

In the matter of an arbitration under the *Labour Relations Code*

Between:

WILL OFFLEY, SHARON SHARP AND MARY JEAN LYTH

(“Applicants”)

-and-

BRITISH COLUMBIA NURSES’ UNION

(“Union”)

-and-

THE BCNU STANDING NOMINATIONS COMMITTEE

(“Committee”)

Arbitrator: Tom Hodges

Counsel for: Applicants

Carmela Allevato

Rachel Roy

Counsel for the BCNU

Jim Gould

Derek Knoechel

Carly Poissant

Counsel for the BCNU Standing Nomination Committee (SNC)

Sebastien Anderson

Counsel for BCNU President Gail Duteil, Christine Sorensen and Sharon Sponton

Scott Turner

Hearing: August 9, 10, 11, September 6, 7, 8, October 10, 11, 2017

Award: February 25, 2018

1. This decision results from issues in a matter which originally arose from applications to the British Columbia Labour Relations Board. The three applicant nurses, Will Offley, Sharon Sharp and Mary Jean Lyth were running on a slate for the 2017 election as president, vice president and treasurer respectively of the British Columbia Nurses Union. Voting was scheduled to commence on May 23, and end on June 2, 2017. On May 22, 2017, the applicants were removed from the ballot by the respondent's Provincial Nominations Committee. Applications were made to the Board pursuant s.10, s.139(k), and s.133(1)(a) of the Labour Relations Code. v. British Columbia Nurses Union.

2. The 2017 BCNU elections took place between April 7 and June 2. The removal of the applicants from the ballot on May 22 was largely centered on the applicants' position that they had an unrestricted right to free speech during the election campaign that included various forms of communication. The use of social media such as Facebook became a primary communication resource of the applicants and a focal point of this dispute. The respondents had taken the position that unsubstantiated allegations of wrongdoing by the applicants against other candidates or the BCNU was a violation of the Union's code of conduct which could result in removal of offending candidates from the ballot. After repeated warnings the Unions Nomination Committee removed the applicants from the ballot and made a recommendation to the BCNU Council that disciplinary charges pursuant to Article 24 of the BCNU constitution be brought against the applicants in light of their behavior during the elections. Several hundred pages of documents, emails and bulletins relating to the BCNU 2017 election process provided much of the record leading to the removal of the applicants from the ballot over the weekend of May 19 to 22, 2017. A brief review of those key events leading to that decision give insight to the timelines of this dispute provides:

Friday, April 7, 2017- the British Columbia Nurses Union sent out a bulletin and posted online the announcement calling for nominations and on Monday April 10 the Nominations Period opened. All related resources were posted to the BCNU website, including election policies, candidate role descriptions, candidate responsibilities, climate goals, etc.

Wednesday, April 19-BCNU-issued bulletin on behalf of Michelle Nelson, Provincial Nominations Committee Chair, regarding communication during the campaigning period.

Friday, April 21-The nominations period closed and on Thursday, April 27 Provincial candidate profiles were published online.

Wednesday, May 10-Bulletin #1 posted, re: “Complaint Resolution”
The bulletin advised of complaints that Will Offley was posting campaign materials contrary to election policies. PNC reporting that Will Offley agrees to send recipients of original email a retraction.

Friday, May 12-Bulletin #2 posted, re:
“Complaint Investigation Underway”
The bulletin announced that the PNC was investigating the distribution of false and misleading campaign materials by BC Nurses Vote for Change slate. The bulletin also noted that materials found to be similar to allegations that are part of the defamation claim filed by Gayle against Will Offley.

Monday, May 15- An All-Candidates Debate was held at the BCNU Annual Convention which continued until May 18.

Friday, May 19- Bulletin #3 was posted by the Committee, advising that:
Complaint Upheld re: false and misleading campaign literature details exactly what Mr. Offley, Ms. Lyth and Ms. Sharp agreed to remove that was defamatory against Ms. Duteil.

Monday, May 22-Bulletin #4 posted, advising that:
Candidates Removed by Nominations Committee
PNC’s decision to remove Offley, Sharp and Lyth from the ballot.

Monday, May 22
A letter from Umar Sheik (Acting Executive Director (AED)) was posted with the intent to give members accurate facts regarding the PNC’s actions.

Tuesday, May 23- The voting period began and polls opened at 09:00.

Wednesday, May 24 -Telephone Town Hall information session was held.

Wednesday, May 24-Video message from Umar Sheik AED was posted.

Friday, June 2, 2017 The voting period ended, polls closed at 12:00 (noon)
A bulletin was posted explaining that the election for Executive Councillors will take place at a later date.

3. Because of pending and suspended elections the parties requested that I expedite the process by providing decisions with reasons to follow. Having done that in previous decisions I will now provide the reasons for those decisions recognizing that some repetition is required.

4. I was given jurisdiction in this matter pursuant to a memorandum of settlement reached with the assistance of the Vice Chair of The British Columbia Labour Relations Board providing:

Memorandum of Settlement

Arbitrator Tom Hodges (the "Arbitrator") will be appointed to fully and finally resolve the following:

- 1 All issues relating to the fairness of the Nominations Committee process regarding the 2017 BCNU election for President, Vice-President and Treasurer;
- 2 The decision of the Nominations Committee to pull the Applicants from the ballot;
- 3 All allegations of discipline, or appeals of discipline, arising under the Constitution in relation to the Applicants;
- 4 Whether the Applicants are guilty of defamation; and
- 5 The existing Code complaint and allegations of discipline, or appeals of discipline, arising under the Constitution in relation to Todd Decker.
- 6 In resolving the issues in paragraph 1, the Arbitrator shall have the discretion to issue any remedy he deems just and reasonable in the circumstances, including but not limited to ordering a new election, an order of costs, and/or damages for defamation;
- 7 The costs of the Arbitrator/arbitration shall be borne by the BCNU;
- 8 The parties are in agreement to schedule the matter on the earliest 5 hearing dates for which the Arbitrator and the parties are available;
- 9 The Incumbents, Gayle Duteil, Christine Sorensen and/or Sharon Sponton, reserve the right to make an application for standing to the Arbitrator;
- 10 There shall be no blackout but any statements alleged to be defamatory made subsequent to this agreement may be relied upon as an ongoing breach in support of the defamation claim(s) referred to in paragraph 1;
- 11 The parties agree to a statement arising from this settlement that shall be:
- 12 In the interests of the Union, the parties have agreed to refer all matters in dispute between them to an arbitrator to be dealt with on an expedited basis.
- 13 The parties agree there shall be no rights of appeal from the Arbitrator's award; and
- 14 Vice-Chair and Registrar Jacquie de Aguayo shall remain seized with respect to the implementation of this settlement agreement.

Dated at Vancouver this 1st, day of June, 2017.

5. An arbitration agreement was signed between this arbitrator and the parties dated June 10, 2017. Resolution of this dispute through mediation with the parties was not successful. The BCNU

and the Nominations Committee argued from the outset that I did not have jurisdiction over the constitutional authority of the Committee to remove the Applicants from the ballot. On July 13, it was necessary to return to the Vice Chair of the Board over my interpretation of the Settlement Agreement that I have jurisdiction over the issue of the constitutional authority of the Nominations Committee to remove the Applicants from the ballot. My interpretation of that jurisdiction was confirmed by the Vice Chair.

6. The parties initially asked that I expedite the handling of this complex case. Scheduling expedited hearings in light of the number of parties, counsel, clients and witnesses was at best, a challenge. In addition, the parties have asked that I provide a bottom line decisions on the two primary questions to be addressed. The Applicants also requested, and I agreed, to provide a decision relating to their costs.

7. The first Interim decision addressed the question:

Did the Committee have the authority to remove the applicants from the ballot?

8. On September 4, 2017, I provided the first Interim Award and found:

All of the parties made submissions pursuant to question #1 as agreed. After considering those submissions I have concluded that I can make a determination of the disputed matter. I will not recount all the arguments presented by the parties. As an expedited process was necessary, it is understood that a prompt decision without a full written review of the facts, arguments or reasons would be part of that process.

In view of the foregoing and after considering the extensive submissions of the parties, I render an interim award (reasons to follow) reflecting my disposition of the first question:

Did the Committee have the authority to remove the applicants from the ballot?

I hereby issue this Interim Award, reasons to follow, finding that the BCNU Committee did have authority to remove the applicants from the ballot. The hearing into the matter of:

If the Committee did have the authority to remove the applicants from the ballot, was the decision made in a fair and reasonable manner will proceed on September 6, 2017, at 09:30.

9. Following the release of the Interim Award hearings resumed on September 6, 2017 on the question of whether the Committee's decision to remove the Applicant's from the ballot was made in a fair and reasonable manner. The hearings proceeded with evidence from Michelle Nelson, Chairperson of the BCNU's Standing Nominations Committee and Applicant Will Offley. Additional written submissions were also provided.

10. The hearings were extensive and on October 11, 2017, following cross examination of Mr. Offley the parties reached an agreement that the arbitrator was in a position to render a decision on the remaining issues outstanding from the Memorandum of Settlement of June 1, 2017, based on the significant amount of evidence that had been provided and after final written submissions were made.

11. At the heart of the remaining issues contained in the Memorandum of Settlement is the provision giving the arbitrator jurisdiction to provide a remedy, including ordering a new election. The parties agree that the issue of ordering new elections is one that should be addressed on an expedited basis. In view of the parties' agreement and after considering the extensive submissions of the parties, I agreed to render an interim award (reasons to follow) reflecting my disposition of whether new elections will be ordered.

12. On November 7, 2017, I issued the following:

In view of all of the foregoing, I hereby issue this Interim Award, reasons to follow, finding that new elections will not be required as a result of my final decision on all the outstanding issues flowing from the Memorandum of Settlement between the parties dated June 1, 2017. I will prepare my final decision on all outstanding issues as soon as possible.

13. On December 4, 2017 I issued a third interim order relating to costs. The relevant provisions are set out below and will be addressed more fully later in this decision:

Pending the issuance of my final decision I have been asked by the Applicants to issue a further Interim Award dealing with the matter of legal costs of the Applicants. I order the BCNU to pay the Applicant's legal fees to the amount of \$75,000. As with previous Interim awards more extensive reasons will follow.

At this point suffice it to say that I am satisfied that the evidence and submissions received during the course of these proceedings, while falling short of requiring that new elections be held, were sufficient to require the Committee and the BCNU to respond to the Applicants' challenge to their removal from the ballot. The Applicants have pointed to a number of documents tendered into evidence that created the appearance of potential interference in the Committee's process and which reasonably caused the Applicants to maintain their challenge to their removal from the ballot.

In particular there were troubling pieces of evidence which created the appearance of potential interference in the Committee's process.

The Applicants have pointed to a May 9, 2017 complaint to the Committee filed by Gayle Duteil who at the time was President of the BCNU and was an incumbent running for the position of president in the subject election.

The Applicants argued and I accept that Ms. Duteil's May 9 complaint (Tab 95 of the Committee's Book of Documents) contains a threat to sue the Committee for defamation. The relevant portion of that complaint reads: "Should this be allowed to continue, I will seek further independent legal counsel as to the ongoing damages Mr. Offley is undertaking to my reputation and the actions of the nominations committee in permitting this to continue."

The email speaks for itself and in my view it is a reasonable conclusion that this amounted to a threat to institute legal proceedings for defamation against the Committee if the Committee allowed the conduct complained of by Ms. Duteil to continue.

The Applicants also pointed to the tone of Ms. Duteil's other complaints to the Committee to highlight the fact that Ms. Duteil behaved in a way that was aggressive and when combined with the May 9 complaint appear to illustrate attempts by Ms. Duteil to interfere with and manipulate the Committee's processes.

I find that Ms. Duteil's attempts to interfere and manipulate the Committee's processes were not successful. For its part the Committee sought to conduct itself in a manner consistent with BCNU policies and the principles of natural justice.

The Applicants were genuinely concerned about the direction of the union and sought to engage in a political debate regarding the issues. The production of Ms. Duteil's complaints and specifically the May 9th complaint confirmed for the Applicants that there had been attempts on the part of the President to interfere and manipulate the Committee's processes and reasonably caused them to incur additional and significant legal expenses

in pursuing their claims against the BCNU and the Committee.

14. The key elements to this dispute are not new to many unions today or the BCNU. Following complaints and a challenge to the 2010 BCNU election for President, the Union retained Arbitrator Rod Germaine to inquire and make recommendations. Arbitrator Germaine addressed the elements of a fair election in paragraph 170 of his February 28, 2011 Report of Investigation he noted:

A fair election has many elements, depending on the context. BCNU provincial elections must of course observe the BCNU constitution and Policies. To be fair, they must also meet recognized democratic norms which mandate that the outcome must reflect the will of the electorate. This connotes the opportunity to make an informed choice based on a fair campaign, the right and opportunity of eligible voters to cast a ballot and an accurate tabulation of the votes. ...

15. The words of Arbitrator Germaine continue to resound today as the BCNU proceeds to conduct elections.

16. On April 7, 2017, the BCNU issued a bulletin calling for nomination in an election to be completed on June 2, 2017. However, on May 22, 2017, during the course of the election, the BCNU's Provincial Nominations Committee (PNC) announced that the three applicant nurses, in this dispute, Will Offley, Sharon Sharp and Mary Jean Lyth who were running on a slate for the 2017 election as president, vice president and treasurer respectively of the British Columbia Nurses Union were removed from the ballot by the Respondent's Provincial Nominations Committee (PNC). Applications were made to the Board pursuant s.10, s.139(k), and s.133(1)(a) of the Labour Relations Code. v. British Columbia Nurses Union. The Memorandum of Settlement dated June 1, 2017, set out above established the foundation for this process.

17. The actions of the PNC in removing the Applicants from the ballot are to be considered in this award. Was that action by the PNC conducted fairly, in accordance with the BCNU constitution and without undue influence by complainants, incumbents or others?

18. Arbitrator Germaine made recommendation in search of the BCNU's solutions for the

providing a fair election. That search is not over, as will be addressed herein. The Labour Relations Code addresses the requirement for a Duty of Fair Representation by a union pursuant to s. 13. However, often left unsaid is the need for Good Representation. The Nurses of the BCNU and their need, if not right to good representation, are the underpinnings of reasons contained herein. The 47,000 nurses of the BCNU and the Health Care System of British Columbia deserve the fair election process contemplated by arbitrator Germaine as a foundation for Good Representation by those they elect.

19. During the course of these proceedings the parties provided very extensive submissions, authorities as well as both documentary and oral evidence only briefly summarized herein. In accordance with the agreement of the parties I have consolidated the two Interim Awards and issue the following reasons for decision.

