

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**FANSHAWE COLLEGE**

**("College")**

**AND:**

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION  
LOCAL 110**

**("Union")**

**AND IN THE MATTER OF:**

**GRIEVANCE - OPSEU FILE #99C250 - 99C252**

**BOARD OF ARBITRATION:**

<b>Kevin M. Burkett</b>	<b>- Chairperson</b>
<b>John McManus</b>	<b>- Union Nominee</b>
<b>Ron Hubert</b>	<b>- College Nominee</b>

**APPEARANCES FOR THE COLLEGE:**

<b>Robert Atkinson</b>	<b>- Counsel</b>
<b>Gail Rozell</b>	<b>- Manager, Human Resources</b>

**APPEARANCES FOR THE UNION:**

<b>Elizabeth Mitchell</b>	<b>- Counsel</b>
<b>Paddy Musson</b>	<b>- President, OPSEU Local 110</b>
<b>Gary Fordyce</b>	<b>- Chief Steward</b>
<b>Gail Major</b>	<b>- Grievor</b>

# **A W A R D**

**I have before me two Union policy grievances claiming that the College violated the collective agreement when it failed to hire an academic employee and instead hired Ms. Gail Major as a Technologist B to teach certain courses in the Blueprints program. It is claimed as well that the College failed to designate a full-time faculty position in the General Studies division and recognize it as such. As a remedy the Union seeks to have Ms. Major deemed an academic employee (as either a professor or alternatively an instructor) from the first day of her appointment and compensated accordingly. As well, the Union seeks payment of union dues. The College disputes that Ms. Major has performed the core duties of an academic employee but, rather, it is the position of the College that at all times she has performed as a staff employee; more specifically as a Technologist B. There is no dispute with respect to my authority to hear and determine this matter.**

**The class definition for a "Professor" reads as follows.**

## **PROFESSOR**

**Under the direction of the senior academic officer of the College or designate, a Professor is responsible for providing academic leadership and for developing an effective learning environment for students. This includes:**

- a) The design/revision/updating of courses, including:**

- consulting with program and course directors and other faculty members, advisory committees accrediting agencies, potential employers and students;
- defining course objectives and evaluating and validating these objectives;
- specifying or approving learning approaches, necessary resources, etc.;
- developing individualized instruction and multi-media presentations where applicable;
- selecting or approving textbooks and learning materials.

**b) The teaching of assigned courses, including:**

- ensuring student awareness of course objectives, approach and evaluation techniques;
- carrying out regularly scheduled instruction;
- tutoring and academic counselling of students;
- providing a learning environment which makes effective use of available resources, work experience and field trips;
- evaluating student progress/achievement and assuming responsibility for the overall assessment of the student's work within assigned courses.

**c) The provision of academic leadership, including:**

- providing guidance to Instructors relative to the Instructors' teaching assignments;
- participating in the work of curriculum and other consultative committees as requested.

**In addition, the Professor may, from time to time, be called upon to contribute to other areas ancillary to the role of Professor, such as student recruitment and selection, time-tabling, facility design, professional development, student employment, and control of supplies and equipment.**

**The class definition for an Instructor reads as follows.**

## **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 instruction formats; and limited to instruction and 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.**

**The job posting that Ms. Major applied for was for a Technologist B. The essential duties are described as follows.**

**Under administrative direction the incumbent will facilitate workshops, providing assistance and directions of a practical nature to students.**

**Ms. Major was provided with and signed off as having read and understood the Technologist B description form. The Technologist B position description form sets out the duties and responsibilities for the position as follows.**

- Plan, organize and facilitate workshops, prescribed by faculty, to meet learning outcomes.**

**Facilitates workshop activity that include:**

- evaluate a client's project and creatively advise as to the most effective means to carry out the workshop requirement.**
- plan, organize and facilitate workshops at Ontario Works.**
- develop or modify demonstrations that enable students to demonstrate learning outcomes prescribed by faculty.**
- develop methods of delivering information to students.**

**Performs other related duties including:**

- work as part of a team to ensure quality programs for LBS clients. Report any difficulties to Program Manager.
- promote LBS program.
- maintains accurate records of student accomplishments, mileage, etc.
- ensure that lab equipment is in safe operating conditions and maintain security of lab.

