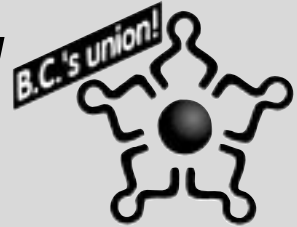


The Steward

NEWS AND INFORMATION FOR BCGEU STEWARDS

SEPTEMBER 1999



Vol 10, No 4

TAWNEY MEIORIN REINSTATED

BCGEU wins landmark Supreme Court decision in forest firefighter's sex discrimination case

By Ken Curry, Staff Counsel and Jaynie Clark, Advocacy Coordinator

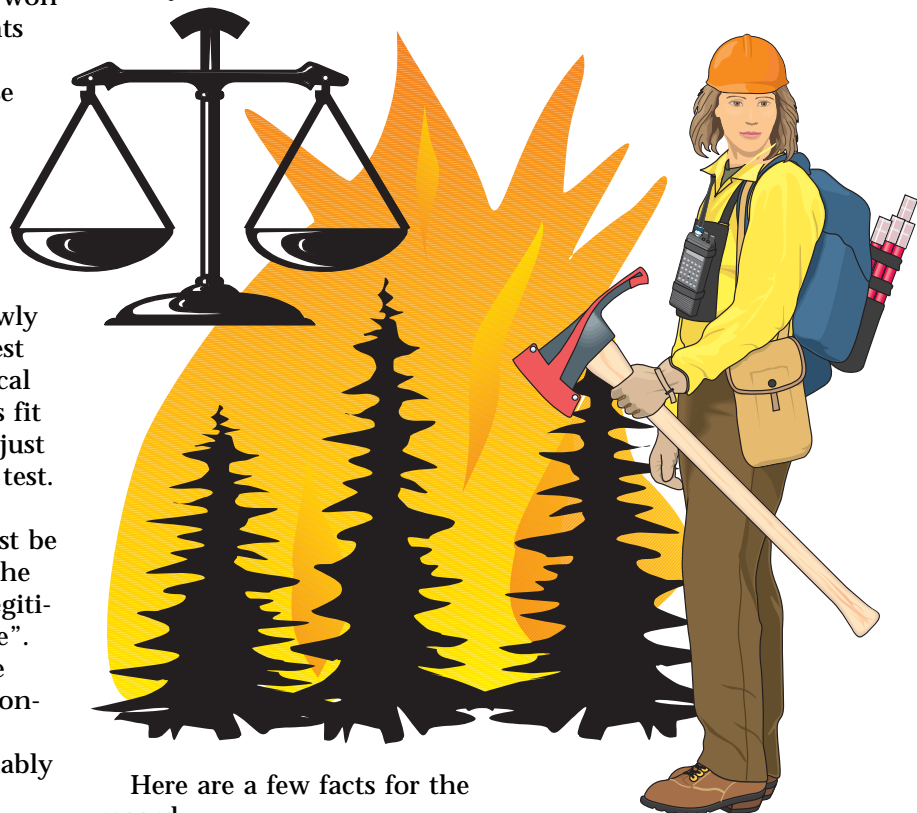
The BCGEU recently won a major human rights case in the Supreme Court of Canada. The case involved Sister Tawney Meiorin who was working for the Ministry of Forests as an initial attack forest firefighter. She was terminated from her job because she narrowly failed a running test. Forest firefighting requires physical fitness. Sister Meiorin was fit and did the job well. She just couldn't pass the running test.

The Supreme Court of Canada says that tests must be "reasonably necessary to the accomplishment of that legitimate work-related purpose". The Court found that "the government failed to demonstrate that this particular aerobic standard is reasonably

necessary to identify those persons who are able to perform the tasks of a forest firefighter safely and efficiently".

was hired by government.

- Sister Meiorin passed the strength portion of the physical fitness test, important for



Here are a few facts for the record:

- Sister Meiorin was a member of the initial Attack Crew and rated by her Supervisor as one of his better employees and a safety asset to the crew for the two years she worked for government.
- She had done this work for four years as a contracted forest firefighter before she

carrying her equipment and dropping out of helicopters to be first on the fire line. It is worth noting that had she taken tests in other jurisdictions she would have passed. Sister Meiorin could do the job well but could not meet the test level of aerobic capacity. The evidence showed running

continued on page 2

The STEWARD

Supreme Court.....	1
Whistle-blowing	4
Breast feeding appeal	9
Auditor General's Report	10
Presuming innocence	11
Labour goes global	11
New BCGEU grievance forms	12

Supreme Court

continued from page 1

2.5 km in 11 minutes or less does not reflect the minimum standards of aerobic capacity required to do the job. Rather, it reflects the aerobic capacity of the average male forest firefighter who participated in the group used to design the test. Men and women have different aerobic capacities. This is *not* an indication of their relative fitness.