Applicants' Position

20. The Applicants rely on their original application to the Labour Relations Board dated May 24, 2017 and note that the jurisdiction of the Arbitrator is not limited to the amended the s. 10 application before the Board. The Applicants argue that if that were the case, the Arbitrator would not have been given authority to order a new election or to interpret the constitution and Bylaws, as those are matters beyond the jurisdiction of the Board.

21. They maintain the Germaine Report never contemplated that the Nominations Committee could remove candidates from the ballot. The issue that the Applicants have raised is that the action of the Nominations Committee does not meet "recognized democratic norms which mandate that the outcome must reflect the will of the electorate." The Applicants submit that Arbitrator Germaine envisioned that the Committee would inform the membership of its decisions relating to complaints and that the members would have that information when casting their ballots.

22. The Applicants note that Arbitrator Germaine listed some examples to illustrate the role that the Committee should have in relation to campaigns:

Consider whether a candidate's campaign is unduly personal or malicious;
 Consider whether a candidate's campaign is contrary to BCNU interests for these and other reasons;
 Consider whether an incumbent is taking unfair advantage of BCNU campaigns, activities and achievements by emphasizing the incumbent's personal role in official BCNU business;
 Consider whether photographs in a candidate's materials unfairly imply an endorsement by staff members captured in the photographs; and,
 Enforce appropriate conduct in these and other similar aspects of campaigns by publishing its decisions to the membership during the campaign.

23. The Applicants note Arbitrator Germaine confirms that the enforcement authority of the Committee is to inform the membership when he says that the Committee will have the authority to "publicize any contravention" of restrictions on campaigning during the voting period. They maintain that the theme of his report is that members of the BCNU are sufficiently sophisticated that they can exercise their franchise in an intelligent manner and take into account rulings of the Committee regarding infractions of election policies or rules.

24. The Applicants argue that the Facebook and emails regarding the president's salary and perks are set out in BCNU Policies. Policies also cover the salaries and perks of members of the executive contained in:

- a. policy 5.1.22 President's Business Expenses
- b. policy 5.1.23 Provincial Executive Benefits and Compensation
- c. policy 5.1.23.2 President's Relocation Allowance
- d. policy 5.1.23.3 Executive Committee

25. Counsel argues that the remaining allegations that form the basis of the threat of discipline are spurious and designed to oppress the applicants, muzzle legitimate dissent and eliminate political debate in a manner that is unworthy of a union of professionals. The Applicants maintain that none of the statements are defamatory and they plead justification and privilege.

26. The Applicants argue that the Committee does not have the authority to declare that otherwise eligible candidates are not eligible for election and thus remove them from the ballot and declare the other candidates acclaimed. The Applicants maintain that the declaration contains no reference to agreeing to endow the committee with authority to remove them from the ballot and the declaration cannot override the constitution. Further, in an email on May 7, 2017 referred

to below, Mr. Offley put to the Committee that disqualification of the Applicants and removal from the ballot was a violation of the Constitution.

27. The Applicants maintain that the BCNU has not provided any documentation that shows that there was any discussion either on the convention floor or by Council when it adopted the policies in 2011 that the Committee would be able to remove people from the ballot. As a result the delegates and BCNU members would have had the reasonable expectation that the Committee would provide them information regarding their decisions so that they, the members, would be able to use that information in deciding for whom to vote.

28. The Applicants argue that it wasn't until late in 2016, after the experience of 2014 included the defeat of an incumbent president by 119 votes and the election of Mr. Offley to the Executive and on the heels of a very public labour dispute with its staff , several years of fighting with the rest of the labour movement on the issue of raiding and the upcoming launch of a defamation lawsuit by the president against Mr. Offley, that the Council started to look at ways that it could tighten up the election process to place limits on what candidates could say or do and to decide on the consequences that would flow from violations of the rules.

29. The Applicants maintain they had not acknowledged the Committee's authority to remove them from the ballot. On the contrary, Mr. Offley made it clear to the Committee that disqualification and removal from the ballot was a violation of their constitutional rights. After expressing concern that it appeared to the Applicants that there was a hardening of tone which indicated that they may be disqualified if they did not falsely agree that they had done something that they did not do he stated:

We would caution against such a step, as we believe any neutral third party examining the current electoral process would find the exclusion of candidates to be not only a violation of our constitutional rights, but also arbitrary, discriminatory and in bad faith.

30. The Applicants argue that when the Committee decided to disqualify the Applicants and remove them from the ballot they knew that they could face a challenge before a "neutral third party". The Applicants deny that they "repeatedly engaged in conduct in breach of the election

rules” as alleged by the BCNU. The Applicants sought to engage in a debate about policies and about issues. Other candidates and members of the Council sought to shut down debate by filing complaints with the Committee in which they urged the Committee to remove the Applicants from the Ballot. Those who requested the removal from the ballot knew very well that the outcome would be to acclaim the incumbents.

31. Counsel argued that there were 13 complaints made against the Applicants by BCNU members not on the Council. Of these only 2 asked for them to be removed. There were 22 complaints filed by members of the Council. Ten of those were by Council members other than the incumbents and in eight of them they asked that the Applicants be removed from the ballot. Ms. Duteil herself filed eight complaints in six of which she asked that the Applicants be removed from the ballot.

32. The Applicants did not deny that in the hours following receipt of the email from Ms. Nelson they set up a meeting to discuss their next steps and that they communicated among themselves what this meant. They did not, contrary to the assertion of the BCNU immediately send anything out. On the contrary Mr. Offley was very cautious. He asked the rest of the slate to be very cautious and not to make any statements or do anything until they had had an opportunity to make a collective decision on how to respond.

33. The Applicants argue that while courts and labour boards have stated that union constitutions should be read liberally, when it comes to matters of discipline or removal from office or restrictions on membership rights, the law requires that the Constitution provide specific authority. The Applicants noted that the Court, and the LRB, have both stated that trade unions are unlike other voluntary organizations have a special role in society and there is an expectation that they conduct themselves in a democratic manner.

34. Counsel argues that it is also contrary to public policy for eligible union members to have their right to be eligible for election taken away from them by a body not expressly authorized to do so under the Constitution. Installing union officers by acclamation where there are other eligible candidates is hardly consistent with the democratic values that infuse the public policy surrounding

trade unions.

35. The Applicants submit that the Arbitrator should declare that the Committee lacked the authority under the Constitution and Bylaws to declare them ineligible and remove them from the ballot and should order that the voting should proceed as if the removal had never occurred.

36. The Applicants argued that the evidence of complaints filed with the Nomination Committee clearly established that the Committee was influenced by the incumbents and as a result took action that was biased and unreasonable. Counsel reviewed the evidence that during the campaign process the Applicants filed 11 complaints. In none of those complaints did the Applicants seek a remedy that involved removing anyone from the ballot.

37. The Applicants reviewed the 12 complaints against one or more of the Applicants filed by incumbents. In five of them they asked for removal from the ballot. Other members of the Council filed 9 complaints of which 8 asked for the removal of the Applicants from the ballot. The Applicants noted that 22 complaints were filed by members of the Council during the 23 day period between April 28 and May 21, 2017. Gayle Duteil filed 8. In 6 of those she requested that they be removed from the ballot. Sharon Sponton filed 3. Christine Sorenson filed 2; in both she asked that the complainants be removed from the ballot and she also asked that the committee file Article 24 charges. In Gail Duteil's complaint of May 9, 2017, the President answered the question regarding the nature of the complaint and why it warrants review by the Nominations Committee by stating:

Mr. Offley has circulated another email with false information in it. At the present time, instructions from Mr. Offley to the entire slate of candidates, instruct them to post free and wide any information he provides. I have no idea where this information is going. It is false and misleading. I do not have an Executive MBA status or funding. I do not have a condo allowance, I do not have free made service. How is this charade allowed to continue?

I understand that discussions were ongoing which may have seen a retraction of previous comments. That has not occurred and as such additional false information may now be circulating. In addition please be advised that I have personally filed defamation charges against Mr. Offley in the Court of BC. His attempt at a stay has been defeated by the court. **Should this be allowed to continue, I will seek further independent legal counsel and to the**

ongoing damages Mr. Offley is undertaking to my reputation and the actions of the nominations committee in permitting this to continue.
(Emphasis Added)

38. The Applicants argue that this series of complaints by incumbents and the comments of the President represent a clear pattern of influence and intimidation of the Nomination Committee. A pattern, they maintain which should result in new elections being ordered.

BCNU POSITION

39. The BCNU's position is that the Committee acted within its exclusive jurisdiction to investigate, resolve and remedy election-related complaints, and that the Committee dealt with the Applicants fairly in all of the circumstances. The BCNU submits that the Applicants' misconduct prior to, during and after the election, amounts to a breach of their duties under the BCNU Constitution and Bylaws, deserving of internal discipline pursuant to Article 24 of the Bylaws. The BCNU further submits the Applicants are guilty of defamation.

40. The BCNU submits that the process adopted by the Committee was fair in all the circumstances. The fact that the Applicants chose not to respond to the Committee and instead opted to engage in a social media campaign, removing themselves from the process weighs heavily against their case. As the Board noted in *Bitz*, BCLRB No. B073/2005 (at para. 75):

... The Complainants do not know what additional information and opportunities they may have been afforded had they not chosen to remove themselves from participation in the very process that was designed to protect their interests. I have determined that the Complainants have failed to establish that the Union breached the rules of natural justice in a manner that constitutes a violation of Section 10(1) of the Code.

41. The Union argues that the Committee was entitled to determine its own process in how it would investigate, resolve and remedy complaints, and that the process implemented by the Committee in the course of dealing with the Applicants was fair. The BCNU argues that the Committee is not held to a standard of perfection. As previously noted, the Committee is made up of a group of volunteer nurses who also maintain regular employment throughout the course of the election.