**Under the heading of Complexity, the Technologist B "incumbent must have an ability to deliver workshop material in a variety of methods to an ever challenging client base who have varying degrees of learning abilities." Under the heading of Judgement, the "incumbent is responsible for delivering info in a manner that promotes learning. Therefore the incumbent must be able to judge whether a client has successfully demonstrated a learning outcome." Under the heading of Sensory Demand, the incumbent must "answer student questions on a wide range of information." Finally, under the heading of Independent Action, "the work is performed without daily supervision, however, advice and guidance are available from program manager." The Technologist B family guide, as agreed to between the support staff union and the employer, stipulates that "this family covers positions that provide technical services requiring the application of specialized knowledge .... Incumbents demonstrate the principles and theories of the specialty in various learning activities and provide technical advice." The summary of responsibility states that "incumbents provide technical expertise of a specialized nature to ... students, using independent judgement**

to determine services and methods ...." Included under the heading Typical Duties are, firstly, "Plans, organizes and conducts experiments and demonstration explaining correct procedures and theoretical principles involved" and, secondly, "may assist in student evaluations in relation to learning activities in which the Technologist B takes part." Under the heading of Judgement, it is stipulated that "job duties require a significant degree of judgement." Consistent with the foregoing, under the heading of Independent Action, it is further stipulated that "there is considerable freedom to act independently with supervisor input or verification when requested." Finally, under the heading Communication, it is noted that "job duties require communication for the purpose of providing guidance or technical advice" such that "there may be a need to promote participation and understanding ...."

Ms. Major, who was employed as a Mathematics and Communications Professor within the academic bargaining unit from 1984 to 1996 was laid off in 1996.

She then worked as a part-time teacher before being selected on September 8, 1998 as the successful candidate in respect of the Technologist B job posting within the Blueprints program.

The Blueprints program, a government sponsored basic skills upgrading program, commenced in 1995 within the College's General Studies division. There were five full-time faculty members teaching students with up to grade 12 qualifications at that time. Ms. J. Girard, the program director, traced the evolution

of the Blueprints program at Fanshawe College from 1996. She testified that in 1996 there were five full-time faculty members teaching a variety of courses covering such subject matter as computer use, personal skills and mathematics, each course with its own curriculum and its own learning outcome. The Ministry made it known in the spring of 1997 that in order to maintain its funding, the program would henceforth have to comply with Ministry guidelines with respect to the academic level of its students and with respect to the nature of the programs offered. The College was told that henceforth the threshold for entry had to be less than grade nine literacy and numeracy and that the courses offered had to be restricted to literacy and numeracy. In addition, the Ministry laid down new guidelines with respect to the minimum number of students, contract hours and academic criteria. All of this evidence is uncontradicted. Ms. Girard explained that in order to process a sufficient number of students and thereby maintain its funding, the program would have to run over 12 months and meet the literacy and numeracy requirements in respect of this clearly defined student set. The difficulty, she testified, is that adult students will walk away if they lose interest in a course. Accordingly, in addition to breaking the courses down into one-month modules spread over 12 months, a decision was taken to offer workshops within which students could both practise and demonstrate math and English skills by working through job relevant material. The computer workshop presided over by Ms. Major was an example of this. It is Ms. Girard's evidence that

because non-literacy and numeracy courses were no longer to be funded, they were eliminated.

Under the program developed by Ms. Girard, the core math and English courses were to be taught by a faculty member (Carmen McGinnis). Students were required to take a minimum four hours with Ms. McGinnis but could allocate the remaining 16 hours as between direct instruction by the faculty member or the demonstration labs. It is important to note that students were permitted to spend all 20 hours with Ms. McGinnis if they so chose, such that the demonstration labs were voluntary. Most importantly, Ms. Girard explained that the learning outcomes were restricted to math and English and that whereas students could demonstrate literacy and numeracy skills by proceeding through a computer application text, the successful completion of that text did not constitute a learning outcome. Ms. Girard testified that, in this context, the technologist did not teach the course nor evaluate students in respect of the learning outcome. She gave uncontradicted evidence that whereas the technologist recorded whether a student had completed a demonstration, Ms. McGinnis completed the Blueprints learning outcomes progress report for each student. She emphasized that it is the academic teacher who determines if a student can read well enough with understanding or perform mathematical functions well enough to reach a specified academic level. She emphasized that learning outcomes were literacy-based such that the computer text was simply the vehicle for learning

literacy skills. She further emphasized that because Ms. McGinnis graded the students, the technologist would not necessarily know the level to which a student had progressed.