- We interviewed witnesses with decades of experience fighting forest fires. Not one of them had ever run out of a forest fire. In fact, the evidence was that only inexperienced people would try to outrun a forest fire.

- Sister Meiorin was awarded 5 1/2 years backpay by the Supreme Court of Canada. However, she has not been sitting at home waiting for her fate to be decided. Sister Meiorin is an extremely active and physically fit woman who has been working as a logger and ski instructor since her termination. Her monetary settlement will be adjusted to account for a portion of her logging wages. She has not won the lottery, in fact, any monetary award will be modest.

What we wanted, and were successful in achieving in this case, was to stop employers from designing tests that measure the male “norm” and instead measure the ability to actually do the job. As one of the judges said during the hearing, if you want to be a piano mover, you have to be able to move the pianos.

The Supreme Court of Canada decision does not mean that B.C. is going to be

dropping out of shape firefighters into burning forests. It means that employers will have to design a physical fitness test that will test a person’s capability to do what is actually required on the job. The Supreme Court decision ensures that all men and women who meet legitimate occupational requirements will have a fair opportunity at employment.

BACKGROUND

In 1988 the Ministry of Forests instituted the U.S. Forest Service Smoke Jumpers Test as the standard for physical fitness for its forest firefighters. The U.S. test was running 1.5 miles in 11 minutes. The Ministry test was 2.5 km in 11 minutes. Two-and-a-half km is approximately 100 metres longer than 1.5 miles. Sister Meiorin ran 1.5 miles but could not run 2.5 kms in the time allotted.

The running test was designed to measure aerobic fitness. Evidence submitted in the arbitration showed that, due to physiological differences (heart and lung size, muscle mass, etc.), women are on average less able to do aerobic work than men, and would therefore have more difficulty meeting the required standard than would men. Thirty-five percent of females passed the test the first time, as compared to sixty-five to seventy percent of males. In 1995 there were 354 initial attack crew personnel, of which 20 to 25 were female (7%). The test had the effect of ensuring that the low participation rate of women in the workforce would continue.

No credible evidence showed that the prescribed aerobic capacity was necessary for either men or women to perform the work of a forest firefighter safely and effi-

ciently. The arbitrator found that the Union had established adverse effect discrimination and that the Government had not discharged its burden of showing that it had accommodated the grievor to the point of undue hardship. The arbitrator described the evidence as impressionistic and anecdotal.

In 1994, the new fitness standard became mandatory. Sister Meiorin was given four opportunities to pass the aerobic aspect of the test (a 2.5 km run in 11 minutes or less) and failed by margins ranging from 8 seconds to 49 seconds. As a result of her failure to meet the required physical fitness standard she was suspended from work and eventually terminated.

She filed a grievance challenging her termination. The Union brought the grievance to arbitration, seeking reinstatement of Sister Meiorin to her position and compensation for her lost wages and benefits. We also sought an order requiring the Ministry of Forests to adjust the standard for measuring aerobic fitness which would recognize the physiological differences between men and women. The arbitrator held that the grievance should succeed, and ordered that Sister Meiorin be reinstated to her former position with full financial compensation for all wages and benefits lost.

The Employer appealed the arbitrator’s award to the Court of Appeal for British Columbia where their appeal was allowed. The Union appealed the Court of Appeal decision to the Supreme Court of Canada where it was heard on February 22, 1999. The legal issue before the Supreme Court of Canada was whether the aerobic standard that led to

Sister Meiorin's dismissal unfairly excluded women from forest firefighting jobs.

THE SUPREME COURT OF
CANADA DECISION

The Supreme Court of Canada decision was issued on September 9, 1999 and the Union's appeal was allowed. The decision changed the conventional approach of categorizing discrimination as "direct" or "adverse effect" discrimination, and replaced it with a unified approach.

The new unified approach to reviewing allegations of discrimination is a three-step test to determine whether an employer has established, on a balance of probabilities, that a *prima facie* discriminatory standard is a *bona fide* occupational requirement (BFOR). First, the employer must show that it adopted the standard for a purpose rationally connected to the performance of the job. The focus at the first step is not on the validity of the particular standard, but rather on the validity of its more general purpose. Second, the employer must establish that it adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose. Third, the employer must establish that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant with-

out imposing undue hardship upon the employer.

In this case, the Union having established discrimination, the burden shifted to the Government to demonstrate that the aerobic standard is a BFOR. The Government satisfied the first two steps of the BFOR analysis. However, the Government failed to demonstrate that this particular aerobic standard is reasonably necessary to identify those persons who are able to perform the tasks of a forest firefighter safely and



efficiently. The Government did not establish that it would experience undue hardship if a different standard were used.

The Supreme Court of Canada found:

The procedures adopted by the researchers who developed the aerobic standard were problematic on two levels. First, their approach was primarily a descriptive one. However, merely describing the characteristics of a test subject does not necessarily allow one to identify the standard minimally required for the safe and efficient performance of the job. Secondly, the studies failed to distinguish the female test subjects from the male test subjects, who constituted the majority of the sample groups. The record therefore did not

permit a decision as to whether men and women require the same minimum level of aerobic capacity to perform a forest firefighter's tasks safely and efficiently.

There is no reason to interfere with the arbitrator's holding that the evidence fell well short of establishing that the claimant posed a serious safety risk to herself, her colleagues, or the general public. The Government also claimed that accommodating the claimant would undermine the morale of the workforce. However, the attitudes of those who seek to maintain discriminatory practice cannot be determinative of whether the employer has accommodated the claimant to the point of undue hardship. If it were possible to perform the tasks of a forest firefighter safely and efficiently with you meeting the aerobic standard, the rights of other forest firefighters would not be affected by allowing the claimant to continue performing her job. The order of the arbitrator reinstating the claimant to her former position and compensating her for lost wages and benefits was restored.

The running standard had a discriminatory effect on women because it was much easier for men to pass than women. The average male with training could pass the test; whereas the average female with training could not. This discriminatory effect would only be permitted to stand if the employer had no choice but to permit the discrimination to stand. Here, the employer had a choice as Sister Meiorin could do the job safely and efficiently despite narrowly missing the running standard.

WHISTLE-BLOWING

By Ken Curry

Are public sector workers free to criticize their employers? Can a correctional officer go to the media and say that people are dying in the system through criminal negligence? Can a senior Revenue Canada officer go to the media and compare the Canadian government to the Nazi regime? Is a public school secretary free to complain about the school board to a parent-teacher association?

Like many areas in labour law, there are no black and white answers. Some arbitrators have a strong employer's perspective on the employees' "duty of loyalty" to their employer such that only in the most extreme circumstances can employees publicly criticize their employers. For others, the balance between an employee's right to speak out and the employer's interests are more balanced in favour of the employee. Like always, when looking at these cases, a close look must be taken at the facts of each case to understand the conclusions.

In general terms, an employee must display a certain degree of loyalty to his employer. Malcontents and troublemakers can be so disruptive of normal production in the work place that they thwart the desires of both employer and fellow employee to get on with the job.

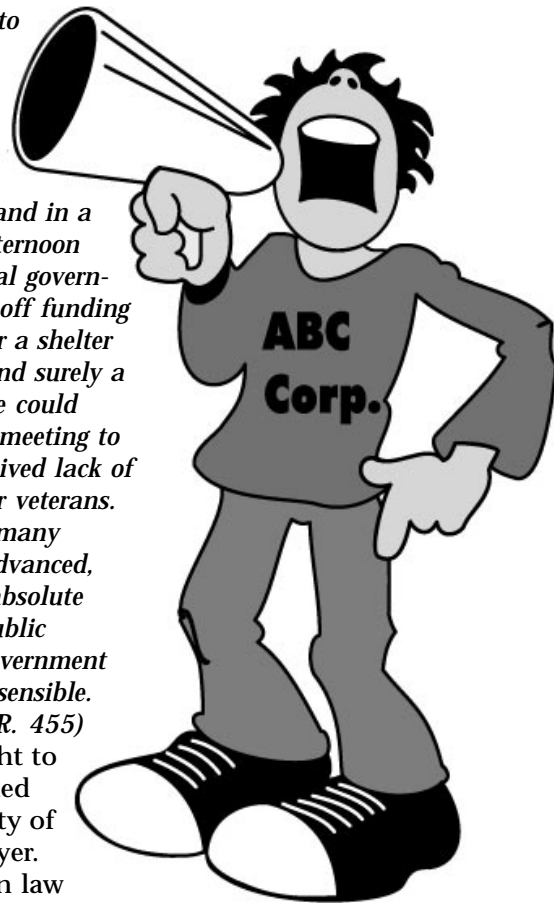
Some scenarios provide an easy answer. For example, as the Supreme Court of Canada said in one case:

Can anyone seriously contend that a municipal bus driver should not be able to attend a

town council meeting to protest against a zoning decision having an impact on her residential street? Should not a provincial clerk be able to stand in a crowd on a Sunday afternoon and protest a provincial government decision cutting off funding for a day care centre or a shelter for single mothers? And surely a federal commissioner could speak out at a Legion meeting to protest against a perceived lack of federal support for war veterans. These examples, and many others that could be advanced, demonstrate that an absolute prohibition against public servants criticizing government policies would not be sensible. (Fraser [1985] 2 S.C.R. 455)

An employee's right to free speech is restricted by an employee's duty of loyalty to the employer. The English common law described the duty of loyalty as:

