

BRITISH COLUMBIA LABOUR RELATIONS BOARD

HERMON PEREIRA, RICARDO CORDONI, SARAH NICOL,
ALBERT MASUNDA AND GRAHAM HIGGS
(the "Complainants")

-and-

UNION OF PSYCHIATRIC NURSES

(the "Union")

PANEL:	Paul Johnston, Vice-Chair
COUNSEL:	Lorraine Shore and Ana Lopez, for the Union Robert Fredericks, for the Complainants
CASE NO.:	30347
DATES OF HEARING:	September 25, 26 and 27; October 29 and 30; November 12, 13 and 14, 1996
DATE OF DECISION:	March 17, 1997

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Complainants apply under Sections 9 and 10 of the *Labour Relations Code*. They allege that the Union denied them natural justice in several matters. They also assert that the Union carried out discriminatory, intimidating or coercive acts. The actions upon which the Complainants rely in this application are numerous and varied.

2 This is not the first dispute of this nature between the parties. The first Section 10 application was filed in January 1995 and the Board granted withdrawal of the application in December 1995: *Hermon Pereira, et al.*, BCLRB No. B437/95. The Board dismissed a second Section 10 application on January 12, 1996: *Hermon Pereira, et al.*, BCLRB No. B8/96.

3 The application that is the subject of this decision initially included a request for an interim order under Section 133 of the Code. I dismissed this request in a letter to the parties dated May 22, 1996 but set the balance of the application for hearing.

II. BACKGROUND

4 The Union has a membership of slightly more than 1000. The supreme decision-making body is the Annual Convention held in May of each year. A Council, composed of five Officers elected at the Convention (the "Provincial Executive") and representatives from its various Locals, administers the Union between conventions.

5 This dispute arises at Riverview Hospital. Riverview employs nearly half of the Union's entire membership. Until 1986, there were two separate hospitals. The two hospitals were merged into a single employer with two programme areas, adult and geriatric. The two programmes and two Locals of the Union roughly equated to the jurisdictions of the two hospitals. The Locals were merged into one, Local 100, in 1991. There is a joint certification between the Union and the British Columbia Nurses' Union (the "BCNU") that covers nurses, including those at Riverview.

6 The Union was experiencing administrative difficulties as a result of the division of its membership into two Locals. Discussions in Spring 1991 culminated in a Council decision to strike a special committee chaired by then Director, Stew Johnson, to investigate. In June 1991, the committee recommended merger of the two Locals. The recommendation was generally accepted by Council but opposed by Local 101 President, Andy McColl. The matter was referred back to the committee. At the January 1992 Council meeting, a timeline was set for the creation of the new combined Local 100, including an express requirement for a set of amendments to the Union's

Bylaws and Constitution for presentation to the 1992 Convention to provide greater Council and Convention representation for the new combined Local.

7 The inaugural meeting of Local 100 was held on March 25, 1993. McColl was nominated for President by Strath and Kathy Nelson, an Officer on the Union's Provincial Executive. He defeated Albert Masunda and Owen Green. Masunda was elected as Vice-President. Also elected were Ricardo Cordoni as Treasurer and Graham Higgs as Secretary. Strath, Cordoni and five others were chosen as delegates to the 1993 Convention.

8 The 1993 Convention approved a new delegate representation formula that increased Local 100's number of Convention delegates. The Bylaw provision, Article 9.1, sets the number of delegates for the next Convention based upon a local's membership numbers at the time of the preceding Convention.

9 In March 1994, Masunda defeated McColl for the Presidency of Local 100. He was joined on the Executive by Cordoni, Green and Higgs.

10 Staff member, Dwight Wenham, the Director of Labour Relations, reported to the 1994 Convention concerns with the Union's revenue and expenditures; the end of a twenty year relationship with the BCNU; and an affiliation agreement entered into with the B.C. Government and Service Employees' Union ("BCGEU"). These matters were all inter-related.

11 In January 1993, the BCNU had invited the Union to merge with it. The Union rebuffed this overture. This was followed by an increasingly acrimonious relationship fueled by difficulties in collective bargaining, discussions of re-structuring in health care and sparring between the two organizations at the Labour Relations Board. There were financial costs to the Union in this and in its decision to seek affiliation through the BCGEU with the B.C. Federation of Labour and the Canadian Labour Congress. The intent of the affiliations was to discourage raid activities by the BCNU.

12 Tensions grew between the Provincial leadership and the Executive of Local 100. Masunda was removed from his position on Council and as President of Local 100 in August 1994. In response, the balance of the Local 100 Executive resigned. Masunda, in turn, filed a defamation suit against Johnson and another member of the Union. Council appointed four trustees, Strath, Nelson, Lorraine Ibbitson and Pat Savage. The Union advised its Local 100 members that an election would be held early in the Fall 1994.

13 At its November 24 meeting, Council rescinded Masunda's removal as Local 100 President. It did not re-instate the previous Executive. Instead, Council extended the trusteeship until March 1995.

14 The Local 100 elections took place in March 1995. The Officers of the Union received nominations as opposing slates and issued an information bulletin to the

members identifying the slates. Balloting, however, was carried out for each position of the Executive individually.

15 The four former Trustees were on the "Green" slate. It was led by Strath who ran for the position of President. The "Blue" slate, headed by Masunda, included all five of the Complainants. Half the eligible membership voted. Masunda and the "Blue" slate swept every position.

16 The 1995 Annual General Meeting ("AGM") of Local 100 took place on March 28. Provincial Executive Officers Johnson, Parker and Diane Mitchell and staff member, Wenham were scheduled to speak.

17 The order of business for Local 100 meetings is set out in its Bylaws and stipulates that new business and the election of Officers are to be the final two items on the agenda. Election of the delegates to the 1995 Convention was also scheduled. There was a motion from the floor to change the agenda and move the elections to the first item of business to accommodate those members who were in attendance during their lunch break.

18 Johnson advised the members that he preferred the pre-set agenda not be altered. He wished to speak to several significant issues subsequent to the election of Convention delegates. He was heckled. Wenham rose and told the hecklers to "shut up". Johnson, Wenham, Parker, Mitchell and Strath left the meeting. Masunda asked the Union Officers to return. Wenham replied "not on your life"; Johnson advised Masunda "...you're on your own now".

19 Masunda received a letter from Johnson on April 5, 1995 which indicated that Masunda could not sit as a representative on the Union's Council as Masunda's outstanding defamation suit placed him in conflict of interest. This position was later reversed and Masunda was only denied entry to the April 10, 1995 Council meeting.

20 At the April 10, 1995 Council meeting, only Nicol was in attendance for Local 100. Four of six resolutions, presented for referral to the 1995 Convention, would have had the effect of decreasing Local 100's delegation to the Conventions and representation on the Council. All four were approved and referred to the Convention.

21 On April 13, 1995, a Union memo, authored by Wenham, was circulated at Riverview. It read in part:

The new leadership of Local 100 has determined that given the conclusive results of the recent election, it will handle all representations with Local 100's members. This will include questions of opinions of member's rights under the collective agreement, grievances, WCB and LTD appeals, etc. Although this has not been the Union's practice in the past, the Union has concurred.

22 The Local 100 Executive denied it endorsed this change in policy. Johnson testified that the intent was not to deny services to any member. Members were free to contact the Union's office for assistance and many did.

23 The BCNU commenced a raid on the Union in April 1995. A meeting between two Union Officers and two Local 100 Officers discussed closer ties between the Union and the Local. The Officers wanted a joint bulletin with both Nicol's and Masunda's signatures condemning the raid. Nicol and Masunda wanted a bulletin acknowledging that Johnson and Wenham were responsible for the bad relations. The bulletin drafted by the Union only dealt with the BCNU raid. The Local Executive decided to advise the Union that the bulletin did not require the signatures of Masunda and Nicol as it was "...no different from any other bulletin issued by the Union...".

The 1995 Annual Convention

24 The Union's 1995 Convention was held on May 26. Thirty-three voting delegates were recognized including nine from Local 100. Bylaw changes of a housekeeping nature were passed but the substantive changes, discussed at the April 10 Council meeting, failed to receive the required two-thirds majority. The Local 100 delegates voted together in opposition to those measures that failed.

25 The Union's Constitution and Bylaws in effect after the 1995 proceedings read:

9.1 Local Unions shall be entitled to representation at the Conventions of the Union...

...for the purpose of this Bylaw, the number of members of each Local Union shall be determined as at the date of each Annual Convention and shall be deemed to remain unchanged during the period between Annual Conventions.

