

## Regarding Grievance 2006 – 20 (Staff Representative Sign) Arbitration

In 2006 we discovered, in the ADTA office, a box of commercially produced plastic signs that simply read, STAFF REPRESENTATIVE, which were subsequently distributed at a staff representative meeting. Some staff representatives posted the signs in or outside of their rooms. Shortly after, we received reports that some administrators had issued directions for the signs to be removed. The grievance that we filed with the District was not settled locally and was referred to arbitration. Some procedural delays occurred but the arbitration hearing did finally take place just before Christmas, 2009. On March 3, 2010 the arbitrator issued his award, in our favour, concluding that the District violated teachers' Charter rights to freedom of expression (section 2(b)). And since the award was based on the Canadian Charter of Rights the award is broadly applicable.

### Relevant Sections of the Charter

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
2. Everyone has the following fundamental freedoms:
  - (a) freedom of conscience and religion;
  - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
  - (c) freedom of peaceful assembly; and
  - (d) freedom of association.

### Summary of Arguments

The District argued that section 2(b) of the Charter does not apply because,

*“the Charter does not guarantee the right of access to a particular platform for expression, or a particular means or form of expression. Further, the inside walls of a school are not an appropriate place where third parties can engage in expression involving the affairs of a union. A school wall or door is not a place where freedom of expression is traditionally practiced, according to the Employer. Therefore, the Employer submits that the grievance should be dismissed. In the alternative, if there has been a violation of the freedom of expression, it is justified under section 1 of the Charter.”*

However, the arbitrator disagreed and awarded in our favour, with concluding statements as follows.

*“The “Staff Representative” sign, placed outside the Grievor’s classroom, was small and unobtrusive. It reflected her responsibilities to represent her members and the Union in various dealings with the Employer. The Union is a significant part of bringing democratic decision-making process to the workplace, as recognized by previous decisions of the Supreme Court of Canada. The sign represented the pride the Grievor and other staff representatives felt in being elected to that position and in representing the Union and its members. Therefore, it has expressive content.*

*The principal removed the sign consistent with her authority to manage the operations of the school. That was a valid purpose. However, the effect of the removal was to create a perception that the Staff Representative and the Union were excluded from the school. This perception is not consistent with the fact that teachers in the school are members of the Union and that the Union (and the Employer) obtain their legal status through legislation. The effect is to make the sign a symbol for the existence of the Union itself. In light of the expressive content of the sign and this effect, there is a violation of section 2(b) of the Charter.*

*With regards to section 1 of the Charter, the broad objective of the Employer when the "Staff Representative" sign was removed was to manage the school property. This is a valid objective. However, the sign does not interfere in any apparent way with the operation of the school or the education of students. Also, only the sign in dispute was removed and not any other material on the school wall so it cannot be said that there was a neutral decision to remove the sign. There is no policy or procedure in place that would assist in assessing the proportionality of the Employer's decision. Overall, the Employer has not demonstrated that the removal of the sign was reasonably and demonstrably justified.*

*With regards to the issues in this grievance under the Canadian Charter of Rights and Freedoms, the grievance is allowed."*

With this award in hand you may post your signs with pride and without fear of any reprisal or overt disapproval. It is a Charter right! For the future we will consider having new signs created that not only identify "Staff Representative" but also better reflect the roles and existence of the ADTA and the BCTF.

Rick Guenther