"...the civil servant is expected to give, and with very few exceptions does give in full measure, the qualities of loyalty and discretion. He is not to obtrude his opinion unless it is invited, but when it is needed he must give it with complete honesty and candour. If it is not accepted, and a policy is adopted contrary to his advice, he must, and invariably does, do his best to carry it into effect, however much he may privately dislike it. If it miscarries, he must resist the



human temptation to say, "I told you so"; it is still his duty, which again he invariably performs, to save his Minister from disaster, even if he thinks that disaster is deserved. (Sir C.K. Allen in Law and Orders, 2nd ed., pp. 317-8)

The duty of loyalty was described by one arbitrator as: In general terms, an employee must display a certain degree of loyalty to his employer. Malcontents and troublemakers can be so disruptive of normal production in the work place that they thwart the

desires of both employer and fellow employee to get on with the job. These kinds of employees have no constructive role to play in a productive work place and their disloyalty destroys their usefulness as employees. (Ministry of A.G., 3 L.A.C. (3d) 140 at 158)

Another arbitrator put it this way: "...an employee is under a duty to serve his employer with good faith and fidelity and not deliberately do something which may harm his employer's business".

Public servants have some freedom to criticize the government. But it is not an absolute freedom.

(Municipality of Hamilton-Wentworth 18 L.A.C. (2d) 46)

Arbitrators balance the right of free speech of employees with employers protecting their business interests. One arbitrator expressed the following view of when an employee should be permitted to publicly criticize their employer:

Only when some higher purpose is served such as to expose crime or serious negligence, to serve the cause of higher learning, to fairly debate important matters of general public concern related to the employer or those in authority over him, as examples, can the employer be publicly criticized about the employer's conduct without breaching the duty of loyalty.

Even where there is a "higher purpose" arbitrators have said the following criteria at a minimum must be met to avoid discipline:

1) Employees must exhaust

internal whistle-blowing mechanisms before going public. For example, in the Government Master Agreement at Article 32.13 is a procedure for bringing forth allegations of wrongdoing. 2) Employees will be in breach of the duty of loyalty if the employee makes false public statements which the employee either knows to be false or is reckless as to the truth of the statements.

The Supreme Court of Canada made the following comment about a public sector worker's freedom to criticize the government:

Public servants have some freedom to criticize the government. But it is not an absolute freedom. To take but one example, whereas it is obvious that it would not be 'just cause' for a provincial government to dismiss a provincial clerk who stood in a crowd on a Sunday afternoon to protest provincial day-care policies, it is equally obvious that the same government would have 'just cause' to dismiss the Deputy Minister of Social Services who spoke vigorously against the same policies at the same rally.

The loyalty owed is to the Government of Canada, not

the political party in power at any one time. A public servant need not vote for the governing party.

Nor need he or she publicly espouse its policies. And indeed, in some circumstances a public servant may actively and publicly express opposition to the policies of a government. This would be appropriate if, for example, the government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability. But, having stated these qualifications (and there may be others), it is my view that a public servant must not engage, as the appellant did in the present case, in sustained and highly visible attacks on major government policies. In conducting himself in this way the appellant, in my view, displayed a lack of loyalty to the government that was inconsistent with his duties as an employee of the government. (Fraser [1985] 2 SCR 455)

continued on page 6

The STEWARD

NEWS AND INFORMATION FOR BCGEU STEWARDS AND OFFICERS

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On the facts of that case the Court upheld a dismissal of an employee who despite warnings, continued to go the media with comments like Pierre Trudeau is like the dictatorship in Poland and comparing the Canadian government to the Nazi regime.

During the summer of 1990, in the midst of the Oka crisis, an employee of the Department of Indian and Northern Affairs participated in the Oka barricade. The employer terminated her. The arbitrator said that the grievor was "actively involved in a situation on the side of those who opposed the employer's position". The arbitrator substituted a 2 year suspension for the termination. (32 LAC (4th) 250)

In the famous William Scott case the grievor publicly criticized her employer in a newspaper by commenting "you wouldn't believe the inefficiencies of the plant". The arbitrator described her conduct as follows:

Mrs. Martelli phoned up the newspaper, accused her employer of serious inefficiencies, and did so in a vindictive effort to discredit her employer. She took this action at a time when her employer, a Crown-owned corporation, was under vigorous public attack by farm organizations for creating a backlog in the processing of poultry, a backlog which was costing farmers a great deal of money.

The grievor's termination was upheld in arbitration. The reason why she received such a severe penalty seems to be that her whistle-blowing was a vindictive effort to discredit her employer. As well, only 5 months earlier she had been reinstated with a long suspen-

sion by an arbitrator on an earlier termination grievance.

At Simon Fraser University, an employee who worked in the library criticized the employer's open door policy concerning the periodicals reading room. In dismissing the grievance the arbitrator said:

Loyalty and some restrictions on the full exercise of the right of free speech are required by the jurisprudence so that the organization can effectively work towards lawful goals, whatever the private opinions of the workers may be. (SFU 18 L.A.C. (3d) 361).

A secretary in a public school also had a daughter attending the school. She wrote a letter to the Parent Teacher Association saying that the School Board's explanation of staff cuts was a "blizzard of double talk" and she encouraged the PTA to protest the cut. The employer gave her a written warning for this breach of loyalty. The arbitrator held that the "...grievor marginally transgressed the bounds of proper conduct which is to be expected of a faithful and loyal employee...However, the particular language used by the grievor relative to the school board was intemperate and inappropriate having regard to the fact that she was an employee...In the board's view the apt response by the employer would have been to orally caution the grievor, through its management personnel, to refrain from any further public utterances using objectionable language. (Wainwright School 15 L.A.C. (3d) 344)

An Alberta child care counsellor was given a 3-day suspension when he gave interviews to the CBC and a 10-day

suspension for comments reported in a local newspaper.

The grievor said during the CBC interview that the Alberta government attacks on welfare were vicious, that an unwritten policy existed to cut the number of people on welfare, that each department had been supplied with a quota of welfare recipients, and that there were no job-creation programs in place.

The arbitrator held that the

An Alberta child care counsellor was given a 3-day suspension when he gave interviews to the CBC and a 10-day suspension for comments reported in a local newspaper.

grievor "overstepped the bounds of fair criticism" in his CBC interview. The arbitrator also considered that there was an internal review process that the grievor should have used before going to the media. The arbitrator reduced the 3 day suspension to a written warning.

In the local newspaper the grievor called the employer's Code of Conduct and Ethics a gag order and that the ministry was going to use intimidation to silence workers. The employer gave the grievor a 10 day suspension for these comments which the arbitrator reduced to a 3 day suspension. (Government of Alberta 57 LAC (4th) 400)

Examples of employees failing to exhaust internal whistle-blowing mechanisms are as follows:

In a federal government case the termination of a district registrar of the Immigration Appeal Board was upheld by

an arbitrator when he leaked evidence of procedural irregularities to immigration lawyers and spoke openly to the press about his criticism of the Immigration Appeal Board.

The arbitration board said that before going to the press the grievor should have done everything reasonable to resolve the issue internally. This is part of the duty of

Before whistle-blowing, full attempts should be made to exhaust internal procedures before going public.

loyalty owed to the employer (Forgie v. Treasury Board).

An immigration officer went to a member of parliament to discuss and criticize a new policy of the government concerning a new refugee determination system. The member of parliament then went to the media about the employee's concerns. The employer terminated him for talking to the member of parliament.

The arbitrator concluded that the grievor believed that the employer's policy jeopardized the safety of Canadians. The arbitrator also found that the grievor should have waited for a reply to a memo that he had sent to his superiors regarding his concerns about the new policy before speaking to the member of parliament. The arbitrator substituted a 10 month suspension for the termination (Treasury Board and Quigley, 31 LAC (3d) 156).

An example of employees making a "reckless" statement is found in a BCGEU case. Correctional officers were terminated when they gave a

radio interview and said that "people are dying in the system through criminal negligence"; that the Correctional Branch was "covering up criminal activities by inmates on temporary passes".

The arbitrator upheld the termination as the statements were made with little regard to the truth of the allegations. (Ministry of AG 3 LAC (3d) 140, at 167)

Before whistle-blowing, full attempts should be made to exhaust internal procedures before going public. Particular attention should be taken in ensuring that what is said is true. Even if these two criteria are met there must be some special purpose to the criticism.

There is no easy answer to what makes up this "special purpose". We know that if the employer's conduct involves illegal activity, or effects the health or safety of the public criticism is permitted. Some arbitrators would stop there. Others might say that employees can criticize their employers publicly as long as it does not effect their ability to do their job or the public's perception of that ability.

What if the whistle-blower is a union official?

A local union president gave a speech at a women's forum of the Ontario Federation of Labour with the purpose of advancing the cause of affirmative action. The employer disciplined her for certain remarks she made in her speech. The arbitrator held that the union president

wilfully distorted the truth and falsely accused the employer.

The union president said in her speech: "We had one woman go up through the ranks from weaving to the 2C department to lab technician. The company did not want to give her the job and tried to cut the salary." Saunders, (the union president) speculated that the company acted on the stereotyped notion that the young women in question might marry, have a baby, and quit and it would then lose its investment in her training.

The arbitrator held that the union president "wilfully distorted the truth to serve her own purposes and dismissed the grievance." The penalty that the union was disputing was a two-week suspension, with pay (Amoco Fabrics, 17 LAC (3d) 425).