As a Technologist, Ms. Major was placed in charge of demonstration labs in conjunction with Communications 177. It is Ms. Major's evidence that in the period April to August 1998 she taught the same course as she had as a part-time teacher replacing Prof. Howatt, in that she had the same responsibility for course content, attendance and evaluation. It is her evidence that the same text was covered and that she had no faculty supervision. During the period October 5, 1998 to December 18, 1998, she also was assigned responsibility for labs in DEVL169A - Personal Skills Management, CANCO754 - Keyboarding for Communications and CMNC179A - Communications and Calculations for Self-Employment.

It is Ms. Major's evidence that on her first day of work, Ms. Girard asked her to develop a portfolio workshop and in this regard she had obtained various materials including videos, overheads and handouts. It is her evidence that in the full knowledge of Ms. Girard, she developed the curriculum for this course. Ms. Major acknowledged that the course was never offered. When asked if Ms. Girard had ever seen her work, she testified that she gave her work to Ms. Girard for her approval in the winter of 2000 after another technologist had been asked to do workshops,

including portfolios. Ms. Major testified that she did not get paid anything extra for this work.

With respect to DEVL169A - Personal Skills Management, Ms. Major testified that she taught from the front of the class, initiated discussion on the various topics, prepared handouts for students, assigned exercises to be completed and "marked for content, then passed to the academic teacher who would initial the weekly assignments and hand them back for return to the students." It is her evidence that at the monthly Blueprints program meeting, she determined if a student had completed the required demonstrations.

Ms. Major testified that she presented a proposal for a keyboarding course to Ms. Girard who said it was a good idea. It is her evidence that she researched what was being offered and found a keyboard on computer course that she adapted as a four-week program, no different than that taught by Nancy Baird, an academic unit teacher. As for Basic Communications and Calculations for Self-employment (CHNC179A), Ms. Major gave evidence that Ms. Penny Poole asked her to put together the course and that absent any existing materials, she did the necessary research and put together daily lesson plans, including overheads, handouts and exercises, covering some 32 hours of instruction. The evidence is that when Ms. Girard became aware some time in January 1999 that Ms. Major had done this work,

she arranged to have her paid \$2,095.20 for course development work beyond that required of a Technologist B.

Ms. Major was assigned CMNCO75A - Keyboarding for Communication, CMNC177A - Basic Communications and CMNC179A - Communication and Calculations for Self-Employment in January 1999. By June 1999 all her courses had been rolled into CMNCO30A - Communication Skills. The essence of the course offerings is found in the four course summaries tendered as Exhibit 14. These are Basic Communications, Business Communications, Basic Numeracy and Beyond Basic Numeracy.

By this time, the organization of the Blueprints program reflected the imperatives of the provincial government with respect to its focus and structure, as testified to by Ms. Girard. To repeat, whereas a variety of practical upgrading courses had been offered by five full-time faculty to students with up to grade 12 qualifications, commencing in 1998 the government restricted its funding to numeracy and literacy upgrading for those with grade nine and below qualification. The courses were redesigned accordingly, with Ms. Carmen McGinnis remaining as the sole academic teacher with two full-time and one part-time technologists assigned to the program as well. The technologists, of whom Ms. Major was one, are referred to as "workshop facilitators" in the course outline referred to in the preceding paragraph. It is Ms. Major's evidence that neither Ms. McGinnis nor any other faculty member

conferred with her with respect to the various workshops that she was assigned. It is her evidence that she planned and facilitated these workshops without academic supervision. She acknowledged that once per week a completed assignment for each student was provided to Ms. McGinnis. Finally, it is Ms. Major's evidence that at the end of the four-week period, she recorded whether the student had completed the demonstrations. Ms. Major maintains that she was responsible for discipline, course content and the timely completion of the material.

Ms. Major acknowledged that at the job interview, she was asked if she understood the difference between demonstrating and teaching and that she indicated that she did. Indeed, in advance of the interview, she was given a demonstration assignment that required her to explain the use of a phone guide to a class of students.

On her first day of work Ms. Major was given a document setting out the demarcation between the academic and support staff work. This document, prepared by the College, reads as follows.

**1. Support Staff can:**

- demonstrate and deal with other aspects related to the practical application of previously taught theory;
- provide tutoring or academic assistance to students;
- provide input into the student evaluation process;
- provide technical expertise and/or advice to teachers and students;

- **provide instruction on "non-academic" subject matter or in areas of limited breadth and complexity;**
- **conduct workshops relating to a specific technique;**
- **monitor and supervise students' placements or field trips;**
- **administer student placement.**

**2. Support Staff can not:**

- **provide academic leadership;**
- **deliver or introduce new course content;**
- **conceptualize curriculum design, but can provide support to the process of developing curriculum, such as research;**
- **determine the academic objectives to be attained in a course;**
- **teach theory, but can explain theory as it has been presented by a faculty member;**
- **perform formal evaluations on the progress of students to determine whether their knowledge of course content is sufficient;**
- **grade or mark (unless the marking is routine in nature or clear guidelines are provided in order to perform the task);**
- **have the "core function" of their position be responsible for imparting course content to students;**
- **perform counselling as the main component of the position.**

**Ms. Major agreed in cross-examination that nothing had been said to her during the hiring process indicating that she would be involved in curriculum development. She further acknowledged that in respect of the small business course,**

Ms. Girard had asked her to check with Prof. Howatt for materials. Ms. Major testified that she inquired of Prof. Howatt but that all he gave her was an internet address. When asked if she reported back to Ms. Girard, Ms. Major testified that she did not recall reporting back. She was then asked if she took it upon herself to develop the workshop and replied that she didn't think she had a choice. She replied in the negative when asked if she ever raised with Ms. Girard the matter of doing course curriculum development when she knew that course curriculum development was not in her job description. Ms. Major acknowledged that when Ms. Girard became aware in early December, she told her that technologists are not permitted to do course development. The evidence is that Ms. Major replied that she thought that she had been asked, to which Ms. Girard replied that she should have sought clarification and that if she ever again thought that she had been asked, she should refuse. Ms. Girard then arranged to have Ms. Major compensated for having undertaken course curriculum development. Ms. Major agreed that she was never asked to undertake nor again undertook course curriculum development.

Ms. Major was asked in cross-examination if she had developed the keyboarding course on her own initiative. She replied that she had seen a need in the classroom. She further agreed that she had not developed the workshop but had taken material from another workshop in the College.

Ms. Major maintained that Ms. Girard asked her to put together a portfolio development workshop. She denied that she was asked to simply download information from the internet. Ms. Girard testified that she had gathered information from Conestoga College with respect to portfolio development and asked Ms. Major to pull it together from the internet and from Sandy Wright, a faculty member who had previously put together such a workshop. Ms. Girard remembers receiving e-mails from Ms. Major with respect to portfolio development but does not remember seeing anything put together in course format. Ms. Major tendered a document in re-examination, entitled **Portfolio Workshop**, as **Exhibit 24**, that shows a course breakdown by hour for an eight-hour portfolio workshop. Ms. Girard had no recollection of ever seeing this document. Although it is Ms. Major's evidence that she was asked to undertake curriculum development in respect of a portfolio workshop in September 1998, she acknowledged, as we have recorded, that she did not show her work to Ms. Girard until the winter of 2000.

Ms. Girard confirmed in cross-examination that Ms. Major worked without in-class supervision, that she monitored attendance, that she regulated student behaviour, that she marked student demonstrations as either complete or incomplete, that the time she spent in the labs counted as student contact time and that she attended and participated in departmental meetings. She further agreed that Ms. Major would impart knowledge but she referred to this as secondary learning and

disputed that Ms. Major was teaching Windows or any other computer program. Ms. Girard reiterated that the learning outcomes related to improved literacy and numeracy and that any computer learning was a byproduct of the literacy and numeracy learning objectives. In response to questions in cross-examination with respect to Ms. Major marking students as pass/fail, Ms. Girard testified that initially the computer was not programmed to record complete/incomplete, thereby necessitating a pass/fail notation for the demonstration that, in her evidence, was really a complete/incomplete notation. It is her evidence that only Ms. McGinnis had the authority to move a student from one level to the next and ultimately to either pass or fail the student.

In response to a question concerning the 1999-2000 calendar heading "Subjects Consisting of Computer Training," Ms. Girard testified that the calendar had not been updated, a not uncommon occurrence, and that, in fact, the literacy outcome was achieved through a variety of means including demonstrations and exercises using computers. Ms. Girard was asked to explain a 1998 Blueprints promotional pamphlet entitled "Design Your Future" that, under the heading "Communications Skills (Computer Training)", stated "communication skills taught using MS Office, including Word and Excel. Internet access and e-mail instruction is also available. Learning the basic computer skills needed for employment today." Ms. Girard explained that the reference to computers was designed to attract students but that as she had

testified computers were used as a tool in the lab to further the literacy and numeracy learning outcomes of the redesigned Blueprints program.

This dispute centres on whether or not Ms. Major was at the relevant time performing within the job description of either a professor or an instructor under the academic collective agreement. As is manifest from the awards cited to the Board, the issue falls to be determined on an analysis of the core functions performed by Ms. Major relative to the job descriptions that are relied upon (see *re: Fanshawe College and OPSEU, Grievance #89A160 (November 28, 1989) Brent and Fanshawe College and OPSEU, Grievance #87212 (May 9, 1990) Brent and Fanshawe College and OPSEU, Grievance #96C008 (August 20, 1996) Burkett*). It is trite to observe that this is not an abstract analysis but rather is it one that must be undertaken having regard to the context; that is to the type of course(s), the type of student and the organizational arrangements for the delivery of the course(s). Also underscoring this analysis are the essential differences between an academic employee and a support staff Technologist B.

In this case Ms. Major performed a number of functions which, on their face, are indicative of academic responsibility. These include the supervision and direction of the lab, the assisting of students, the taking of student attendance within the lab, the monitoring of student behaviour, the marking of demonstrations (about which we will have more to say) and participation in departmental meetings. However, these

**indicia of academic responsibility must be considered in the context of the delivery of literacy and numeracy upgrading to students below the grade nine level and the organization of the program to incorporate both classroom teaching and demonstration labs or workshops. The evidence establishes that the Blueprints program had been reconfigured commencing in 1998 to conform with Ministry guidelines and thereby to retain ongoing Ministry funding. The evidence establishes that the program was transformed from one that offered a range of upgrading courses, each with its own learning outcome, for students with up to grade 12 qualification, to a program restricted in its scope and its learning outcomes to literacy and numeracy upgrading for students up to grade nine qualification. It was in this context that two full-time and one part-time Technologist B incumbents were retained to facilitate demonstration labs established to complement the literacy and numeracy instruction carried out by a faculty member.**

**In this regard, using the computer lab as an example, the technologist worked through a prescribed text but without a computer proficiency learning outcome. This is a critical fact in assessing the merits of this grievance. The students in the computer lab, while they were no doubt interested in computers and benefited from secondary learning, did not have to demonstrate computer proficiency in order to progress. These students received no credit for computer proficiency. Rather, they**

were evaluated on the basis of their ability to read and understand the lesson instructions from the text as supportive of progress in literacy.

Consistent with the absence of a computer skills learning outcome was the fact that the lab conducted by Ms. Major was optional for all students. Also consistent with the absence of a computer skills learning outcome was the complete/incomplete evaluation in respect of the lab demonstrations. While initially Ms. Major assigned a pass/fail designation, we are satisfied that this was because of a computer limitation. In reality, Ms. Major assigned a complete/incomplete designation with respect to the various demonstrations. Accordingly, consistent with the absence of a computer skills learning outcome is the optionality of the lab together with the limited evaluation of student progress by Ms. Major. The evidence establishes that it was Ms. McGinnis, the faculty member, who determined whether or not a student was progressing relative to the learning outcome and ultimately whether a student had successfully completed the course. The absence of a learning outcome in respect of computer proficiency and the limited student evaluation required of Ms. Major weigh against her claim, as these are hallmarks of academic employee status.

The reference to "computer training" and to communication skills taught using MS Office, etc. in the 1998 Blueprints pamphlet suggests the ongoing existence of a computer training course; the course that Ms. Major claims she was instructing. The reference in the 2000 calendar to "subjects consisting of computer training" supports

**the same conclusion. However, discounting the fact that the 1998 Blueprints pamphlet was early in the Blueprints transition and that the reference in the 2000 calendar may have been an oversight, the absence of a computer skills learning outcome and the absence of a credit in computer proficiency undermine whatever inference in support of the Union's claim might otherwise be drawn from these pamphlets.**

**The absence of direct classroom supervision supports the claim for academic employee status on behalf of Ms. Major. The evidence establishes that Ms. Major was without supervision in the course of carrying out her duties within the workshop as would be the case with an academic employee. However, in assessing the weight to be given to the absence of supervision, account must be taken of three factors: firstly, the level of student (below grade nine); secondly, the absence of a learning outcome for which she was responsible and the limited scope for student evaluation; and thirdly, the use of a prescribed text. These factors lessen the weight that would otherwise be given to the absence of direct academic supervision. Furthermore, it must be noted that under the Technologist B family guide, supervisor input is upon request. It can readily be concluded that the direct supervision of a Technologist B in the conduct of a lab for students below the grade nine level with no learning outcome would not be required.**

**The Union puts a great deal of emphasis upon the use of Ms. Major to perform curriculum development. Specific emphasis is placed upon curriculum development in**

respect of a small business course and in respect of a portfolio workshop. Clearly, curriculum development is a hallmark of academic status that is within the academic job descriptions and beyond the Technologist B job description. However, in order to support a finding of academic status, curriculum development must be an assigned responsibility carried out with the full knowledge of management. In this case, Ms. Major, upon her appointment to the Technologist B position, had been provided with the relevant job documentation and, in addition, a College document entitled "Demarcation Between Academic and Support Staff Work" that ruled out conceptualizing curriculum design (except for supportive research) for support staff. As a former academic employee who had been provided with this documentation, Ms. Major knew that curriculum design and development was beyond the job description of a Technologist B.

