcorn*. That is, rather than a situation involving an attempt by the Union to enforce solidarity during a strike, or in defense of its existence, the Carpenters' Union undertook proceedings in respect of its constitutional ban on membership in a competing union.

[137] In applying the reasoning in *Graham*, *supra*, the Union's actions, although taken in good faith, constituted a threat with a view to discourage the Applicant from exercising a right under the *Act* in circumstances that cannot be said to have been a defensive measure to protect the existence of the Union, and was, therefore, a violation of s. 11(2)(a) of the *Act*.

[138] Finally, in considering all of the evidence, we conclude that the Union did not treat the Applicant in a discriminatory manner as compared to other members of the Union with dual union membership. We accept the evidence that in all earlier instances of dual union membership, the member in question made an election that has made proceedings under Section 42-I of the Union's constitution unnecessary. With respect to Mr. Eagleson, he was not called to testify and the evidence regarding his holding dual membership is hearsay. In any event, we accept the Union's position that it is waiting for the outcome of the present application before proceeding with any action in respect of Mr. Eagleson.

Conclusion and Remedy:

[139] In summary, the Union breached ss. 36.1(1) and (3) and s. 11(2)(a) of the *Act*. The Applicant sought no recompense for monetary loss and presented no evidence of same.

[140] The Union shall be ordered to refrain from engaging in these violations of the *Act*. It shall also be ordered to restore the Applicant to its membership without loss of seniority or benefits and to restore him to its work referral list, as if he had not had his membership revoked. The Applicant shall not be obliged to pay dues to the Union from November 19, 2002 to the date of the Order to issue on these Reasons.

[141] Finally, there is a matter that we feel compelled to address because of its disturbing nature. Earlier in these Reasons it was pointed out that Mr. Lalonde made a somewhat startling and bizarre statement during his argument before the Board. The text of that statement is as follows:

> Mr. Lalonde: [The Union] mentioned me being a troublemaker. You don't know the half of it. They're darn rights. I am a troublemaker and you have to be cautious around me. I've had lawyers disbarred. …I have had RCMP supervisors reprimanded. I had an entire detachment of the RCMP reprimanded. I've had city workers reprimanded. I've had anybody that crosses me put in their place and I have no problem admitting that. So you know what you do, you don't cross me. And if I join the Union and everybody leaves me alone, I don't bother anybody.

[142] We wish to make it clear that our decision was not influenced in the least by Mr. Lalonde's outrageous statement at the hearing, nor his subsequent often ill considered, distressing, profane and otherwise inappropriate communications with Board staff.

[143] We also wish to make it clear that we found no evidence of bad faith, malice or ill will on the part of the Union or its officers in this case, and we commend Mr. Plaxton on his professional presentation of the case and the Union's witnesses on their composure in what were circumstances that often tried the patience.

DATED at Regina, Saskatchewan, this 5th day of **November, 2004.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson