The Labour Relations Board
Saskatchewan

TERCON INDUSTRIAL WORKS LTD., WESTWOOD ELECTRIC LTD., CANONBIE CONTRACTING LTD., WILBROS CONSTRUCTION SERVICES (CANADA) L.P., and PYRAMID CORPORATION, Applicant Employers and CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151, Applicant Unions

v.

SASKATCHEWAN REGIONAL COUNCIL OF CARPENTERS, DRYWALL, MILLWRIGHTS AND ALLIED WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529, SASKATCHEWAN PROVINCIAL BUILDING TRADES COUNCIL, SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, CANADIAN UNION OF PUBLIC EMPLOYEES UNION, LOCAL 1975, and LOCAL 01 SASKATCHEWAN OF THE INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS and the INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTWORKERS (BAC), Respondent Unions

LRB File Nos. 103-10, 104-10, 107-10, 108-10, 121-10, 122-10, 123-10, 124-10, 125-10, 126-10, 139-10, 140-10, 141-10, 142-10, 151-10, 152-10, 173-10, 174-10, 179-10, 180-10, 181-10, 199-10, 200-10, 201-10, 202-10, 203-10, 204-10, 205-10, 206-10, 207-10, 211-10, 212-10 & 213-10

February 10, 2011

Chairperson, Kenneth G. Love, Q.C.; Members: Bruce McDonald and Clare Gitzel

For Tercon Industrial Works Ltd. & Westwood Electric Ltd.	Mr. Larry Seiferling, Q.C.
For Wilbros Construction Services (Canada) L.P. and Canonbie Contracting Ltd.	Mr. Thomas Ross
For Pyramid Corporation	Mr. Joseph Hunder
For Construction Workers Union (CLAC), Local 151:	Mr. Richard Steele
For the Carpenters/Millwrights & IBEW, Local 529:	Mr. Drew Plaxton
For RWDSU & Sask. Prov. Bldg. Trades Council:	Mr. Larry Kowalchuk
For Sask. Government and General Employees' Union:	Ms. Juliana Saxberg
For the IUBAC, Local 1:	Mr. R. Graeme Aitken
For CUPE, Local 1975:	No one appearing

Practice and Procedure – Application to dismiss alleging that Construction Workers Union, (CLAC) Local 151 a "Company- Dominated Organization" – Applicant Unions file multiple applications with Board for determination that Construction Workers Union, Local 151, is a "Company-Dominated" Organization – Applicant Employers and Unions apply for summary dismissal alleging that application, along with particulars provided by Board Order, do not show an arguable case and Board should exercise its discretion granted under s. 18(p) to dismiss applications – Board considers previous jurisprudence and submissions of parties along with applications,

replies and particulars provided – Board determines that the applications do not disclose and arguable case – Applications allowed for summary dismissal.

Practice and Procedure – Applicant Unions file applications that allege Construction Workers Union, Local 151, is "Company-Dominated" organization – Applications filed by Unions last minute without any particulars and, in one case, failing to name the person who it is alleged is responsible for domination of the Union – Failure to provide particulars with application when the Applicants knew, or should have known, Board Orders requiring particulars to be ordered result in applications being summarily dismissed.

Practice and Procedure – Applicant Unions file applications that allege that Construction Workers Union, Local 151, is a "Company-Dominated" Organization – One application fails to provide information allowing the Board to determine who it is alleged is responsible for domination of Union – Applications allowed for summary dismissal.

Summary Dismissal – Board considers factors to be considered with respect to applications for summary dismissal – Where applications do not make other than general allegations of breach of a provision of the *Act* and fail to provide any particulars as to the allegations respecting the Applicant Employers, alleging only that the Applicant Union is dominated by a person or persons unknown to them – Applications allowed for summary dismissal.

Practice and Procedure – Board considers application pursuant to s. 18(b) of the *Act* for an Order directing production of documents or things – Board determines that application premature and declines to make requested Order.

Practice and Procedure – Board considers application for Production of Documents and Things – Section 18(b) – Application dismissed as premature.

***The Trade Union Act*, ss. 2(e), (j) and (l), 18(b), (p) and (q).**

REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Q.C., Chairperson: On July 27, 2010[1], August 18, 2010,[2] and August 27[3], 2010, the Construction Workers Union, Local 151 (hereinafter "CLAC") applied to the Saskatchewan Labour Relations Board (the "Board") to become the certified bargaining agent pursuant to *The Construction Industry Labour Relations Act* (the "*CILRA*") and *The Trade Union*

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1 See: LRB File Nos. 097-10 & 098-10.
2 See: LRB File Nos. 116-10 & 117-10.
3 See: LRB File No. 134-10.

Act, R.S.S. 1978, c.T-17 (the "*Act*") to represent various units of employees involving five (5) different employers in Saskatchewan.[4]

[2] Various trade unions filed applications during the period August 4, 2010 through to the hearing date claiming that CLAC was a "company dominated" organization as defined in Section 2(e) of the *Act*. If successful in such applications, CLAC would be ineligible to be certified, or could be stripped of their representative rights, by the Board on the basis that they would not satisfy the definition of a "trade union" pursuant to s. 2(l) of the *Act*. The Applicant Unions included the Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021)[5], the International Brotherhood of Electrical Workers, Local 529[6], the Saskatchewan Provincial Building Trades Council[7], Saskatchewan Joint Board, Retail, Wholesale and Department Store Union[8] and Saskatchewan Government and General Employees' Union[9].

[3] In addition to claiming that CLAC was a "company dominated" organization, the Applicant Unions also sought standing to participate in each of the certification applications filed by CLAC. No decision has been rendered regarding the participation of the Applicant Unions with respect to their applications to intervene in the certification applications, and these Reasons for Decision do not relate to those applications.

[4] All of the "company-dominated" applications filed by the Applicant Unions were essentially the same and contained the following allegation but did not set forth the factual basis upon which the allegation was based:

> *The applicant within alleges Construction Workers Union (CLAC), Local 151 is a company dominated organization in that it is an organization the formation or administration of which an employer or employer's agent has dominated, interfered with and/or contributed support to.*

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4 See: LRB File Nos. 097-10, 098-10, 116-10, 117-10 & 134-10.
5 See: LRB File Nos. 103-10, 104-10, 141-10, 142-10 & 151-10 filed by Carpenters/Millwrights.
6 See: LRB File Nos. 107-10, 108-10, 139-10, 140-10 & 152-10 filed by IBEW, Local 529.
7 See: LRB File Nos. 121-10 & 124-10 filed by Building Trades Council.
8 See: LRB File Nos. 122-10 & 125-10 filed by RWDSU.
9 See: LRB File Nos. 123-10, 126-10, 211-10, 212-10 & 213-10 filed by SGEU.

[5] In CLAC's Replies to the "company-dominated" applications filed by the Applicant Unions, CLAC asked the Board to summarily dismiss each of the said applications on the basis that, absent particularized facts, the applications failed to raise a *prima facie* case. For the reasons that follow, the Board has determined that the applications and other materials filed in response to a request for particulars do not give rise to an arguable case and the applications by the Respondent Unions are dismissed.

[6] In response to the "company-dominated" applications filed by the Applicant Unions, two (2) of the affected employers, namely Tercon Industrial Works Ltd. and Westwood Electric Ltd. (the "Respondent Employers"), sought particulars directly from the Applicant Unions. Not receiving such particulars, the Respondent Employers sought the assistance of the Executive Officer of the Board for an Order directing the Applicant Unions to state and particularize the facts upon which they intended to rely on, at least, the facts upon which they intended to rely with respect to the involvement of the Respondent Employers, if any, in "dominating" CLAC, as alleged by the applicant trade unions.

[7] In accordance with the Executive Officer's usual practice and the authority delegated to that office by the Board, the Executive Officer convened a conference call with all of the above captioned parties participating through counsel. In addition, counsel on behalf of the International Union of Bricklayers and Allied Craftworkers, Local 01 participated in the conference call with the Executive Officer.

[8] Having heard from the parties, the Executive Officer issued the following Order on September 21, 2010 with respect to the "company-dominated" applications involving Tercon Industrial Works Ltd.:

> ***THE LABOUR RELATIONS BOARD**, pursuant to Section 18(a) of The Trade Union Act, **HEREBY ORDERS:***
>
> *1) That the Applicants shall, on or before October 8, 2010, provide the Employer with particulars of its allegation that the Employer has engaged in the domination of the Respondent contrary to the provisions of the Trade Union Act, which allegations are set out in applications to the Board:*
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> *a) LRB File No. 103-10, Application by Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers dated August 4, 2010;*
>
> *b) LRB File No. 108-10, Application by International Brotherhood of Electrical Workers, Local 529 dated August 6, 2010;*

c) *LRB File No. 121-10, Application by Saskatchewan Provincial Building Trades Council dated August 20, 2010;*

d) *LRB File No. 122-10, Application by Saskatchewan Joint Board, Retail, Wholesale and Department Store Union dated August 20, 2010;*

e) *LRB File No. 123-10, Application by Saskatchewan Government and General Employees Union dated August 20, 2010;*

2) *Particulars shall include all facts within the knowledge of the Applicants which shall include times, dates, places and the manner in which the Employer has engaged in domination of the Respondent. The particulars shall also provide specifics of the matters or events that lead the Applicants to the conclusion that the Employer has engaged in domination of the Respondent in contravention of the Trade Union Act.*

3) *Upon particulars being provided, the Employer shall have until October 22, 2010 to file its Reply to the within applications.*

4) *Further, upon particulars having been provided, the Respondent shall have until October 22, 2010 to file an Amended Reply to the within applications.*

5) *Failing provision of particulars as ordered, or in the event that the particulars provided are inadequate, the Board Registrar is hereby directed to refer the applications to an in camera panel of the Board for a summary dismissal of the applications pursuant to ss. 18(p) and (q) of the Trade Union Act.*

[9] Similarly, the Executive Officer issued the following Order dated September 21, 2010 with respect to the "company-dominated" applications involving Westwood Electric Ltd.:

THE LABOUR RELATIONS BOARD**, pursuant to Section 18(a) of The Trade Union Act, **HEREBY ORDERS:

1) *That the Applicants shall, on or before October 8, 2010, provide the Employer with particulars of its allegation that the Employer has engaged in the domination of the Respondent contrary to the provisions of the Trade Union Act, which allegations are set out in applications to the Board:*

a) *LRB File No. 104-10, Application by Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers dated August 4, 2010;*

b) *LRB File No. 107-10, Application by International Brotherhood of Electrical Workers, Local 529 dated August 6, 2010;*

c) *LRB File No. 124-10, Application by Saskatchewan Provincial Building Trades Council dated August 20, 2010;*

d) *LRB File No. 125-10, Application by Saskatchewan Joint Board, Retail, Wholesale and Department Store Union dated August 20, 2010;*

e) *LRB File No. 126-10, Application by Saskatchewan Government and General Employees Union dated August 20, 2010;*

2) *Particulars shall include all facts within the knowledge of the Applicants which shall include times, dates, places and the manner in which the Employer has engaged in domination of the Respondent. The particulars shall also provide specifics of the matters or events that lead the Applicants to the conclusion that*

the Employer has engaged in domination of the Respondent in contravention of the Trade Union Act.

3) *Upon particulars being provided, the Employer shall have until October 22, 2010 to file its Reply to the within applications.*

4) *Further, upon particulars having been provided, the Respondent shall have until October 22, 2010 to file an Amended Reply to the within applications.*

5) *Failing provision of particulars as ordered, or in the event that the particulars provided are inadequate, the Board Registrar is hereby directed to refer the applications to an in camera panel of the Board for a summary dismissal of the applications pursuant to ss. 18(p) and (q) of the Trade Union Act.*

[10] In response to the Executive Officer's Orders, two (2) things happened. Firstly, particulars were produced by some of the applicant trade unions. For example, one (1) set of particulars was produced concurrently by the Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021) and the International Brotherhood of Electrical Workers, Local 529. Similarly, another set of particulars was produced concurrently by the Saskatchewan Provincial Building Trades Council and the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union.

[11] Secondly, all of the Applicant Unions made application to the Board to review and set aside the Orders of the Executive Officer. The applications to review the Executive Officer's Orders were joined and heard on October 26, 2010 in Regina, Saskatchewan. In Reasons for Decision[10] dated November 10, 2010, the Board upheld the Executive Officer's Orders making one minor change to the Order to more properly reflect the Board's established procedure for summary dismissal. The Board Order issued in respect of the challenge to the Executive Officer's Order was as follows:

1) *That the Applicants shall, on or before October 8, 2010, provide the Employer with particulars of its allegation that the Employer has engaged in the domination of the Respondent contrary to the provisions of the Trade Union Act, which allegations are set out in applications to the Board:*

   a) LRB File No. 104-10, Application by Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers dated August 4, 2010;

   b) LRB File No. 107-10, Application by International Brotherhood of Electrical Workers, Local 529 dated August 6, 2010;

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10 LRB File Nos. 162-10, 163-10 & 163-10.

c) LRB File No. 124-10, Application by Saskatchewan Provincial Building Trades Council dated August 20, 2010;

d) LRB File No. 125-10, Application by Saskatchewan Joint Board, Retail, Wholesale and Department Store Union dated August 20, 2010;

e) LRB File No. 126-10, Application by Saskatchewan Government and General Employees Union dated August 20, 2010;

2) *Particulars shall include all facts within the knowledge of the Applicants which shall include times, dates, places and the manner in which the Employer has engaged in domination of the Respondent. The particulars shall also provide specifics of the matters or events that lead the Applicants to the conclusion that the Employer has engaged in domination of the Respondent in contravention of the Trade Union Act.*

3) *Upon particulars being provided, the Employer shall have until October 22, 2010 to file its Reply to the within applications.*

4) *Further, upon particulars having been provided, the Respondent shall have until October 22, 2010 to file an Amended Reply to the within applications.*

5) *Failing provision of particulars as ordered, the Board registrar is hereby directed to refer the application to an in camera panel of the Board for determination as to whether or not the option exists for summary dismissal pursuant to ss. 18(p) and (q) of The Trade Union Act in accordance with the procedure established by this Board in Beverly Soles v. Canadian Union of Public Employees, Local 4777, [2006] Sask. L.R.B.R. 413, LRB File No. 085-06.*

[12] Following the provisions of particulars by the Respondent Unions, all of the Applicant Employers joined with CLAC in filing applications with the Board for Summary Dismissal of the "company dominated" applications. Rather than deal with these applications in the Board's usual fashion which is to have an *in camera* panel of the Board determine if, based upon the material filed with the Board, the application raises an arguable case which should proceed to hearing by the Board. In the normal case, if the *in camera* panel determined that the application did not raise an arguable case, then the parties would be permitted the opportunity to file additional materials to supplement their case. Those materials would then again be considered by an *in camera* panel who would again determine if based upon this additional information an arguable case was raised. If the answer to that question was no, then the application would, in most instances, be summarily dismissed by the Board.

[13] Hearings for LRB File Nos. 116 -10, 139-10 & 141-10 had been scheduled by the Board to be heard on December 2 and 3, 2010 in Saskatoon. Similarly, LRB File Nos. 097-10, 198-10, 103-10, 104-10, 107-10, 108-10, 121-123-10 &124-126-10 were scheduled to be heard on December 6 - 8, 2010 in Saskatoon. Since the scheduling of those hearings, the Board had received additional applications regarding CLAC being a "company dominated" organization as

well as additional applications for summary dismissal of those applications. As a result, the Chairperson of the Board wrote, on November 17, 2010, to all the counsel involved in the various applications to advise that in order to facilitate hearing of these matters in a timely and efficient manner that the Board would proceed to hear the various applications in the following order commencing on December 2, 2010.

> 1. *Commencing at 9:30 AM on December 2, 2010, at our hearing room in Saskatoon (10th Floor of the Sturdy Stone Building), the Board will hear and consider all of the applications made for summary dismissal of the various applications that the Construction Workers Union, Local 151 is a "company dominated organization". For the purpose of this hearing, all of the applications for summary dismissal will be joined and heard together. If necessary, this hearing will continue on December 3, 6, 7 & 8.*
>
> 2. *Dependent upon the outcome of that hearing, the Board will, if necessary, proceed to hear and determine the applications that the Construction Workers Union, Local 151 is a "company dominated organization". For the purpose of this hearing, all of these applications will also be joined and heard together. If possible, this hearing will continue on December 3, 6, 7 & 8, at the discretion of the Board.*
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> 3. *Dependent upon the outcome of that hearing, the Board will, if necessary, proceed to hear and determine the applications for certification of the various Employers. Prior to the commencement of those hearings, the Board will hear submissions and make a determination regarding the applications for intervenor status in respect of the certification applications. All of the applications for intervenor status will be joined and heard together prior to the commencement of the first certification application hearing. The certification hearings will be then heard consecutively, in the order they were filed with the Board.*

Preliminary Matters:

[14] At the outset of the hearing on December 2, 2010, Mr. Plaxton, Ms. Saxberg and Mr. Kowalchuk requested the Board adjourn the hearing. Both Mr. Plaxton and Ms. Saxberg were in attendance at the hearing, but Mr. Kowalchuk was unable to attend and made his request for an adjournment by email to the Board Registrar dated December 1, 2010. Mr. Plaxton made additional applications at the commencement of the hearing, but it was not necessary, in the final analysis to deal with those requests other than his application for Production of Documents and Things[11] which had been previously filed on October 22, 2010 and November 2, 2010, with the Board in relation to the "company dominated" organization applications which he had filed on behalf of his clients.

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[11] LRB File Nos. 173-10, 174-10, 179-10, 180-10 & 181-10.

[15] All counsel seeking an adjournment made similar arguments. They argued that they had been prejudiced by the Chairperson's decision as outlined in the letter of November 17, 2010 to deal with the applications regarding "company domination" as a group as a preliminary matter rather than having one of the applications for certification proceed as a "test case" which would include a challenge by the proposed intervenors in those applications to the proposed certification as well as a challenge that CLAC was a "company dominated" organization.

[16] The also argued that the scheduling of the applications had been done without their input, nor had a scheduling conference been convened by the Board, something which several of the parties had requested. Mr. Kowalchuk argued that the failure by the Board to schedule a case management conference "resulted in a refusal to schedule the matters in a way that follows the principles of natural justice."

[17] The parties argued that they did not know if they had intervenor status in the main certification applications as yet, and, as a result, they were disadvantaged in not knowing what case they should prepare and what witnesses they may be required to call.

[18] S.G.E.U., through its counsel, took the unusual position that it would not be attorning to the jurisdiction of the Board in respect of the matters which the Board proposed to deal with. Nevertheless, S.G.E.U. counsel participated fully in the application for adjournment and the subsequent hearing before the Board.

[19] Counsel on behalf of the various employers and CLAC opposed the requested adjournment. They argued that the various applications needed to be dealt with in a timely fashion so as employees and the employers and CLAC would know the outcome of the applications for certification in respect of these employers. They argued that the request for an adjournment was part of a grand strategy on behalf of the Respondent Unions to delay and frustrate the Board's processes.

[20] They argued that there was no reason to adjourn the cases regarding Mr. Plaxton's clients as those matters had been scheduled by the Board for some time to commence on December 2, 2010. They argued the Board should make use of the time allowed on the schedule to at least deal with those matters, but should also keep the dates available in the following week for the hearings to continue if necessary.

[21] Mr. Seiferling proposed that, if necessary, the hearings involving Ms. Saxberg and Mr. Kowalchuk's clients should be adjourned to the following week when they were originally scheduled, alternatively, the Board could provide those parties the ability to file written submissions regarding the hearings regarding the cases scheduled to be heard on December 2 and 3, 2010.

[22] Counsel for the Applicant Employers and CLAC argued that there was no need for witnesses to be called as the test for summary dismissal was well known and no evidence was required, only argument respecting whether or not an arguable case existed on the face of the materials filed.

[23] In reply, the Respondent Unions' counsels argued that, even though the Chairperson's letter was dated November 17, 2010, that they had not received delivery of the letter until November 22, 2010. Ms. Saxberg argued that both she and Mr. Kowalchuk were in-house counsel and had limited resources to prepare for the hearing on short notice. She also objected to proceeding only on the matters originally scheduled, involving Mr. Plaxton's clients.

Decision on Adjournment:

[24] The Board considered the request for an adjournment. On consideration, the Board was of the view that the adjournment should not be granted with respect to clients represented by Mr. Plaxton. The matters involving Mr. Plaxton's clients (LRB File Nos. 116-10, 117-10, 139-10, 140-10, 141-10 & 142-10) had been scheduled for some considerable time as had the matters involving Mr. Seiferling's clients, Tercon Industrial Works Ltd. & Westwood Electric Ltd., which were scheduled for the following week.

