

IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** Nova Scotia (Transportation and Public Works) v.  
Canadian Union of Public Employees, Local 1867, 2004 NSSC 211

**Date:** 2004 12 15  
**Docket:** S.H. 220214  
**Registry:** Halifax

**Between:**

The Department of Transportation and Public Works,  
representing Her Majesty the Queen in Right of the Province of Nova Scotia      Applicant  
and

CUPE Local 1867, representing the Nova Scotia Highway Worker's Union

Respondent

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**Judge:** The Honourable Justice Gerald R. P. Moir

**Heard:** 18 August 2004

**Subject:** Labour Law; Interest Arbitration, Jurisdiction to submit issues for arbitration; Interest Arbitration; Bias.

**Summary:** Talks broke down and the union applied to the Highway Workers Employee Relations Board to establish a board of arbitrators. In addition to requiring arbitration, the *Highway Workers Collective Bargaining Act* places some limits on the issues that can be submitted for arbitration. The union also asked the Board to settle those issues. The board settled the issues for arbitration and appointed an arbitration board that included the union nominee, against whom the government alleged bias. He is a lawyers, whose firm represents CUPE and who represented the Highway Workers when talks broke down the last time.

**Issues:** Before the Board and upon review the government contended (1) the Court of Appeal has exclusive original jurisdiction to determine what issues are arbitral, (2) in any event, the Board wrongly determined that a number of issues as being arbitral, and (3) and Board was required by natural justice to exclude the union nominee for reasonable apprehension of bias.

**Result:** (1) The statute gives the Board original jurisdiction to receive evidence and determine what issues are arbitral. (2) The parties agreed that the Board had to be correct in those determinations. It was. (3) The principles regarding exclusion for bias cannot apply to nominee arbitrators, especially not nominee interest arbitrators, in the same way they apply to adjudicators required to show neutrality. In this case, the statute itself provides the criteria for exclusion and the union nominee was well within the statutory limits.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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