A union officer was discharged because of allegedly false and defamatory statements about two company officers in a union newsletter. The newsletter reported on an employer's conduct at an arbitration. The steward said that senior management demonstrated a lack of integrity and that the employer had threatened the job security of female employees. The employer's conduct was described as "disgusting and contemptible". The employer terminated the steward. The arbitrator ordered reinstatement and full back pay on the basis that when the steward made the statements he did not believe them to be false nor did he act out of a reckless disregard as to the truth of his statements. The arbitrator also considered that the remarks were published in a union newsletter and that the steward: ...honestly be-

continued on page 8

lieved that the company had threatened the job security of female employees and had demonstrated a lack of integrity in its approach to the two grievances...It should come as no surprise to the company that the union's account of the arbitration should be slanted in such a way as to bring credit upon itself at the expense of the company and its officers. A thick skin has its place in industrial relations, and those who participate on either side must not be surprised to occasionally find themselves on the receiving end of a stinging verbal blow. Short of malice, such statements must be tolerated. Moreover, the company and its officers in this case were not entirely without recourse. If the company felt that the events had been critically misrepresented by the union it was free to publish and circulate to the employees its own account of what happened and the reason for what its officers said.

The arbitrator said that while statements of stewards must be protected, protection doesn't extend to statements that are malicious in that they are knowingly or recklessly false. Union stewards are not immune from discipline in all circumstances (Burns Meats, 26 LAC (2d) 379).

The president of a bus drivers local union received a one-day suspension when he sent a letter to the mayor, council and the press. Some of the comments made by the local president were that the mayor said that he was not concerned about a transit strike as only 10 per cent of the population uses buses and that the Council might consider privatizing the bus system. The local president also mentioned patronage.

The arbitrator said that the test in looking at cases of employees who also are union executives is whether the employee has intentionally misrepresented the truth or carelessly or recklessly misrepresented the truth in the statements made with a detriment to the employer. Unfortunately the arbitrator found on the facts of this case that the grievor did have a careless disregard for the truth and upheld the one day suspension (City of Brampton, 7 LAC (4th) 294).

In another case, a shop steward was an assistant supervisor at a hostel providing accommodation for homeless individuals and long-term residences. A resident died at the hostel and an inquest was held. The employer refused to provide legal representation to an outspoken shop steward.

The shop steward decided to circulate a leaflet about these matters. In the leaflet the grievor said that the outspoken shop steward had been disciplined in the past but that the discipline had been found by arbitrators to be without cause. As well the leaflet said that the employer's refusal to provide a legal representative to the steward at the inquest was "an open attempt to limit his participation in the inquest, and suppress the information he might bring forward". The arbitrator held that the statements about the employer's attempt to limit participation and suppress information were honestly held beliefs by the grievor, and were neither malicious, nor recklessly or knowingly false. The arbitrator said that the grievor's statements fell within the scope of protected activity for union stewards and that if the employer disagreed with what

was said it could have circulated its own account.

However, the arbitrator took issue with the comments that prior discipline to the steward had been given without cause. The arbitrator held that the grievor did not sincerely believe that all the discipline had been found to be without cause. He said that the grievor deliberately misrepresented the facts. The grievor had been given a five-day suspension for circulating the leaflet. The arbitrator asked for further submissions as to the appropriate penalty (Metropolitan Toronto, 68 LAC 4th 224).

What if the union official is on an unpaid leave and working full-time for the union? In a recent case of the LRB (B539/98), upheld on Appeal (B107/99), the Board overturned an arbitrator and held that an employee on unpaid leave and working full-time for the union is not immune from any discipline. In that case the employee who was in a full-

continued on page 10

Comments, story ideas, criticism, suggestions welcome

The Steward is published specifically to meet the needs of BCGEU stewards and local officers. If there are topics or issues that you would like us to cover, please let us know.

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time union position as president of the union local went to the workplace to attend a meeting that he thought he had a right to attend. There was an incident at the gatehouse that led to the discipline. The arbitrator held that the grievor was immune from discipline because he was working full-time for the union.

The LRB overturned that decision on the basis that union officials while acting in that capacity are afforded a general but not an absolute immunity from discipline.

The LRB followed an earlier case (Richmond Lions) where a union official was disciplined for conduct at a meeting where the steward violently slapped and pounded the table, yelled incoherently and refused to leave when asked. The arbitrator found that the manager reasonably feared for her physical safety.

The Board said that when the conduct of union officials goes beyond the bounds of lawful union activity and is detrimental to the legitimate interests of the employer, the union official can't be expected to be protected from discipline solely because the impugned acts occurred during the course of official duties. On the facts of the Richmond Lions' case the Board said that the conduct of the steward went beyond the bounds of lawful union conduct and undermined the employment relationship. For more information on stewards immunity from discipline see the December 1991 edition of *The Steward*, Vol. 2, No. 8.