26 The membership of Local 100 at the time of the 1995 Convention set its entitlement to the 1996 Convention at nine delegates.

27 The Convention unanimously approved a resolution aimed at the increasingly acrimonious relations between the Union and Local 100. It directed the Council and Executive Committee "...to commence a process of reconciliation within the Union". Terry Riley, the Union's Treasurer, contacted Masunda to "...ascertain what plans he [Masunda] and his Executive [had] in mind to carry out the wishes of the Convention delegates". Riley reported that Masunda had refused to meet as he felt he should be communicating with Johnson.

The BCNU Raid

28 An emergency resolution at the 1995 Convention condemned the BCNU raid; called on the Union to strengthen its ties with the B.C. Federation of Labour and to strengthen and expand sanctions against the BCNU. The raid clearly influenced

relations between the Union and the Local. The Union knew and/or suspected that certain members of the Local 100 Executive were complicit in the raid.

29 A July 1995 "Statement of Position" by Cordoni was circulated at Riverview supported the BCNU. Ibbitson wrote and circulated a petition amongst Local 100 members that called on the Executive of Local 100, its Directors and Convention delegates to state their position with respect to the raid. There were one hundred and six signatures on the petition when it was delivered to Masunda. The Local 100 Executive responded to the petition. It refused to articulate a collective position for fear of reprisals by the Union. The Executive stated that individual opinions were "...quite varied..." and that the Executive and delegates were "...available to members of Local 100 to discuss the facts that we are aware of...".

30 The Union did not pursue disciplinary charges against Cordoni for his written statement as charges would "...add fuel to the fire...". No charges were brought against any member of the Local 100 Executive. Instead, Johnson directed Masunda to obtain the resignations of Cordoni and Pereira for "breach of trust". Masunda was unable to obtain those resignations. Local 100 was no longer provided Council minutes in advance of the meetings or sent copies of "Update", an internal Union bulletin forwarded to Local Executive members, stewards and Union activists.

31 The Union established an anti-raid committee headed by Strath. It was organized without the participation of the Local 100 Executive. The Executive refused to attend committee meetings. The Local 100 decision to take a "hands off" position was because the Union had established the committee without the Local's involvement.

Events in the Fall of 1995

32 Relations continued to deteriorate throughout the Fall of 1995. Two grievances, one involving the shifts of Nurse 5's and the other vacation scheduling with respect to Nurse 3's, caused considerable friction. In a letter from Wenham to the Nurse 5s, he stated that he was "...in full agreement that...you deal with Albert Masunda and the BCNU and that I stay out of your problems". Masunda wrote Johnson and complained that Wenham, as an employee, "...[had] no right to be reluctant nor refuse service to any member of our Local". Masunda urged Johnson "...to ensure that such conduct ...does not continue". Johnson interpreted the letter to be a request to discipline Wenham; a request he dismissed as "game-playing".

33 Local 100 continued to attend joint union-management meetings with representatives of the BCNU. On November 16, Johnson wrote and reminded Masunda to discontinue contact with the BCNU. He instructed Masunda and all Officers and stewards of Local 100 to cease all contact with the BCNU.

34 In response, the Executive of Local 100 called a membership meeting. The meeting decided by consensus to continue to meet jointly with the BCNU representative and the Employer. Masunda advised Johnson of this in a December 6 letter. Local 100

and BCNU representatives both attended a December 15, 1995 Joint Standing committee meeting with the Employer.

The Riverview Revitalization Committee

35 Johnson believed that the events in the Fall of 1995 proved that Local 100 was "...out of control". He initiated a December 14 meeting of what was titled the "Revitalization Committee". Those in attendance included Strath, Ibbitson, Savage, Nelson, Parker, Mitchell and a consultant, Paul Rowland. Minutes of the November 1995 Council Executive meeting indicate the consultant was hired to assist in the reorganization of the Union after the transfer of community-based members to the health sector and the closing of Woodlands and Glendale. Johnson left before the meeting commenced as he did not wish to influence its outcome.

36 Topics, addressed at the meeting, included the loss of Union members, health care re-structuring, jobs for psychiatric nurses and programme management. The emphasis, however, was on the political situation with Local 100. Amongst the goals listed in Rowland's notes was "Change leadership at Local 100"; amongst the options listed were "Co-opt", "Get rid of them"; "Council to remove executive"; "split locals", and "discipline". Another option was to "Give responsibility to membership". Strath testified that he believed that the current Executive would be re-elected in 1996.

37 On December 20, Ibbitson delivered a letter she had crafted to Johnson signed by six Local 100 members employed in geriatrics. It requested that Council investigate reconstituting Local 102. The reasons given were that there was "...a sense of separation... between the Geriatric and Adult Divisions"; "...that staff and safety issues [were] not being equitably addressed..."; "...that stewards [were] cut out of the process...leaving members uninformed"; that "...issues of substance..." [were] not being addressed; and that "...Union bashing by the Local 100 Executive...divide[d] its members".

38 The Revitalization Committee met again on January 4, 1996 to discuss the reconstitution of Local 102. The group recommended from amongst themselves a Managing Committee for Local 102. They recommended geographical boundaries for Local 102 and a process of consultation with Local 100 to work out details of the split.

39 On January 23, 1996, a petition with 96 names of members from the Geriatric programme was delivered to the Union's office. It supported the call for the reconstitution of Local 102. Johnson took the petition to the January Council meeting. Copies were not distributed. Similarly, it was produced at the March Council meeting but not circulated for inspection. When the petition's existence was challenged by Masunda at the May Council meeting, Strath stated it was not circulated as "...the inspection of names [might] create possible harassment".

The January 25, 1996 Council Meeting and the Re-establishment of Local 102

40 The January 25 Council meeting approved the reconstitution of Local 102. Johnson took the unusual step of providing his President's Report in writing to the meeting. Of the seven and one half pages of single space type, a page describes his actions, those of the Riverview Revitalization committee and the reasons for reconstituting Local 102. The balance of his report was Johnson's analysis of the issues and tensions that existed between the Provincial Officers and the Executive of Local 100. Johnson condemned Masunda and the Local 100 Executive for its condonation or support of the BCNU during the raid.

41 The motions to re-establish Local 102 expanded the Local's jurisdiction beyond its former size prior to the formation of Local 100. All on-call nurses were placed in its jurisdiction. Local 102 was to have roughly half the UPN members at Riverview. Peter Gog, Nelson, Ibbitson and Strath were named as the Managing Committee, with Gog as Chair. The Committee was given full authority to manage the affairs of Local 102. Local 100 was instructed to determine its new membership numbers, amend its Bylaws and meet with the Managing Committee of Local 102 to divide assets and representation entitlements. The resolutions were carried over the opposition of the representatives of Local 100.

42 Council also passed a series of 10 motions directed at the Executive of Local 100. The first four expressed Council's "...extreme dismay and disappointment..." with the Local 100 Executive for consorting with the BCNU, failing to work towards reconciliation within the Union and violations of the Local's Bylaws. Resolutions five and six took issue with certain remarks attributed to Masunda in the Local's minutes and ordered Masunda to prove the reported assertions or apologize and publish a retraction in "Spotlite". Resolution seven demanded that Masunda obtain the resignations of Pereira and Cordoni for their support of the BCNU. Resolutions nine and ten directed that the Council's "extreme dismay and displeasure" with the Local 100 Executive be reported to the entire Union membership in "Spotlite".

43 The Union issued a letter to all Local 100 members on the next day to explain and promote its actions in re-creating Local 102. The letter advised that a Committee had been struck and a consultant hired to review the Union's values, goals and structure. "Spotlite" contained a similar article in its January/February edition. It stated that the reactivating of Local 102 was done at the request of the members in the new Local. No mention was made of the ten motions.

The Events of February and March, 1996

44 The Executive of Local 100 called a membership meeting for February 5, 1996. The breakup of Local 100 and the ten motions passed by Council were discussed. The meeting passed a motion unanimously expressing "extreme dismay and disappointment" in the Council for dissolving part of Local 100 without input. The motion called upon the Local 100 Executive to seek a meeting with the Union's Officers "...to assist you on this subject at your earliest possible convenience". It was further decided not to meet with the Managing Committee of Local 102 until the issue had been resolved.

45 Higgs, Secretary of Local 100, wrote Johnson on February 12 and set out the approved motion verbatim. He advised Johnson there would be no discussions with Local 102 until the issues raised in the motion had been resolved. This was followed by a February 14 letter from Masunda to Johnson refusing to retract or apologize for his comments that "...both (Johnson and Wenham) had refused to address membership concerns".