[25] Nevertheless, in response to concerns raised by Ms. Saxberg and Mr. Kowalchuk regarding their not having been a part of the earlier cases involving Mr. Plaxton's clients, the Board offered Ms. Saxberg, and through her to Mr. Kowalchuk, the option of adjourning their cases *sine die* awaiting the outcome of the cases involving Mr. Plaxton's clients, or alternatively, adjourning the matters which they were involved in until the following week.

[26] During the course of considering the options presented to them, Ms. Saxberg requested a short recess to discuss the matter with Mr. Plaxton and to confer, by telephone with

Mr. Kowalchuk. That short recess resulted in meetings between all of the counsel present. Ultimately, the Board adjourned until after the lunch break to allow the parties to continue to consult among themselves.

[27] As a result of consultation between counsel, the parties agreed and jointly recommended that the hearings be adjourned to 9:00 AM on Monday, December 6, 2010 in Saskatoon. At that time it was agreed that all of the applications for summary dismissal would be dealt with. Secondly, following the conclusion of the hearings regarding the applications for summary dismissal, Mr. Plaxton's application for Production of Documents and Things pursuant to section 18(b) of the *Act* would be considered.

[28] The Board was also advised that the Canadian Union of Public Employees, Local 1975 ("CUPE"), Local 01 Saskatchewan of the International Union of Bricklayers and Allied Craftworkers and the International Union of Bricklayers and Allied Craftworkers (BAC) (the "Bricklayers") also wished to file applications alleging that CLAC was a "company dominated" organization. Leave was granted to those unions to file such applications.

[29] As a result of those joint submissions, the matters were adjourned until Monday, December 6, 2010 at 9:00 AM.

Facts:

[30] As noted above, there were five (5) applications for certification filed by CLAC to certify each of the Applicant Employers. Those applications were as follows:

LRB File No.	Applicant Union	Respondent Employer	Application Type	Dated Filed
097 -10	CLAC	Tercon	Certification	2010.07.27
098-10	CLAC	Westwood	Certification	2010.07.27
116-10	CLAC	Canonbie	Certification	2010.08.18
117-10	CLAC	Wilbros	Certification	2010.08.18
134-10	CLAC	Pyramid	Certification	2010.08.27

[31] Following these applications being filed, as noted above, the Respondent Unions filed applications alleging that CLAC was a "company dominated". organization. All of these

applications, regardless of which of the Respondent Union filed the application, and regardless of the employer involved (with one exception that we will deal with later) set forth in paragraph 6 of its application, the following:

> *The applicant submits that the following facts in support of the allegation that the said labour organization is a company dominated organization:*
>
> *(a) The applicant within alleges Construction Workers Union (CLAC), Local 151 is a company dominated organization in that it is an organization the formation or administration of which an employer or employer's agent has dominated, interfered with and/or contributed support to.*

[32] In the applications filed by Mr. Kowalchuk and Ms. Saxberg on behalf of their clients, a further allegation was contained in paragraph 6 of the application, being:

> *(b) The applicant within alleges Construction Workers Union (CLAC), Local 151 and its parent body (CLAC) is not a labour organization nor trade union within the meaning of the Trade Union Act nor the C.I.L.R.A.*

[33] The Respondent Union's response to the Order for Particulars made by the Board also varied. Mr. Plaxton in respect of his clients provided one form of response and Mr. Kowalchuk and Ms. Saxberg provided another. As those responses are fairly lengthy, I have not reproduced them in the body of this decision, but rather have attached a representative copy of those particulars and attached them to these reasons for decision as Appendix "A" (Mr. Plaxton's particulars) and Appendix "B" (Mr. Kowalchuk and Ms. Saxberg's particulars).

[34] In Mr. Plaxton's particulars, the first eight (8) paragraphs make no allegations nor provide any facts, but are by way of background to the particulars provided. Paragraph 9 sets forth 28 points (items (a) to (bb)) which the Carpenter/Millwright and IBEW provided in support of their application.

[35] Mr. Kowalchuk's and Ms. Saxberg's particulars attach a report by the Canadian Labour Congress, February 2008 which "provides a general overview of a significant aspect of the basis for our applications in this matter". Thereafter, the particulars make reference to provisions of certain collective agreements, as well as arguments that CLAC is "inherently, ideologically and historically company dominated and/or not a trade union."

[36] Neither of the forms of particulars was provided by way of a sworn document. In each case, the particulars provided are over the signature of respective counsel, not as a statutory declaration by their clients.

[37] With one exception, each of the various applications which allege that CLAC is a "company dominated" organization names in paragraph 3 of those applications one of the Applicant Employers as the "employer who is alleged to dominate or to have dominated the labour organization designated in paragraph 4 of this application". The one exception is the application filed at the hearing by the Bricklayers which application does not name any "employer who is alleged to dominate or to have dominated the labour organization designated in paragraph 4 of this application"[12].

[38] It should be noted that the applications in LRB File Nos. 199-10, 200-10, 201-10, 202-10, 203-10[13], 204-10 & 205-10[14] were filed with the Board on December 3, 2010, that is, after the initial hearing in respect of this matter, but prior to the hearing held on December 6 and 7, 2010. CLAC applied for summary dismissal of all of these applications.

[39] LRB File Nos. 206-10 & 207-10 were filed by the Bricklayers at the commencement of the hearing on December 6, 2007. The Board accepted these applications and they were dealt with at the hearing. Verbal applications for summary dismissal were made by CLAC and the affected employers, which applications were also accepted and dealt with by the Board at that hearing.

[40] Applications in regard to LRB File Nos. 211-10, 212-10 & 213-10 were filed by SGEU after the hearing on December 13, 2010.

[41] Each of the various applications names in paragraph 4 of that application as "the labour organization which is alleged to be a company dominated organization" as CLAC.

[42] CLAC filed a reply to the various applications that it was a "company dominated" organization. In that reply regarding the Canonbie application (LRB File No. 116-10), CLAC stated the following facts which it intended to rely upon in the proceedings:

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12 LRB File Nos. 206-10 & 207-10.
13 Filed by CUPE.
14 Filed by SGEU, NOTICE OF APPLICATION FOR DISCLOSURE AND PRODUCTION OF DOCUMENTS AND THINGS.

(a) *Local 151 was formed in August 1984 and has been in existence since that time. In June 2010 Local 151 changed its named [sic] from the Construction Workers Association, Local 151 to the Construction Workers Union, Local 151.*

(b) *Local 151 is affiliated with the Christian Labour Association of Canada, whose affiliated locals have been recognized and certified by Labour Relations Boards in multiple jurisdictions across Canada.*

(c) *Local 151's formation was not dominated or interfered with by Canonbie, Canonbie's agents, or by any other employer or employer's agent.*

(d) *Local 151 is independently administered and is not dominated or interfered with by Canonbie, Canonbie's agents, or by any other employer or employer's agent.*

(e) *Neither Canonbie, Canonbie's agent, nor any other employer or employer's agents have contributed financial or other support to Local 151.*

(f) *The Board has already determined that Local 151 is not a "company dominated organization". Attached and marked as* ***Exhibit "A"*** *to this reply is a copy of the Board's decision in Construction Workers Association (CLAC), Local 151 v. Salem Industries Canada Limited (Board File No. 033-86 and 044-86) in which the Board held that it had "no hesitation in finding" that Local 151 was not a company dominated organization. Both before and after this decision, the Board has repeatedly certified Local 151 as the bargaining agent for units of employees in Saskatchewan.*

(g) *The questions of whether Local 151 is a company dominated organization has already been determined by the Board.*

(h) *Local 151 has the substantial support of employees of Canonbie. Local 151 is ready, willing, able and interested in representing those employees. The Applicant has not has not raised any particulars to supports [sic] its bare allegation of Local 151 being a company dominated organization. The Application should be dismissed summarily so as not to delay Local 151 from representing employees who have indicated their substantial support for Local 151.*

[43] This Reply was filed prior to the provision of particulars as noted above. CLAC also filed a separate request for dismissal of the "company dominated" organization applications in addition to the request contained within their Reply.

Arguments of the Parties Re: Summary Dismissal

Applicants' Arguments:

[44] All of the Applicants Employers argued that the applications, even with the particulars provided by the Respondent Unions (in some cases) were inadequate and were fundamentally defective and flawed. They argued that based upon the Board's decision in *Re:*

Soles[15] that the Board had established a two part test to determine whether to summarily dismiss an application:

> (a) Has the applicant established an arguable case?
>
> (b) If not, is this an appropriate case to summarily dismiss the applicant's application without an oral hearing?

[45] The Applicant Union and Employers cited numerous authorities in support of their position that the applications and written materials (particulars) provided by the Respondent Unions (in some cases) were insufficient insofar as they provide reasonable clarity and particularity of the case to be met.[16] They argued that the Respondent Unions should have provided specific details of the facts whereby CLAC was dominated by the Applicant Employers, "including a chronology of events, times, dates and any witnesses" to support the allegations.[17]

[46] Relying upon the Board's decision in *P.A. Bottlers Ltd.*[18] they maintained that the Respondent Unions had an obligation to state "with some precision the nature of the accusations which are being made" in order that the persons accused of the alleged activity has the capacity to know the case which is being made, but also to cloth the Board with "the capacity to provide a fair hearing to the respondents."

[47] They argued in respect of the second element of the test for summary dismissal that the Board should not exercise its discretion to allow the applications to proceed should the Board find that there was no arguable case before it.

[48] The Applicant Union and Applicant Employers argued that for the Respondent Unions to succeed on their applications, that the application and written materials filed in support must allege facts that could establish that there is a labour organization:

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15 *Beverly Soles v. Canadian Union of Public Employees, Local 4777*, [2006] Sask. L.R.B.R. 413, LRB File No. 085-06.

16 *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Watergroup Companies Inc.*, [1992] 1st Quarter Sask. Labour Rep. 68, LRB File No. 011-92.

17 *Virginia McRae Jackson and Jacoline Shepard v. CAW-Canada and Air Canada Jazz and Edwin F. Snow v. Seafarers' International Union of Canada and Seabase* [2004] CIRB No. 290 at para 50, as quoted in *Soles, supra*, at para 37 as well as *Re: PCL Construction Holdings Ltd. v. U.B.C.J.A., Local 1985*, [2002] Sask. L.R.B.R. 120, LRB File No. 192-01 at para 49.

18 *P.A. Bottlers Ltd o/a P.A. Beverage Sales and Sascan Beverages v. U.F.C.W., Local 1400*, [1997] Sask. L.R.B.R. 249, LRB File No. 017-97 at para. 6.

(i) the formation or administration of which an employer or employer's agent has dominated or interfered with; or

(ii) to which an employer or employer's agent has contributed financial support.

[49] The Applicant Union and Employers argued that a critical issue with respect to the determination of whether a labour organization was "company dominated" is "whether the fitness of the Union to represent the employees in the present case is impaired".[19]

[50] The Applicant Union and Employers also argued that as noted in the *Wal-Mart decision*[20] a Union's history before the Board was significant to determine whether or not it may be "company dominated". The Applicant Union and Employers cited *C.U.P.E. v. Bo-Peep Co-operative Day Care Centre*[21] which was cited in *Wal-Mart* in support of that position.

[51] The Applicant Union and Employers argued that the particulars which were supplied raise matters which are not an *indicia* of a "company dominated" organization, citing as examples the fact that it had established voluntary recognition agreements with some of the Employers or how employees were dispatched to jobsites by them. It cited in support of its position the Board's decision in *Construction Workers Association, Local 151 v. Salem Industries*[22]

[52] It also cited examples of alleged facts which they asserted were not germane to the Board's determination of whether a labour organization is "company dominated". They further suggested that the Respondent Unions had brought forward matters which asserted that the Respondent Unions were more "effective unions than Local 151" matters which were not relevant to the Board's determination of company domination.

[53] CLAC and the Applicant Employers also noted that much of the purported particulars had no relationship to the Employers named in the Respondent Applicants' applications. Specifically they argued that in the *Wal-Mart, supra*, case the Union there argued

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19 See: *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. at Weyburn, Sk., operating as Wal-Mart, Wal-Mart Canada, Sam's Club and Sam's Club Canada, et al.*, [2008] Sask. L.R.B.R. 951, 2008 CanLII 64399, LRB File Nos. 069-04, 122-04 and 124-04 to 130-04 (inclusive) at para. 199.

20 *Supra*, Note 12.

21 [1979] Feb. Sask. Labour Rep. 44, LRB File No. 189-78.

22 [1986] June Sask. Labour Rep. 69, at 70.

that "the allegations are as against the UFCW national organization in Ontario and not against the Union Local 1400, the applicant in the present case."

[54] The Applicant Union and Applicant Employers argued that the onus fell upon the Respondent Unions in their applications to allege sufficient facts to give rise to an arguable case that CLAC was a "company dominated" organization. They argued that the Respondent Unions had failed to meet this onus.

[55] Finally, CLAC and the Employers suggested the Board should consider the long-standing antipathy of other Unions towards CLAC and its affiliated local unions. It referenced the report of the Canadian Labour Congress filed by Mr. Kowalchuk and Ms. Saxberg as an illustration of the level of antipathy towards CLAC *et al.* They also cited references to that antipathy by the Alberta Board in *Re TNL Industrial Contractors Ltd.*[23]

[56] Additional authorities were cited by the Applicant Union and Employers which have not been referenced during this brief recitation of their arguments, but which may be referenced in the following Reasons for Decision.

Respondent Union's Arguments:

[57] Mr. Kowalchuk began his argument on behalf of his clients by referring the Board to the Supreme Court of Canada decision in *S.E.I.U., Local 333 v. Nipawin District Staff Nursing Association*[24]. He argued that this decision, at pp. 391 established that the test for whether a Union was a "company dominated" organization was set out in that decision when the Court says:

> *...I find it difficult to accept that contention. Section 2(e) of the Trade Union Act defines "**company dominated** organization" as a labour organization dominated by "an" employer. The proscribed domination need not be that of the employer whose employees are seeking to organize it. A labour organization is a **company dominated** organization if any employer or employer's agent dominates it or interferes with it or contributes financially or other support to it, except as permitted by the Act...*

[58] He argued that neither CLAC nor the Applicant Employers had filed anything that suggested that the test established by the Supreme Court in that decision has changed. He argued that the applications for summary dismissal were based on the wrong principles of law.

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23 [1996] Alta L.R.B.R. 497.

24 [1975] 1 S.C.R. 382, 1973 CanLII 191 (S.C.C.).

[59] He argued that CLAC was a "sweetheart Union" to the Applicant Employers. He cited in support a decision of the Ontario Labour Relations Board ("OLRB")[25] which was quoted in a later OLRB decision, *United Steelworkers of America v. J.P. Murphy Inc.*[26]. He argued that this decision was authority for the proposition that it was up to CLAC and the Applicant Employers to prove that CLAC was not a "company dominated" organization rather than the Respondent Unions having to prove that to be the case.

[60] He also argued that the Board must accept the applications and materials filed as being true for the purposes of this application. He argued that if that were done, then the Board must conclude that CLAC is a "company dominated" organization.

[61] He argued that CLAC was derived from a Dutch reform religious sect who began to represent employees. He argued that they constantly refined their constitution to obtain recognition as a trade union. He argued that in essence, that this was not a labour organization, but was, rather, a religious organization and that it would be unconstitutional to certify a religious organization as a trade union.

[62] He argued that the Applicant Employers are seeking through voluntary recognition to deny craft unions the right to represent their respective craftspeople. He argued that they were collaborating with CLAC, as an instrument of the employers, to destroy traditional craft unions.

[63] He argued that it was bad public policy to mix religion and trade unions. He argued that Christian beliefs foreclosed or excluded persons of other religious beliefs from becoming members and having the benefit of collective bargaining with that employer.

[64] He argued that an organization which includes religious tenets does not meet the criteria set out by the International Labour Organization ("ILO") in respect of freedom of association.

[65] He argued that CLAC did not meet the definition of being a trade union. He argued that CLAC did not meet the test of "social unionism" in that it did not represent its members

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25 *National Dry Company Ltd.* [1980] OLRB Rep. Aug. 1217.
26 [1995] O.L.R.D. No. 4480.

properly, did not strike very often, and co-operated with management. He suggested that CLAC and Employers other than the Applicant Employers have been found guilty of manipulating collective agreement dates to avoid open periods so as to disallow traditional unions from being able to mount organizing drives.

[66] He argued that the form of representation by CLAC was at issue in this proceeding as noted by the Canadian Labour Congress in the materials filed as particulars by Mr. Kowalchuk and Ms. Saxberg. That representation, he argued, was below the standard necessary for CLAC to be a "labour organization". He further advised that it was his intention to raise these issues, in any event, when the application for certification was being considered by the Board.

[67] Mr. Kowalchuk also argued that his clients should not be prejudiced with respect to its application for intervenor status in any way as a result of the Board's decision with respect to this matter. He voiced concern that the Board should take care to insure that the matters were dealt with independently.

[68] Mr. Kowalchuk postulated on behalf of his clients that the Board should consider the questions he has raised in his application in the following fashion. First, he argued, the Board should consider whether or not CLAC is a "trade union". Thereafter, he argued the Board should turn to the question of whether CLAC is a company dominated organization.

[69] He argued that the Board should take a "principled view" of the requirements which should be met for a labour organization to meet the test of being a "trade union". He cited this as an opportunity for the Board to see if CLAC can meet this test.

[70] Mr. Plaxton, on behalf of the clients he represents argued that the applications for summary dismissal of their "company dominated" applications were premature on all fronts. He argued that CLAC and the Applicant Employers were seeking to "simply get rid of the applications". He acknowledged that the only question which the Board should consider was whether or not the applications and materials provided as particulars disclosed an arguable case.

[71] He argued that by seeking summary dismissal, CLAC and the Applicant Employers were attempting to do an end run on the allegations that CLAC was a "company dominated' organization. He argued that the Respondent Unions did not have sufficient information available

to them regarding the domination of CLAC and that they required the production requested by his application for production of Documents and Things[27].

[72] He argued that CLAC and the Applicant Employers had "missed a step", insofar as they had not provided sufficient grounds with respect to their applications for summary dismissal. In support of this assertion, he referenced paragraph 43 of the Board's decision regarding the review of the Executive Officer's order for production of particulars.[28] He argued that the requests for summary dismissal were too general in nature.

[73] He argued that CLAC and the Applicant Employers could have made application for further and better particulars rather than seeking summary dismissal. In making the summary dismissal application, he argued they were attempting to "leap frog" the whole issue. He suggested that it was normal during the course of litigation that it may be necessary to provide additional facts or particulars regarding allegations as they arise.

[74] He argued that the Board should adopt as the test for whether an arguable case exists, the principles adopted by the Courts in respect to when a statement of claim should be struck out as disclosing "no reasonable cause of action". In support of this position, he referenced several Court decisions, including the decision of the Supreme Court of Canada in *Canada v. Inuit Tapirisat of Canada*[29].

[75] He also cited the Board's decisions in *Re: Dishaw*[30] and *Re: Peterson*[31] as examples of the Board's past practice with respect to applications for summary dismissal.

[76] He argued that the process adopted by the Board in relation to these files was backwards. He argued that the Board normally processed files in a chronological fashion, that is, first in – first out.

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27 LRB File Nos 173-10, 174-10, 179-10, 180-10 & 181-10.

28 *Supra*, Note 7.

29 [1980] 2 S.C.R. 735; see also *First Choice Capital Fund Ltd. v. First Canadian Capital Corp.* [1999] S.J. No. 163, 179 Sask. R. 221, *Nycholat v. Royal Bank of Canada* [1997] S.J. No. 323, 9 W.W.R. 66, 156 Sask. R. 226, *Zakerson v. Jubilee Residences Inc.*[1985] S.J. No. 891.

30 *Dishaw v. Canadian Office & Professional Employees Union, Local 397*, 2009 CanLII 507 (SK L.R.B.), 2009 CanLII 507 (SK L.R.B.), LRB File No.164-08.

31 *Peterson v. Canadian Union of Public Employees, Local 1975-01*, 2009 CanLII 13052 (SK L.R.B.), LRB File No. 156-08.

[77] He argued that CLAC and the Applicant Employers had misread the original Order for particulars. He argued that in compliance with that Order, the Respondent Unions had provided what they can. He further submitted that with what has been provided, and assuming that it is all correct, then he argued that there was an arguable case to be taken forward.

[78] He argued that most of the information necessary to determine if CLAC was a "company dominated" organization was not within the knowledge of the Respondent Unions as it was not usual that an Employer would openly engage in activities which would be seen as constituting union domination. He cited in support, the comments of the Canada Labour Relations Board in *Syndicate Des Employees*[32] which was referenced by the Board in several decisions.[33]

[79] He suggested that the test to be applied when an allegation that a union is "company dominated" is as set out by the Canada Labour Relations Board in *Royal Oak Mines Inc.*[34] as follows:

> *...The threshold test to be applied in this jurisdiction, much like in all provincial jurisdictions, in order to determine if a trade union is dominated or unduly influenced by the employer, is whether there exists the proper arm's length relationship between the trade union and the employer.*
>
> *and at page 14,507*
>
> *...any degree of domination suffices to trigger section 25, since it impairs a union's fitness to represent employees. Domination implies the lack of an arm's length relationship.*
>
> *The Board went on to say at page 14,507*
>
> *...it is also important that employees perceive that a trade union seeking their support is an institution totally independent of management, capable of asserting their claims and enforcing their interests.*

[80] He argued, again based on his premise that the applications for summary dismissal were premature, that there should be a full trial of the issue regarding whether or not CLAC was a "company dominated" organization. In order to do that, the Respondent Unions, he argued,

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32 CLRBR 578 @ page 591.

33 See *Nipawin Hydro Electric Employees Association v. K.A.C.R.* [1993] Sask. Lab. Rep. November, *R.W.D.S.U. v. Canadian Pioneer Management Group*, LRB File No. 661-77.

34 93 CLLC 16,063 at 14,506, which was cited with approval by the Canada Board in *Anvil Range Mining Corp.* [1996] C.L.R.B.D. No. 41 at para 13 et seq.

required the information in the possession of CLAC and the Applicant Employers which he had requested in his application for Documents and Things.

[81] In summary, he argued that there was an arguable case and therefore the applications for summary dismissal should be dismissed.

[82] Ms. Saxberg on behalf of her client also adopted the submissions of the other counsel set out above. She concurred that the test set out in Soles[35] should be adopted and applied. She cited the *Royal Oak Mines*[36]. She referred those provisions cited by Mr. Plaxton above. She also noted parts of that decision which dealt with the necessity for independence of the parties in order to facilitate collective bargaining.

[83] She argued that this was not an appropriate case for summary dismissal and the Board should exercise its discretion in favour of a full hearing of the matter. She further suggested that the Board should inquire of the employees who are sought to be represented if they think CLAC is dominated or not.

[84] She argued that if the particulars provided were determined to be inadequate that it would not be appropriate to dismiss the application, but rather the Board should order further and better particulars as suggested by Mr. Plaxton.

[85] She pointed out that in *Royal Oak*, the Board had only circumstantial evidence. That, she argued, was the case here. She argued that the result in *Royal Oak* should prevail.

[86] She echoed Mr. Kowalchuk's concern that the Board would prejudice or pre-judge the applications for intervenor status should it determine that the "company dominated" applications should be summarily dismissed. She noted that as in the Board decision in *Re: University of Saskatchewan*[37], the Board should have the assistance of "friends of the Board" to assist it in its consideration of the applications for certification.

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35 *Supra*, Note 8.
36 *Supra*, Note 26.
37 *Canadian Union of Public Employees v. University of Saskatchewan et. al.*, [2001] Sask. L.R.B.R. 475, LRB File No. 154-00.

[87] Mr. Aiken on behalf of his clients adopted the arguments above, and took the view that there was an arguable case and therefore the applications should be dismissed.

[88] He argued that he found it surprising that Employers like Westwood and Tercon would be engaged so actively in defense of their employee's right to be certified by CLAC. He argued that it was his experience that employers usually fought tooth and nail not to be certified.

[89] He concurred with Mr. Kowalchuk's argument that the Board should first determine if CLAC is a trade union before embarking on a determination if CLAC is company dominated. He also concurred that, in his submission, if the allegations in the application for "company dominated" organization and the particulars provided were considered to be true, then there is an arguable case.

Arguments in Rebuttal:

[90] In rebuttal, Mr. Steele, counsel for CLAC argued that none of the Respondent Union's arguments established an arguable case. In response to Mr. Kowalchuk's arguments, he argued that he was using the wrong test and had missed the context of the *SEIU, Local 333 v. Nipawin District Staff Nurses Assn*[38]. He argued that this case was a case involving judicial review, not one dealing with defining what "company dominated" meant.

[91] In that case, the entity which was challenged as being the dominator of the union was the Saskatchewan Registered Nurses Association. That entity was found to be full of management representatives and hence dominated the Union. He argued that Mr. Justice Dixon did not make any express finding in respect to the definition of "company dominated".

[92] He also argued that Mr. Kowalchuk had not referred to the full quotation from the case. He argued that the issue in this case was whether the Board had jurisdiction, not what constituted a "company dominated" organization.

[93] He argued that one could not take the comments by the Board in the *Wal-Mart* case[39] to suggest that the Board should take allegations against an unnamed entity to support that a union was "company dominated". He argued that in *Wal-Mart*, counsel for Wal-Mart identified

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38 *Supra*, Note 17.
39 *Supra* ,Note 12.

the party that allegedly dominated the union. He argued that the Respondent Unions had full control of their pleadings and could have specified the party which they alleged was engaged in domination of CLAC, but they failed to do so.

[94] He argued that Mr. Kowalchuk's criticism of CLAC represented his personal opinions of CLAC as did the report prepared by the Canadian Labour Congress. He noted that Mr. Kowalchuk made no reference to any specific provisions of the *Act*, but was simply critical of CLAC as a trade union.

[95] He noted that CLAC has been recognized as a trade union in numerous jurisdictions, a fact which was also reported in Mr. Kowalchuk's particulars. He argued that in the reply which they filed with the Board, that they specified that CLAC had been recognized as a trade union since the 1960's, which fact was supported by Mr. Kowalchuk's materials. Also, he noted that their reply showed that CLAC had been certified as a trade union in Saskatchewan on numerous occasions and that it had successfully withstood an earlier challenge that it was a "company dominated' organization. He argued that the Respondent Unions were putting forth a grand conspiracy theory to try to create a reverse onus.

[96] He argued that CLAC was active as a trade union in Saskatchewan for many years as noted in the reply which they filed in response to the "company dominated" applications. He noted that they had been unable to represent employees because they had not been listed on the Minister's schedule to *The Construction Industry Labour Relations Act, 1992*[40] ("*CILRA*"). As a result, he argued, CLAC was prevented from representing any employees in the "trade divisions" specified by the Minister pursuant to s. 9 of *CILRA*. He noted that until *CILRA* was amended in 2010, CLAC was effectively estopped from representation of employees in Saskatchewan. Nevertheless, he argued that CLAC maintained some certifications in Saskatchewan during that period.

[97] He also argued that the particulars provided by Mr. Plaxton, Mr., Kowalchuk and Ms. Saxberg were provided by way of letter rather than statutory declaration. As a result, he argued, they should not be considered to be evidence before the Board.

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[40] R.S.S. 1978 c. C-29.11.

[98] With respect to Mr. Plaxton's arguments, he argued that the application had nothing to do with cleaning up the case or seeking further particulars. Rather, he argued, it was a situation where the applications which had been brought by the Respondent Unions did not give rise to an arguable case. As a result, they had moved to have those applications summarily dismissed in accordance with Board practice. He argued that the fundamental issue is whether or not there are allegations, which, if proven, show an arguable case.

[99] He referenced the Board's decision in *Watergroup*[41] where the Board quoted from its earlier decisions in *Saskatchewan Construction Labour Relations Council Inc.*[42] which outlined the requirements of Form 5 of the *Regulations and Forms, Labour Relations Board*[43] to "state clearly and concisely all the relevant facts of the employer and the dates of such acts, relied upon to indicate company domination. Additional materials in the form of Exhibits properly verified by statutory declaration may be included."

[100] He also referred to the Alberta Labour Relations Board decision in *United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry of the United States and Canada, Local Union 488 v. Vikon Technical Services, Ltd., et. al*[44], which he argued articulated a helpful policy explanation for the need for an applicant to provide reasonable particulars in support of his/her application.

[101] He submitted that Mr. Plaxton's reference to the *United Brotherhood of Carpenters and Joiners of America, Local 1985 and Graham Construction et al*[45] regarding pleadings before the Board being based on "information and belief" was taken out of context. He argued that the processes of the Board were different from the processes utilized in the Courts.

[102] He argued that the *Graham* case supported the need for applicants to plead their cases with full particularity. He pointed particularly to the list of particulars ordered by the Board in *Graham*. He also argued that applicants must provide specificity in their allegation. He argued that broad allegations or absurd conclusions, unsupported by evidence, was not appropriate.

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41 *Supra* Note 9 at p. 257.
42 [1982] Oct. Sask Labour Report 487.
43 *Saskatchewan Regulations* 163/72 as amended.
44 Alberta L.R.B. File Nos. L.R. 174-F-11, 174-V-6 and 174-W-19.
45 LRB File No. 014-98 at page 13.

[103] He argued that with respect to the application by Mr. Aitken wherein he swore that no company dominated CLAC was completely defective and should be dismissed out of hand.

[104] Mr. Seiferling, on behalf of his clients replied to Mr. Kowalchuk's argument that it was none of his client's business that CLAC was company dominated. He argued that it was necessary that in the application to the Board to have a union declared to be "company dominated", it was necessary for the Respondent Unions to declare who it was that was dominating CLAC. He asserted that the Respondent Unions, by their applications, had declared his clients to be the entity dominating CLAC.

[105] His position, simply stated, was that he wanted to know how his clients were, in fact, dominating CLAC. That was the reason for the particulars, none of which provided any factual link between his clients as being the entity which was dominating CLAC. He noted that Mr. Kowalchuk in his argument did not even suggest that his clients were involved in dominating CLAC.

[106] He noted that his clients have been named by the Respondent Unions in the "company dominated" applications, but none of the factors which Mr. Kowalchuk argued the Board should take cognizance of, had nothing to do with his clients.

[107] He also argued that the particulars provided by Mr. Kowalchuk and Ms. Saxberg were out of step with the arguments which Mr. Kowalchuk made in respect of the applications for summary dismissal. He noted that with respect to his clients, Westwood and Tercon, the issue was whether or not CLAC resonated with their employees. He noted that the particulars provided noted that CLAC had 38,000 to 43,000 members in Canada. He noted that the employees of his client represented only a small portion of those numbers.

[108] He warned the Board that if the case does not become more focused, it would end up as being a "kitchen sink" case, that is, everything would be thrown in the sink and the Board would be forced to try to sort it out. He argued that should not be required of the Board.

[109] He repeated that his clients had a right to know the allegations against them. His clients requested particulars, and those which were provided, provide no factual connection between his clients and the allegations of company domination. He repeated his request that he

needed to know what his clients had done to become the dominator of CLAC, i.e., what events gave rise to his clients being named as the dominating entity.

[110] In response to Mr. Plaxton's arguments, he noted that none of the particulars provided by Mr. Plaxton provided any evidence or implication that his clients were involved in domination of CLAC.

[111] He argued that Mr. Plaxton's references to Alberta and decisions regarding striking out of statements of claim by Courts were not helpful and the Board should not apply the rules adopted by Courts for striking out statements of claim as the basis for a summary dismissal of a baseless application.

[112] He argued that the application by the Bricklayers was totally deficient and should be summarily dismissed. He argued that the Board should have expected more insofar as the application did not even name any entity as being the entity dominating CLAC. Similarly, the Bricklayers has knowledge of the Board's previous rulings regarding particulars, yet the Bricklayers chose to file an application without any particulars at all.

[113] Mr. Ross made five (5) points in reply:

1. *The Board form used for "company dominated" applications clearly requires that the identity of the entity allegedly dominating the union must be named. It is a stretch to move from specific employees of a specific employer to say that "all employees, or person or persons unknown" are the entity involved in the alleged domination. He noted that Mr. Kowalchuk's arguments were simply "anti CLAC" as distinct from specific to a domination by a particular employer;*

2. *He cautioned the Board that although "factual allegations are to be taken as proven" for the purposes of the application, that the Board must distinguish between facts and hypothesis, conclusions, argument or conjecture. He argued that the facts provided do not support or show domination of CLAC by any of the named employers and certainly not those which he represents. He argued as well that there was no*

circumstantial evidence of anything untoward. No inference of impropriety was raised by the application or the particulars;

3. *He argued that nothing in the particulars advanced by Mr. Kowalchuk and Ms. Saxberg named either of his clients. He argued that those arguments were ideological and had nothing to do with 'company domination". He argued that the applications, coupled with the particulars don't demonstrate what is necessary to demonstrate company domination. What was provided was insufficient to get the applications for company domination off the ground;*

4. *He argued that notwithstanding the Board's assertion that the applications for intervenor status were not being considered, that his clients see a connection between this application and the intervenor applications insofar if the Respondent Unions haven't got enough factual basis for these "company dominated" applications, then it will diminish any argument for intervenor status; and*

5. *He argued that the Respondent Union's arguments were "vague and speculative." He noted that he was unable to prepare for any case against his clients since no definitive allegations had been made against them. He suggested fairness to the parties required that there be some basis for allegations against them. Since none had been plead, the applications should be dismissed.*

[114] Mr. Ross further suggested that any hearing of these allegations in the manner framed by the Respondent Unions would look like or be a circus. He urged the Board to end it now and proceed to hear what the employees want.

[115] Mr. Hunder argued as well that there were no allegations made against his client by Mr. Plaxton and that Mr. Kowalchuk's clients had not made application alleging company domination on LRB File No. 134-10, being the application for certification of the employees of Pyramid Electric by CLAC.

[116] He also cautioned the Board that it must be careful to deal with facts as distinct from conclusions. That is, the Board should look at the adduced facts with respect to how his client allegedly dominated CLAC. He argued when you strip away the non-facts in the particulars provided by Mr. Plaxton, there is nothing that is alleged against his client.

[117] At the conclusion of rebuttal arguments, Mr. Aiken asked for leave to clarify why his application had been made without naming an entity which allegedly dominated CLAC. He advised that he took the position that it was unnecessary to identify the entity allegedly dominating CLAC and asserted that it was sufficient to simply allege that CLAC was "company dominated" presumable by a party or parties unknown.

Background Re: Application for Production of Documents and Things

[118] Mr. Plaxton and Ms. Saxberg, on behalf of their respective clients, filed applications with the Board (LRB File Nos. 173-10, 174-10, 179-10, 180-10, 181-10, 204-10 & 205-10). While directed to the Applicant Employers and CLAC, the applications sought production almost exclusively from CLAC and were identical to the requests made for production.

[119] The applications sought production of a broad classification of documents, which we have summarized as follows:

1. *Copies of Collective Bargaining Agreements, Letters of Understanding, Minutes of Settlement, working agreements or other documents evidencing terms and conditions of employment;*
2. *Copies of correspondence passing between CLAC and the named employer in the application relating to negotiations leading up to any collective agreement, etc.;*
3. *All correspondence, memoranda and other documents between CLAC and the named employer in relation to requests for deployment of employees to the employers worksites in the Province of Saskatchewan;*
4. *All documents and things evidencing activity by the employer or any employer's agent assisting CLAC in obtaining support for union*

membership and/or any applications before the Labour Relations Board, including communications to employees;

5. *All documents and other things evidencing the activity by the employer or any employer's agent promoting or otherwise assisting CLAC…in obtaining support for union membership and/or any applications before the Labour Relations Board;*

6. *All documents evidencing the named employer or any of its agents' involvement in the workings of CLAC, interaction with CLAC with its members or contributing or offering to provide any support or assistance from the employer or any of its agents to CLAC;*

7. *All documents evidencing collaboration or cooperation between CLAC and the named employer or any agent of association acting on its or their behalf to advance the interests of CLAC or interfere with or act to the detriment of bona fide trade unions;*

8. *Copies of all notices of ratification meetings or other meetings held to discuss any proposals, collective agreements or other documents concerning terms and conditions of employment with the named employer;*

9. *Lists of all management personnel who have been present at any meetings held by CLAC or CLAC representatives with employees or the employer and the disclosure of the nature, time and location of said meetings;*

10. *Copies of all and any documents forwarded to members of the proposed collective bargaining unit in relation to representation by them by CLAC in relation to the operations of the named employer;*

11. *Copies of all dispatch slips or related documents in relation to the members of the proposed collective bargaining unit;*

12. *Copies of the constitution and/or bylaws and related documents of CLAC, including Local 11; and*

13. *The above noted requests relate to all documents and things whether created, communicated or received in the Province of Saskatchewan or elsewhere.*

[120] The grounds relied upon by the Applicants were:

> *The above-noted disclosure and production of documents and things is necessary for the applicants to prepare and proceed to hearing in the above noted matter(s) and are further required should the Applicant Unions be required to provide particulars or further particulars of their assertions and pleadings in the within matters.*

[121] It was agreed by the parties and confirmed by the Board that these applications would be heard by the Board following the hearing of the applications by the Applicant Employers for summary dismissal of the "company dominated" applications by the Respondent Unions.

Arguments of the Parties Re: Application for Production of Documents and Things

[122] Mr. Plaxton, on behalf of his clients, provided the main argument with respect to this application. Ms. Saxberg concurred with his arguments and indicated, in the absence of Mr. Kowalchuk, that he had asked her to advise the Board that he also concurred in these arguments on behalf of his clients.

[123] He argued that these were important cases in which all parties should have a proper opportunity to have a fair hearing with all issues brought forward. He also argued that an order for production of documents and things should precede any determination of the within applications for summary dismissal.

[124] He argued that both matters and procedures before the Board are becoming more complex. He argued that easy simple hearings are becoming rarer. He argued that the Board did not, in its regulations, have an elaborate pre-hearing production process and argued the Board should establish rules whereby pre-hearing production of documents should be mandated.

[125] Mr. Plaxton noted that the *Act* was amended in 2005 to allow the Board to require "any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing". He noted that prior to the amendment the Board ordered pre-hearing production sparingly. He argued that this new authority was a broad power, one which he was not asking the Board to abuse, but rather to use the power which it was granted to order production in this case.

[126] He argued that the documents which his client sought could have previously been compelled by *subpoena duces tecum*, but he argued that production, pre-hearing was more appropriate. He cited in support for his arguments the Board's decision in *International Brotherhood of Electrical Workers, Local 2038, Applicant v. Sun Electric (1975) Ltd., Alliance Energy Limited and Mancon Holdings Ltd.*[46]. He argued that the Board should adopt the factors outlined by the Canada Board in its decision in *Air Canada Pilots Association v. Air Canada et al.*[47]

[127] He argued that pre-production would allow definition to the hearing and provide focus to the matters to be addressed by the Board. He argued that this was not a "fishing" expedition, nor should the Board be concerned that this would create a "floodgates" scenario where pre-hearing production would become the norm rather than the exception. He argued that the documents requested were specific and related directly to the issues before the Board.

[128] Mr. Plaxton pointed to the Board's decision regarding particulars in *Graham Construction*[48] and argued that the Board should favour the approach taken by it in the Sun Electric case.

[129] He argued that all of the documents etc. requested by way of this application was specific and relevant and directed to the parties involved. In that regard, he argued that the information regarding deployment of employees by CLAC, the promotion of CLAC by the employers, any assistance given to CLAC with respect to gaining support of employees, any financial support or other assistance given, and if CLAC and the Applicant Employers were collaborating and cooperating were relevant and specific.

[130] He argued that this was the proper time and place in the proceedings to order production of documents, that is, before the pleadings are closed. He argued that the Board will have to deal with the issue of whether CLAC is a "company dominated" organization and this information will be required for that determination.

[131] He argued that the Board processes regarding pre-hearing production were truncated or incomplete and therefore pre-hearing production was necessary in this case.

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46 [2002] Sask. L.R.B.R. 362, LRB File No. 216-01.
47 [1999] C.I.R.B.D. No. 3 at para [28].
48 *Supra*, Note 37.

[132] He argued that this was a 'beachhead". CLAC was coming into the Province of Saskatchewan and the client's he represented, which were the craft unions particularly impacted, felt hearings were essential to be held.

[133] He also argued that there was nothing to preclude further applications for production of documents or things under the provisions of the *Act.* He argued that his clients (and those clients represented by Ms. Saxberg by association) were seeking Orders which were appropriate in the circumstances of this case.

[134] Mr. Seiferling, on behalf of his clients, argued that this application was premature. He argued that the Board should first determine whether or not it would grant the applications for summary dismissal of the "company dominated" applications. He relied upon the Board's decision in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Watergroup Companies Inc*[49] as authority for his proposition that it was up to the Board to determine which issues it would deal with and in what order.

[135] He argued that until the Board focuses the case through by determination of the applications for summary dismissal, it would be difficult, if not impossible, to know what documents would be considered to be relevant to the proceedings before the Board. He argued that the Applicant Employers and CLAC can't tell what is broadly relevant arguing his clients would be prejudiced in having to make wholesale production of documents.

[136] He argued that the applications are focused on issues yet to be determined by the Board. He noted that the approach being taken by the Board in respect of this matter was to "peel the onion" and to remove one layer of issues at a time to reduce complexity.

[137] He argued that he took a different view from Mr. Plaxton and Mr. Kowalchuk regarding the cases they had cited. He argued that the Board can not order particulars before the Applicant Employers and CLAC know the case which they are expected to meet. He noted that the request for production of documents and things was seeking these documents and things, for use in the certification proceedings where the Respondent Unions had not yet been granted status to appear in respect of those matters.

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[49] *Supra*, Note 33.

[138] Mr. Ross also argued that the applications were premature. He argued that if the Board accepts the Applicant Employers and CLACs arguments regarding summary dismissal, then there is nothing to order particulars in respect.

[139] He argued that similar arguments had been dismissed by the Canada Board in *den Boer v. Teamsters Local 938*[50]. That case, Mr. Ross argued, was authority for his position that in order to get an Order for production of documents, a case must first be shown to exist. He also cited arbitral authority from this province in *University Employees' Union, C.U.P.E. Local 1975 v. University of Saskatchewan.*[51]

[140] He also argued that the application requested production of documents from non-parties to the applications for certification or the "company dominated" applications. He argued that it was inappropriate to require production by non-parties.

[141] He noted that the requests were "open-ended", that is, there were no temporal limitations nor any geographic limits on what was requested which made it extremely difficult to determine what might or might not be relevant. He argued that the jurisprudence was clear that such requests for production were not to be a "fishing" expedition as was noted by the Board in *Sun Electric*[52]. In support, he also cited *McLeod v. C.U.P.E. Local 3766*[53].

[142] Mr. Hunder argued that the application was nothing more than a "fishing" expedition. He argued that this was a "chicken and egg" situation where the scarcity of the particulars provided belie a weak case. He argued that if there was no arguable case found by the Board then this application should go no further. He argued that the Respondent Unions were simply dropping a line in the water hoping a fish would swim by and get caught on the hook.

[143] Mr. de Groot on behalf of CLAC echoed the concerns of other counsel that the application was premature. He argued that the Respondent Unions were arguing the reverse of what should happen. Rather than providing particulars in respect of their applications respecting CLAC being "company dominated" they are telling the Board, in effect, we have nothing, but we

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50 [2006] Carswell Nat 5549, 138 C.L.R.B.R. (2nd) 938.
51 [2005] Carswell Sask 622, 139 L.A.C. (4th) 18 (Pelton).
52 *Supra*, Note 38 .
53 2010 CanLII 4982 (SK L.R.B.), LRB File No. 015-07.

want the Applicant Employers and CLAC to give us the information we need to help us prove our case.

[144] He quoted from the *Air Canada* case[54] as authority for his argument that this process should not be intended to enable a party complainant to determine whether it has a case or not.

[145] He also argued that the Board should not condone a "fishing" expedition and cited in support the *Air Canada* case[55] and the *Sun Electric* case[56].

[146] He argued that without clarity of the scope of the *lis* between the parties, the Applicant Employers and CLAC can't know relevance of the documents that they are asked to produce. He noted that the application provided no dates, no persons whom the documents related to, and no "what" was to be produced.

[147] He noted that reference was made to the Progressive Contractors Association, a stranger to the proceedings. He also noted that the National organization of CLAC was not a party to the proceedings and that production was requested from them as well.

[148] In rebuttal, Mr. Plaxton, noted that the *Air Canada*[57] decision was with respect to production of documents by *Subpoena duces tecum*, in the middle of a hearing, not a case where production of documents was requested at an early stage of the proceedings.

[149] Mr. Plaxton further argued that they were not seeking an Order for production against the Progressive Contractors Association, but that they do want documents where the parties to these applications have engaged with the Progressive Contractors Association, arguing that the Progressive Contractors Association is, in his client's view, the employer's agent.

[150] He argued that the application was not premature, but rather was made to allow the parties to advance their applications to the Board.

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54 *Supra*, Note 39.
55 *Supra*, Note 39 at para 21, 28 & 33.
56 *Supra*, Note 38 at p. 4.
57 *Supra*, Note 39.

Relevant Statutory Provisions:

[151] The relevant provisions of *The Trade Union Act* are as follows:

> *2 In this Act:*
>
> *(e) "**company dominated organization**" means a labour organization, the formation or administration of which an employer or employer's agent has dominated or interfered with or to which an employer or employer's agent has contributed financial or other support, except as permitted by this Act;*
>
> . . .
>
> *(j) "**labour organization**" means an organization of employees, not necessarily employees of one employer, that has bargaining collectively among its purposes;*
>
> . .
>
> *(l) "**trade union**" means a labour organization that is not a company dominated organization.*
>
> . . .
>
> *18. The board has, for any matter before it, the power:*
>
> . . .
>
> *(b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing;*
>
> . . .
>
> *(p) to summarily dismiss a matter if there is a lack of evidence or no arguable case;*
>
> *(q) to decide any matter before it without holding an oral hearing;*

Decision: re: Summary Dismissal:

[152] For the reasons that follow, the applications by Applicant Employers and CLAC are allowed and the applications by the Respondent Unions to declare CLAC to be a "company dominated" union are dismissed pursuant to s. 18(p) of the *Act*.

Context in which the Applications are brought

[153] Before embarking on the reasons for the decision in this matter, we believe that it will be helpful to outline some of the background to these applications which, while not evidence, is important to understand the context in which the applications have been brought to the Board.

[154] On March 3, 2009, the Government of Saskatchewan introduced Bill 80, which was a Bill to amend the provisions of *CILRA*. That Bill and the provisions it sought to enact were vigorously opposed by some groups and trade unions and warmly embraced by others.[58] The Bill received second reading in the Legislative Assembly on May 5, 2009 and was referred by the Assembly to the Legislative Committee on Human Services for review. That committee held public hearings with respect to the Bill and thereafter reported back to the Assembly regarding those consultations. The Bill was given 3rd reading on May 19, 2010 and was assented to by the Lieutenant Governor on May 20, 2010. The amendments were proclaimed effective July 1, 2010.

[155] There was strong opposition from trade unions and their members to Bill 80. A vigorous campaign against the passage of the Bill was undertaken by some of the Respondent Unions in this case, as well as by other members of society.

[156] On June 10, 2009, The Communications, Energy and Paperworkers Union of Canada ("CEP") made application[59] for certification of the employees of J.V.D. Mill Services Inc. As a part of that application, CEP brought forward a Constitutional question regarding the validity of the *CILRA* in light of Section 2(d) of *The Canadian Charter of Rights and Freedoms*[60]. As a result of that application, many, if not all of the Respondent Unions in this case, applied for and were granted intervenor status with respect to the Constitutional question before the Board.

[157] However, following the proclamation of Bill 80, CEP, advised the Board that it was withdrawing its application for certification and the resultant Constitutional question and filed a fresh application[61] to the Board for certification to represent the employees of J.V.D. Mill Services Inc. A decision has been rendered by the Board granting certification to CEP.[62]

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58 See Hansard reports of the Legislative Committee on Human Services.
59 LRB File No. 058-09.
60 *Constitution Acts, 1867 to 1982.*
61 LRB File No. 087-10.
62 [2011] CANLII 2589.

[158] Certain of the Respondent Unions in this case also applied for and were granted limited intervenor status in respect of the second application by CEP. What was at issue for those unions was the changes to the *CILRA* which CEP argued would permit non craft trade unions, such as CEP, to obtain certification for an "all employee" bargaining unit in the construction industry, which prior to the amendments in Bill 80, would not have been permitted, since the *CILRA* required sectoral bargaining by craft, as defined under ministerial regulation.

Analysis: re: Summary Dismissal

[159] All of the parties were in agreement, and the Board concurs, that the test to be applied with respect to these applications for summary dismissal was outlined by the Board in *Re Soles*[63]. Simply stated, that case set forth the following test:

1. *Has the applicant in the material which it has filed, established an arguable case?*

2. *If not, is this an appropriate case to summarily dismiss the applicant's application without an oral hearing?*

[160] In Form 5 in the regulations to the *Act*, paragraph 6 makes it clear that the applicant is to "state clearly and concisely all of the relevant facts of the employer and the dates of such acts, relied upon to indicate company domination". This requirement is more than a mere direction or suggestion to the parties, but rather gives rise to a requirement that the applicant properly complete the form and, in doing so, provide facts in support of the application.

[161] The original applications were determined by Vice-chairperson Schiefner to "contain little more than a bare allegation and no supporting facts. As such they are in violation of the procedural expectations of the Board and stand vulnerable to an application for summary dismissal".[64] Vice-Chairperson Schiefner went on to say in that same paragraph "[A] party against whom a complaint or application is made should be able to read the applicant's pleadings and get a clear understanding of when, how and by whom, the *Act* was alleged to have been violated..."

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63 *Supra*, Note 8

64 LRB File No. 162-10, 163-10 & 164-10 (November 10, 2010) at para 35

[162] In *P.A. Bottlers Ltd*[65]., the Board alluded to its earlier comments in the *WaterGroup* case[66] and placed those comments in the context of other factors which must also be considered by the Board, at 251:

> *The Board has thus made it clear that it is necessary for an applicant to state with some precision the nature of the accusations which are being made, both in terms of the specific events or instances of conduct which are considered objectionable, and of the provisions of the Ad which have allegedly been violated. The Board has linked this requirement with the capacity to provide a fair hearing to a respondent.*
>
> *On the other hand, the Board must balance the requirement for a fair hearing with other values which are also of pressing importance to the Board, including those of expedition in the hearing of applications, and maintaining relative informality in Board proceedings. Whatever might be the case in a civil court, the nature of the proceedings before this Board cannot accommodate extensive pre-hearing or discovery processes without running the risk that the ability to respond in a flexible and timely way to issues which arise in the time-sensitive context of industrial relations will be seriously impaired.*
>
> *We do not interpret the requirement for the provision of sufficient particulars, in any case, to contemplate a complete rehearsal of evidence and argument in the exchange between the parties prior to a hearing. What is necessary is that an applicant make it clear what conduct of the respondent is the subject of their complaint, and how this conduct, in the view of the applicant, falls foul of the Act. In assessing the degree to which an applicant has met this requirement, the Board must be guided not only by our desire to ensure a fair hearing, but by the demands placed upon us by the objectives of efficacy and timeliness in our proceedings.*

[163] In addition, the Alberta Labour Relations Board, in the case of *Vikon Technical Services*[67], *supra*, articulated a helpful policy explanation for the need for an applicant to provide reasonable particulars in support of his/her application:

> *Before turning to the particulars given in this case it is useful to make some general observations on the need for particulars in applications, before this Board. When a party commences an application or complaint before us they must give particulars of what they are applying for, or why they are complaining. What this means is that in their initial correspondence they should set out in plain English a set of allegations of fact which, if accepted as true, would establish that the section of the Act in question may apply, or have been violated. They are not required to prove their allegations in the initial application, they must just make them. It is not enough to recite the section in question and then say some other person has violated it. The Board, when reading a complaint, should get a clear understanding of when, how, and by whom, the Act was violated. When receiving an application the Board should get a clear understanding of how the facts alleged justify the use of the section of the Act referred to, and justify the granting of the order or remedy sought.*

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65 *Supra* Note 11
66 *Supra* Note 9
67 Alberta LRB File Nos. L.R. 174-F-11, 174-V-6 and 174-W-19.

> *This requirement for particulars is not a request for a "legalistic" approach. A layman, reading a complaint or application should be able to get a clear understanding of what the matter is about and why the Board is being asked to use its powers. Most sections in the Labour Relations Act are not complex. The particulars should make it clear why the facts referred to make the section or sections of the Act applicable. This is not an onerous task. Applications that lack these basic particulars will not be accepted initially, and will not be processed further.*
>
> *We insist on particulars in order to ensure fairness to all parties. We have broad powers given to us by the Legislature. The exercise of these powers may cause major inconvenience to the party complained against. Answers must be given, officer's investigations cooperated with, records that would otherwise be confidential disclosed, hearings attended, and lawyers sometimes retained. We will only enter into or continue this process when there is an allegation that, if true, would lead us to believe that the legislation might apply or have been violated. If an applicant cannot even allege facts that would, if proven, result in a Board order or remedy, then there is no justification for the process being started.*

[164] The requirement for facts that raise an arguable case is, as noted above, not an onerous task. It is, however, a necessary procedural requirement of proceedings before the Board. A party against whom a complaint or application is made must be able to read the applicant's pleadings and, by that reading, get a clear understanding of when, how and by whom, the *Act* was alleged to have been violated and why the Board is being asked to exercise its powers.

[165] As pointed out by Vice-chairperson Schiefner in his decision regarding the review of the Executive Officer's order requiring the applicants to provide particulars in relation to their application, "If an applicant is unable to allege facts that could, if proven, result in a Board Order or remedy, then there is little (arguably no) justification or utility in an application proceeding further". It was clear from that decision that the applications, on their faces, were flawed. As noted above, in response to the Executive Officer's Order, particulars were provided by some of the parties to supplement their applications.

[166] On many occasions, the Board has stated that it does not at this stage assess the strengths or weaknesses of the Applicant's case, but simply seeks to determine, based on the application and/or written submissions filed (in this case the particulars) discloses facts that, if proven, would form the basis of a violation of the *Act*.[68]

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68 See *Soles*, *supra* Note 8, *Re: Lalonde*, [2007] Sask. L.R.B.R. 201, 138 C.L.R.B.R. (2nd) 63, LRB File Nos. 098-05, 099-05 & 100-05.

Analysis of Particulars provided by Mr. Kowalchuk and Ms. Saxberg

[167] In response to the Executive Officer's Order, as confirmed by the decision of the Board on November 10, 2010, Mr. Kowalchuk and Ms. Saxberg filed particulars by letter dated October 7, 2010. Attached to that letter was a report prepared by the Canadian Labour Congress dated February, 2008. In addition, the letter referenced collective agreements which were not provided. The letter also made the following points:

> *4. The Employers in these applications are from Alberta, are based in Alberta and have a pre-existing relationship with the Respondent prior to the certification applications filed by CLAC in Saskatchewan with these Employers.*
>
> *5. As a result of point 4. above, the Employers already have in their possession and knowledge the details of the pre-existing relationship they have with the Respondent to a far greater extent than the Applicants have including: when the Employer first had contact with the CLAC; all verbal and written communications between them; the agreements and letters of understanding between them; and the names of employees of the Employers and how they were hired.*
>
> *6. The Applicant will be relying upon the constitution, by-laws, history, collective agreements and general anti-union and anti-democratic conduct of CLAC in establishing its nature as a company dominated organization, an organization which permits employers generally, including the Employers to "dominate" them contrary to law.*
>
> *7. None of the particulars mentioned in point 6. above were ordered nor requested and they form the substantive aspect of the evidence we intend to rely upon in our Applications.*
>
> *8. We are not aware of any information already in the possession of the Employer which we can provide particulars upon that would be better than that which the Employer already knows.*
>
> *In summary, it is our allegation that CLAC is inherently, ideologically and historically company dominated and/or not a trade union.*

[168] Thereafter, the particulars provided what Mr. Kowalchuk's clients and Ms. Saxberg's client considered to be examples which demonstrated that CLAC was "company dominated".

[169] The underlying thesis of their arguments was that CLAC was not a proper trade union. That is, it did not subscribe to the basis principles of trade unionism which, in their view,

demonstrated that they were either an "inferior union" or were a "sweetheart union" to the Applicant Employers in this case.

[170] The *Overview of CLAC's History and Philosophy* which Mr. Kowalchuk and Ms Saxberg provided as a part of their particulars is illuminating. No author for this paper is noted, however, it is purported to have been prepared by the Canadian Labour Congress in February of 2008. It is subtitled "An Overview of an "Employer-Accommodating Pseudo Union".

[171] The paper provides background with respect to the formation and growth of CLAC. It notes, based on figures provided by Human Resources and Skills Canada (HRSDC) from 2006, that claims made by CLAC that it is the fastest growing union in Canada is a "plausible" claim. It notes as well that CLAC has experienced a 150% increase in membership over the 9 years between 1997 and 2006.

[172] It notes that CLAC has membership in British Columbia, Alberta, Ontario, Manitoba, and the Northwest Territories. It states that CLAC has members in the "construction, transportation, and health care sectors, with smaller, but increasing membership in hospitality manufacturing and food services." It also says that CLAC is a national organization made up of affiliated locals serviced from regional offices.

[173] It notes that CLAC has a different philosophy to that taken by what might be termed more traditional trade unions (or as Mr. Kowalchuk referred to them as "socially democratic" trade unions). The author notes that CLAC "openly advocates an 'alternative approach' to labour relations and has been railing against 'traditional trade unions' for decades".

[174] The paper argues that CLAC is "undemocratic" and not a "real" trade union. This analysis, however, is bereft of factual analysis and relies mainly on arguments on how CLAC operates versus how other traditional trade unions operate.

[175] The paper attempts to link CLAC with other organizations such as the Christian Reformed Church, the Work Research Foundation, Merit Contractors Association, Canadian Christian Business Federation, Christian Stewardship Services, Citizens for Public Justice, and Christian Colleges, as being like minded organizations. The link between CLAC and those organizations and any link to the Applicant Employers is not established by reference to this paper.

[176] The paper notes that CLAC "rejects the adversarial, confrontational approach that dominates in labour relations and prides itself on having had only 5 strikes in its entire 55 year history". This was a factor alluded to as well by Mr. Kowalchuk in his argument which suggested that one of the criteria this board should use to determine if an organization was a labour organization was by reference to its militancy.

[177] The paper also argues that CLAC takes a different approach with respect to how it organizes and how it represents employees. It points to the use of "voluntary recognition agreements", long term agreements, "inoculation" from raids, early detection and penalties for breaking ranks, early renewal of collective agreements, and other tactics.

[178] From a close reading of this paper, it is obvious that it is not an objective analysis, but rather one written from the perspective of the Canadian Labour Congress. It represents little more that an op-ed piece outlining the CLC's view of CLAC. Much of what is written is argument, speculation, hypothesis or opinion.

[179] More importantly, there is nothing in the material presented which in any way ties the Applicant Employers and CLAC together to in any way suggest that the Applicant Employers in any way dominate CLAC.

[180] In paragraph 178, *supra*, we outlined other allegations made by Mr. Kowalchuk and Ms. Saxberg in the provision of particulars. However, these allegations are as unexacting as the original allegations contained in their applications claiming that CLAC was a "company dominated" organization.

[181] Point 4 makes an allegation that the Employers are from Alberta. That may be a fact. It also alleges that they are based in Alberta, which may also be a fact. It alleges that the Employers have a "pre-existing" relationship with CLAC. Again, this may be the fact as may be the fact that that relationship pre-dated the certification applications. Those facts, in and of themselves, do not show or even point towards "company domination". Such a set of facts is not unusual in the construction industry where it is often the case that a contractor from another jurisdiction may have a relationship with a trade union in that other jurisdiction.

[182] Point 5 then tries to make the point that somehow this prior relationship must have been tainted, and therefore, once that taint is hypothesized, albeit without facts in support, then that taint must be considered to exist and the knowledge of that tainted relationship is within the knowledge of the Applicant Employers and CLAC and they should be called upon to prove it not to be the case. With respect, we cannot agree with this argument.

[183] Point 6 is again, an allegation not rooted in fact. It would require the Board to accept as proven, the hypothesis outlined in the paper produced by the Canadian Labour Congress, which, as noted above, is not fact based, but based on conjecture, hypothesis, speculation and opinion.

[184] Point 7 is argument. Point 8 suggests that the Applicant Employers have all of the information necessary to know in what way they dominate CLAC.

[185] In their applications, in the particulars which they filed in response to the Executive Officer's Order, and the arguments made, do not support any basis upon which this Board could find that CLAC was dominated by any of the Applicant Employers.

[186] The Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, the Saskatchewan Building Trades Council, and the Saskatchewan Government and General Employees Union have failed to demonstrate an arguable case. Their applications are accordingly subject to dismissal pursuant to section 18(p) of the *Act*.

[187] Mr. Plaxton, on behalf of his clients took a somewhat different tack from Mr. Kowalchuk and Ms. Saxberg. His approach was, in essence, to plead that his clients were not privy to the dealings between the parties and that all of the necessary information was within the knowledge of the Applicant Employers or CLAC. Furthermore, he suggested that he required further information from the Applicant Employers and CLAC which would support his allegations.

[188] In the response to the Executive Officer's Order by Mr. Plaxton's clients, the particulars provided were allegedly set out in paragraph 9 (a) to (bb). However, a close review of those paragraphs reveals that there is little by way of factual assertion contained in those paragraphs.

[189] Paragraph 9(a) is an assertion on behalf of Mr. Plaxton's clients. The only fact contained in that paragraph is that "CLAC appears to be active in a number of different sectors, including the construction industry". This is consistent with the CLC analysis set out above.

[190] Paragraph 9(b) is conjecture and assertion.

[191] Paragraph 9(c) is assertion except for the first sentence. There is nothing to connect the fact that staff members may be appointed rather than elected to the Applicant Employers or to show how this may be the result of the Applicant Employers dominating CLAC.

[192] Paragraph 9(d) talks about the number of strikes conducted by CLAC. There is nothing to connect the fact that there are limited strikes to the Applicant Employers or to show how this may be the result of the Applicant Employers dominating CLAC.

[193] Paragraph 9(e) speaks to the manner in which CLAC represents its members. There is nothing to connect how CLAC represents it members to the Applicant Employers or to show how this may be the result of the Applicant Employers dominating CLAC.

[194] Paragraph 9(f) references alleged incidents which occurred outside the jurisdiction of this Board. The paragraph states that Mr. Plaxton's clients "believe" that employers also meet with employees of the Applicant Employers in Saskatchewan. However, there are no specifics with regard to either the purported meetings in Alberta, or those which they suspect are occurring in Saskatchewan. There are only passing references to employees of employers working in Fort McMurray and that Westwood Electric Ltd. and Canonbie Contracting Limited also worked in Fort McMurray and we are invited to draw the conclusion that these Employers should be guilty by association with unknown persons, engaged in unknown activity, for an unknown purpose.

[195] Paragraph 9(g) puts forward a number of facts regarding hiring halls and voluntary recognition agreements, but draws no conclusion nor points to any activity by the Applicant Employers or CLAC regarding company domination.

[196] Paragraph 9(h) again makes factual allegations but they remain unconnected to any activities of the Applicant Employer or CLAC regarding company domination.

[197] Paragraph 9(i) asserts that CLAC provides inferior representation to its members than do traditional trade unions. There is nothing to connect how CLAC represents its members to the Applicant Employers or to show how this may be the result of the Applicant Employers dominating CLAC.

[198] Paragraph 9(j) alleges that the Applicant Employers are members of the Progressive Contractor's Association of Canada. It also alleges that CLAC has been "a sponsor and/or participant at a number of open shop conferences". Even if proven to be true, these statements do not support a finding that the Applicant Employers dominate CLAC.

[199] Paragraph 9(k) makes allegations with respect to a meeting between CLAC and the Progressive Contractors Association of Canada held on February 1, 2006 "apparently to discuss collaboration with employers to assist employers in avoiding certifications by the bona fide building trades". It would be tenuous at best to suggest that this meeting, even if it were proven to have occurred, could in any way have contemplated the repeal of the Building Trades monopoly on representation under the *CILRA* under a newly elected government in Saskatchewan and the subsequent filing of the applications for certification of these employers in Saskatchewan by the Applicant Employers. Even if the Applicant Employers were members of the Progressive Contractors Association of Canada, and this meeting had occurred in 2006, there is nothing to show that the Applicant Employers dominated CLAC.

[200] Paragraphs 9(l) and (m) purportedly link the Progressive Contractors Association of Canada and CLAC through Co Vanderlaan a former employee of CLAC who is now employed by the Progressive Contractors Association of Canada. Even if proven to be true, these facts do not show any linkage between the Applicant Employers (albeit they may be members of the Progressive Contractors Association of Canada) as dominating CLAC.

[201] Paragraphs 9(n) & (o) refers to alleged misconduct on the part of CLAC and an unnamed employer or employers in an Alberta case cited as *Firestone Energy Corp.*[69] . That case involved a re-assessment by the Alberta Labour Relations Board of its previous jurisprudence which allowed that parties could, in appropriate circumstances, negotiate away the statutory open period. In re-assessing its previous jurisprudence, the Alberta Board determined that there was a public interest in stable, certain, publicly known open period and the competition

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[69] [2009] Alberta LRBR. 134

for bargaining rights during these open periods supported the finding that the parties cannot, by negotiation, close the statutory open period.

[202] The suggestion in paragraph 9(n) & (o) is that CLAC or the employer in that case were acting improperly. To the contrary, the employer and CLAC were acting in accordance with long standing jurisprudence in Alberta. The Board, however, determined, as noted above, that it should change that long standing jurisprudence to allow for competition to occur for bargaining rights.

[203] Paragraph 9(p) and (q) are also of little assistance. Nor do they in any way point to conduct on the part of the Applicant Employers to dominate CLAC.

[204] Paragraph 9(r) references the Alberta LRB decision in *Vertex Construction Services Ltd.*[70]. That decision dealt with the effect of a voluntary recognition agreement which purported to cover employees who were the subject of a certification application by another union. The Alberta Board in that case declared the agreement to be of no force and effect.

[205] It is difficult to understand how the facts of this case have any relevance to or bearing on the issues before the Board in this matter. Furthermore, there is no connection (apart from CLAC being involved in Alberta) to any aspect of "company domination" of CLAC by the Applicant Employers.

[206] Paragraph 9(s) refers to another decision of the Alberta Labour Relations Board and the Court of Queen's Bench of Alberta in reviewing that decision[71]. This case dealt with the previous policy of the Alberta Board to permit parties to change the open period by renegotiation, which policy was upheld by the Alberta Court of Queen's Bench on review. As such, it is not relevant to the matters under discussion in this matter, nor is there any factual connection suggested which would show that the Applicant Employers thereby dominate CLAC.

[207] Paragraph 9(t) outlines offices of CLAC across Canada. Even if shown to be true, the locations of these Canadian Offices do not give rise to an arguable case that CLAC is somehow dominated by the Applicant Employers.

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70 [1999] Alberta LRBR, 183
71 [2004] Alberta LRBR, 487

[208] Similarly, paragraph 9(u) lists the offices of the Applicant Employers. Even if shown to be true, the locations of these offices do not give rise to an arguable case that CLAC is somehow dominated by the Applicant Employers.

[209] Paragraph 9 (v) is speculation without factual basis. Paragraph 9(w) is the same. Paragraph 9(x) invites the Board to speculate the alleged indiscretions outlined with respect to CLAC will somehow be repeated in Saskatchewan and should lead us to conclude (or at least raise an arguable case for) company dominance of CLAC.

[210] Paragraph 9(y) is hypothesis and draws a conclusion rather than asserting facts.

[211] Paragraph 9(z) admits that there is no direct evidence of the Employer's domination of CLAC, but postulates that indeed, that evidence is known to the Employers and CLAC and that they allegedly had colluded to bring forward the certification applications.

[212] Paragraph 9(aa) asserts that a voluntary recognition agreement likely exists between some or all of the Applicant Employers and CLAC covering the employees for which a representation certificate is requested. Even if proven to be the case, this does not amount to an arguable case of company domination.

[213] Paragraph 9(bb) is speculation and assertion only. It echoes the general assertions contained in the original application and provides no further factual basis, which if proven to be true could give rise to a determination of that CLAC is "company dominated".

[214] As was the case with the applications by Mr. Kowalchuk's clients and Ms. Saxberg's client, the application and particulars provided do not give rise to an arguable case and those applications are accordingly subject to dismissal pursuant to section 18(p) of the *Act*.

[215] The applications by the CUPE and the Bricklayers are easily dealt with. Neither of these parties provided any particulars to their applications which mimicked the applications already filed by the other parties hereto, notwithstanding that in each case they had knowledge of

the Executive Officer's Order in relation to provision of particulars and the Board's decision[72] upholding the Executive Officer's Order. As noted in the Board's decision in upholding the Executive Officer's Order, at paragraph 35:

> *We agree with the positions advanced by both the Respondent Employers and CLAC that the "company-dominated" applications filed by the Applicant Unions cry out for particulars. They contain little more than a bare allegation and no supporting facts. As such they are in violation of the procedural expectations of the Board and stand vulnerable to an application for summary dismissal.*

[216] In the face of these explicit comments from the Board, neither CUPE, nor the Bricklayers did other than make a half hearted attempt. CUPE did not even appear in respect of its application. In addition, the Bricklayers made no allegation that anyone was the entity dominating CLAC, arguing that it was someone unknown. Such an allegation, given the serious nature of the allegations contained in such a claim is disingenuous at best. It would be difficult, if not impossible for anyone to be able to prepare for a case where the protagonist responsible for the domination is unknown.

[217] However, while those flaws are, in and of themselves fatal to the applications by CUPE and the Bricklayers, even if the particulars filed by the other parties had been incorporated with their filings, for the reasons set out above, those applications are accordingly subject to dismissal pursuant to section 18(p) of the *Act*.

[218] Notwithstanding that the applications do not give rise to an arguable case, the Board must then consider whether or not this might be an appropriate case whether it should exercise its discretion to summarily dismiss the applications without an oral hearing.

[219] In *Soles*[73] the Board also considered this question and its authority to dismiss an application without an oral hearing. In considering the question, the Board quoted with approval excerpts from the Canada Labour Relations Board decisions in *Kelly v. Amalgamated Transit Union, Local 1415, and Greyhound Canada Transportation Corp.*[74] and *McRae Jackson*[75].

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[72] *Supra* Note 56
[73] *Supra* Note 8
[74] [2002] CIRB No. 202
[75] *Supra* Note 10

[220] At paragraph [36] of *Soles*, the Board referenced an excerpt from *Kelly* regarding the Board's powers to decide any matter before it without an oral hearing, at p. 10 as follows:

> *...to provide a broader discretion to the Board and to allow it to reduce the time required and the expense of deciding any matter, where this is appropriate...*
>
> ...
>
> *[24] Under section 16.1 of the Code, the Board is required to carefully consider the facts and circumstances before it, and if the Board determines it is appropriate to decide a matter on the basis of written submissions before it, it may do so (see Chislaine Gagne, [1999]CIRB no 18; Raynald Pinel, [1999] CIRB no. 19; Anne Marie St. Jean, [1999] CIRB no 33; Greater Moncton Airport Authority Inc., [1999] CIRB no. 20; and Royal Aviation Inc. [2000] CIRB N. 69). In many cases, therefore, after considering the matters in issue, the available evidence and other relevant factors, the Board will decide the matters before it based on written submissions only.*

[221] In this case, the Board did more than simply rely upon the written submissions of the parties. It provided a hearing at which additional arguments could be made in respect of the application now under consideration, that the Board summarily dismiss the Respondent Union's applications that CLAC is a "company dominated" organization.

[222] Again, in *Soles*, the Board quoted, with approval, the decision of the Canada Board in *McRae Jackson* in respect of the Board's powers to summarily dismiss at pp. 16 & 17 as follows:

> *[49] The Board is an independent and adjudicative body whose role is to determine whether there have been violations of the Code. Although the Code gives the Board broad powers in relation to any matters before it, it is not an investigative body. Accordingly, it is not mandated to go on a fact-finding mission on behalf of the complainant, to entertain complaints against the employer for alleged wrongs suffered in the workplace. Employees who allege that their union has violated the code and wish to obtain a remedy for that violation must present cogent and persuasive grounds to sustain a complaint.*
>
> *[50] A complaint is not merely a perceived injustice; it must set out the facts upon which the employee relies in proving his or her case to the Board. A complaint goes beyond merely alleging that the union has acted in "a manner that is arbitrary, discriminatory or in bad faith." The written complaint must allege serious facts including a chronology of events, times, dates and any witnesses.*

> *Copies of any documents which are relevant, including letters from the union justifying its actions or decisions, should be used to support the allegations.*

[223] As noted in the excerpt from the Kelly decision, one of the rationales that the Board will rely upon in the exercise of its power of summary dismissal is "to reduce the time required and the expense of deciding any matter". Board resources are a precious resource and are not unlimited. Nor are the resources of parties to these applications. The Applicant Employers complain that they have been dragged into a dispute between CLAC and the Applicant Unions which is political in nature and does not and, (they submit) should not involve them. They argue that by being dragged into this dispute they are forced to expend resources to disprove allegations which they argue have no merit. They argue that to continue to face unfocused and allegations which have no basis in fact, requires them to expend resources unnecessarily. Hence, they argue that the applications that CLAC is dominated by them should be summarily dismissed.

[224] The Board will also exercise its authority to summarily dismiss applications where they are frivolous or vexatious in nature or which are designed an abuse of process, such as one which would have the effect of frustrating the rights granted pursuant to the *Act*.

[225] The applications by the Respondent Unions also overlook several significant points. This Board has previously determined a similar application which alleged that CLAC was a "company dominated" organization[76]. In that case, at p. 70 the Board says:

> *Counsel for the intervenor submits that CLAC is a company dominated organization because the employer negotiated the terms and conditions of a collective bargaining agreement with CLAC before voluntarily recognizing it, and because the employer told the Iron Workers Union that it would likely be supplying iron workers for the project.*
>
> *The Board has no hesitation in finding that those circumstances do not justify a finding that CLAC is a company dominated organization. CLAC's status as a trade union within the meaning of the Trade Union Act was first accepted by the Board on October 3, 1984 when it was certified to represent employees of Monad Contractors Ltd. (see LRB File No. 333-84). By negotiating a collective agreement with the employer, securing voluntary recognition, dispatching its members to the project, and applying for certification CLAC did nothing that the intervenor would not have done, and precisely what the Iron Workers Union attempted to do to secure work for their members. Voluntary recognition is the accepted norm in the construction industry.*

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[76] *Construction Workers Association (CLAC), Local 151 and Salem Industries Canada Limited and Construction and General Workers Union Local 180* Sask. Labour Rep. June, 1986, LRB File No. 033-86 & 044-86.

[226] The Board also considered another application by the International Association of Bridge, Structural and Ornamental Iron Workers, Local 771[77]. In that case, the Iron Workers again alleged that CLAC was a "company dominated' organization. At p. 43, the Board dismissed this argument in the following manner:

> *In the Board's view, CLAC was not a company dominated organization within the meaning of The Trade Union Act when that question was argued on LRB Files 033-86 and 044-86 and Mr. Heighes statement did not transform it into one. Although CLAC is a relative new-comer to this Province, it has operated as a trade union in other provinces for a number of years and there is no basis for finding that Mr. Heighes' statement could have altered CLAC's ability to represent its members in their relations with the employer, or to conduct its own affairs in any way it sees fit. It is for the same reason that although the Ironworkers Union received employer "support" when its business representative was permitted to gather membership cards from the employees on company time and in company premises, that support did not make the Ironworkers Union a company dominated organization because obviously it did not affect its ability to properly represent and to independently conduct its own affairs.*

[227] This latter statement by the Board is important as a lens through which the Board should look at the allegations and facts put forward by the Respondent Unions in their applications and particulars. If those allegations were proven, would CLAC thereby be affected in its ability to properly represent and independently conduct its own affairs?

[228] When the information provided by the Respondent Unions is viewed through this lens, it is also clear that there is no basis for any suggestion that CLAC is impaired in its ability to represent the employees it seeks to represent. While there may be arguments with respect to the manner in which CLAC represents the employees it seeks to represent that is a qualitative question to be determined by the employees' choice of the collective bargaining agent they choose to represent them.

[229] Also, there is nothing in what has been presented by the Respondent Unions which suggests that there have been any changes with respect to CLAC during the period since the Board determined that CLAC was not a "company dominated" organization over 25 years ago, and which would raise an arguable case which would justify the Board reconsidering this decision.

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77 *International Association of Bridge, Structural and Ornamental Iron Workers, Local 771 and Construction Workers Association (CLAC), Local 151 and Salem Industries Canada Ltd.* Sask Labour Rep. July, 1986 40, LRB File No. 038-86 & 042-86

The allegation, which was made in the *Salem Industries* cases, was that CLAC was "company dominated", which allegation the Board dismissed in both cases. This revised attempt appears to both ignore that reality and seeks to essentially argue the same issue, albeit on broader grounds.

[230] Mr. Plaxton, however also argues that he is unable to provide better particulars since the required information is within the knowledge of the Applicant Employers and CLAC. With respect, this position cannot succeed.

[231] In the recent decision of the Court of Queen's Bench, in *Franklin Land Development Ltd. v. Clement*[78], the Court cited with approval the decision of former Chief Justice MacPherson in *Koop v. Saskatchewan Power Corp.*[79] which held that to a response that the particulars requested were "within the knowledge of the defendant" was an inappropriate response and not in accordance with the Queen's Bench Rules regarding provision of particulars. At paragraph 12, Former Chief Justice MacPherson says:

> *The defendant served on the solicitors for the plaintiff a demand for particulars.... As to providing particulars in respect of paragraph 5 of the statement of claim, the plaintiff provided an abundance of particulars running from pages 13 to 16 of that Brief. However, as to particulars requested in paragraphs 2 to 5 of the demand for particulars, in each instance, the plaintiff has simply stated "...that the particulars demanded are wholly within the knowledge of the defendant". The Plaintiff does not say that it has no particulars and the defendant is therefore left in the position of not knowing whether the plaintiff has the particulars requested. In my view, this method of replying to a demand for particulars is inappropriate and contrary to the requirements of Queen's Bench Rule 164(2)...*

[232] The Board, of course, has no such rules regarding the provision of particulars. Nevertheless, it is equally inappropriate to reply that the particulars requested "are wholly within the knowledge of the defendant" as Mr. Plaxton did. The preferred response, as suggested by former Chief Justice MacPherson would be to reply that they had no particulars to furnish. A reply of this nature obfuscates the issue and arguably is made so as to insinuate that there is truth to the allegations, and the Applicant Employers and CLAC are hiding those facts.

[233] For all of the above reasons, the application for summary dismissal of the Respondent Union's applications that allege that CLAC is a "company dominated' union are

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78 [2010] CANLII SKQB 272
79 [1997] 159 Sask. R. 290, CANLII 11140

allowed and those applications alleging CLAC to be "company dominated" are summarily dismissed.

Application for Production of Documents and Things

[234] Mr. Plaxton[80] and Ms. Saxberg[81], on behalf of their clients also requested that the Board order production of "Documents and Things" from the Applicant Employers which they argued were necessary for them to receive a fair hearing on all of the issues that are before the Board. In response to these applications, the Applicant Employers and CLAC argued that such application was premature. We agree with the position of the Applicant Employers and CLAC.

[235] As a result of the applications alleging that CLAC is a "company dominated" organization having been dismissed, all that remains before the Board is various applications for intervenor status and the applications for certification which have not, as yet been determined. Both Mr. Plaxton's clients and Ms. Saxberg's client have applied for intervenor status in respect of all or most of the certification applications before the Board (See paragraph 39, *supra*). However, since the Board has made no determination as to whether status as intervenors will be granted, the ongoing participation of either Mr. Plaxton's clients or Ms. Saxberg's client in the remaining applications is unknown. Therefore, it would be premature of the Board to make an order for production of documents and things in accordance with s. 18(b) of the *Act* until that status is determined.

[236] Should Mr. Plaxton's clients or Ms. Saxberg's client be granted intervenor status, as noted by Mr. Plaxton in his arguments, there is no impediment to either or both of them making similar applications at that time.

Decision:

[237] The applications for summary dismissal are allowed with respect to LRB File Nos. 103-10, 104-10, 107-10, 108-10, 121-10, 122-10, 123-10, 124-10, 125-10, 126-10, 139-10, 140-10, 141-10, 142-10, 151-10, 152-10, 173-10, 174-10, 179-10, 180-10, 181-10, 199-10, 200-10, 201-10, 202-10, 203-10, 204-10, 205-10, 206-10 & 207-10.

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[80] LRB File Nos 173-10, 174-10, 179-10, 180-10 & 181-10
[81] LRB File Nos 204-10 & 205-10

Events Subsequent to the hearing of this matter:

[238] On December 13, 2010, following the hearing of this matter, Ms. Saxberg, on behalf of her client, the Saskatchewan Government and General Employees Union filed with the Board applications which also alleged that CLAC was a "company dominated" organization. These applications were received by the Board as LRB File Nos. 211-10, 212-10 & 213-10. SGEU also filed Amended "company dominated" applications which were assigned LRB File Nos. 123-10 & 126-10.

[239] Those applications were forwarded by the Registrar, in accordance with usual Board policy, to counsel for the other parties to this application. There was a great deal of confusion amongst various counsel as to why these applications had been filed after the hearing, and contrary to the agreement reached by counsel at the hearing on November 2. 2010 (see paragraph 36, s*upra*).

[240] After correspondence between counsel, the Board was advised by Ms. Saxberg, by letter dated January 18, 2011 as follows:

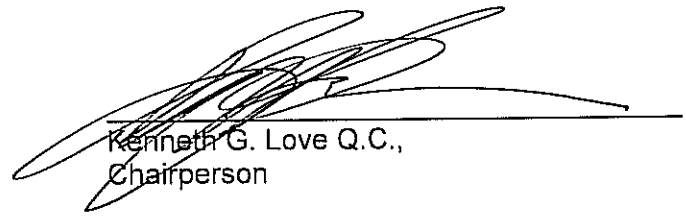
> 1) *SGEU filed the Canonbie, Pyramid and Wilbros Company Dominated Applications in LRB Nos. 211-10, 212-10 and 213-10 and the Amended Company Dominated Applications in LRB Nos. 123-10 and 126-10 to assert an interest in the proceedings and to preserve SGEU's ability to participate further in these matters and in the Applications for Intervention, and not for the purposes of re-litigating or collaterally attacking the as-yet unreleased Board decision dealing with the various Company Dominated Applications heard in December 2010, nor for any other improper purpose; and*
>
> 2) *SGEU understands and does agree that, by virtue of the agreement made among counsel during the December 2010 hearing, the Board's decision with respect to the Employer's Summary Dismissal Applications heard in December 2010 would apply to all five of SGEU's Company Dominated Applications including the Amended Company Dominated Applications filed in Tercon and Westwood, subject to our reserved right to join or advance any further hearing, appeal, reconsideration, or other process involving the Company Dominated Applications filed by SGEU and others.*

[241] Accordingly, as the balance of the Company Dominated Applications are summarily dismissed, the applications on LRB File Nos. 212-10, 213-10, 123-10 & 126-10 are also dismissed.

[242] This panel will not remain seized with respect to any further proceedings with respect to the applications for certification or the applications for intervenor status.

DATED at Regina, Saskatchewan, this **10th** day of **February, 2011.**

LABOUR RELATIONS BOARD



Kenneth G. Love Q.C.,
Chairperson

DISSENT

[243] Member, Bruce McDonald dissents for the following reasons:

[244] I disagree with the majority determination that the Respondent Unions have failed to demonstrate an arguable case. The majority has, in my opinion, failed to recognize the importance of this issue to the Respondent Unions nor has it appreciated that the entry of CLAC into Saskatchewan will destabilize labour relations in the Province.

[245] Under the CILRA scheme of collective bargaining, the Construction Industry enjoyed relative labour relations peace. There were few, if any strikes during the period since the CILRA was re-introduced in 1992. The scheme of sectoral bargaining which was put in place by the CILRA was an effective means of collective bargaining in the Province.

[246] With the introduction of Bill 80, this whole scheme has been placed in jeopardy. Unions that are not traditional to Saskatchewan, or traditional craft unions, may now seek to represent employees in the trades and construction industry, where they have little history or understanding. This will, in my view, cause destabilization and will lead to labour relations disruptions.

[247] Traditional craft unions are best equipped to represent and bargain for employees in the construction industry. There is a common bond between members of a particular trade or craft that transcends usual trade union representations. Members of craft unions train together,

apprentice together, and work together. Theirs is a unique bond that is more that just a employee – employer relationship, but is one which is formed in camaraderie and brotherhood.

[248] The majority has overlooked this fundamental difference which, would lead me to conclude that there is an arguable case put forward by the Respondent Unions, which case should be heard with full participation from all parties and with complete testimony and evidence presented.

[249] There is, in my opinion, an undercurrent or closeness in the relationship between CLAC and some, if not all of the Applicant Employers and others. That relationship, in my opinion, should be canvassed and explored by the Board. It is clear that the Respondent Unions may not, at present have sufficient evidence showing the nature of the relationship, but I would support the application for production of Documents and Things so as to allow the Respondent Unions to probe and discover that relationship.

[250] Furthermore, even if the current applications and production of documents do not show an arguable case, nevertheless, I would exercise my discretion in favour of a full and complete hearing of the matter to ensure that employees seeking to be represented are represented by a trade union that is not in any way fettered in their representation of such employees.

[251] For these reasons, I dissent from the decision of the majority and would dismiss the applications for summary dismissal.

Bruce McDonald, Board Member

SCHEDULE "A"

SASKATCHEWAN JOINT BOARD
RETAIL, WHOLESALE AND DEPARTMENT STORE UNION
Affiliated with UFCW CANADA

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October 7, 2010.

Mr. Fred Beyer, Registrar
Saskatchewan Labour Relations Board
1600 - 1920 Broad Street
Regina, Saskatchewan
S4P 3V2.

Dear Sir:

Re: LRB File Nos. 103-10, 104-10, 107-10, 108-10, 121-10, 122-10, 123-10, 124-10 125-10, 126-10

Without prejudice to our Application for Review pursuant to s. 4 (12) (see attached), we provide the following particulars pursuant to the Order issued by the Executive Officer on September 21, 2010.

1. Attached is a report prepared by the Canadian Labour Congress, February, 2008 which provides a general overview of a significant aspect of the basis for our applications in these matters. (attached as A)

2. The collective agreement(s) between the two specific employers in the above referenced matters are in the possession of the Employers and the Respondent and we cannot do more than to indicate that there is nothing we can provide as particulars on this aspect that they already do not have.

3. We intend to rely upon collective agreements of the Respondents with other employers in our application and the Order does not require such production at this point.

.../2

SCHEDULE "A"

4. The Employers in these applications are from Alberta, are based in Alberta and have a pre-existing relationship with the Respondent prior to the certification applications filed by CLAC in Saskatchewan with these Employers.

5. As a result of point 4. above, the Employers already have in their possession and knowledge the details of the pre-existing relationship they have with the Respondent to a far greater extent than the Applicants have including: when the Employer first had contact with the CLAC; all verbal and written communications between them; the agreements and letters of understanding between them; and the names of employees of the Employers and how they were hired.

6. The Applicant will be relying upon the constitution, by-laws, history, collective agreements and general anti-union and anti-democratic conduct of CLAC in establishing its nature as a company dominated organization, an organization which permits employers generally, including the Employers to "dominate" them contrary to law.

7. None of the particulars mentioned in point 6. above were ordered nor requested and they form the substantive aspect of the evidence we intend to rely upon in our Applications.

8. We are not aware of any information already in the possession of the Employer which we can provide particulars upon that would be better than what the Employer already knows.

In summary, it is our allegation that CLAC is inherently, ideologically and historically company dominated and/or not a trade union.

For example:

- CLAC, the Saskatchewan Party Government and known anti-union employers and organizations collaborated to amend our laws to attempt to allow CLAC into Saskatchewan.

- CLAC told its members to vote for the Saskatchewan Party prior to the last election – a political party who while in opposition stated in many ways its opposition to trade unions in Saskatchewan.

SCHEDULE "A"

- Below are excerpts of collective agreement provisions negotiated by CLAC demonstrating its fundamental employer domination:

a) Article 5 – Strikes or Lockouts

5.01 During the term of this agreement, or while negotiations for a further agreement are being held, the Union will not permit or encourage any cessation of work, strike, slowdown or any stoppage of work or otherwise restrict or interfere with the Employer's operation through its members.

b) Article 6 - Employment Policy and Union Membership;

6.02 Neither the Employer nor the Union will compel employees to join the Union. Subject to Article 6.01, the Employer will not discriminate against any employee because of Union membership or lack of it, and will inform all new employees of the contractual relationship between the Employer and the Union. Before commencing work, or as soon as reasonably possible after commencing work, new employees will be referred by the Employer to a Union steward or Representative in order to describe the Union's purpose and representation policies to such new employees.

c) Article 3 – Management's Rights

3.01 c) To operate and manage the Employer's business in order to satisfy its commitments and responsibilities. The right to determine the kind and location of business to be done by the Employer, the direction of the working forces, the scheduling of work, starting and quitting times, the number of shifts, the methods, processes and means by which work is to be performed, job content, quality and quantity standards, the right to use improved methods, machinery and equipment, the right to determine the number of employees needed by the Employer at any time, employee qualifications, and generally, the right to manage the business of the Employer, and to plan, direct and control the operations of the Employer, without interference.

SCHEDULE "A"

d) 14.03 In the event that consultation fails to resolve a matter of contention, the Union agrees that the decisive word resides with Management, unless specifically abridged, deleted or modified by this Agreement. The Union reserves the right to refer unresolved matters to the Grievance Procedure.

e) Letter of Understanding #1

When an employee works in excess of eight (8) hours per day or forty (40) hours per week on Sundays or on Statutory Holidays, the regular rate that the employee is currently receiving will be reduced by twenty percent (20%).

- CLAC recently co-sponsored a "Right to Work" conference with employer groups and publicly anti-union organizations who do not support the freedom of association collective bargaining rights of trade unions as guaranteed by international law, our Charter of Rights and Freedoms and our Trade Union Act.

- Employers actively support CLAC as a replacement for and/or alternative to historically certified, bona fide trade unions in Saskatchewan and Canada.

The Applicants will provide further particulars as ordered if and when the Applicants become aware of them as a matter of courtesy.

Should the Employers have specific questions, we would invite them to send them to us and we will do our best to answer them.

We trust that these matters will proceed in a manner that reflects the mutual interest of all parties to have the significant legal issues dealt with without prejudice to the desire for a fair adjudication.

Yours truly,

LARRY KOWALCHUK & JULIANA SAXBERG
On Behalf of the Applicants
SJB RWDSU
SGGEU
SPBTC

LK/ts

enclosure

SCHEDULE "A"

APPENDIX A

The Christian Labour Association of Canada (CLAC)

AN OVERVIEW OF AN "EMPLOYER-ACCOMMODATING" PSEUDO UNION

February 2008

Canadian Labour Congress

Congrès du travail du Canada

SCHEDULE "A"

Table of Contents

SCHEDULE "A"

Overview of CLAC's History and Philosophy

The Christian Labour Association of Canada (CLAC) is multi-sector, multi-craft union representing increasing numbers of workers across Canada on the basis of "Christian Social Principles." The Christian Labour Association was first established in the USA in 1931. CLAC itself was formed in Canada in 1952 by Dutch immigrants affiliated with the Christian Reformed Church (CRC) in the Sarnia area of Ontario.

Historically, CLAC was concentrated in communities with Dutch settlements, and while they are still entrenched in these communities, they have expanded beyond these localities (mostly rural areas) in the past two decade. CLAC's membership growth in the first couple of decades (1950s, 60s and 70s), was limited and slow due to the difficulty it had in gaining legal status as a trade union because of its overtly Christian-biased principles and practices. Also during this period, CLAC was targeted by mainstream unions and while this may have contributed to their slow and limited gains, it also developed their reputation as victims of big, "undemocratic" and monopolistic trade unions as well as effective raid fighters. This situation changed somewhat in 1963, when CLAC gained its first certification when the Supreme Court of Ontario (OSC) overruled a decision of the Ontario Labour Relations Board (OLRB). In that infamous decision, Chief Justice of the OSC, J. C. McRuer stated that "if Marxists can have a union, why shouldn't the Christians."

Significant membership growth, however, did not take hold until the mid 1980s and 1990s which coincided with the election of right-wing, anti-union governments at the federal and provincial levels (Mulroney, Vander Zalm, Harris, Klein, Campbell). Under the guise of globalization, these governments gutted our social support system in favour of corporate interests and embarked on an agenda that changed the political, legal and legislative environment governing labour relations across the country. This had the effect of weakening labour rights, and in the process made it harder for legitimate unions to organize and bargain freely, while it made it easier for phony, unrepresentative company unions to gain much more than a foothold, and much needed legitimacy.

According to 2006 Human Resources and Skills Development Canada (HRSDC) figures, CLAC has 38,000 members across Canada, which amounts to a 26.7% membership growth in the 2005-2006 period (from 30,000 to 38,000). CLAC claims it has 43,000 members and is the fastest growing union in Canada. If CLAC's numbers are correct (which is plausible given HRSDC figures), then it has experienced more than a 150% increase in membership over the past 9 years (from 17,000 in 1997 to 43,000 in 2006).

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The bulk of CLAC's membership is concentrated in BC (10,000+), Alberta (19,000) and Ontario (11,000) plus a small number in Manitoba and the Northwest Territories. CLAC is not recognized in Saskatchewan and Nova Scotia as a craft union and is barred from representing construction workers. In the case of Nova Scotia, CLAC did not meet the definition of 'trade union' contained in S. 92(1) of the *Trade Union Act*, as it did not demonstrate that it has "established trade union practices in Nova Scotia".

CLAC membership strength is in the construction, transportation and the health care sectors, with smaller but increasing membership in hospitality, manufacturing and food service. In 2005 CLAC began to expand into the oil and gas industry in Alberta and the construction industry in BC, thereby significantly increasing their membership. CLAC has also increased its membership by tapping into the "Temporary Foreign Workers Program" by teaming up with corporations, such as Ledcor to recruit migrant workers for work on the Tar Sands projects in Alberta and other provinces.

As a national organization, CLAC is made up of affiliated locals which are serviced from regional offices, from where collective agreements are negotiated and administered, and bargaining units and their members receive representation. CLAC's head office (located in Ontario) serves the union with financial administration, publishing, research, education and other support services. CLAC also maintains separate training and benefit administration centres for Eastern and Western Canada.

CLAC's Philosophy and Religious Worldview

CLAC openly advocates an "alternative approach" to labour relations and has been railing against "traditional trade unions" for decades. CLAC's so-called "positive" approach to labour relations is based on a rejection of socialist and social-democratic principles in favour of nurturing the worst type of class collaboration/business unionism. This under the guise of nurturing a harmonious relationship with employers by avoiding confrontation and adversarial actions.

CLAC claims political non-partisanship, but is clearly aligned with conservative political, business and social forces. A number of CLAC staff, including staff leader Ray Pennings have been candidates for the Christian Heritage Party and the Reform Party. Edward Bosveld, CLAC's Ontario Regional Director, has just been appointed by the Harper Conservative government to the Canada Refugee and Immigration Board (RIB). CLAC official Co Vanderlaan, became the Executive Director of the Progressive Contractors Association, a right-wing, anti-union association of contractors in the construction industry.

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CLAC denies that it is an organization connected to any institutionalized religious establishment and states that "although unapologetically Christian in our founding and guiding philosophy, CLAC is not a church or a church-basedorganization. We accept and represent members of all faiths." The Christian Reformed Church (CRC) (www.crcna.org/pages/memorable_events.cfm) takes pride in the formation of the Christian Labour Association which it considers part of the church's overall mission.

According to the Dutch Neo-Calvinist belief, the concept of "sphere sovereignty" involved a certain form of separation of church and state, and more importantly, a separation of state and other societal spheres. Accordingly, different religious or ideological groups should form their own "sphere" with their own societal institutions like schools, news media, trade unions, businesses and charitable organizations. The founding of CLAC in the 1950s was part of this vision and a larger effort by the church to establish a number of societal organizations united in their Christian belief.

Sphere sovereignty is therefore, crucial to the church's ideological/theological mission. **Although these organizations remain separate from one another legally, they are highly cross-fertilized and work very closely together.** Staff representatives of CLAC, who are the main power brokers within the organization, are often graduates of religious colleges affiliated with the church. There is an increasing number of Redeemer University College graduates employed by CLAC which is considered a natural fit since "Redeemer provides its students with a solid Christian worldview... giving them the ability to understand, articulate and apply the Christian social principles upon which CLAC is based." Members of the CRC and of CLAC were instrumental in the formation of other loosely affiliated societal institutions, such as the Citizens for Public Justice and the Work Research Foundation among others.

CLAC is aware that if it is to make any advances beyond the confines of its tightknit community, which include friendly employers, it needs to appeal to an increasingly diverse workforce (racially, culturally and religiously). Hence, CLAC is very defensive about being seen as connected with the Church. CLAC's website boasts that it is "a bona fide trade union recognized in five provinces and in federal jurisdictions", which is often followed by denials and statements that "it is not a religious organization, and is not affiliated in any way with any church or church-based organization." Being what it is, however, CLAC asserts that its "approach to the workplace is based on Christian social principles" that stress integrity, respect, partnership, fairness and community. (www.clac.ca)

The "Christian" in CLAC's name is not only there for historical purposes, but is rather indicative of the distinct theological Christian fundamentalist commitments that CLAC has to the Christian Reformed Church. Justifications that these "Christian social principles" are anchored in "democracy, freedom,

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justice, responsibility and respect for all", or that it is an "inclusive, not exclusive" organization does nothing to make workers from diverse ethnic, cultural and religious backgrounds feel welcome in an organization where a specific Christian world and life view is considered a superior and viable alternative to everything else. Although CLAC's rank-and-file and its staff are less homogenous today than they were in the past, **it is still the case that the vast majority of both membership, but especially staff, are drawn from the Dutch Christian Reform community.**

When all is said and done, however, it is important to remember that what makes CLAC truly different from real, representative unions is that it is out of step with the diversity that exists in Canadian society, and in the labour force itself. **Contrary to the democratic structures that define our movement, CLAC's members cannot question or debate, let alone change, the very essence of the Christian Labour Association of Canada.** Being a member of CLAC means that you must submit to the Calvinist Christian religious worldview, whether you agree with it or not. The fact that a great number of CLAC's collective agreements (estimated at more than 25%) are the result of voluntary recognitions, means that many workers find themselves stuck in an organization that not only bargains away their rights, but is also disrespectful of their personal religious beliefs and cultural and ethnic diversity.

CLAC's Undemocratic Structure

Real trade unions pride themselves on the fact that union democracy is not a hollow concept, but is rather a living reality that members experience and practice at the work-site, union office and the convention floor. Union democracy is integral to the very essence of the trade union movement where the ultimate decisions are made by duly and democratically elected leaders, and more importantly, by the membership itself during duly constituted conventions and through the various committees and forums that are led by and are open to all union members. The democratic rights of union members are enshrined in constitutions that protect these rights. These very constitutions are subject to change by the members themselves at union conventions. Therefore, assessing union democracy is done by looking at the constitutions of these unions and how they are practiced on a daily basis by the members of the union.

The CLAC claims to be a trade union that champions the democratic rights of individuals as a cornerstone of its philosophy. CLAC distinguishes itself from "traditional unions" on the basis that it follows a self-described, non-combative approach to labour relations – one founded on Christian values and a positive outlook on labour relations. A central CLAC principle is one which is premised on the interdependence of employers and employees in the workplace. Accordingly, it is argued by CLAC that a non-adversarial environment makes the company more productive and in turn make workers' jobs more secure. Clearly,

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however, CLAC has no consideration for the real, concrete power relations that exist between bosses and workers. The power imbalance that exists between labour and capital in capitalist societies is all too real. CLAC's simplistic view of the world makes a mockery of this reality.

CLAC's Constitution spells out the "Christian social principles" that guide CLAC as those basic concepts of just and charitable relations found in the Old and New Testaments of the Bible. In the realm of labour relations these principles have a bearing on people's relationships to each other and to society and their equality before God and the law. According to CLAC's Christian worldview, all human beings bear the image of their Creator and every violation of the divinely given law of love among people is a sin against God.

For CLAC, injustices in relations among people are due to violation or neglect of "divine norms", and their elimination must be promoted through reformative measures which respect divinely instituted order and authority. This divine order and authority means that there is a certain level of "functional division" of work that is necessary for the completion of certain tasks within society or the "diverse work communities." Irrespective of the divinely ordered functional divisions between people, all those involved in the process of work (whether workers, managers or owners) are part of the same team and bound together by their dedication to "fulfilling the specific task of the work community in question." (Olthuis and Vandezande1972, 6-7)

Although the National Convention and the National Board of CLAC, (which is elected at the biennial convention) may seem to be the highest decision-making body within CLAC, a closer examination of the Constitution easily reveals that **CLAC staff representatives wield a great deal of power, far exceeding the power of CLAC's elected officials.** CLAC's staff have a parallel structure to the elected National Board leadership of the union. CLAC's Staff Council and Executive which consists of all appointed CLAC representatives is responsible for much of the day-to-day running of the organization.

It is notable that the Staff Council, which is an important leadership structure within CLAC, elects its own executive without any say from the rank-and-file membership. In fact, CLAC's unelected staff representatives have additional powers over the membership at National Conventions where the staff are automatic voting delegates.

CLAC's constitution restricts who is able to run for local or national office on the basis of subjective criteria. For example, **a member is ineligible to run if he/she "is not qualified to give leadership that is in harmony with the Constitution."** In other words, a member must be willing to adhere to CLAC's version of Christianity and "Christian principles". Members must also promote a collaborative approach in their relations with employers, which more often than

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not, is done at their expense and the expense of their fellow workers.

Although CLAC talks about the right of workers to freedom of association, in practice, CLAC's employer-friendly model of labour relations restricts the right of workers to freely belong to a union of their choice. Employers are increasingly using the process of voluntary recognition to block workers' efforts to freely choose the union they wish to belong to, and instead install an un-representative union. While this process of voluntary recognition is not in principle an illegitimate way to gain union recognition, it is an exception to the rule and is subject to abuse by employers as well as by un-representative unions such as CLAC. In collaboration with friendly employers, CLAC has taken advantage of this process. **It is estimated that in certain jurisdictions, between 25% to 40% of all collective agreements negotiated by CLAC are voluntary recognition agreements** with friendly employers who do not want legitimate trade unions in their workplaces.

On another level, CLAC claims that "we do not believe it is our role as a union to make up your mind on controversial social issues" or to "promote any political party on behalf of its members." While CLAC does not seem to have "direct" ties or to have made any financial contributions to political parties, it's claim to political non-partisanship is nothing but hollow rhetoric. Nationally, CLAC's so-called non-partisanship comes up against the fact that several of their leading staff members have been candidates for the Christian Heritage Party and the Reform Party of Canada. CLAC is ideologically aligned with conservative business, political and social forces and considering CLAC's structures, it is doubtful that any of these views represent its membership.