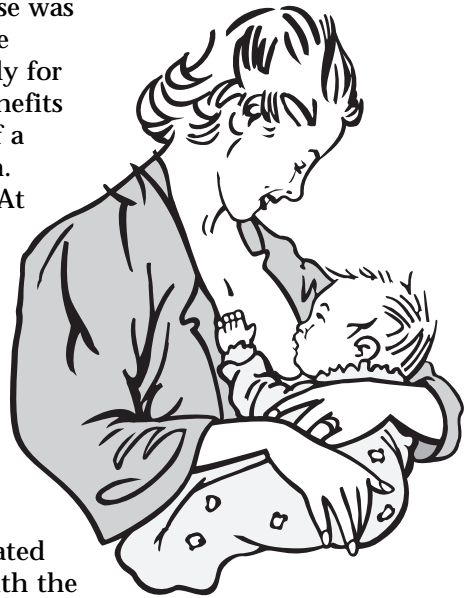
• Ken Curry is a BCGEU Advocacy Staff Representative.

Breast feeding appeal allowed

A BCGEU member won an extra five weeks of maternity leave and parental benefits to continue breast feeding her baby, after appealing to the Employment Insurance Board of Referees.

At dispute in the case was whether or not the mother could apply for an extra five weeks of benefits under the Act, because of a special medical condition. Initially she was denied. At the appeal the union provided additional evidence in the form of a letter from her physician. The union claimed the doctor was misled by the E.I. Commission's medical advisor during initial discussions over the extension of the five weeks. The doctor stated he had a conversation with the medical advisor, who stated that only adopted babies were eligible for the extra five weeks of E.I. benefits. The doctor agreed the baby was not adopted. It turns out the doctor never mentioned any special condition because he was not asked and he assumed the adopted child ruling prevailed.

The baby had a special medical condition. The child had chicken pox at two months old and had been sickly and susceptible to colds and flu since birth. The baby's doctor stated in his letter to the board that the medical concerns made it even more important that the child be breast fed. The mother was determined to do everything in her power to aid the child.



Being aware of the beneficial aspects of breast feeding, the parents wanted to continue to give their child those benefits. In addition, the baby had resisted all attempts to be weaned. The reason the mother was asking for the additional five weeks of benefits under Section 12(7)(b) of the Employment Insurance Act was to permit her to breast feed her baby as a means of assisting the child overcome illness.

In a unanimous decision by the Board of Referees, the board found the mother's claim for a five-week extension of parental benefits was justified for reasons of the child's physical, psychological and emotional well being.

AUDITOR GENERAL CRITICAL OF GOVERNMENT PRACTICES

The Auditor General says the human capital of the B.C. public service is at risk, and calls for a more effective approach to maintaining the knowledge and skills of the public service.

British Columbians could face a decline in the quality of service they receive from government because the human capital of the public service is at risk, says the Auditor General in a report released Aug. 3.

George Morfitt, the Auditor General of British Columbia, cites a widespread lack of effective strategies for maintaining the knowledge and skills of government workers. "Human capital in the British Columbia public service is at risk," says Morfitt, "and training and development, which is a key element of maintaining human capital, is not being managed effectively. People are the most important element in delivering quality services, and they need to keep up the knowledge and skills demanded by their jobs."

The B.C. public service spends close to \$2 billion annually on salaries and benefits. The investment in training and developing public servants, however, is small in comparison—less than one percent of payroll in direct costs.

Downsizing and reorganization within the public service has increased the need for training and development.



During a twelve month period reviewed by the Auditor General, nearly 1,700 people left the public service through downsizing, taking over 31,000 years of experience and knowledge with them. At the same time, 40 per cent of the workers remaining had their jobs redefined. And the workforce is aging rapidly. During the next five years, for example, up to 43 per cent of senior managers will reach the age of 55, and will be eligible to retire. All of this adds up to

a potentially serious erosion of human capital, and government is not preparing for it properly by training people, or by developing the next generation of leaders and specialists.

"These problems are not new," says Morfitt. "Previous reports on human capital management have not resulted in change. The time has come to advance our thinking about training and development. I would like to see a commitment made to maintain the human capital of the B.C. public service, so that British Columbians can continue to receive the high standards of service they expect."

KEY HIGHLIGHTS OF THE AUDITOR GENERAL'S REPORT ON THE B.C. PUBLIC SERVICE

During the one-year period from December 1996 to December 1997:

- 40 per cent of public service employees had their jobs redefined;
 - 1,697 employees left the public service;
 - Government lost 31,151 years of knowledge and experience; and
 - Over the next five years, 43% of senior managers will reach age 55 or older and be eligible to retire
-
- Less than one per cent of payroll is invested in training and developing the British Columbia public service
-
- 67 per cent of public service employees believe training and development is a fundamental value within their ministry

Presuming innocence

By Judith McCormack/CALM

"I used to be Snow White," said actress Mae West, "but I drifted." She was talking about innocence, although she wasn't presuming anything.