46 Johnson telephoned Masunda and indicated that he was displeased that Local 100 was not meeting with Local 102 and at a loss to understand the purpose of a meeting between the Executives of the Union and the Local. Johnson discussed the issue with other members of Council and a decision was made to proceed with the meeting with Local 100.

47 Masunda's conversation with Johnson and Local 100's relationship with Local 102 were discussed at a Local 100 Executive meeting on March 10. The attitude of the Local 100 Executive had crystallized. The minutes indicate that "...at this time, Local 100 doesn't recognize [the] existence of Local 102".

48 The Union's office secretary contacted Masunda, Nicol and Higgs by telephone to confirm the date and time of the Local 100/Union Executive meeting. This was followed by a written notice to the three. Nicol, the only Local 100 Executive scheduled to work, booked time off. Masunda understood there would be four participants from the Union's Executive and invited Cordoni to balance the numbers. He did not advise the Union of this decision.

49 The four Local 100 Executive members arrived at the Union's offices. Johnson and the Union Officers refused to meet with a delegation that included Cordoni, whom Johnson accused of being a traitor. After a caucus, the Local 100 Executive members decided to hold fast to their decision to include Cordoni. Masunda attempted to persuade Johnson to acquiesce. When this proved impossible, the Local 100 Executive members left and the meeting did not take place. The entire process took one hour.

50 The Union Officers continued to meet. Those who were eligible claimed a full day's Leave of Absence ("LOA") pay from the Union. When Masunda approached Johnson to sign Nicol's LOA form, he granted only one hour. The Union's Expense Account Regulations state that an LOA claim should reflect the actual time required for the meeting plus travel time to and from the worksite with exceptions for Council, Executive, Bargaining and other meetings anticipated to last a full day.

51 Both parties responded with their own versions of what took place. Local 100 published a bulletin for distribution at Riverview; Johnson wrote two letters, one to the Union's Council and members of the Local 102 Managing Committee, the other to Masunda. An issue of "Update" reported the Union's version of the event.

52 The facts in all were essentially the same. They differed in emphasis and in their analysis of who was responsible for the cancellation of the meeting. Johnson told

Masunda that he would not attend the Local 100 AGM but that he would be pleased to meet Masunda and the members of the Local "...[w]hen you are prepared to tell your members the whole truth and to provide some modicum of control...".

53 Local 102 held its first AGM on March 21, 1996. The 19 people who attended elected the Local's Executive by acclamation. The Executive included Strath as President and Ibbitson as Vice-President. Four delegates to the Convention were chosen. The meeting endorsed the new Local's Bylaws.

The March 28, 1996 Council Meeting

54 The issue of the LOA payment of only one hour to Nicol for the March 11 meeting was presented to Council. A motion to pay Nicol for the day was defeated with Johnson casting a tie-breaking vote. The motion was opposed by the Executive of the Union with the delegates from the other Locals with one exception, Kay Taylor, abstaining from the vote. Taylor supported the payment of Nicol.

55 It was reported that Local 100 had not met with the Local 102 Managing Committee as directed. The matter was referred back to the Executive for a report at the next meeting.

56 Several proposed constitutional amendments were presented for the consideration of Council. One proposal would set the number of Council representatives for a new Local based upon its membership on the day that Council established the new local. The existing constitutional provision set the number as of the date of the previous year's Convention. This proposed amendment also stated that if a Local was dissolved it ceased to have representation on Council. The second proposed amendment had the same force and effect with respect to Convention delegates. Council adopted these recommendations and forwarded them to the 1996 Convention. They were opposed by the Local 100 representatives.

The Local 100 1996 Annual General Meeting

57 The Local 100 Bylaws specify that copies of the agenda, resolutions and proposed Bylaw amendments must be posted in each sub-unit (working area) at least thirty days prior to the AGM. Higgs testified that this had not been done in the jurisdictional area of Local 102.

58 Forty-four people attended the Local 100 Annual General Meeting. As in the previous year, the elections were moved forward on the agenda. The Local's Officers were re-elected by acclamation. Their supporters were elected to the Directors' positions and as Convention delegates by a wide majority. The number of delegates elected was based on Local 100's membership at the time of the 1995 Convention.

The May 9, 1996 Council Meeting and the Dissolution of Local 100

59 In advance of the May 9 Council meeting, Pereira wrote Johnson and advised him of his intention to attend as an observer. The Union's policy on observers reads:

1. Any member of the Union may attend a Council meeting as an observer giving 24 hours notice.
2. There may be a maximum of four members allowed as observers at a Council meeting.
3. An observer does not have a vote at a Council meeting.
4. The Chairman may invite an observer to address a motion before Council or to provide information to Council.
5. Observers attend at their own expense.

60 Wenham wrote to Pereira and indicated that the policy concerning observers at Council meetings was discretionary and that Pereira was denied permission to attend. No reason was given.

61 Kay Taylor, President of Local 104, testified that two days prior to the meeting, she had a telephone conversation with Wenham. Wenham advised her that there would be an "...order of Council to "...wipe out' Local 100". The Local would be disbanded and their representatives would have no status. Local 101 would be created and placed under the supervision of Council. Local 101 would have two Council members instead of Local 100's three, and four instead of six Convention delegates.

62 Taylor was bothered by Wenham's call. She did not "feel right" about the proposed actions as it bothered her conscience. Taylor called seven of her fellow Local 104 elected members and five indicated their belief that Local 100 had rights and should not be disbanded. Taylor decided to oppose the Union's proposals although she was fearful as no one, with the exception of the Local 100 representatives, ever went against the provincial Officers.

63 Taylor's testimony was reported in both "Spotlite" and "Update". In "Update", the Union commented:

Kay Taylor, the former President of Local #104, blind sided us. She has a mad on against the Executive, and sold out to the BCNU and the quislings. When reminded she on a number of occasions voted for a motion, then later voted against it, Taylor claimed tearfully that "nobody dares vote against the senior executive" and "she was afraid". She was unable to say what she was afraid of.

64 Motions to disband Local 100, create Local 102 and place the new Local under absolute supervision were made and adopted by Council on May 9. Notice of, and the reasons for, the Executive's intention to disband Local 100 and create Local 101 had been provided in advance to all members of Council except the representatives of Local 100.

65 The constitutional authority cited for this action was that "Local Union 100 opposes a membership representation formula based upon fairness and is therefore in contravention of the policies and principles of the Union"; specifically, the stated objective of the Union to be a democratic organization. The reference was to the failure of Local 100 to meet with Local 102 and share its 1996 Convention delegate entitlement.

66 The Council then created Local 101, effective midnight May 9, with a membership of all psychiatric nurses at Riverview not represented by Local 102. Without consultation, it installed the Local 100 Executive as Local 101's officers. Council also designated the four delegates with the most votes at the Local 100 AGM as Local 101's 1996 Convention delegates. There was no constitutional authority cited for these decisions.

67 Amongst the terms of supervision of the new Local, the Executive was required to seek the written permission of the Union's Executive before it could hold meetings or issue communications "...in the name of the Union, Local Union or any other name such as "Riverview RPNs" which conveys a recognized status, in the workplace, or to members' homes..."

68 The Local 100 representatives and Taylor opposed the dissolution of Local 100. Taylor was alone in opposing the creation of Local 101 and its terms of supervision as the Local 100 representatives were no longer recognized. The former Local 100 representatives had been asked to leave the meeting.

69 In a letter dated the same day as the Council meeting, Johnson advised Masunda that Local 100 was dissolved and that Local 101 did not have either Council representation or Convention delegates until the two resolutions to amend the Union's constitution were passed by Convention. Johnson indicated that this would be addressed at the beginning of the Convention. He advised Masunda that the Union would then recognize Masunda and Nicol as delegates, given their respective positions as President and Vice-President of Local 101, and the top four vote-getters in the Local 100 election, provided they were all members of Local 101 and not Local 102.

70 The former Executive members of the Local 100 did not accept the Union's actions as being legitimate and chose not to assume their appointed positions with Local 101. They published an undated bulletin for distribution at Riverview. The bulletin advised that Council had dissolved Local 100 and established Local 101. It expressed the opinion that the former Local 100 Executive members had no legal right to represent members of Local 101, and that Council had not established a Managing Committee or arranged for elections.

71 The bulletin was taken by the Union as proof that Masunda and Nicol had breached the terms of Local 101's supervision. They were removed as Council representatives. The Union advised its Riverview membership that contract administration issues would be handled by Local 102 stewards. As of the final hearing dates into this application in November 1996, no action had been taken by any party to

address the representational rights of the Union's membership outside of Local 102's jurisdiction at Riverview.

The 1996 Union Convention

72 The 1996 Convention opened on May 24. At the outset, no delegates from Locals 100, 101 or 102 were recognized. After a lengthy debate, the chair ruled that the order of the agenda could be changed by a two-thirds vote. The resolution to consider Constitution and Bylaw amendments at the beginning of the Convention was approved. The amendments to the Constitution were addressed first. In past Conventions, amendments to the Constitution and Bylaws had been last on the agenda under "New Business".

73 The twenty-four voting delegates representing the Union's Executive and all Locals with the exception of Locals 100, 101 and 102 approved two Constitution and Bylaw amendments. The amendments had the effect of allocating Convention delegates and Council representation to Locals 101 and 102, according to their membership at the time of their formation by Council. The amendments also provided that if a Local is dissolved, it ceases to be entitled to Convention delegates or Council representation. Prior to these amendments, representation was based upon a Local's membership at the time of the previous Annual Convention and the Constitution and Bylaws were silent on the issue of representation by delegates from a Local which Council had dissolved.

74 Subsequently, the delegates from Locals 101 and 102 were recognized. No delegate from Local 100 was seated for the Convention.

75 The Convention proceedings record opposition by the Local 101 delegates to the proposed and adopted "Oath of Obligation" and the addition of the Past President as a member of the Provincial Council. Johnson was re-elected President in a contest. No opposition is recorded to any other matter considered in the balance of the proceedings.

III. POSITIONS OF THE PARTIES

A. The Complainants' Argument

76 The Complainants assert that the focus of this inquiry must be on the actions of the Union since December 1995. The Complainants submit that the questions which must be addressed are did the Union breach Section 10 of the Code:

- (i) when it divided Local 100 on January 25, 1996?
- (ii) when it dissolved Local 100 and imposed supervision on May 9, 1996?
- (iii) when it altered the order of proceedings at the 1996 Convention and prohibited delegates from Riverview hospital from voting on two Constitutional amendments?

77 The Complainants note that there is a long history of antagonism between the Union and the Local, beginning with Masunda's removal as Local 100 President in 1994. This antagonism intensified as the subsequent trusteeship continued for eight months. It surfaced at the 1995 Local 100 AGM of the Local. The meeting occurred shortly after the Complainants were re-elected; defeating those who acted as appointed trustees.

78 The Complainants characterize the events of Fall 1995 as a "classic power struggle". The Complainants note that Masunda was asked to obtain Pereira's and Cordoni's resignations because of suspicions of their support for the BCNU raid.

79 The Complainants submit that the revitalization meetings were a thinly veiled plot to reduce Local 100's influence. They note the committee considered splitting the Local and co-option, removal from office and discipline of the Local's Executive. The Complainants assert that the decision to split the Local was taken on January 4, 1996 as the Local Executive was too powerful and would be re-elected.

80 Subsequent events were attempts to justify the January 4 decision. There was a letter from a participant in the Revitalization Committee asking Council to act. There was a petition of members delivered to Johnson two days before the January Council meeting. The Complainants assert that the real issue was the strife between the Local and the Union. They note that the entire process to split the Local took only one month and that neither the Executive of Local 100, nor the rank and file members, were ever consulted.

81 The Complainants assert that several actions of Council on January 25, 1996 were disciplinary in nature. These included the order that Masunda obtain the resignations of Pereira and Cordoni and the censure in other approved motions. They state there was no advance notice or consultation.

82 The Complainants submit that Johnson canceled the aborted March meeting between the Union and the Local. They state that Nicol was the only person on the Local Executive who had been scheduled to work and, in accordance with her understanding of the Union's practice from Council meetings, booked the day off.

83 Local 100 wrote the Union and indicated that it wished the full complement of delegates guaranteed by its numbers at the time of the 1995 Convention. The Complainants assert that Article 9.1 of the Constitution contains clear language in support of their position.

84 The Complainants submit that the Local 102 AGM took place prior to the adoption of the Local's Bylaws by Council as required by the Constitution. They allege that this renders the elections null and void: *Harris (J.) & Sons Ltd. and Canadian Brotherhood of Welders and Burners (Int'l)*, OLRB , August 24, 1960, 60 CLLC ¶16,177 at p. 886.

85 The Complainants submit that Pereira wrote and indicated his intention to attend the May 9, 1996 Council meeting as an observer. He was denied permission. They argue that the Union penalized Pereira and denied admittance based upon suspicions of his role in the BCNU raid.

86 The Complainants submit that they were given no notice of the Union's intention to dissolve Local 100. They note that notice was provided to other members of Council. The Complainants argue that the Union's position, with respect to trumpeting its strategy, is specious.

87 The Complainants assert that the only reason given for the dissolution of Local 100 on May 9 was that the Local opposed a fair representation formula. The Complainants argue they did nothing to prevent Local 102 from attending the 1996 Convention, they only asserted their right to delegate representation guaranteed by their membership numbers in 1995.

88 The Complainants characterize as "curious" the establishment of Local 101 and the Council's attempt to appoint the Executive of Local 100 to positions with Local 101. They submit that Local Executives are elected and the Union has no provision in its Constitution to appoint.

89 The Complainants argue that only some delegates to the 1996 Convention were recognized before two Constitutional amendments were approved and that the entire membership of the Union at Riverview was disenfranchised. This action was both undemocratic and contrary to past practice where Constitutional amendments were decided under new business.

90 The Complainants submit that Section 10(1) of the Code has shifted authority from the Courts to the Labour Relations Board with respect to disputes regarding unions' constitutions and natural justice. This was recently confirmed in *Lamont v. The B.C. Teachers' Federation*, (13 April 1996), (B.C.S.C.) [unreported]. The general policy

of the Board was considered in *Marilyn Coleman, et al*, BCLRB No. B282/95, (1996) 28 CLRBR (2d) 1.

91 The Complainants submit that a Union's Constitution and Bylaws are an essential element in a trade union's structure: *Marilyn Coleman, et al, supra*, p. 23, para. 101. They argue that the Courts have intervened in internal union matters "...where there have been important departures from the constitution...": *Howard, et al v. Parrinton*, (10 May 1971), (O.H.C.J.) [unreported], p.2. The Complainants assert that several events must be characterized as significant departures from the Constitution and Bylaws. These include:

- (i) The elections in Local 102 before the Bylaws were approved.
- (ii) The dissolution of Local 100 for no valid reason.
- (iii) The appointment of Officers to Local 101 without Bylaws in effect.
- (iv) The alteration of the order of business at the 1996 Convention and the adoption of Constitutional amendments with only some of the delegates being recognized.

92 The Complainants submit that the Board's policy in *Marilyn Coleman, et al, supra* enunciates the standards expected of unions in their conduct (at p. 26, para. 112 to 114). They argue that a balance must be struck between individual and collective rights. The Complaints assert that "...[w]hile discipline is essential for the maintenance of a union as an effective organization, it may also be an instrument of oppression when misused by over-zealous or misguided leaders... the rights of persons should be protected against undemocratic and tyrannical practices...": *Bimson v. R. A. Johnston and others representing the Federated Association of Letter Carriers*, (16 August 1957), (SCO), (1957) 57 CLLC ¶ 15,338 at p. 756. The Complainants submit that the Union has clearly curtailed the rights of the individual Complainants.

93 The Complainants submit that the Board's policy with respect to natural justice is enunciated in *Marilyn Coleman, et al, supra*, at paragraph 118. These principles are reinforced by the Court's application of the principles in *Tippett, et al. v. International Typographical Union, Local 226 et al*, (8 October 1975), (B.C.S.C.), [1976] 1 W.W.R., at p. 688.

94 The Complainants submit that the application of natural justice, typically required in cases of discipline, are equally applicable in cases wherein union members are removed from office: *Kennedy v. Gillis, et al.*; *Gillis et al., v. Smith and Kennedy*, [1961] O.R. 878; (1961) 30 D.L.R. 82, (1962) 62 CLLC ¶ 15,410 at pp. 475-6 and *Flaherty v. Fewer*, (20 August 1987), (SCN), [unreported], at page 4. The Complainants argue that they were removed from office when Local 100 was dissolved and that they are not required to prove prejudice if there has been a breach of natural justice. It is the breach itself which must be remedied: *Tippett, et al. v. International Typographical Union, Local 226 et al, supra*, at page 684.

95 The Complainants submit that the events surrounding the creation of Local 102 must be seen as a dispute related to the Union's Constitution and that natural justice principles must apply. They assert that, although the Constitution establishes Council's right to create Locals, there is an implied obligation to due process when it impacts on the rights of members and Local Officers: *Kennedy v. Gillis, et al.*; *Gillis, et al. v. Smith and Kennedy, supra*, at page 475.

96 The Complainants argue that the creation of Local 102 was much more than a simple adjustment. It reduced the influence of Local 100 and affected almost half the Union's entire membership. Where members' Constitutional rights are affected in this manner, the Union must be seen to have imposed a penalty. The Union cannot discipline without charges and then argue the Board cannot intervene: *Marilyn Coleman et al, supra*, at paragraph. 201.

97 The Complainants recognize that "...the Board does not want to insert itself into the political life of a Union": *Marilyn Coleman et al, supra*, at paragraph 202. They argue that this is a case in which the Board must intervene. The Union has violated its own Constitution repeatedly and its actions against the Complainants have impacted on their basic democratic rights. The Union has violated the principles of natural justice and acted in a manner that is illegal, arbitrary and unreasonable.

98 For reasons that will become apparent in my analysis of this case, I have chosen not to repeat the extensive and able argument made by the parties on bias and the standard to be applied in its determination.

99 The Complainants argue that the Board adopted a standard for discrimination in *Marilyn Coleman et al, supra*, at page 46. "Discriminatory" is held to mean illegal, arbitrary or unreasonable rules or actions against or between individuals. The inquiry is not simply on the result, but also on the basis for the action and the process followed by the union: *Gerald Abbott and the International Longshoremen's Association, Local 1953, CLRB No. 114/77*. The Complainants assert that the term is to be given a broad meaning. They urge the Board to embrace three questions adopted by the Alberta Labour Relations Board in *Barry Cresine and the United Association of Plumbers and Pipefitters, Local 488, [1994] Alta. L.R.B.R. 135*, at page 5:

- Was the person discriminated against in the decision to apply the rules or standards?

- Was the person discriminated against by the process or procedures involved in applying the rules or standards?

- Was the person discriminated against by the outcome or penalty?

100 The Complainants submit that they have been discriminated against individually and collectively through the penalty of the loss of their representational rights and that their treatment was arbitrary and the actions against them were unconstitutional and

unreasonable. Pereira was discriminated against when not allowed to observe the May 9 Council meeting. Nicol's treatment with her LOA claim was discriminatory.

101 Cordoni and Pereira have been singled out without formal charges being laid and proven. Cordoni has been called a "traitor" for a 1995 letter stating a position to which the Union was openly hostile. Pereira is suspected of similar views. The Complainants assert that the message the Union sent was that anyone who joined the BCNU could expect harassment and intimidation.

102 The Complainants request the following remedies:

- (i) A declaration that the Union violated Sections 9 and 10 of the Code.
- (ii) An Order that the Union cease and desist from violating the Code.
- (iii) An Order that all of the 1996 actions of the Union with respect to Locals 100, 101 and 102 are null and void and that Local 100 is restored to the position it was in on January 24, 1996.
- (iv) An Order that the Union pay Nicol for her monetary loss on March 12, 1996.
- (v) An Order that the decision be posted in each workplace.
- (vi) An Order that a summary of the decision, crafted by the panel, be published in "Spotlite".
- (vii) An Order that the Union publish a retraction of its inflammatory comments in "Spotlite".
- (viii) A mediator be appointed to assist the parties in coming to terms with their differences.

B. The Union's Argument

103 The Union submits that the Complainants have focused on 1995 onward and in doing so have omitted events of significance. There were administrative problems that led to the merger of the two Locals to create Local 100 but new, larger problems erupted.

104 The Union asserts that the antagonism began when Masunda was removed from Council. Following this a campaign began against the Union. Pereira began a series of applications to the Labour Relations Board. The first was withdrawn over the Union's objections; the second was dismissed as frivolous. The Union submits that the BCNU raided the Union in 1995 and at least one of the Complainants, Cordoni, overtly supported the BCNU.

105 The Union asserts that the Executive of Local 100 was proven wrong on three
major issues in the Fall 1995 including contact with the BCNU. The Union argues that it
was these issues that led to the meetings in December 1995 and January 1996. It
states that Local 100 was not apprised of the meetings as the Local had proven to be
openly defiant to the Union's attempts to reconcile the relationship.

106 The Union submits that a proper chronology of events reveals the Union
accepted the results of the March 1995 election in Local 100. At the March 1995 Local
100 Annual General Meeting, there was heckling. The Union contends that the meeting
was stacked and a set-up.

107 The Union notes that Masunda was only stopped from attending one Council
meeting after his re-election in 1995. The Union asserts that it had second thoughts. It
submits that this demonstrates it was able to admit error and acted in good faith.

108 The Union admits that it stopped mailings to the Local 100 Executive. It submits
that the minutes of the Council meetings, to which Local 100 representatives had a
right, were distributed at the Council meetings. The Union asserts that it was within its
rights to stop mailings as the BCNU boasted it had a "pipeline" through which it
received the Union's documents. The decision was not arbitrary nor unreasonable but
taken for legitimate self-protection reasons.

109 The Union acknowledges that Johnson asked Masunda to obtain the
resignations of both Cordoni and Pereira. It argues that they were suspected of
supporting the BCNU during the raid. The Union points out that Cordoni's support of
the BCNU was put into writing. It asserts that there is nothing unusual in attempting to
get rid of Officers who are in a breach of trust.

110 The Union denies that the Riverview Revitalization committee was a "plot" to
reduce the influence of Local 100. The Union asserts that members sought their own
Local.

111 The Union argues that there is simply no evidence of discrimination against the
Complainants. The reason for the Union's actions was that the issues were being
ignored by Local 100.

112 The Union, in response to the complaint that Local 100 was not consulted about
the recreation of Local 102, argues that it was the Council's authority to make the
decision. It notes that when Local 100 was created, there was no vote of the
membership.

113 The Union asserts that that the Complainants believe that they have a right to a
set block of votes, regardless of their membership. It submits that Section 10 was
never intended to be used as a weapon by which an individual or a group could
preserve their political power.

114 The Union relies on several passages from *Marilyn Coleman, et al, supra*. It submits that a union's constitution is an essential element in its structure (at para. 101); that the constitution is a vigorous social and political document (at para. 102); and that its construction should be seen as "liberal, not restrictive" (at paragraph 102 and also in *Astgen v. Smith* (1969), 7 DLR (3d) 657, at page 684). The Union further submits that unions must be free to enforce the collective good (at para 117).

115 The Union submits that the rules of natural justice are context dependent. It argues that a union may treat different circumstances in a different manner without being discriminatory. The Union asserts that it is only discriminatory when its actions are illegal, arbitrary or unreasonable (*Marilyn Coleman, et al, supra*, at paras 192-3 and in *Barry E. Chilton*, BCLRB No. B391/95, at p. 13).

116 The Union submits that the Board's policy on Section 10 is further defined in *Victor Maylon*, BCLRB No. B207/95:

The principles of natural justice do not extend to require a decision-maker to render a decision which is correct. Section 10(1) is not an avenue for the Board to review the sufficiency of the evidence relied upon by the decision maker. (pp. 19-20)

117 The Union argues that the Board must take into consideration all of the circumstances. It asserts that the Union did not act in isolation, but that its actions were in response to actions, or inaction, by the Local and in response to requests by members.

118 The Union asks the Board to consider that this application is brought by five individuals, not the Local. It argues that this demonstrates the fatal flaw in the Complainants' argument as no individual has the right under the Union's Constitution to have a Local structured in a specific fashion. The power to fashion the Local structure of the Union rests in its entirety with Council.

119 The Union requests that the Panel adopt the definition of penalty set out in *Zantolas*, IRC No. C96/89, (1989) 3 CLRBR (2d) 86:

"Penalty" is not a term of art in labour relations. In the common usage of the word, we take a "penalty" to mean the imposition of a disadvantage or loss which is imposed on a person who acts in violation of the law or contrary to rules or standards which are promulgated by a higher authority. (p. 103)

120 The Union asserts that none of the Complainants has suffered a penalty. None have been expelled or suspended by the Union; none has been fined or suffered an employment disadvantage. Four of the five Complainants maintained their right to delegate status at the Convention.

121 The Union argues that the Complainants did not suffer a penalty with respect to holding office. It submits that Locals are "components" of the Union and have no

bargaining authority. Local 100 existed because Council created it. Local 100 was dissolved as the required two-thirds of Council decided, for good and legitimate reasons, that the Local was in contravention of the policies and principles of the Union.

122 The Union submits that Local 100 was recreated as Local 101. The new Local had the same officers as Local 100 and a similar jurisdiction to the former Local 101. The Union asserts that the Complainants accepted this status by participating as delegates at the Convention, only to later decide they were not Officers of the new Local. The Union argues that the Complainants cannot refuse to serve in offices to which they are appointed by Council and then argue they have been "kicked out" of their positions.

123 The Union argues that the dissolution of Local 100 was the only way to ensure Local 102 had representation at the 1996 Convention. Without Local 102 representation, twenty-five percent of the Union's membership would have been disenfranchised.

124 The Union argues that no notice was given to Local 100 of the actions of Council on May 9, 1996 as there is no general right to notice. There is no right to notice in the Constitution and Bylaws. The natural justice right is in the context of hearings and notice of charges to be considered. The Union asserts in this instance, the Complainants faced no charges and did not require notice to mount a defence.

125 The Union also denies that the decision to apprise all Council members, but the Local 100 representatives, of the decisions to be made on May 9 was not discriminatory. It was a "strategy decision". The Union asserts that the different treatment was neither arbitrary or unreasonable but the direct result of the Complainants' own conduct in failing to respect and honour the legal decisions of Council.

126 The Union submits that its denial of Pereira's request to attend the March Council meeting was reasonable as he had participated in opposing the legitimate actions of Council and demonstrated he was an enemy of the duly elected Officers of the Union. The Union asks why would the Union pay the full day to Nicol on the date of the aborted meeting. It submits that full days are paid only for Council meetings.

127 The Union submits that if the Complainants believe they can overtly support a raiding union, they are mistaken. The Union asserts that the Board has made it clear that an incumbent trade union is entitled to defend itself: *Delta Hotels*, BCLRB No. B433/95, (1995) 29 CLRBR (2d) 101 and *Garrett et al*, IRC No. C281/88, 19 CLRBR (NS) 312. The Union argues that given its clear and definite opinion that the Complainants had aided a rival union prove that its actions were in the Union's defence and not in bad faith.

128 The Union submits that this case is not about natural justice, but rather about power. It submits that the Complainants wish to maintain an effective veto over constitutional change. The Union argues that the Complainants may talk about

democracy but would disenfranchise more than 200 members; subordinating the interests of their members to their own desire for power. The Union concludes that there is no breach of Section 10, but rather the Complainants' application is an abuse of process.

IV. ANALYSIS AND DECISION

A. Production of Documents

129 In my September 10, 1996 letter and at the hearing, I refused to order documents and limited oral evidence in two areas. Evidence and documents that pertained to the undertaking in *Hermon Pereira*, BCLRB No. B437/95 were disallowed. Also, I refused to admit evidence and order documents that pertained to the role of the Complainants in the BCNU raid. Both parties requested I explain my rulings in this decision.

130 Certain factual information was entered at the hearing without the objection of the opposing party. I have reported this information, if it was relevant. Other aspects of the evidence, that I found to be irrelevant to the matters before me or hearsay in nature, have been ignored.

131 In *Hermon Pereira, ibid*, thirteen complainants, three of whom were the original Complainants in this case, applied to withdraw an application under Section 10. The Union opposed the withdrawal. The complainants undertook not to file any further Section 10 complaints on the matters alleged in their original application:

... the Complainants have undertaken not to file any other Section 10 with regard to the matters alleged in their application of February 28, 1995, and that undertaking may be pleaded by the Union as a basis for estoppel should such an application be filed by Pereira or any of the other twelve complainants or anyone representing them. That undertaking, in my view, injects a far greater degree of finality than a dismissal on a procedural basis.
(p. 2)

132 The three original Complainants who filed this present application were parties to the undertaking. The last two of the Complainants here added their names after the hearing into the Section 133 application.

133 I am not prepared to allow the present Complainants to evade the terms of the undertaking merely because the some of the individuals are not the same. I am not prepared to allow the present Complainants to rely on matters alleged in the February 28, 1995 application in support of the present complaint. To hold otherwise would be to allow the original Complainants in this application to evade the terms of the undertaking.

134 In my September 10, 1996 letter, I declined to order the production of certain documents with respect to the alleged or proven participation of certain Complainants on the side of the BCNU in the raid. Similarly, I refused to order disclosure of the source of financing of the Complainants' legal costs.

135 The issues before me are whether the Union violated either or both Sections 9 and 10 of the Code. My inquiry is limited to whether any or all of the Complainants were afforded natural justice in decisions to impose discipline; whether any or all of the Complainants suffered discrimination; whether the Union coerced or intimidated any or all of the Complainants; or whether the Union failed to apply the principles of natural justice with respect to its Constitution and Bylaws. I have found the Union breached the Code as explained below. The Complainants' alleged complicity in the BCNU raid nor its legal support is not, in and of itself, a defence.

136 I am convinced by the Union's evidence that certain of its' actions were based upon the belief that the Complainants, individually or collectively, were complicit in the BCNU raid. Rather than justify the Union's actions, I must conclude that certain of these actions were disciplinary in purpose and taken without the protection of due process. While the Union's conclusions may have been absolutely correct and the sanctions appropriate, the Union is required to afford the accused due process and natural justice before those sanctions may be imposed.

B. The Law and Policy with Respect to Section 10

137 Section 10(1) of the Code requires the application of the principles of natural justice to certain internal union affairs::

10.(1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to

- (a) Matters in the constitution of the trade union,
- (b) the person's membership in a trade union, or
- (c) discipline by a trade union

138 Section 10, introduced with the Code in 1993, moved the review of internal union affairs with respect to natural justice from the jurisdiction of the Courts to the Board. It is clear from Section 10 that this jurisdiction extends, not just to matters of discipline, but also to constitutional matters.

139 The significance of the constitution and bylaws of a trade union is set out in *Marilyn Coleman, et al, supra*:

101. An essential element of the structure of a trade union, at the local level, and between the local and any parent organization, is its constitution and bylaws. It is the key document upon which the trade union and its membership govern themselves. The

constitution and bylaws contain the rights and obligations of the members to one another and towards the union; it contains the different levels of decision making, as well as the powers and duties of the officers involved in that decision making; it includes provisions outlining the relationship of the local to the parent; and it sets out the requirements for the elections of officers and for the setting of conventions. (p.23)

140

Section 10 reflects a broader understanding of the role of trade unions than formerly. Trade unions are no longer viewed as akin to private clubs. A union constitution is no longer merely a contractual document regulating a relationship in which society has little, if any, interest. Section 10 accepts that trade unions play a significant role in society. At well, trade unions derive their strength from their collective nature, which may compromise individual interests:

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

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

114. It is clear that the democratic tradition, which trade unions uphold, is strengthened, not weakened, by the fair balance which they strike in the administration of these trade-offs. It is this view of the nature and role of trade unions in our society that will inform the framework for our interpretation and administration of s. 10 of the Code: *Marilyn Coleman et al, supra*: at p. 26.

141

Thus, a trade union may legitimately compromise individual interests in order to preserve the strength of the collectivity. This is essential to the collective nature of trade unionism. However, this does not deprive individual members of the right to be critical of their union or to state positions in opposition to the majority:

168. The power of discipline and the principle of majoritarian rule cannot be used by a union executive or its officers to silence the views of a minority or to take away the right of an individual member to dissent from the majority view. Each member of the

union must have the right to stand for office, criticize the union and its officers, support political parties and express political beliefs of any persuasion, and to take a stand on any public issue which may be directly in conflict with their own union's position, without the fear of reprisal or discipline.

169. Conversely, the union must have the ability to discipline for violations of its constitution and bylaws and to be able to deal with breaches of confidentiality, breaches of trust, corruption and destruction of property. (*Marilyn Coleman, et al, supra*, at p. 41)

142 Where individual interests are at stake, the Courts have implied principles of natural justice into the constitutions of trade unions. These rules are context dependent and will vary according to the circumstances of each case, the nature of the inquiry, the statutory provisions and the seriousness of the case: *Marilyn Coleman, et al, supra*, at page 27.

143 The application of these rules must take into account the nature of trade unions. There must be a balance struck between the individual and the collective. In *Marilyn Coleman, et al, supra*, the Board set down the requirements with respect to internal union discipline:

1. Individual members have the right to know the accusations or charges against them and to have particulars of those charges.
2. Individual members must be given reasonable notice of the charges prior to any hearing.
3. The charges must be specified in the constitution, and there must be constitutional authority for the ability to discipline.
4. The entire trial procedure must be conducted in accordance with the requirements of the constitution; this does not involve a strict reading of the constitution, but there must be substantial compliance with intent and purpose of the constitutional provision.
5. There is a right to a hearing, the ability to call evidence and introduce documents, the right to cross-examine and to make submissions.
6. The trial procedures must be conducted in good faith and without actual bias; no person can be both witness and judge.
7. The union is not bound by the strict rules of evidence; however, any verdict reached must be based on the actual evidence adduced and not influenced by any matters outside the scope of the evidence.
8. In regard to serious matters, such as a suspension, expulsion or removal for office, there is a right to counsel.

C. The Riverview Revitalization Committee

144 The Complainants have argued that the focus of my inquiry into the Union's
conduct is limited to events beginning in late 1995. This is how they have framed the
complaints and I defer to their request. I have set out the background to the
relationship between the parties. My purpose is to inform those members of the Union
who may not have a complete history of the current dispute and to paint a backdrop for
this decision. I make no conclusions based upon these past events.

145 The Complainants submit that the meetings of the Riverview Revitalization
Committee constituted an inquiry into the Complainants' activities and formed part of a
disciplinary process undertaken by the Union. The Complainants argue that the Union
was required to disclose information from these meetings prior to Council's January
1995 meeting.

146 I disagree with this characterization. I find the meetings were concerned with the
internal politics of the Union. The evidence shows that the participants were focused
almost exclusively on political strategies.

147 My opinion is re-inforced by both the timing of the meetings and the participants.
The December meeting took place within days of Masunda's letter to Johnson
questioning Council's decision concerning the sanctions against the BCNU. It also
came within days of Masunda's complaint with respect to Wenham.

148 Johnson called the first meeting and chose the participants. They were, for the
most part, those who had been appointed Trustees of Local 100 in 1994 and the same
people who had lost to Masunda and his supporters in the Spring 1995 election. They
were also activists in the Anti-Raid Committee in the Summer 1995. These were close
political allies of the Union's administration with a personal stake in reducing the
influence of the elected officials in Local 100. This was not a focus group and these
were not simply rank and file members.

149 Power politics is a reality of our society. Citizens are accustomed to groups of
people with particular viewpoints and opinions organizing events to accomplish their
own ends. The Riverview Revitalization Committee was formed by Johnson, of people
with like-mind, for a political end. There is no societal or legal requirement to advise
one's opponents of your strategy to wrest power from them. Trade union politics is not
played by the Marquis of Queensbury's rules.

D. The January 25 1996 Council Meeting

150 The creation of Local 102 on January 25 was a political maneuver. It was done
in accordance with the Constitution and Bylaws of the Union. I find that the intent was
to strip dissidents within the Union of power and influence. Johnson employed
Ibbitson's letter and a petition circulated, after a decision to proceed had been taken, to
re-inforce his position. This did not violate either the Constitution and Bylaws or the
Code. The Board will not interfere in the political life of a union unless "...there has

been a breach of natural justice or a violation of an individual's basic democratic rights...": *Marilyn Coleman, et al, supra* at para. 202. There is no evidence of a breach of natural justice or a violation of individual rights in the action creating the Local.

151 The ten companion resolutions passed on January 25, are a different matter. Certainly, a union has every right to express displeasure with some of its own members. Were these motions, however, simply admonitions or were they penalties?

152 Council for the Union has provided me with a working definition of penalty in the trade union context:

"Penalty" is not a term of art in labour relations. In the common usage of the word, we take a "penalty" to mean the imposition of a disadvantage or loss which is imposed on a person who acts in violation of the law or contrary to rules or standards which are promulgated by a higher authority. *Zantolas, supra* (p. 103)

153 I would add, however, that a penalty may be applied for an alleged violation. It is sometimes required that we search behind the events in order to determine if the penalty is the consequence of a charge that was never laid. This was contemplated in *Marilyn Coleman, et al, supra* when the Board wrote "...nor could a union simply discipline without laying charges and argue since no charges have been laid, the Board has no right to interfere". (at para. 201)

154 Council found Local 100 violated a Convention resolution. The resolution directed Council and the Union's Executive Committee to commence a process of reconciliation. The Union made certain feeble attempts and quickly abandoned the effort when Masunda rebuffed Riley's overtures. Council assumed that this reversed the onus and placed the burden on the Local to fulfill the terms of the Convention resolution.

155 Council found the Local had violated its Bylaws. It demanded Cordoni's and Pereira's resignations for supporting the BCNU. Council decided that these decisions were to be relayed to the membership through "Spotlite". Council determined the guilt of the Executive of Local 100 collectively, and certain persons, individually. This was done without notice; without the benefit of particulars; and without the right to any of the elements of a fair hearing.

156 At issue is whether the resolutions, and the stated instruction to publicize the decisions, constituted a penalty. I note that neither Cordoni nor Pereira offered their resignations. I have no evidence that the motions themselves were publicized in "Spotlite", although I have abundant examples of the Complainants, individually and collectively, being maligned in the magazine and in the publication "Update". These examples both pre-date and come after the January 25 meeting.

157 It is unnecessary for me to resolve this matter as it would serve no labour relations purpose. If I were to determine a breach had occurred, it would not affect the remedy I am granting.

E. Local 100's 1996 Annual General Meeting

158 I find that I must comment on the Local 100's 1996 AGM. I note that Higgs
agreed in testimony that notice of the meeting was not displayed in work areas within
the geographical jurisdiction of Local 102. I find this to be an honest and
understandable error, but with serious consequences. It is understandable that the
rebirth of Local 102 caused confusion with little debate or discussion. It is also
understandable because the meeting with the Union's Executive failed to materialize.
Both parties must bear some responsibility for its failure.

159 The lack of notice invalidates the elections of delegates that occurred. Local 100
must re-stage the election for its delegates prior to the next Convention. The number of
delegates chosen will be based upon the Local's membership at the time of the 1995
Convention, in accordance with the Union's Constitution and Bylaws.

160 As noted above, a significant component of those in Local 100 was not properly
notified of the 1996 Annual General Meeting and election. The same cannot be said of
the Local 100 Executive who were elected by the constituency they represent. What
requires remedy then is only the election of Local 100 delegates and not the entire
1996 Local 100 AGM proceeding.

F. Local 102's 1996 Annual General Meeting

161 The Complainants also submit that a Constitutional breach occurred when Local
102 elected its Officers and delegates to the 1996 Convention prior to the approval of
its Bylaws by Council. I concur that this constituted a breach of the Union's Constitution
and Bylaws but find it was technical in nature and does not offend the principles of
natural justice. There is no evidence of any prejudice which may have flowed from this.
The election of the delegates, however, is void as they had no status at the 1996
Convention.

G. Nicol's LOA Payment and Pereira's Request for Observer Status

162 I turn now to the complaints with respect to the Union's refusal to pay Nicol's full
LOA for the aborted March 11 meeting and the Union's denial of observer status to
Pereira at the May 9 Council meeting. In neither case does the evidence support a
finding that the actions had, or were intended to have, a coercive or intimidating effect.
They do not fall within the ambit of Section 9 of the Code.

163 I find that both actions were contrary to Section 10 of the Code. Nicol's LOA
payment of one hour was discriminatory as she was treated differently, for no logical
reason, than the Officers who were reimbursed their full wage loss. Pereira's denial of
access to the Council meeting constituted a penalty for his real or imagined support of
the BCNU and/or his lack of support for the Union Executive. This penalty was
assessed without due process.

164 I order that the Union pay to Nicol her full wage loss for the day of the aborted meeting. The only remedy I have available with respect to the Pereira incident is to declare that the Union breached Section 10 of the Code.

H. The Dissolution of Local 100

165 The Complainants submit that the Union's actions in dissolving Local 100 were disciplinary in nature. I concur on this point and also note the breadth of Section 10 is broader than simply discipline. Natural justice is to be applied to matters with respect to the Union's Constitution. In order to dissolve a Local, the Union must, by its Constitution, determine that a Local has been in contravention of the Union's policies and principles. This requires a determination, a judgment as it were, to be made based upon evidence and argument. This is far different and much more serious than the discretion the Constitution gives Council in the creation of a new Local. This is exactly the type of situation to which the natural justice requirement must apply. The operative article in the Union's Constitution and Bylaws reads:

10.6 Every Local Union shall be directly responsible to the Council. The Council by a two-thirds majority vote, shall have the authority to place a Local Union under absolute supervision of the Council, or suspend or dissolve a Local Union where, in the opinion of the Council in its absolute discretion, such Local Union has conducted, is conducting, or will conduct itself in contravention of its By-laws [or those] of the Union or the policies and principles of the Union or where the Local Union has ceased to exist, or has ceased to be effective.

