

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

ONTARIO COUNCIL OF REGENTS FOR COLLEGES  
OF APPLIED ARTS AND TECHNOLOGY in the FORM of  
ALGONQUIN COLLEGE  
(hereinafter called the "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION  
(for ACADEMIC EMPLOYEES)  
(hereinafter called the "Union")

GRIEVANCE of F. Dutton  
OPSEU FILE NUMBER 341501

ARBITRATOR: Richard H. McLaren, C.Arb.

COUNSEL FOR THE COLLEGE: Jock Climie

COUNSEL FOR THE UNION: Kristin Elliot

HEARINGS in RELATION to this MATTER were HELD AT OTTAWA, ONTARIO, on  
NOVEMBER 20, 2003; JANUARY 26 and MAY 19, 2004.

## AWARD

On the first day of the hearings Counsel for the parties agreed that the Arbitrator was properly appointed. There was a preliminary objection raised by the College related to the jurisdiction to determine the matter and render a final and binding decision. Other preliminary objections by the College were abandoned during the first day of hearings. The preliminary objection remaining was under Article 32.02 that if the Grievor believes that he was an employee not an independent contractor when he started as such on the 8<sup>th</sup> of September 2000 then that was the time to file the grievance not on the 6<sup>th</sup> of March 2003. The Parties agreed that the Arbitrator ought to hear the merits of the case before deciding the preliminary issue.

The College provides an auto apprenticeship program which is a post-secondary program {ASEP} run on the campus. The College also provides contracted programs for General Motors Corporation {GM}. GM has a national product service training program which is delivered in Ontario by four colleges one of which is Algonquin. This program is funded by GM. The Algonquin training center for GM is in Gloucester and has been in operation for approximately 20 years.

The grievance reads:

... violation of the Collective Agreement between the Ontario Council of Regents for CAATS and OPSEU (Academic Employees) particularly, but not exclusively, Article 2 staffing, Article 14 salaries, Article 27 job security and Appendix V sessional employees with respect to my status, salary, benefits and seniority.

The settlement requested at arbitration was that the Grievor's status as a regular full-time professor be declared with full retroactive adjustment of compensation, benefits and seniority as of the date of the grievance on 6 March 2003.

## FACTS

Frank Dutton started his employment with the College as a Sessional teacher on the 19<sup>th</sup> of October 1998. He taught in the automotive apprenticeship Program and was given an 8 week contract which was twice renewed ending in August of 1999. He testifies that his co-ordinator was Randy Scott who held a full-time professorship at the College. Mr. Dutton taught on the road rather than at the center in places such as Sudbury and North Bay. Aside from scheduling, the co-ordination undertaken by Professor Scott was minimal occurring for one or two hour periods every two weeks. His supervisor was John Tapp who became the Dean of Transportation and Building School for the College in 1998. Dean Tapp had hired the Grievor to work on the GM program.

Dean Tapp testifies that the GM training is not a College program but a contract for the delivery of training to employees of GM and their dealerships in the Ottawa and the Eastern Ontario region. The training carried out is largely determined by the GM dealership network in the area demanding training for their employees. Therefore, GM has no control over the demand and does not want to be tied to a binding formal contract and commitment to the College in respect of, what I will term in this award, a course of study for GM trainees. Dean Tapp advised that the program had in the early 1980s been at a level of a half a million dollars. There has been over the years wide fluctuations in the demand and overall there has been a continuing decline in the delivery of courses for GM.

At the request of Dean Tapp the Grievor entered into an independent contract agreement with the College on the 8<sup>th</sup> of September 2000. If that had not occurred Mr. Dutton would have had 12 of 24 months of sessional employment with the College the very next month. Dean Tapp testifies that there was a lot of volatility in the GM program and they did not cover losses. For example, the demand was almost nothing in the month of February. Dean

Tapp advised that discontinuing the GM program was not seen as a viable option as GM supplies the College with support materials and many other benefits. He wanted to use contractors to continue to deliver the course of studies for GM in order that he might maintain the greatest flexibility in his staffing decisions. With independent contractors he would have greater flexibility and could respond more easily to the volatility as well as ensuring that the GM program would not penalize the other activities of the College because of losses. It is the switch to an independent contract status which the College argues is the time when the grievance should have been filed.

Dean Tapp claims that Mr. Dutton was not forced to become an independent contractor. Mr. Dutton's view was that if he wanted to keep working this was the only way that it would happen. Therefore, Mr. Dutton became an independent contractor and incorporated a company to receive the revenue.

In September of 2002 the status of Mr. Dutton was switched back to a Sessional without any new documents being put in place. There was never a sessional contract signed as all sessional status positions were managed online. Exhibits #7 & #15 indicate that the Sessional status commenced in September of 2002 and was terminated on the 26<sup>th</sup> September 2003. After that he was terminated from all employment by the College on one week's notice. In October of 2002 Dean Tapp advised the Grievor that the switch back had occurred because the College had been forced to do so by Revenue Canada. It was at this time that Mr. Dutton became aware that he might be both an independent contractor and a sessional. He sought out advice from the Union and launched the initial complaint leading to the Grievance in January of 2003. In a formal response to e mail discussions Dean Tapp indicated that it was his intention to have a job posting to hire an instructor to deliver the training that the Grievor had been doing {see Exhibit #9}. In his testimony before me the Dean indicated that it remained his intention to post but that he had not done so because he was awaiting the outcome of this arbitration proceeding.

Mr. Dutton testifies that during the three plus years at the training center he considered himself a professor. He testifies that he was hired as such, had a business car labeling him as

such and never told that his status had changed. He testifies that all across Canada the GM instructors are professors. When he was terminated the employment record, Exhibit #10 indicates that he was a “Part-time Professor”.

## ARGUMENTS

On behalf of the Grievor, Union counsel submits that Mr. Dutton has a claim to a roll over into a full-time position by having completed 12 months sessional employment in a 24 month period. The broader issue is the failure of the College to give preference to the designation of a full-time teaching position as is required by Article 2.03 A rather than continue a sessional teaching position. The individual and the college issues are linked together through Article 2.03 C requiring that the position be designated as a regular full-time bargaining unit position which must be filled by a member of the bargaining unit. It is submitted that none of the reasons put forward by the witnesses for the College as to why the course of study for GM trainees should not be designated a full-time position are appropriate in this case. The evidence of the College on revenue fluctuation and absence of permanent contracts does not qualify as such operational requirements to justify staffing outside of full-time positions. It is also submitted that if the Grievor were not labeled an independent contractor, it is clear that the Grievor occupied a sessional teaching position. Therefore, the roll over should be declared effective October 2000. It is further submitted that once a roll over is confirmed then the work performed must be characterized as that of a Professor not of an Instructor. The argument of the College that the Grievor is an independent contractor is the antithesis of what the definition of an Instructor is in the Collective Agreement.

In support of its position on the preliminary objection the Union counsel made reference to the following arbitration decisions:

*Re Seneca and OPSEU*, (union grievance) an unreported majority arbitration award dated 29 October 1998 (MacDowell); and, *St. Clair College and OPSEU* (Cross grievance) an unreported majority arbitration award dated 24 June 1997 (McLaren).

In support of its position on the merits Union counsel made reference to the following arbitration decisions:

*Re Humber and OPSEU*, (union grievance) an unreported unanimous arbitration award dated 12 April 1994 (Howe); *St. Lawrence College and OPSEU* (Nutley grievance) an unreported arbitration award dated 5 April 1995 (Mitchnick, supplemental award III); *Re George Brown and OPSEU*, (union grievance) an unreported unanimous arbitration award dated 22 December 1994 (Picher); *Fanshawe College and OPSEU* (Donaldson & Bucek grievance) an unreported arbitration award dated January 1987 (Brown); *Fanshawe College and OPSEU* (O'Brien grievance) an unreported arbitration award dated 3 April 1998 (Devlin).

The College submits that the Grievance is out of time under Article 32.02 in that the time to grieve is when the College made him an independent contractor when he believed he was an employee. For this reason the grievance is out of time and ought to be dismissed. It is argued on behalf of the College that the facts need to be characterized first. The Grievor bounced back and forth in various capacities with the College both as a sessional at times and at times in a non teaching capacity as a support and then some time as an independent contractor. It is submitted that the first issue is to determine if there is an on-going full-time position. It is submitted that there can be no full-time position when the person doing the work is an independent contractor and not a sessional teaching position as is required by Article 2.03 A. The course of study for GM trainees was in a great state of flux in 1999 and 2000 with the work decreasing so much that two professors had to be brought from the training center to the College campus because there was nothing for them to do at the center.

In support of the argument on the preliminary objection College counsel relied on the following arbitration decisions.

*Re: British Columbia Buildings Corp. and B.C.G.E.U.* 68 C.L.A.S. 222 (Laing, 2002); and, *St. Lawrence College and OPSEU* (Dailey grievance) (An unreported unanimous arbitration award dated June 26, 1995) (MacDowell).

In support of the argument on the merits College counsel relied on the following arbitration decisions.

*Re Cambrian and OPSEU*, (Sommerer grievance) 44 C.L.A.S. 327 (1996, Simmons); *St. Lawrence College and OPSEU* (union grievance) an unreported unanimous arbitration award dated October 20, 1998) (K. P. Swan); *Cambrian College and OPSEU* (union grievance) 5 L.A.C. (4th) 325 an unreported arbitration award dated 17 March 1989 (Swan); *Fanshawe College and OPSEU* (McDiarmid grievance) an unreported arbitration decision dated 27 February 1993 (Brown); *Cambrian College and OPSEU* (Anderson, Poupore, Suosalo, Ashick and Potvin grievance) an unreported arbitration award dated 30 June 1988 (Brown); *Seneca College and OPSEU* (union grievance) an unreported arbitration award dated 16 April 2004 (Picher); *Canadian Labour Arbitration* cases 2:2200-2:220 and 2:3128-2:3130.

## RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT

### Article 2

#### Staffing

2.01 The College shall not reclassify professors as instructors except through the application of Article 27, Job Security.

2.03 A The College will give preference to the designation of full-time positions as regular continuing teaching positions rather than sessional teaching positions including, in particular, positions arising as a result of new post-secondary programs subject to such operational requirements as the quality of the programs, enrolment patterns and expectations, attainment of program objectives, the need for special qualifications and the market acceptability of the programs to employers, students, and the community. The College will not abuse sessional appointments by failing to fill ongoing positions as soon as possible subject to such operational requirements as the quality of the programs, attainment of program objectives, the need for special qualifications, and enrolment patterns and expectations.

2.03 B The College will not abuse the usage of sessional appointments by combining sessional with partial-load service

and thereby maintaining an employment relationship with the College in order to circumvent the completion of the minimum 12 months sessional employment in a 24 month period.

2.03 C If the College continues a full-time position beyond one full academic year of staffing the position with sessional appointments, the College shall designate the position as a regular full-time bargaining unit position and shall fill the position with a member of the bargaining unit as soon as a person capable of performing the work is available for hiring on this basis.

## Article 14

### Salaries

14.01 A Determination of starting salaries and progression within the salary schedules shall be in accordance with the Job Classification Plans (see pages 131-136). The application to certain present employees above the maximum step on the salary schedule shall continue as set out in 14.03.

27.01 A full-time employee shall be appointed to regular status upon successful completion of the probationary period and be credited with seniority at least equal to the probationary period served.

27.16 Extension and Continuing Education programs and courses which are not included in the regular assignment of full-time employees are excluded from the application of the Article for all purposes.

## Article 32

### Grievance Procedures

32.02 It is the mutual desire of the parties that complaints of employees be adjusted as quickly as possible and it is understood that if an employee has a complaint, the employee shall discuss it with the employee's immediate supervisor within 20 days after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee in order to give the immediate supervisor an opportunity of adjusting the complaint. The discussion shall be between the employee and the immediate supervisor unless mutually agreed to have other persons in attendance. The immediate supervisor's response to the

complaint shall be given within seven days after discussion with the employee.

## Appendix V

### SESSIONAL EMPLOYEES

1 The terms of this Appendix relate to persons employed on a sessional basis. Sessional employees are excluded from the bargaining unit.

2 A sessional employee is defined as a full-time employee appointed on a sessional basis for up to 12 full months of continuous or non-continuous accumulated employment in a 24 calendar month period. Such sessional employee may be released upon two weeks' written notice and shall resign by giving two weeks' written notice.

4 If a sessional employee is continued in employment for more than the period set out in paragraph 2 of this Appendix, such an employee shall be considered as having completed the first year of the two year probationary period and thereafter covered by the other provisions of the Agreement. The balance of such an employee's probationary period shall be 12 full months of continuous or non-continuous accumulated employment during the immediately following 24 calendar month period.

### BARGAINING UNIT

(To be used in conjunction with the Job Classification Plans for positions in the Academic Bargaining Unit.)

### CLASS DEFINITION

#### PROFESSOR

...

#### INSTRUCTOR

The Instructor classification applies to those teaching positions where the duties and responsibilities of the incumbent are limited to that portion of the total spectrum of academic activities related to the provision of instruction to assigned groups of students through prepared courses of instruction and according to prescribed instructional formats; and limited to instruction

directed to the acquisition of a manipulative skill or technique; and under the direction of a Professor. Notwithstanding such prescription, the Instructor is responsible for and has the freedom to provide a learning environment which makes effective use of the resources provided or identified, work experience, field trips, etc., and to select suitable learning materials from those provided or identified to facilitate the attainment by the students of the educational objectives of the assigned courses.

The Instructor's duties and responsibilities include:

- ensuring student awareness of course objectives, instructional approach, and evaluation systems;
- carrying out regularly scheduled instruction according to the format prescribed for the course, including as appropriate, classroom, laboratory, shop, field, seminar, computer-assisted, individualized learning, and other instructional techniques;
- tutoring and academic counselling of students in the assigned groups;
- evaluating student progress/achievement, assuming responsibility for the overall assessment of the students' work within the assigned course, and maintaining records as required;
- consulting with the Professors responsible for the courses of instruction on the effectiveness of the instruction in attaining the stated program objectives.

In addition, the Instructor may, from time to time, be called upon to contribute to other activities ancillary to the provision of instruction, such as procurement and control of instructional supplies and maintenance and control of instructional equipment.

## DECISION

The Grievor commenced his employment with the College in a sessional teaching position in the auto apprenticeship program at the College in October of 1998 and worked in that capacity until December of 1998. Fused into this work were some activities as part of the support staff {see Exhibit #7}. On the 4<sup>th</sup> of January 1999 until the 23<sup>rd</sup> of April 1999 Mr. Dutton was again a sessional. Beginning in the Spring of 1999 there was a period of employment not as a teacher but in support in the multi media department that work carried over into August of 1999. The same sessional position commenced again in August of 1999 and ran until December of 1999. This bouncing back and forth between support work and sessional teaching activities continued until the Grievor went to the training center in connection with the course of study for GM trainees on the 16<sup>th</sup> of March 2000.

In the academic year 99/00 the service training program for GM experienced a sharp decline in enrolment and a consequent curtailment of activities and revenues for the College. To cope with the situation Dean Tapp returned to the College campus two full-time professors who had been working in the training center on the GM teaching work. Part of these moves by Dean Tapp included assigning the Grievor to the training center. In the period from the 3<sup>rd</sup> of January 2000 through the 11<sup>th</sup> of August of 2000 the Grievor worked in a variety of ways. He was involved in non-teaching, support staff, partial load and part time work as well as a few days in April as a sessional. The period of January to August of 2000 reflects a very disjointed and overlapping functions only a few days of which are work as a sessional teacher. Dean Tapp then thought he had remedied the situation for the Grievor by turning him into an independent contractor in August of 2000. A status which continued for two years until September of 2002.

The Grievor became an independent contractor in August of 2000 the first invoice for such being the 18<sup>th</sup> of September 2000 and the last one was incorrectly dated but appears to have been the 28<sup>th</sup> of September 2002 {see Exhibit #8}. Then the Grievor was switched back to being a sessional still at the training center doing the same duties and hours of work that he

had been doing whilst an independent contractor. This teaching activity continued until his dismissal in September of 2003.

The status as an independent contractor was apparently not acceptable to Revenue Canada as testified to by Dean Tapp. The Grievor along with other “Employee Contractors” engaged in the teaching of courses {see Exhibit #19} were switched back to the College payroll as employees. There was apparently a lack of a genuine independent contractor relationship. Therefore, I find that the status of independent contractor was in fact an erroneous one which should not be considered in the characterization of this matter. Therefore, I must characterize the situation with the Grievor as being one of an employee from the outset in 1998 through to the termination in September of 2003.

The College required the Grievor to be an independent contractor. The Grievor had no alternative but to act as such or not work. For purposes of interpreting and applying the Collective Agreement the proper characterization of the relationship is not that of an independent contractor but as an employee. While he was paid for almost a two year period as if he were an independent contractor he was in effect an employee.

The period immediately following the independent contractor situation was as a sessional as is clear from Exhibits #7 & #15. Appendix V of the Collective Agreement defines a sessional employee

*as a full-time employee appointed on a sessional basis for up to 12 full months of continuous or non-continuous accumulated employment in a 24 calendar month period.*

By September of 2003 the College took the view of the situation as one that Mr. Dutton was about to roll over into a regular full-time bargaining unit position under Article 2.03 C. They thus exercised their right on their characterization of the facts to release the sessional employee upon two weeks’ written notice as provided for in Appendix V paragraph 2. This action by the College takes no account of the two years of the so called independent contract relationship which is what this grievance is all about. Furthermore, in order to escape the reference to that two year period the preliminary objection as to timeliness of the grievance is raised to attempt to take the matter back to August of 2000 when Mr. Dutton went on

independent contractor status at the insistence of the College with the iron fist of no work if he did not do so. Therefore, the first requirement of Article 2.03A must be satisfied in that the position for a course of study for GM trainees was a sessional teaching position.

### Preliminary Objection

The independent contractor characterization raises an issue of status. The implications of what was going on in the period of August 2000 until September of 2003 only became completely clear to the Grievor during his final sessional position through the late Autumn and Winter of 02/03. The recognition of what had been going on and the implications for him under the Collective Agreement of which he had not been a part as an independent contractor only became apparent to him as he filed his grievance in March of 2003. The grievance is about his status and he seeks a declaration as to that status.

The College responds by asserting that he ought to have contested his status in August of 2000 when he became an independent contractor or on his switch back to sessional in September of 2002. It is asserted this the time when the complaint arose under the requirements of Article 32.02.

The jurisprudence in the colleges recognizes that grievances about status are continuing grievances see *Seneca College, supra* at 20. The fact that there may be different time frames or windows through which to examine the question of timing as to when there may have been 12 months continuous employment in 24 months does not alter the fact that the Arbitrator is looking at those various time points for the purpose of determining status. Even if this grievance was not about status, the preliminary objection is waived because the objection was raised too late in the proceedings being indicted only 10 days before the arbitration proceeding see *St. Clair College, supra* at 11. Therefore, the timeliness objection of the College based on Article 32.02 is dismissed. On this basis I do not need to consider the argument as to when the circumstances of the Grievor's situation are said to have crystallized.

### The Merits

The switch in the delivery of the course of study for GM trainees to an independent contractor, who was as I have determined it more properly an employee of the College, occurred as a result of a drop in demand for the program and revenue from the delivery of this activity. When viewed in the context of the history of the program and the evidence of various witnesses the period in 99/00 does appear to be an anomalous blip in the delivery of the course of study. Under Article 2.03 A & C there was a full-time position which has existed at least from the commencement of the independent contractor status in August of 2000 through the dismissal of the Grievor in September of 2003. Therefore, I find that the College under Article 2.03 A ought to have given preference to the designation of a full-time positions as a regular continuing teaching positions as required by Article 2.03 A unless the “*subject to*” language of that Article applies.

The exception of 2.03 A reads:

*subject to such operational requirements as the quality of the programs, enrolment patterns and expectations, attainment of program objectives, the need for special qualifications and the market acceptability of the programs to employers, students and the community.*

What were the operational requirements here? Do they justify not staffing with a full-time position?

Several arbitration decisions have dealt with the issue of whether operational requirements justify not staffing with a full-time position. The Union counsel submits that the decision was improperly based on fiscal considerations only. In the case of *Re OPSEU and Humber College*, (union grievance) an unreported unanimous arbitration award dated 12 April 1994 (Howe) at 7, the arbitrator ruled that the exceptions (virtually identical to those in the present case) were not meant to be an exhaustive list, but rather were examples of what constitute “operational requirements”. The arbitrator ruled that the list was a qualitative one and, per the maxim *noscitur a sociis*, therefore militated against interpreting “operational requirements” to include financial matters. In the case of *Re Fanshawe College and OPSEU*, (Donaldson & Bucek grievance), *supra* at 17, the arbitration board ruled that, in determining