42. The BCNU argues the Committee has to act reasonably, based on the results of its

investigation and the response it receives from both complainants and respondents. In this case, the BCNU has an interest in ensuring that the Committee's independence and broad mandate to oversee elections is respected by all those who wish to stand for office in BCNU elections. The Committee plays a critical role in maintaining the BCNU electorate's confidence in the integrity of the election process. The Committee must have the flexibility to address the wide variety of issues and complaints that can arrive during a relatively short campaign and election timeframe. A rigid and inflexible process along the lines of that set out in Article 24 would be inconsistent with the Committee's mandate.

43. The BCNU maintains the Committee determined that the harm caused by the Applicants to the integrity of the election process warranted their removal from the ballot. The Committee's decision is justified and reasonable given the egregious nature of the breaches. In order for the Arbitrator to interfere with the decision of the Committee and order a new election, the Applicants have to establish that the process the Committee followed was not only unfair, but the substantive decision was unjust and unreasonable.

Standing Nomination Committee Position

44. Counsel for the Standing Nomination Committee (SNC), argues it has the constitutional responsibility to oversee the election process and to enforce the election rules and policies. In the hours before voting was to commence, the SNC assessed that a fair election was impossible as a result of the Applicants disinformation campaign. It maintains there is simply no evidence to support the Applicants' allegation that the Committee worked "hand in hand" with Council to remove them from the ballot.

45. The SNC argues that reckless manner in which the Applicants chose to conduct their campaigns undermined the fairness and integrity of the election process. As a result of the manner in which they chose to conduct their campaigns and by their subsequent conduct they have cast the BCNU's election process into disrepute. Further the SNC denies the Applicants contention that the Committee was under a significant degree of pressure from members of Council and Ms. Duteil.

46. The Committee submits that if the Applicants believed that only proper forum to challenge the SNC's decision, why did they bring their application before the Labour Board? Why did they not proceed directly to the Court? Why didn't the Applicants simply agree with BCNU and the SNC that this matter should be decided in the courts, not before the Board?

47. Rather, the Committee expressly deferred any decisions relating to discipline to Council and to the Article 24 process. Moreover, the SNC denies that it decided that the Applicants conduct was worthy of punishment—that is a question for either Council or the Hearing Board under Article 24 to determine. The Committee was quite simply exercising its authority to enforce the election rules and policies precisely as envisioned by the Germaine report.

48. Accordingly, the SNC maintains there is no evidence before the Arbitrator with respect to what the Applicants believed or didn't believe. The evidence that is before the Arbitrator consists of the text messages and e-mails among the Applicants and presumably other members of the Slate that clearly show that the Applicants were more concerned with drafting their "declaration of war" and preparing their "*coup d' état*."

49. Counsel argues the Applicants take no responsibility for their own failure or, more accurately, refusal to conduct their campaigns in accordance with the BCNU's election rules and policies. In fact, the Applicants claim at paragraph 70 of their Reply Submission that everyone else but themselves are responsible for their removal from the ballot.

50. The SNC says it is the constitutional role and responsibility of the SNC to receive, investigate, resolve and remedy Members' complaints about the election process. As Germaine emphasized in his recommendations "the Committee should have the authority to deal with complaints during the campaign and enforce its decisions." This is precisely the authority and the power that the SNC exercised in this instance.

51. Counsel submits that none of the labour board or court decisions cited by any of the Parties have the same provisions as at issue in the case at bar. The SNC's remedial authority has to be

interpreted based on the BCNU's Bylaws, keeping in mind the intention of those provisions in the context of the Germaine Report, the applicable rules of interpretation as informed by the jurisprudence.

52. The SNC says it gave the Applicants the opportunity for input prior to taking any steps to implement its decision. The evidentiary record before the Arbitrator is clear, the Applicants chose not to respond to the Committee's invitation to provide information to justify why they should not be removed from the ballot. They did not ask the SNC for an extension of time to respond; instead they chose to politicize their removal from the ticket of nominations and to prepare to commence legal proceedings.

53. Counsel maintains that this is a case in which the Applicants ran their campaigns in a manner contrary to the Candidates Guidelines, Climate Goals, and the BCNU's election policies and rules, which were adopted by the democratically elected members of Council and the members of the SNC. The SNC had the constitutional authority under the Bylaws to enforce them. This is a case where the Applicants were aware that they were personally responsible for ensuring that their respective campaigns were run according to the same election rules and policies applicable to all of the other candidates, to which the Applicant's expressly agreed to be bound. The Committee was the sole body responsible under the Bylaws for supervising the election, for enforcing the election policies & rules and for enforcing its decisions.

54. The SNC is responsible for preparing and presenting the ticket of nominations. As a result of the manner in which they chose to run their respective campaigns, the Applicants' names were removed from the ticket of nominations and thus their names would not appear on the ballot.