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Who's Who in the CLAC World?

CLAC maintains close relationships with a number of allies and front organizations that include the church, business associations, think tanks, Christian colleges and universities, charitable organizations and anti-union construction industry contractor groups. The following is a brief description of some of these organizations.

Christian Reformed Church (CRC)

The Christian Reformed Church (CRC) is a denomination that has about 300,000 members in 1,000 congregations across the United States and Canada. The roots of the CRC go back to the Netherlands where it flourished in the middle 1800s. Dutch Reformed immigrants moved to the United States in the 1800's and they started the Christian Reformed Church in North America. In Canada, the Dutch were prominent among the huge number of post-war immigrants, and because many of them were devout Christians from the Dutch Reformed churches, they adopted the Christian Reformed Denomination of North America as their new church.

The views of the CRC were greatly shaped by the Dutch theologian, Dr. Abraham Kuyper. Kuyper's vision was to claim Christ's lordship over all of life. Believers were not only called to maintain holy lives in relation to God and each other, they were also called to extend God's kingdom into the society in which they lived. Believers were to look beyond their family altars to take on the world for Christ - using Christian schools, institutions and organizations to make God's redemptive and recreating work a reality in the marketplace, city hall and factory.

The creation of Christian societal institutions by members of the CRC was premised on the Neo-Calvinist concept of "sphere sovereignty" which entailed a certain separation of state and other societal spheres. **"Sphere sovereignty" called for the creation of separate societal institutions (schools, universities, media, business, trade unions) by the different religious or ideological groups, and this is what led a group of CRC members to establish CLAC in 1952.**

The Work Research Foundation (WRF)

The WRF was formed in the early 1970s by members of CLAC and it was incorporated and registered as a charitable organization in 1974, with Harry Antonides as the first part-time research director. Antonides (who is currently listed on the WRF website as the research and education director of CLAC), argued for a view of work rooted in the European Christian tradition.

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According to its website, the mission of the WRF is to "influence people to a Christian view of work and public life... to explore and unfold the dignity of work, the meaning of economics, and the structures of civil society in the context of underlying patterns created by God." The goal of the WRF's research is, "to help restructure public life within the framework of "sphere sovereignty," and to allow for the revitalization of civil society in North America."

The profile of the WRF increased substantially with a $325,000 project relating to freedom of association from 1997-2000. This transformed the WRF from a small scale research group to a right-wing think tank.

In 1997, the WRF commenced its biennial survey of Canadian attitudes toward unions. The survey indicated that Canadians were looking for a less confrontational and adversarial approach to labour relations. The WRF built on this insight over the next few years with conferences and publications devoted to alternative labour relations structures. In 2000, the WRF hired Michael Van Pelt, its first full-time President, who re-branded the WRF as a full-fledged research institution and think tank, focused on investigating work, productivity and work relationships. Van Pelt hired Dr. Gideon Strauss to edit *Comment*, and Ray Pennings to create an alternative model for industrial relations policy. The WRF promotes a holistic view of the economic sphere, in which the individual worker, the trade union, management, economics and public policy are vitally interdependent. The cross fertilization between CLAC and the WRF is undeniable and is clear from the double role that some of its board members and staff play between the two organizations. **It seems that the WRF has become CLAC's vehicle for popularizing, lobbying and legitimizing a social, political and legislative agenda that is anti-union and anti-worker, as evidenced in their position on the anti-scab legislation, Employment Standards, labour reforms and their close ties with anti-union contractors associations.**

Merit Contractors Association/Open Shop Contractors Association (anti-union policy)

Merit was first established in Alberta over 20 years ago (1985) and is today operating in various provinces including: Manitoba, Saskatchewan, Ontario, Newfoundland and Labrador, Nova Scotia, BC and NB. Merit Contractors Associations in Canada are part of what they call "the movement" that started in the United States over 30 years ago, and is also referred to as "open shop associations." An open shop is another way to describe a place of employment where unions are not welcome (they describe it as a place where workers do not have to join or financially support a labour union as a condition of hiring or continued employment). Open shop is big in the Right-to-Work anti-union U.S. States that prohibit trade unions from making membership or payment of dues a condition of employment, either before or after hire.

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Merit Contractors Association describes itself as "a non-profit organization of open shop or "union-free" contractors dedicated to serving the needs of employers and employees in the open shop sector of the construction industry." CLAC works very closely with Merit Contractors across the country as they share the goal of keeping legitimate trade unions out. CLAC has been a sponsor and a participant at a number of Open Shop Conferences, the last of which was held in May 2007 in Victoria, BC.

Canadian Christian Business Federation (CCBF)

According to the Federation's website, "members of the Canadian Christian Business Federation seek to promote their Christian business and professional tasks in service to their Master, Jesus Christ, by the study of Scriptures and prayer, by fostering understanding of ethical business activities, and by working to promote a God pleasing business climate in society." The activities of the CCBF in support of the above goal include: 1. encouraging business structure that allows for responsible Christian activities; 2. **promoting harmonious labour relations and meaningful work experiences through appropriate management practices;** 3. promoting Christian business ethics and standards; 4. participating in the development of public policy and speaking out on matters of public policy proposed by the government as it relates to the justice system or business enterprises.

Christian Stewardship Services (CSS)

Christian Stewardship Services is described as a Canadian charity serving Christians with practical advice on stewardship issues since 1976. CSS have assisted thousands of people with their retirement, estate & will planning, personal finances and charitable giving. Funding for CSS is provided by almost 40 Christian partner organizations and over 100 Christian Schools. The mission of CSS is to work with its supporting Christian organizations (including CLAC as a partner) in promoting Biblical stewardship through planned giving and education.

Citizens for Public Justice (CPJ)

CPJ, formerly the Committee for Justice and Liberty (CJL), was established by the founders of CLAC and given the task of appealing to the courts on behalf of CLAC in Ontario in its court battles to gain recognition as a trade union. CLAC eventually won its first certification in Ontario in 1963 when the Ontario Superior Court overruled a decision of the OLRB. In his decision, Justice J.C. McRuer stated that if "Marxists can have a union, why shouldn't the Christians." According to its website, "Citizens for Public Justice (CPJ) promotes public justice in Canada by shaping key public policy debates through research and analysis, publishing and public dialogue. CPJ encourages citizens, leaders in society and

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governments to support policies and practices, which reflect God's call for love, justice and stewardship."

Christian Colleges

Educational institutions are a very important component of the many societal institutions that were created by members of the CRC across Canada and the USA. Many of these institutions play multiple roles in the theological mission of the CRC, and also in complementing and supporting other church affiliated organizations that were part of the church's "sphere sovereignty" vision. Some of these colleges and universities in Canada are: Redeemer University College and the Institute for Christian Studies (affiliated with the Free University in Amsterdam) in Ontario; Trinity Western University in BC and The King's University College in Alberta. These universities are accredited, degree granting post-secondary institutions, recognized by the respective provincial governments and are members of the Council for Christian Colleges & Universities (CCCU) and of the Association of Universities and Colleges in Canada (AUCC).

While CLAC is aligned to all of the above institutions, Redeemer University College in Ancaster, Ontario, stands out as a fertile staff recruiting ground for CLAC. This point gains more importance as we start to comprehend the level of power and control that the staff exert within the organization. It seems that maintaining the ideological focus and the theological purity of CLAC depends in a large part on recruiting like-minded people who have a "solid Christian worldview."

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Organizing Tactics of CLAC

CLAC's guiding principle in the realm of labour relations is anchored in building a cooperative and collaborative environment where workers and employers are seen as part of the same team rather than being on opposite sides. CLAC rejects the adversarial, confrontational approach that dominates in labour relations and prides itself on having had only 5 strikes in its entire 55 year history.

CLAC also prides itself on building a union that is focused on servicing the members and spending their money wisely, not in support of social causes, but rather strictly on bargaining related issues (although the Constitution allows CLAC to collect a special levy for non-bargaining issues). Evidence suggests, however, that once CLAC is successful in organizing a particular workplace, their record of servicing is not all that good. It seems that servicing activities increase only when they are in open period, facing a raid or a decertification vote.

Contrary to the rhetoric, CLAC has a reputation for being reluctant to pursue grievances through arbitration and only does so when confronted with the threat of Duty to Fair Representation.

It would be an error to believe that CLAC's growth, especially over the past couple of decades, is entirely the result of voluntary recognitions, uncontested organizing drives or behind closed door deals between CLAC and friendly employers. OLRB figures show that CLAC filed a sizable number of Unfair Labour Practices (ULPs) in organizing drives which testifies to the fact that, for some employers, even CLAC is too much of a union. The fact that CLAC is successful in its straight-up certification applications only shows that they have certain appeal which is resonating with some workers.

The CLAC appeal is based on:

- What they claim to be low dues: "shall not be less than two times the hourly wage rate of the member" (2006 constitution).
- Servicing: CLAC boasts a low member-to-representative ratio – money for members' needs at the workplace and not for social causes or political parties.
- Non-confrontational union: fosters cooperation and mutual respect with employers (rare strikes).
- Group benefits and training opportunities: CLAC offers group benefit plans for members and their dependents in case of accident or illness. CLAC has also established training centres in Alberta, British Columbia and Ontario. CLAC boasts that they are the result of a "cooperative labour relations" and are jointly funded.

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- Employer partnership and acceptance.
- Low level of union control of access to work and pension funds in the construction industry.

CLAC's growth in the past couple of decades is directly related to the changing political, legal and legislative environment across Canada. That is why CLAC is active, directly and through its research arm, the Work Research Foundation (WRF) in lobbying governments on issues related to labour relations and work in general. For example, the WRF and CLAC support and lobby for back-to-work legislation; oppose anti-scab legislation; oppose the Rand Formula – which they call "forced unionization"; promote open shop across Canada (which is another term for union busting); and call for watering down of Employment Standards.

In a recent study for the Canadian Centre for Policy Alternatives (CCPA), titled **"Negotiating Without a Floor: Unionized Worker Exclusion from BC Employment Standards"** (July 2007), David Fairey with Simone McCallum investigated the changes to the BC Employment Standards Act that was contained in Bill 48 and became law in 2002. Among other things, the authors concluded that an important consequence of the 2002 changes was to "allow overly collaborative or "employer-accommodating" unions to negotiate agreements with provisions below the minimum standards of the Act." As the largest of the "alternative employer-accommodating unions in BC," CLAC's collective agreements were reviewed for this study.

The authors noted that "CLAC has frequently conceded to employers collective agreements with provisions below the standards of the Employment Standards Act, both before and after the 2002 changes." The end result of such legislative changes was lower wages and overall working conditions, in addition to permitting, what the study calls "pseudo unions" to "opt out" of basic employee protections. Despite the rhetoric, this type of legislative change to employment standards and other labour laws seem to be in line with CLAC's political agenda.

There is an intimate relationship between the laws governing labour relations and the organizing tactics used to gain members at the level of the workplace. It is imperative that we have a full picture of CLAC's organizing tactics (in new drives as well as in raid-proofing their members). Here are some of the CLAC tactics:

1. **Voluntary Recognitions**

   It is estimated that Voluntary Recognitions make up between 25% to 40% of all the CLAC collective agreements. Their private nature and the fact that there is no legal responsibility to report these agreements when signed, makes it very difficult to get specific numbers. There is much evidence to suggest that voluntary recognitions are granted to CLAC by employers who are trying to keep a legitimate union out. In some cases, a failed organizing

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campaign by a real union will be followed quickly by a successful CLAC certification. While these employers usually stay out of the way of CLAC, there is some evidence to suggest that in some other cases they actively encourage their employees to join CLAC. This is also the case when CLAC is raiding or being raided by a legitimate union.

What is objectionable about Voluntary Recognitions is the fact that they are not the exception, but the rule as far as CLAC is concerned. They are often signed, in exchange for sub-standard agreements on wages, benefits, working conditions, employment standards, "flexible" work hours and provisions guaranteeing labour peace.

2. **Long-term agreements with "lock in terms"**
   A number of affiliates who successfully raided CLAC learned the hard way that liberating members from CLAC was only half the battle. In some jurisdictions (BC for example) the union that takes over after a raid, remains bound by the collective agreement that was in place at the time of the raid. In the case of CLAC this means that their inferior agreements become those of the affiliated unions and often for a long period of time.

3. **Effective inoculation**
   The history of CLAC is one of fighting against the legitimate trade union movement much more than they fight for advancing the interests of their members. They have and will continue to be the target of raids from real unions, and that made them develop a number of effective ways to fight off these raids. CLAC's publications (website, newsletter, press releases, etc.) are full of articles and stories explaining why they continue to be subjected to the hostility of the "America-based, monopolistic trade unions" who are being threatened by the increasing popularity and growth of CLAC.

   CLAC is no longer content with fighting defensive battles. The more they gain new members (especially in BC and Alberta), the more aggressive they become in raiding CLC affiliates across the country.

4. **Early detection and severe penalties for breaking ranks**
   CLAC's newsletter, *The Guide*, frequently features articles about CLC affiliates attempting to raid CLAC. They boast and broadly publicize their victories and gains in the face of raids or when they are successfully raiding other unions. Articles have also featured tips on early detection of raid attempts and how to deal with "disgruntled workers" who may be in favour of supporting efforts to get rid of CLAC. If CLAC's claim that it has a 500:1 member-to-servicing staff ratio is real, it is not hard to see why they are quite effective in detecting raids. A low member to staff ratio makes it easier to monitor problems within bargaining units, to make site visits and to otherwise have their finger on the pulse of a workplace – not for the

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purpose of better representing and servicing workers, but rather to monitor their allegiance to CLAC.

The CLAC Constitution itself makes it clear that members who engage in actions that harm CLAC may be suspended and/or expelled. These actions include: initiating or promoting secession from the union (to be non-union or join another union); taking membership for reasons of subverting or undermining the union; promoting, organizing or participating in any unauthorized job action; providing membership information or internal documents to persons or organizations not authorized to receive them. (6.04, a to h)

5. **Early renewal of CAs and the use of legal manoeuvres**

CLAC relies heavily on the practice of early renewal of collective agreements especially when faced with possible decertification. Other tactics used by CLAC to keep legitimate unions out include: the transferring of members to "dummy" bargaining units, and in at least one case in the construction industry a contractor was asked to shut down worksite operations during the open period so that there would be no bargaining unit members "at work" to participate in a decertification or displacement.

These legal manouevers have seen mixed results – in some cases CLAC has gotten away with early closing or total avoidance of open periods, in other cases Labour Boards have remedially established open periods.

On October 17, 2007, the Alberta Court of Appeal unanimously overturned a Labour Relations Board (LRB) decision that allowed Finning International in 2005, to bust a legitimate union, the International Association of Machinists (IAM) and install CLAC in its place. The legal manoeuver used by the company (with the collusion of CLAC) was to establish a "new" entity (OEM Re-manufacturing) for part of its operations thereby evading the contract with the International Association of Machinists in violation of "well established successorship principles."

Other CLAC tactics include:

- Signing voluntary recognition agreements with an employer before any employees have been hired.
- Conducting ratification votes before a wage schedule was negotiated into the collective agreement.
- Permitting management to participate in union meetings.
- Enticing employees with interest free payday loan advances if they signed with CLAC when real unions were trying to organize them.
- Empowering CLAC staff to "conclude, execute or administer collective agreements on behalf of CLAC or an affiliated local" without having to go back for a membership vote.

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- Withdrawal of benefits plan coverage as a payback for loss of certification.

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Frequently Asked Questions (FAQ)

Is CLAC a real union?

- A number of Labour Relations Boards across the country say they are. Other LRB's do not recognize CLAC a legitimate union in the construction industry. However, we believe that a union should be judged on what they do, not whether or not they are officially considered one.
- It is important to remember that CLAC was founded in 1952, but did not get its 1st certification until 1963 because it was deemed to have a Christian-bias as far as its principles and practices were concerned.
- It is estimated that between 25-40% of CLAC certifications are Voluntary Recognitions, where workers have no say in who represents them since these agreements are struck behind closed doors between employers and CLAC reps.
- Unions should represent their members' interests, and that in order to do this, they have to be independent of employer influence. Does CLAC pass the test? We'll leave that decision up to you...

Do real unions oppose CLAC because it is a Christian union?

- Absolutely not! Real unions include Christian unions, such as the Ontario English Catholic Teachers Association (OECTA).
- Our issue with CLAC is not that they are Christian, but rather that they negotiate sub-standard agreements that are below industry standards (wages, overtime pay, vacation, holiday pay, etc...) without the members input or involvement.
- On the political, legislative and legal arenas, they act in opposition to the interest of workers (witness their opposition to the anti-scab legislation).
- CLAC's approach has a simplistic appeal to those who value so-called "harmony" in the workplace. In reality, such collaboration is a tool to allow the employer to increase the rate of exploitation and control by maximising the time and efforts of all workers. That's the real truth behind CLAC's smiley-face version of the workplace.

Is CLAC affiliated to any religious organization?

- Not officially or legally. CLAC maintains very close ties (arms length) with the Christian Reformed Church and reformed church inspired organizations (schools, businesses, universities, think tanks, etc).
- The founders of CLAC were members of the Christian Reformed Church and built CLAC as one of a number of societal organizations that were part

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of the church's overall mission.

- According to James Olthuis of the Institute for Christian Studies, the Lord's dedicated "band of CLAC'ers" have been busy "erecting signposts for the Kingdom of God in the socio-economic arena."
- The Christian Reformed Church in North America website takes pride in the creation of the Christian Labour Association (US) in 1931.

CLAC says that all "traditional unions" are the same - is this true?

- Nothing could be further from the truth. Every union in Canada has a different approach based on who their members are, how employers treat its workers and the sector they work in. The job a nurse does is very different from the job a trades person does, so obviously the unions they have will be different.

CLAC says that unions are only upset with CLAC because they're so successful. How do you respond?

- There's no doubt that CLAC has been growing for the last 10 years or so. What we're worried about is not that they are growing, but rather what is behind the growth: it is because employers are often "choosing" them to keep unions out and because workers often aren't given the choice about whether they want to join or when they want to leave CLAC. If workers have all the information about CLAC and are given the opportunity to decide if CLAC is in their best interests, we think that fewer and fewer workers will choose CLAC.

SCHEDULE "A"

What is the difference between CLAC and real unions?

Real Unions	The Christian Labour Association of Canada (CLAC)
▪ Open and transparent organizing drives	▪ 25% to 40% Voluntary Recognitions (behind closed door deals between employers and CLAC staff)
▪ Members vote to ratify their collective agreements	▪ Staff has authority to "conclude, execute, or administer collective agreements" without having to go back for a membership vote
▪ Lobby governments to strengthen labour rights (anti-scab, minimum wage, employment standards, etc)	▪ Lobby governments against anti-scab legislation; supports back to work legislation; promotes open shop and opposes the Rand formula
▪ Real Unions are independent, democratic and representative organizations	▪ An unrepresentative, employer-accommodating and staff controlled organization
▪ Negotiate agreements with higher provisions and increased protections than the law	▪ Frequently negotiates sub-standard agreements with provisions below the minimum standards of the law (B.C. Employment Standards Act)

SCHEDULE "A"

A Guided Tour of the CLAC Constitution

(as amended at the October 28, 2006 National Convention)

The CLAC Constitution states that the policies and actions of the organization are based on "the Christian principles of social justice and charitable relationship among people, as taught in the Bible." These Christian social principles are also said to be informed by "Christian social thought and action, with an emphasis on the dignity of the human person."

The overall guiding principles of CLAC are found in Supplement A (Principles) and its practices in Supplement B (Practices) of the Constitution. **Here are some of CLAC's guiding principles:** all human beings are created equal; resources of the world should be used for the benefit of all humanity and not only some individuals; compensation of work should enable workers to meet their personal and family needs; removal of injustice should not be sought through class conflict or revolution, but through actions that respect proper authority and democratic principles; employers and employees have shared interests; workers should organize to protect their common interest and to preserve and promote their legal and God-given rights; collective bargaining is an important means through which labour and management describe their respective responsibilities; strive for a balance between collective and individual interests; allow the voice of the minority to be heard; **employers and workers must make every effort to settle differences peacefully; a strike should not occur before the workers have exhausted reasonable alternative methods of removing the injustice.**

CLAC's key practices include: promote cooperation between workers and their employers; negotiate CAs that guarantee proper wages, benefits, and other just working conditions; maintain Sunday as a common day of rest; encourage members to study and consider the relationship between Christian social principles and current economic and social conditions; promote just economic and social conditions that reflect the union's principles; exert influence on all levels of government to promote and protect the interest of labour; **employ measures and practices that minimize the occurrence of unnecessary labour disputes;** cooperate with like-minded organization in Canada and internationally; assist members in finding and keeping employment.