whether to staff with a full-time position, cost was not relevant as the collective agreement had not included it. The College counsel submitted in this case that financial costs are relevant where it may jeopardize other programming of the College. In support of this submission, *Re Cambrian and OPSEU, supra*, was cited. Further, in *St. Lawrence College and OPSEU, (union grievance), supra* at 9, the arbitration board ruled that although it was in agreement with the *OPSEU and Humber College, supra*, decision (cited by Union counsel), it should be distinguished that “there may be occasions when financial factors rise to such a level of importance that they have a direct bearing” on operational requirements. Consequently, if the financial repercussions involve eliminating or affecting the quality of other College programs, they may be found to have risen to such a level as to be beyond a mere cost consideration.

In the case at hand, there was no formal contract with GM for the delivery of a course of study for GM trainees at the training center. Thus, the revenues from the delivery of such course of study is uncertain and will depend upon the demand of GM dealerships to train its personnel. Dean Tapp’s actions, although at first glance appear only fiscally motivated, were in response to losses threatening the well-being of the other College post-secondary program delivery. Dean Tapp had even considered discontinuing altogether the GM program. However, this too would have had negative repercussions for the College. At one point the students to be taught in the GM training center decreased to such a level as to require the two full-time professors to be transferred back to the College campus and assigned other work. This is an indication of the fluctuation in enrolment patterns. Further, there is a need for special qualifications by GM because any instructor was required to have been through the course being taught at least once as a student. This course of study is not a regular teaching activity of the College leading to a degree or diploma, and is not an erosion of the bargaining unit the occurrence of which Article 2.03 A is designed to protect. I therefore conclude, that the exception of operational requirements was present in this case. The result is that the College is justified through the exception in Article 2.03 A in staffing the course of study for GM trainees as a sessional teaching position rather than as a regular continuing teaching position. On this basis, I need not consider the arguments as to the classification of the regular continuing position or College counsel’s submission regarding the applicability of Article 2.03 C.

The provisions of Appendix V apply to sessional teaching positions. Paragraph one indicates that such employees are excluded from the bargaining unit. The Grievor is trying to assert that he has worked 12 full months in 24 as provided for in paragraph two. If such an assertion is correct, then depending upon the timing, paragraph four could deem him to have become an employee who has completed the first year of the two year probationary period and thus covered by the Collective Agreement. I agree with the submissions of the Counsel for the Employer that this is a classic case of estoppel in respect of the 12 in 24 months argument of the Grievor.

The Grievor was prepared to hold himself out as an independent contractor in order to continue working in the course of study for GM trainees in August of 2000. While I have characterized that period of work as being one of employment he nevertheless accepted and took on the mantle of an independent contractor. Union counsel's submission that the independent contractor arrangement was entered into for the sole purpose of avoiding roll over status must fail. As there is no continuous position for staffing the course of study for GM trainees, there was no attempt to circumvent the collective agreement. College counsel submits, in accordance with *Fanshawe and OPSEU*, (MacDiarmid grievance), 1993 C.L.A.S.J. 584185, 29 C.L.A.S. 683 (Brown) at para. 20, that it was within the College's right to choose not to roll over the Grievor and subsequently enter the new arrangement. Having signed the contractual agreement between himself and the College that he is an independent contractor he is holding himself out as such by his conduct and legal agreement. Therefore, the principle of estoppel applies to prevent him from asserting some other status under the Collective Agreement during that period. Such an estoppel is not running against the Union but himself personally who is not a member of the bargaining unit either as an employee who is a sessional and certainly not as an independent contractor which is the legal status he chose. Therefore, he can only begin to count his sessional teaching work in the course of study for GM trainees from September of 2002.

Based on all of the foregoing by the time he was released in September of 2003 he did not have 12 full months of continuous or non-continuous accumulated sessional employment in

a 24 month calendar period backwards from September 2003 because of being estopped from asserting a different status than the legal one he had taken on. In that event the College must be taken to have released him within the provisions of Paragraph two of Appendix V. He has received the required notice. Therefore, there are no grounds to uphold the grievance.

It is ordered that the grievance be dismissed.

DATED at LONDON, ONTARIO THIS 20<sup>th</sup> DAY of JULY 2004.

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Richard H. McLaren, C.Arb.