55. During examination by Mr. Anderson, Ms. Nelson, Chair of the SNC gave extensive testimony over two days regarding the actions of the SNC. She reviewed the complaints and correspondence handled by the committee in over 200 multi page exhibits. She was subject to extensive cross examination. She addressed the required independence of the SNC in the decision to remove the Applicants from the ballot. On agreement of the parties her testimony was recorded and provided for all counsel and the arbitrator. I will address the substance and credibility of her

testimony later in this award.

Position of the Intervenors

56. Gayle Duteil, Christine Sorensen and Sharon Sponton, President, Vice-President and Treasurer of the BCNU respectively were recognized and added as interested parties to the Arbitration under terms established by the arbitrator and agreed to by the parties. The Intervenors represented by Mr. Turner provided comprehensive Will Says outlining their experience, positions, concerns and involvement in the election.

57. At the request of the arbitrator Mr. Turner provided written submissions on behalf of the Interested Parties to address the volume and tone of Ms Duteil's complaints to the Provincial Nominations Committee including her complaint of May 9, 2017 wherein Ms. Duteil references seeking legal counsel in respect of the actions of the Committee.

58. Counsel noted that the conduct of Ms. Duteil was not put in issue in these proceedings. No relief is sought against Ms. Duteil or the other incumbents, except indirectly because they may have to face re-election - which is the basis upon which they sought and were granted intervenor status. He maintained that the real issue in this proceeding was the conduct of the Nominations Committee, and whether they treated the Applicants fairly. The Interested parties say that the Committee did treat the Applicants fairly. The Committee gave the Applicants ample opportunity to address the multiple concerns raised by the Committee as a result of complaints by members, which the Applicants failed to do.

59. Counsel submits that there is simply no evidence that the Committee was improperly influenced by the complaints made by Ms. Duteil, or that the Committee reached anything but an independent decision based on the facts. Each of the Interested Parties submitted Will Says. Each clearly said that they did not participate in the Committee's decision making process. No objection was taken to this evidence and the Applicants did not seek to cross-examine.

60. Counsel reviewed the will says of Ms. Duteil in detail. He also submits that Michelle

Nelson was called to give evidence on behalf of the Committee. She gave clear evidence that she was not intimidated by Gayle Duteil or the other Interested Parties. In fact, her evidence is that she does not know the incumbents personally, and that she lives on Vancouver Island and was mostly located there during the times in issue. Michelle Nelson's evidence is that the Committee reached its decision to disqualify the Applicants without influence from and independently of the incumbents.

61. Counsel submits that it is true that the incumbents made complaints as they were entitled to do. Michelle Nelson's evidence about whether she was influenced or intimidated by the incumbents was not tested on cross-examination. It was not put to her that she or other members of the Committee were intimidated or felt threatened by Gayle Duteil or, in particular, Ms. Duteil's allusion to legal proceedings. He maintains that if such a suggestion had been put to Ms. Nelson, the Committee could have called a second witness, Kevin Barry, who was also a member of the Committee. However, that was not necessary in light of the evidence that was called and the cross-examination of Ms. Nelson.

62. Counsel submits that when Ms. Nelson was questions regarding comments in Ms. Duteil's complaint she responded that it was not something I want in a complaint. But not something I would consider a threat. She went on to testify that Ms. Duteil has a strong personality. I know this from the 2014 election. I did not think this was a threat.

63. Counsel argues that it is true that the incumbents made complaints to the Committee, as they were entitled to do. Michelle Nelson's evidence about whether she was influenced or intimidated by the incumbents was not tested on cross-examination. The uncontracted evidence of Ms. Nelson (and the Interested Parties through their Will Says) is that the Committee reached the decision to disqualify the Applicants independently and without undue influence or pressure from Ms. Duteil or the other incumbents.

64. Counsel submits that the Interested Parties say, as they have all along, that if the Committee did treat the Applicants unfairly (which for the reasons expressed they say they did not), the Interested Parties should not be penalized by having to re-run for Office. The actions

of the Applicants, and in particularly Mr. Offley, who seems to have a penchant for "going it alone", make it clear that the Applicants will seek to exploit any error by the Committee as being part of the collective wrongdoing of the "BCNU Leadership", including the Interested Parties. This would be extremely unfair to the Interested Parties, who did not run as a slate, who did not make the decision to disqualify, and whose only connection is the fact that they happen to be incumbents.