166 There is no argument that the principles of natural justice, or due process, are context dependent. The context in this particular circumstance demands a high standard of conduct. An elected governing body was dismissed without notice. This is a serious and invasive matter. It is not relevant that the elected positions were voluntary. Nor is it relevant that the Union attempted to mitigate its decision by appointing these same individuals, without their consent, to positions in a new Local. The new Local has no life as the old Local was improperly dissolved.

167 The operative provision states that Council "in its absolute discretion" may dissolve a Local by a two-thirds vote if it finds the Local has violated the Bylaws or the policy and principles of the Union. The inclusion of the words "absolute discretion" imply that due process is not required. To accept this interpretation would be to accept that a Union can "contract out" of the statutory requirement that the principles of natural justice be followed in matters with respect to its Constitution. This, of course, is not possible and instead these same natural justice principles must be read into the Constitution and applied.

168 Even if I am wrong in this, I find that the dissolution of the Local was intended as a disciplinary measure against the Officers of Local 100, both collectively and individually. They were found to have breached the policies and principles of the Union.

The penalty was their removal from office and the dissolution of the Local. There was no pretence of due process. Cloaking discipline in some manner does not lessen the requirement that those directly affected must be afforded fair treatment.

169 I note that the new Local 101 was placed under the strict supervision of Council and onerous terms were applied. I use the term onerous advisedly as I find that the nature of the limitation placed upon free speech is troublesome. The Executive of the new Local was required to seek the written permission of the Union's Executive before it could hold meetings or issue communications "...in the name of the Union, Local Union or any other name such as 'Riverview RPNs' which conveys a recognized status, in the workplace, or to members' homes..."

170 An argument can be made that the appointed Executive of a Local must subordinate its opinions to an senior elected leadership when they purport to speak for the Union, but the terms of Local 101's intended supervision go well beyond this mark. Essentially the Union said that a group of individuals collectively were not permitted to communicate with their peers under any name associated with their profession. I find that the fact and nature of the intended supervision supports my conclusion that the dissolution of Local 100 was a disciplinary action against a group of individuals, including the five Complainants.

171 I feel it is necessary to at least make reference to the notice given to all Council representatives, except those directly affected by the decisions. The fact of the notice, and lack thereof, would arguably be in the arena of political strategy in a less significant context. In this circumstance, the failure to provide notice and particulars to the Local 100 representatives constitutes a breach of the Code. This is only made worse by the apparent pre-conceived conclusion that Council would "wipe out" Local 100. This either belied a confidence on the part of the Union administration that their cause was just or a suggestion that Council was merely a "kangaroo court" in its deliberations. On either count, it was an ill-conceived conclusion before decision-makers had the opportunity to consider the evidence.

172 The judgment by Council that dissolved Local 100 must be set aside. Without notice, particulars and a proper hearing before an unbiased tribunal, the required finding that the Local's Executive breached the Constitution and Bylaws cannot stand. The subsequent action in creating Local 101 is also void.

I. The Union's 1996 Annual Convention

173 The decision with respect to Local 100's status has clear ramifications with respect to the 1996 Convention. Local 100's delegate entitlement was set at the time of the 1995 Convention. The Union's Constitution and Bylaws required that delegates to that Convention representing the entire Riverview membership be elected under the auspices of Local 100. It is not a question that anyone would be disenfranchised.

174 For the purpose of the election of 1996 Convention delegates, all members at Riverview, including those in Local 102, should have been eligible to vote at the Local

100 AGM. The only impacts of following the Constitution and Bylaws would have been that Riverview generally would have had less delegates and none would have sat under the banner of Local 102.

175 Local 102 was ineligible for delegate status until it has numbers to establish itself at the time of a Convention. Had it not been for the breach of the Code, this eligibility would have provided Local 102 with delegates at the 1997 Convention.

176 I choose not to craft a remedy with respect to the impact of this findings until I have had the opportunity to hear further from the parties. I will be requesting submissions on the issue of the impact of my decision on the proceedings at the 1996 Convention.

J. Section 9 Complaint

177 The Complainants ask me to find that the Union violated Section 9 by intimidating and coercing those they believed supported the BCNU. I have reviewed the actions of the Union with respect to those whom they suspected and find little support for any finding of a breach of the Code. There have been intemperate words and uncivilized behaviour on both sides. It is clear from the evidence that the acrimonious relationship between the Union and the BCNU in general, and the division this has created in the UPN, are at the source of much of the conflict within the Union.

178 The Union's choice of methods to defend itself from this external threat and, particularly, from the BCNU's perceived allies within, has been sometimes ill-conceived, but also understandable. I concur with the Union that it has the right to defend itself both by entering into the debate and by penalizing those in positions of authority if they breach that trust. The breaches of the principles of natural justice I have found do not imply innocence or guilt.

179 There is one further matter tangentially related to this proceeding upon which I feel it important to comment. I was troubled by the Union's characterization in "Update" of the testimony of Taylor at the hearing into this application. Taylor was summonsed to appear before the Board. I found her to be a credible and helpful witness. She admitted to fear at opposing the Union's Officers on the issue of the dissolution of Local 100. As she explained, this was a matter of conscience for her.

180 The Union, by publishing only selected aspects of her testimony and editorializing about the reason for her testimony, gave credence to her expression of fear. I found the characterization to be both unfair and personalized. No one deserves to be portrayed in this manner for testifying under compulsion with respect to decisions made for ethical reasons. No application has been made under Section 5 of the Code with respect to this issue and it is beyond the scope of my jurisdiction to order the Union to apologize publicly to Taylor. I would hope, however, that an apology would be forthcoming.

V. SUMMARY

181

The following is a summary of my findings:

(a) I find that the creation of Local 102 and the events that led to that decision did not breach Section 10 of the Code.

(b) I choose to make no finding with respect to the series of ten motions passed at the January 25 Council meeting as a determination would have no labour relations purpose.

(c) I find that elections the election of Local 102 delegates to the 1996 Convention is void as the Local was not entitled to delegates.

(d) I find that proper notice of election of delegates by Local 100 for the 1996 Convention was not given to the entire eligible constituency of voters but may be remedied through a new election with proper notice.

(e) I find that the Union acted in a discriminatory manner when it refused to pay Nicol LOA for all of her lost wages for the aborted March, 1996 meeting.

(f) I find that the Union's refusal to allow Pereira access as an observer to its May 1996 Council meeting was a violation of Section 10 of the Code.

(g) I find that the Union violated Section 10 of the Code when it dissolved Local 100 on May 9, 1996.

(h) I find that, as a consequence of the Union's error with respect to the dissolution of Local 100, that the 1996 Convention proceeded without proper delegate representation.

(i) I find that the Union did not breach Section 9 of the Code.

VI. REMEDY

182

As remedy, I make the following Orders:

(a) I order that the Union cease and desist violating Section 10 of the *Labour Relations Code*.

(b) I order the Union to reimburse Nicol for her full wage loss for the aborted March 1996 meeting.

(c) I declare the dissolution of Local 100 to be void.

(d) I reserve on the issue of remedy with respect to the impact of my decision on the proceedings at the Union's 1996 Convention. Submissions will be sought from the parties.

(e) The Complainants have further requested that I write a summary of this decision and order the Union to publish the summary in "Spotlite". I note the Union agreed with this request. I have decided to order that the Union prepare this summary. The Complainants must approve the summary prior to its publication in any Union bulletin. If the parties are unable to agree on its content within two weeks of the publication of this decision, I retain jurisdiction to write or edit the article.

(f) The Complainants have requested that copies of this full decision be posted in each workplace. I am reluctant to make such an order without information on the nature and number of workplaces employing Union members. I do agree, however, that members, should they wish, have the opportunity to review the full text. I leave it to the parties to decide on how best to facilitate access and retain jurisdiction to decide on distribution if they cannot agree within two weeks of the publication of this decision.

(g) The Complainants have requested that I appoint a mediator to assist the parties in normalizing their relationship. Although I appreciate the spirit of this request, I decline to assist in this matter without the agreement of both parties and a commitment from both to enter into discussions with good faith. The Board has an interest in seeing this relationship improve as it has cost not only the parties, but the Board itself, an inordinate amount of resources. A continuance of the incessant bickering is not in the interests of either the parties, the membership or the public. Consequently, I am not closing the door on this possibility if the parties jointly request assistance.

183 I retain jurisdiction with respect to any difficulties in the implementation of this decision.

LABOUR RELATIONS BOARD

PAUL JOHNSTON
VICE-CHAIR