Structure of CLAC

CLAC describes itself as a "national labour organization, constituted of craft, trade, industrial, occupational, student and solidarity locals." (7.01) Each local is considered a separate union in its own right (7.01) and a local may be formed if it has at least five workers (or members in the case of solidarity or student locals). (7.02 & 7.03)

SCHEDULE "A"

Membership

CLAC has two types of membership: direct members and local members. In both cases a person can become a member upon pledging to uphold the CLAC Constitution, and has signed a membership application form by which he pledges to faithfully fulfill his membership obligations. (6.01) Membership of CLAC (local or direct) is considered terminated if one has "failed to pay the required membership dues for a period of six months." (6.03) Other **constitutional mechanisms are in place so as to discourage dissent and silence dissenters within the organization.** A member, for instance, may be suspended and/or expelled for: circulating or causing to be circulated false or malicious information questioning the reputation, of a member, official, union representative of CLAC, its affiliated locals or the union itself; initiating or promoting secession from the union (to be non-union or join another union); taking membership for reasons of subverting or undermining the union; violating the collective agreement; disrespecting the chair or engaging in other disruptive behaviour at meetings; promoting, organizing or participating in any unauthorized job action; providing membership information or internal documents to persons or organizations not authorized to receive them. (6.04, a to h)

The National Convention

It shall meet biennially and is responsible for CLAC's overall activity. (10.01) "the National Convention shall be constituted of the delegates of the locals and the members of the National Board and Staff Council." (10.02) BUT while "every member of the National Board and of Staff Council...shall have ONE VOTE on all matters coming before the National Convention (10.04), Locals with up to 1000 members shall have 4 VOTES. (10.03) In reality, **CLAC's national conventions are not only controlled, but also dominated by the staff** who, based on the Constitution, make up the majority of those who are given the constitutional right to attend with full privileges, unlike the members.

Who can run for National Office?

Democracy is certainly in short supply as far as giving members the right to run for office within CLAC. In fact, the Constitution is preoccupied with controlling what members can and cannot do. For example, only members who are in "harmony with this constitution" are eligible to seek elected office. "No member is eligible for nomination if he is engaged in the promotion, implementation, furtherance or support of any other union or collective bargaining group with the purpose or intent of supplanting CLAC or an affiliated local as the bargaining agent." (8.05) The Constitution also stipulates that **Nominees for elected office of CLAC must demonstrate their agreement with the Constitution not only to their fellow employees, but also in their relationship with the employer.** (8.05)

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The National Board (NB)

The NB of CLAC is made up of no fewer than 10 members and "is responsible for the overall governance of the union." (9.01) The NB is elected at the National Convention for a four-year term. A member of the NB can be re-elected for only one additional term – unless he takes a two year break in between. (9.03) Vacancies at NB may be filled via appointment. The NB elects its own president, VP and secretary.

As far as taking legal strike action the Constitution states that the NB is the sole agent that can sanction such action. The local bargaining unit must first secure the support of its local board "prior to seeking National Board approval." (9.10)

Dues & Finances of CLAC

The monthly membership dues of a full-time employee shall not be less than two times the hourly wage rate of the member. (6.07) Members who are not working under a CLAC or affiliated local collective agreement shall not pay less than $25 every six months. (6.08) CLAC has the right to require the payment of a $25 initiation fee from new members. (6.10) **The CLAC Constitution stipulates that "all funds in the treasury of a local shall be remitted at least monthly to the national treasurer." (8.21) However, the Constitution does permit locals to "levy a surcharge on the membership to fund activities" that do not pertain to collective bargaining. (8.22)**

Furthermore, the Constitution permits a local board and the NB to levy "a temporary dues surcharge on all dues-payers in the local...or on dues-payers across Canada in support of a lockout or properly authorized strike." The amount shall not exceed 10 per cent of the dues-payer's monthly dues amount, and it shall not apply for more than three consecutive months, without a NB decision to renew it beyond that time. (9.10b)

For all of CLAC's talk about respecting the membership and managing their money wisely, there is no mention in the Constitution of having to go back to the membership to approve special levies. CLAC does not maintain a strike fund, which is not surprising considering that they have only had 3 strikes in the past 55 years.

The power of the CLAC Staff

Staff Council is made up of all duly appointed CLAC Representatives. Staff Council Executive (SCE) is comprised of the Executive Director and at least six other Staff Council members. (11.01) The Executive Director shall serve as chair of Staff Council and Executive. (11.02) He is appointed by the NB and is the NB's only link to operational achievement and conduct. (11.08)

SCHEDULE "A"

Staff powers include:

- ☐ determine "annual budgets as well as staff members' tasks, salaries, fringe benefits and conditions of work," (11.04)
- ☐ approve the hiring, discharge, classification and conditions of employment for support and administrative staff and supervise their work (11.04)
- ☐ coordinate and approve legal action (11.04)
- ☐ monitor organizational performance (11.04)
- ☐ authorized to appoint one or more CLAC Representatives to serve as officers of a local, in case of vacancies (11.14)
- ☐ may enter into an agreement providing for the merger into, or transfer of jurisdiction to CLAC by any other organization with similar aims (15.01)
- ☐ responsible for accepting membership applications (6.01)
- ☐ authorized to suspend a member (6.05)
- ☐ may reduce membership dues for a part-time employee (6.07)
- ☐ issues local certification of affiliation & delineate the jurisdiction of each local (7.01)
- ☐ call for or approve all bargaining unit meetings (to be properly constituted) (11.11)
- ☐ conclude, execute or administer collective agreements on behalf of CLAC or an affiliated local (11.11)
- ☐ refer a grievance under a collective agreement to arbitration (11.11)
- ☐ place a local under trusteeship if: local calls for unauthorized strike; fails to remit funds; if local attempts to seek affiliation with another national or local union; if there is a failure to follow directives of SCE or NB (11.14, a to f)
- ☐ may serve as ex-officio members and shall be eligible to serve as officers of a local board (8.04)
- ☐ act as agents of the local in conducting day-to-day affairs which include: entering and administering a collective agreement (8.04)
- ☐ may be delegated to assume the functions of a local treasurer (8.14)
- ☐ may present names to be considered for possible nomination to the National Board
- ☐ authorized to suspend or remove a steward or a bargaining committee member (13.17)

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Canonbie.

LRB File Nos. 139-10 and 141-10

LABOUR RELATIONS BOARD
Saskatchewan

Between:

Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021)

International Brotherhood of Electrical Workers, Local 529

- and -

Construction Workers Union (CLAC), Local 151

RESPONDENT

- and -

Canonbie Contracting Ltd.

EMPLOYER

Particulars provided by
Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021)
and
International Brotherhood of Electrical Workers, Local 529

A. General

1. These particulars are provided by Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021) and International Brotherhood of Electrical Workers, Local 529 (hereinafter the "Carpenter / Millwright" and "IBEW").

2. The Carpenter / Millwright and IBEW submit it is neither required nor appropriate nor timely for particulars to be ordered at this time. The Carpenter / Millwright and IBEW provide the enclosed on a without prejudice basis to this position.

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3. The Carpenter / Millwright and IBEW have employed their best endeavours to provide further particulars of their allegations in this matter. However, most of the dealings between CLAC and the employers it deals with, including the employer within, are within the exclusive knowledge of it and the employers in question. Further, these particulars are being provided prior to pleadings being closed or any parties having an opportunity to receive production of documents.

4. In providing particulars, the Carpenter / Millwright and IBEW have had reference to actions of CLAC throughout Canada, especially Western Canada dealing with various employers. The Carpenter / Millwright and IBEW believe CLAC, Local 151 has dealt with the employer within in a fashion similar to what appears to be its normal practice, especially in the construction industry.

5. Reference to "CLAC" in these particulars is reference to the Christian Labour Association of Canada and its locals, including Local 151. Construction Workers Union (CLAC), Local 151 is referred to as "CLAC, Local 151".

6. At present CLAC has five (5) applications for certification outstanding in relation to employers' activities in Saskatchewan, those involving the following five employers: Tercon Industrial Works Ltd., Westwood Electric Ltd., Pyramid Corporation, Willbros Construction Services (Canada) L.P. and Canonbie Contracting Limited. These applications have been brought recently and are still being investigated by the Carpenter / Millwright and IBEW. The Carpenter / Millwright and IBEW reserve the right to call evidence concerning such matters as may become known as their investigations and the litigation within proceeds.

7. The Carpenter / Millwright and IBEW have endeavoured to make these particulars as accurate as possible. However, in most instances the applicant is left to best estimate the nature of dealings between CLAC and various employers, as the Carpenter / Millwright and IBEW are not privy to these dealings.

8. Together with the application within, the Carpenter / Millwright and IBEW have filed replies in CLAC's certification applications presently before the Board alleging, amongst other things, CLAC, Local 151 is not a trade union within the meaning of *The Trade Union Act*. Many of the allegations in support of this plea are

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relevant to the assertion that CLAC, Local 151 is a company dominated organization.

9. The Carpenter / Millwright and IBEW provide the following particulars in support of these assertions.

(a) The Carpenter / Millwright and IBEW assert CLAC is in reality an organization the primary purpose of which is not to represent and promote its members' interests in dealing with employers or securing improvements in terms and conditions of employment, but its primary purpose is to assist employers in avoiding representation of employees by bona fide trade unions. CLAC appears to be active in a number of different sectors, including the construction industry.

(b) The Carpenter / Millwright and IBEW assert CLAC has been responsible for agreeing to collective bargaining agreements with terms and conditions inferior to those available to employees represented by bona fide unions in the construction sector. To the best of the Carpenter / Millwright's and IBEW's knowledge, a number of these agreements may not be subject to a meaningful ratification process by the membership or were made without meaningful or any input from the membership. The same may be taken to the membership prior to wage schedules being negotiated.

(c) CLAC's constitution allows for staff members to be appointed without election by the membership. These staff members are allowed to vote at meetings. It is asserted the affairs of CLAC are determined by appointed personnel and not by persons elected by the membership or the membership itself. By the CLAC constitution it appears only the appointed representatives have the authority to represent a bargaining unit and to conclude, execute or administer collective bargaining agreements.

(d) From information available to them, the Carpenter / Millwright and IBEW believe that in CLAC's 55 year history, it has had approximately only five strikes. Further, the CLAC constitution appears to provide

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that members of a Local who support a properly authorized strike may be subject to a special temporary dues surcharge, not to exceed ten (10%) percent of the members' monthly dues amount.

(e) The Carpenter / Millwright and IBEW further understand representation of members in the workplace is minimal. Further, they understand although CLAC does process grievances on behalf of members from time to time, it is reluctant to do so and does so only when confronted with the possibility of a complaint of fail to fulfill the duty of fair representation.

(f) The Carpenter / Millwright and IBEW have learned of union meetings where management or apparent management has been allowed to participate. The Carpenter / Millwright and IBEW have learned specifically of meetings occurring involving employees of employers working in the Fort McMurray, Alberta area, where employees believed to be outside of the collective bargaining unit participated in "union meetings". The meetings the Carpenter / Millwright and IBEW are aware of did not involve the employers presently subject to certification applications in Saskatchewan. However, the Carpenter / Millwright and IBEW believe CLAC deals in the same fashion or a very similar fashion with most of the employers it represents. To the Carpenter / Millwright's and IBEW's knowledge, two employers subject to certification applications, Westwood Electric Ltd. and Canonbie Contracting Limited, were active in the Fort McMurray area and believed to be parties to have the same or similar collective agreements. These activities to the Carpenter / Millwright's and IBEW's knowledge occurred from late 2007 into the year 2009 and likely continue to present.

(g) Most bona fide building trade unions provide hiring halls with out-of-work boards available for its members. Workers join the union and are dispatched from the hiring hall upon call from employers. Voluntary recognitions agreements do occur. However, employees who are

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members of bona fide building trade unions have input into same and a meaningful ratification process is employed.

(h) To the Carpenter / Millwright's and IBEW's knowledge, CLAC does not operate a hiring hall system. It negotiates collective agreements in the construction sector often without employee input. Employees are generally left to deal directly with employers in finding work. As part of the hiring process, employees are directed by the employer to join CLAC, the Carpenter / Millwright and IBEW believe as a condition of employment.

(i) The Carpenter / Millwright and IBEW assert the traditional building trades provide better representation and agreements with superior terms and conditions of employment to its members than those available to members of CLAC and many members of CLAC would prefer to belong to a bona fide trade union, but have joined CLAC as it is the only way to obtain work.

(j) To the Carpenter / Millwright's and IBEW's knowledge, CLAC works closely with a number of anti-union or "open shop" employers' organizations. To the applicant's knowledge, CLAC has been a sponsor and/or a participant at a number of open shop conferences, including one held in May 2007 in Victoria, British Columbia and another held in April 29 to 1 May 2010 in Kelowna, British Columbia. Further, it is believed CLAC works closely with the Progressive Contractors Association of Canada (hereinafter referred to as "PCAC"). To the Carpenter / Millwright's and IBEW's knowledge, its members include Canonble Contracting Limited, Pyramid Electric, Westwood Electric Ltd., Willbros Construction Services (Canada) L.P., Tercon Industrial Works Ltd.

(k) The Carpenter / Millwright and IBEW have information concerning a CLAC representative meeting with PCAC on the 1st of February 2006, apparently to discuss collaboration with employers to assist employers in avoiding certifications by the bona fide building trades. The

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Carpenter / Millwright and IBEW do not know the exact location of this meeting, but believe it to be Edmonton or Calgary.

(l) The Carpenter / Millwright and IBEW have information as to what they believe to be an accurate excerpt from the Executive Director's Report of PCAC for the period ending February 29, 2006. The excerpt is as follows:

> "The Progressive Contractors Association of Canada Board met on February 1, 2006. It was a productive meeting which included two guests: Dave Ross from McLennan Ross and Co Vanderlaan from the Christian Labour Association of Canada ...
>
> ... Given the importance of this matter and the importance of mobility of workers from the Building Trades to CLAC, our Board is very interested in this matter.
>
> Our board also discussed some British Columbia initiatives. We are in the process of organizing an Open House sponsored with CLAC out of British Columbia so that we can increase our presence in the British Columbia market."
>
> The Progressive Contractors Association of Canada (PCAC)
> Executive Directors Report
> Period Ending February 28, 2006

(m) The Co Vanderlaan referred to as then being from CLAC is now the Executive Director of PCAC.

(n) The Carpenter / Millwright and IBEW believe CLAC has collaborated with a number of employers in an effort to prevent bona fide trade unions from being able to organize the workplace by entering into new collective bargaining agreements in a manner that avoids open periods. An example of this can be seen in *Firestone Energy Corp.*, 2009 ALBRD No. 22 and the cases mentioned therein (It is believed this decision is presently subject to reconsideration and judicial review). Further particulars as to dates, places, etcetera are set forth therein.

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(o) The Carpenter / Millwright and IBEW are presently aware of other instances where CLAC has collaborated with employers to avoid open periods, those being:

Employer	Date CLAC new contract
Save-On Foods & Drugs	March 14, 2001
Extendicare (Canada) Inc. Scottish	August 16, 2001
Ledcor Fabricators Inc.	December 31, 2002
Ledcor Industrial	December 31, 2002
Venta Care Centre	May 31, 2003
Extendicare Canada Inc. Somerset	August 31, 2003
Chinook Animation Productions	September 29, 2003
Monad Contractors Ltd.	October 2, 2003
Trotter & Morton Building Technologies Ltd.	May 31, 2004
HMJ Fabricators Ltd.	December 16, 2004

(p) The Carpenter / Millwright and IBEW are not presently aware of the locations of entering into the abovenoted contracts; the same is within the knowledge of CLAC.

(q) Another reference to this practice may be seen in *Husky Oil Operations* v. *Ledcor* Industries Ltd. 2006 ABCA 122 (varied on appeal 2006 ABCA 122), where CLAC's practices are referred to especially at para. 69 through 72. There, it appears there the employer voluntarily closed down operations to save CLAC from being vulnerable to an open period and possible representation applications by bona fide unions. (Further particulars as to time and place are set out in the decision).

(r) Another example of CLAC collaborating with an employer in an effort to avoid representation by bona fide trade unions may be seen in *Vertex Construction Services Ltd.*, [1999] Alta. L.R.B.R. 183, where CLAC entered a voluntary recognition agreement when it was not the representative of employees. These activities appear to have occurred in late in 1997 and continued into 1998. Further particulars are set forth in the Alberta Labour Relations Board's decision.

(s) A further example of CLAC attempting to avoid an open period with another collective agreement can be seen in *United Brotherhood of*

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Carpenters and Joiners of America, Local 1325 v. *J.V. Driver Installations Ltd.* 2004 ABQB 915. These facts appear to have occurred during or about the years 2000 and 2001. Further particulars of location and time are set out in the judicial review decision above-noted and the Labour Relations Board decision given rising to same.

(t) To the best of the Carpenter / Millwright's and IBEW's knowledge, CLAC has offices throughout Canada. The offices most likely involved in the transactions germane to the matter presently before the Board are those in Alberta, British Columbia and Saskatchewan. The location of these offices to the Carpenter / Millwright's and IBEW's knowledge are as follows:

British Columbia: Fort St. John, Kelowna, Tumbler Ridge and Vancouver;
Alberta: Edmonton, Calgary and Fort McMurray;
Saskatchewan: Saskatoon.

(u) The location of the employers' offices in question are most likely those set forth in CLAC's applications filed with the Labour Relations Board, those being:

Tercon Industrial Works Ltd., Kamloops, British Columbia
Westwood Electric Ltd., Leduc, Alberta
Pyramid Corporation, Nisku, Alberta.
Willbros Construction Services (Canada) L.P., Sherwood Park, Alberta
Canonbie Contracting Limited, Sherwood Park, Alberta.
Further particulars of the exact location of these offices are set forth in CLAC's applications filed with the Labour Relations Board.

(v) The Carpenter / Millwright and IBEW submit it is likely communications between CLAC and the employers in question occurred either in person or by telecommunication (whether by electronic mail, facsimile transmission or otherwise).

(w) The Carpenter / Millwright and IBEW allege further CLAC and more specifically Local 151 and the employers in question have acted in concert in relation to the matters above-noted, whether through the

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Progressive Contractors Association of Canada or other associations or otherwise.

(x) The above represents what the Carpenter / Millwright and IBEW believe to be the normal course of operations of CLAC and the employers who chose CLAC to deal with. The Carpenter / Millwright and IBEW assert the same or similar dealings occurred with employers presently subject to certification applications in Saskatchewan, including the employer within. The Carpenter / Millwright and IBEW assert this conduct has been carried on over a number of years and continues to date.

(y) There is nothing about the application at hand that leads the Carpenter / Millwright and IBEW to believe CLAC including Local 151 and the employers in question have deviated from the normal course of events and lead the Carpenter / Millwright and IBEW to the conclusion that the employer and/or the employer's agents have engaged in domination of CLAC and more specifically Local 151 within contrary to *The Trade Union Act*.

(z) The Carpenter / Millwright and IBEW are not privy to nor do they have direct knowledge of specifics of the dealings between CLAC and the employers subject to certification applications in the province of Saskatchewan, including the employer within, and therefore cannot provide these particulars, but it is asserted it is likely these matters occurred shortly before the employers commenced active operations in the province of Saskatchewan and shortly prior to the certification application being filed within, matters which occurred commencing late July 2010. Similarly, the Carpenter / Millwright and IBEW are not privy to the places in which the impugned activities occurred, but assert it is likely the same occurred at the employer's sites in Saskatchewan and/or the employer's offices in their home jurisdictions outside of Saskatchewan, CLAC's offices in Saskatchewan and outside of Saskatchewan.

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(aa) The Carpenter / Millwright and IBEW believe CLAC has likely entered into a voluntary recognition agreement with the employer within without any meaningful input from employees affected by it. The same was likely concluded shortly before the employer commenced activities in the province of Saskatchewan and is likely an adaptation of a CLAC agreement previously in place with this employer and/or others.

(bb) The Carpenter / Millwright and IBEW assert upon the above, the employer and/or its agent, alone or in concert with other employers have dominated or interfered with the formation and administration of CLAC, including Local 151. Further, the employer has received and will continue to receive benefit from CLAC by virtue of lower employee costs due to a number of factors, including inferior terms and conditions of employment. CLAC on the other hand has received and will continue to receive support and other benefits, both financial and otherwise by obtaining membership dues, fees and assessments from persons who would not otherwise belong to CLAC but for the arrangements between CLAC and its employers above-noted.

Dated at Saskatoon, Saskatchewan, this 2nd day of November, 2010.

Plaxton & Company

Per: _____

Solicitors for Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021) and
International Brotherhood of Electrical Workers, Local 529

To: The respondent,

SCHEDULE "B"

Construction Workers Union (CLAC), Local 151
by its solicitors Blumet, Duckworth & Palmer, LLP

To: The employer,
Canonbie Contracting Ltd. by its solicitors
McLennan Ross LLP
David J. Ross, Q.C.

This document was delivered by Plaxton & Company

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