The idea of innocence in law is a little different. The presumption that people are innocent until they are proven guilty, for example, has sometimes been called the "golden thread" of the law. This presumption is contained in Canada's Charter of Rights and Freedoms as well. Usually it means that a case must be established against a person before he or she is required to provide a defence.

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In some areas of law, however, that golden thread has become a little tangled. In the area of arbitration law, for instance, certain arbitrators have said that workers are required to come up with explanations for suspicious circumstances. If they don't,

the lack of explanation can be held against them.

Let's take a worker who is caught leaving a workplace with company property in her car. If she doesn't provide an explanation for this situation, many arbitrators might conclude that she is guilty of theft. One problem with this is that under most collective agreements, employers are required to prove that they have just cause for discipline and discharge. If a grievance in this kind of case goes to arbitration, the employer is usually obliged to go first to present its evidence. If an employer doesn't establish just cause for its actions during its part of the case, sometimes it is not even necessary for a union to put forward a defence. For this reason, at least one arbitrator has rejected an employer's request for the details of the union's defence in advance of an arbitration hearing.

How does this jibe with the idea that a grievor has to provide an explanation for his conduct in certain circumstances? The answer is that it doesn't, at least not very well. Although there are some thin legal distinctions that can be drawn, the result is the same: in some circumstances, workers will be considered guilty until proven innocent.

• *Judith McCormack is a lawyer with Sack Goldblatt Mitchell in Toronto and former chair of the Ontario Labour Relations Board. Distributed by the Canadian Association of Labour Media.*

LABOUR DEBATE GOES GLOBAL

CLC Faxpress/CALM

Ever wonder what it would be like to have a leisurely discussion on the future of trade unionism globally in the new millennium? Ever want to have that discussion with trade unionists and supporters of organized labour from around the world?

The International Labour Organization (ILO) and the International Confederation of Trade Unions (ICFTU) are launching an on-line debate on exactly that topic. The debate, or conference, is aimed at trade unionists and labour researchers and is expected to run for about 12 months.

Each month new speakers will be invited to act as panelists to take questions on the month's hot topic. All questions will be gathered and selected by a moderator, so that anything posted to the conference is monitored before it goes out over the list.

The conference will be run by the ILO's International Institute for Labour Studies in co-operation with the ICFTU.

Those interested can sign up at: www.ilo.org/public/english/130inst/research/network/index.htm

ROAST TOM KOZAR AND RAISE A MONUMENT

RAISE A TOAST AND ROAST
LABOUR

ACTIVIST, TOM KOZAR.

All proceeds from this gala fund raising dinner will help to complete the monument to the Canadian heroes of the MacKenzie-Papineau Battalion of the International Brigades, in the Spanish Civil War (1936-39).

Friday, October 29, 1999

Operating Engineers' Hall
4333 Ledger Avenue
Burnaby

6:30 No Host Bar

7:30 Dinner

8:30 Veteran Speakers &
Roasters

TICKETS \$50

call Lynn Brice at the BCGEU
(604) 291-9611 or
Gordie Larkin at the CLC
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NEW BCGEU GRIEVANCE FORMS

The BCGEU's grievance forms have just been updated and are on the way out to the Area Offices. The modifications are for the most part minor in nature and include things like:

- the addition of "and any other related articles" after the ARTICLE(S) ALLEGEDLY VIOLATED section;
- there is more space in the body of the grievance form;
- there are more reminders of what information and documents the Area Offices need from the grievor and the shop steward in order to process the grievance;
- they are numbered in the bottom right hand corner to help us identify a specific grievance when a member has multiple files.

The two more significant changes to the form are that it is now a three-part form, previously it was a four-part form, and the *Steward Fact Sheet* is now part of the grievance form itself.

The three-part form divides as follows:

- the top (white) copy goes to the Employer's designate at Step 2;
- the middle (yellow) copy goes to the Grievor; and
- the last (green) copy goes to the Area Office.

The shop steward will have a copy mailed to them by the Area Office to indicate receipt of the grievance by the union. If a shop steward does not receive their photocopy within two weeks it is important that they follow up with the Area Office to ensure the grievance was received.

The *Steward Fact Sheet* that was previously a separate document, which was rarely used outside of the shop stewards' training courses, has now become part of the grievance form. It is located on the back of the union's copy of the grievance form and should be completed by the shop steward AFTER they have distributed the top two copies of the grievance form to the employer and the grievor.

The new *Steward Fact Sheet* section contains very important information necessary for the Area Offices to process the grievance, and if used, can alleviate delays. It is important that shop stewards complete the relevant sections of BOTH sides of the grievance form prior to forwarding it to the Area Office.