The evidence establishes that in respect of the small business course, she was asked to contact Prof. Howatt for relevant materials but that he proved unhelpful. At this juncture, Ms. Major did not report back to Ms. Girard but rather took it upon herself to develop the workshop. In circumstances where Ms. Major knew that she was performing in a position that did not encompass curriculum development, we are at a loss to understand why she did not report back to Ms. Girard in order to clarify what it was she should do next. In any event, when Ms. Girard discovered that she had prepared the course, she arranged for a special payment to be made to

compensate Ms. Major for this work. While it is clear on the facts here that Ms. Major engaged in curriculum development in respect of the small business course, it is not clear that she was ever directed to do so. Indeed, on the facts here, her failure to seek clarification supports the finding that she proceeded on her own. In any event, she was paid for this work beyond her salary as a Technologist B such that absent more, her work developing the small business course must be treated as an unauthorized and atypical extension of her duties that does not weigh in support of a finding of academic status.

There is a dispute on the evidence as to whether Ms. Major was asked to develop a portfolio workshop or to simply download information from the internet and obtain information from a faculty member; the latter being within the Technologist B job description. There is a further dispute as to whether or not Ms. Major ever presented the finished product to Ms. Girard. Ms. Major testified that she did, albeit in the winter of 2000, while Ms. Girard disputes that she ever received it. Ms. Major knew that curriculum development was not within her job description and yet, if she thought that she had been asked to develop curriculum, she did not raise any concern. The failure of Ms. Major to raise a concern at the time that she maintains that she was directed to develop the portfolio workshop is not determinative. However, when considered along with the failure to raise the matter at the time that she was paid for developing the small business course and cautioned

**against performing such work, the absence of any follow-up by Ms. Girard and the failure to have presented the finished product (which itself is disputed) until after the filing of the grievance must cause us to reject the contention that this was assigned work that can be relied upon to support a finding of academic status.**

**The core duties of a professor, under the heading Provision of Academic Leadership, include the design/revision and updating of courses, the teaching of assigned courses, the evaluation of student progress/achievement and responsibility for the overall assessment of the students' work within assigned courses and participation in the work of curriculum. The core duties of an instructor 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. This encompasses the evaluating of student progress/achievement and responsibility for the overall assessment of the students' work within the assigned course. A Technologist B, on the other hand, is responsible for neither the design/revision or updating of courses, the teaching of assigned courses, the evaluation of student progress nor curriculum development. Rather, a Technologist B may plan or organize student demonstrations, interpret complex data for students, communicate with students for the purpose of technical advice, promote participation and understanding of students and may assist in student evaluations in respect of learning activities in which the Technologist B takes part. Importantly for our purposes, under the heading**

**Independent Action, "there is considerable freedom to act independently with supervisor input or verification when requested." We have not been satisfied on the evidence that Ms. Major, within the context of the post-1998 Blueprints program, performed the core functions of an academic employee. In particular, she was not responsible, as part of her assigned work, for the design/revision or updating of courses, the teaching of any course with its own learning objective in respect of which students would receive credit, the evaluation of students within a course with its own learning objective, the overall assessment of the students' work within such a course, nor was she responsible for curriculum development as an assigned task. Rather, her duties and responsibilities, consistent with what she had been hired to do, are consistent with those found in the job documents for a Technologist B and we hereby so find. This is not to say that Ms. Major is not qualified to teach in the academic bargaining units, as she clearly is, nor that those who opted for her workshops did not benefit from her work there, as clearly they did.**

**Having regard to all of the foregoing, these grievances are hereby dismissed.**

**Dated this 18<sup>th</sup> day of April, 2002 the City of Toronto.**

**"Kevin M. Burkett"**

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**KEVIN BURKETT**

**I Dissent**

**"John McManus"**

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**JOHN MCMANUS - UNION NOMINEE**

**I Concur**

**“Ron Hubert”**

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**RON HUBERT - COLLEGE NOMINEE**