Analysis of the Evidence

65. There is no question the Union has the ability to develop guidelines, policies and procedures governing how its internal elections are conducted, and the BCNU has done so in its various governing documents. A historical context is necessary as background to this effort, stretching to the 2010 elections, which were challenged for irregularities. For our purposes, of note is that the nominations committee in 2010 was not fully independent, but reported to – and was appointed by – Council. As a result of various alleged election irregularities, the BCNU retained Rod Germaine to investigate and make recommendations regarding election practices going forward. Mr. Germaine issued his report in August 2010 (the “Germaine Report”). The Germaine Report resulted in a number of recommendations regarding future BCNU elections. These included that a neutral Nominations Committee should be created, with “full authority over elections, and accountable to Council and the membership to administer fair and transparent elections” (at p. 2). Mr. Germaine indicated a need for an “independent agency to assert responsibility and manage the process” (at p. 45). In his recommendations, Mr. Germaine stated:

Nominations Committee: The BCNU should require complete neutrality of Committee members and endow the Committee with the authority to assume responsibility all [sic] aspects of a fair and transparent election process. **The Committee should have the authority to deal with complaints during the campaign and enforce its decisions....**It should assume ultimate responsibility for administering the voting, communicating with external contractors and dealing with any issues in this regard... (at para. 201, emphasis added)

66. In 2011, the Union amended its Bylaws to implement recommendations from the Germaine Report. Article 4.02 of the BCNU Constitution and Bylaws (the “Constitution”) established the five member Nomination Committee. Article 4.03 of the Constitution sets out the duties of that Committee. To gain a flavor for the breadth of its responsibility, and in support of my finding that

the Nominations Committee “occupies the field” regarding election conduct, I have reproduced Article 4.03 in its entirety:

4.03 The Committee’s duties shall include:

To rule on the eligibility of all candidates for elected office and membership on the Council.

To implement the procedure for obtaining nominations for the offices of President, Vice President, Treasurer and the Executive Councilors.

To obtain candidate(s) for any office of which no nomination has been received.

To prepare and present the ticket of nominations for all officers defined under Article 3.01 to the President and designated Executive Director.

To conduct and oversee the election and report the results of the election to the President.

To receive complaints from Union Members with regard to an election process.

To investigate, resolve and remedy complaints referred to in 4.03(f) above.

To attend the Annual Convention and at the Provincial Bargaining Conferences of the Union as provincially funded observers. (emphasis added)

67. The evidence established that the BCNU has continued to develop its election processes. BCNU Policy 4.5.6 “Provincial Elections” sets out that “BCNU climate goals shall be respected and maintained throughout the entire election process” (para. 4). It also states that the “Provincial Nominations Committee will investigate, resolve and remedy election process complaints received on the Election Complaints Form” (at para. 11). The Committee was also given access to independent counsel to assist it in its work (Sebastian Anderson). Ms. Nelson was elected by the members of the Nominations Committee as its Chair and occupied that position during the elections in dispute. She gave what I have found to be credible and straightforward evidence during this process regarding the procedures used by the Nominations Committee to investigate and remedy complaints during the election process and in particular, complaints regarding how candidates were conducting their campaigns.

68. BCNU Policy 4.5.6 also sets out that “Candidate Responsibilities during the election will be defined by the Provincial Nominations Committee” (at para. 10). In part, those include the following obligations for those seeking election:

Candidates must act honestly and with integrity

Candidates must not do anything which is detrimental to or jeopardizes the Union;

Must uphold the mission and core values of the Union

Candidates must ensure that their campaigns and any activities/actions related to their campaigns are accurate and not misleading

Candidates must not make statements or take actions that are unduly personal or malicious

Candidates must provide verification of any statements issues in their campaign if requested by the Nominations Committee

Candidates must ensure compliance with these responsibilities

69. Rules were also developed with respect to campaign materials, such as that these materials were not to be posted or left unattended at worksites. There have also been amendments to the Candidate Declaration, which each candidate must sign, and which all Applicants to this dispute did sign. That Declaration reads, in part:

I hereby certify that the information contained in my biographical sketch is true and correct. During my campaign, and if elected, **I shall abide by the provisions of the current BCNU Constitution and Bylaws and all relevant union policies. I have read and will abide by the candidate responsibilities. I understand that candidates found to be in violation of these guidelines may be required to withdraw from the election or be declared ineligible by the provincial nomination committee** (emphasis added).

Decision

70. I am satisfied that the intent – and result – of the policies, procedures and Constitution of the BCNU was to give to the Nominations Committee the ability to manage each aspect of the election process and to be in a position to provide enforceable remedies to well-founded complaints. I do not intend to outline each factor which supports this conclusion in this expedited decision, nor address every authority cited to me. The need for a timely final decision with respect to these issues argues against that process, nor do I believe it is what was envisioned or required to bring finality to this dispute. I will say that the Committee “occupied the field” with respect to elections within the BCNU, and with respect to what could happen should its dictates not be followed. There was no other body given power to address issues in the election, yet it is clear from the history and the amendments made to the Constitution that the BCNU did not want a repeat

of previous election issues and allegations of misconduct, that such a body was needed, and that the Nominations Committee was borne out of that desire. The Nominations Committee was given broad powers, and legal resources to consult in executing those powers, including a specific power to “investigate, resolve and remedy” complaints.

71. The word “remedy” is, in my view, a key power given to the Nominations Committee and one that must be given meaning. The word “remedy” incorporates enforcement. Without an ability to “enforce”; the Committee could not hope to “remedy” a complaint and thereby ensure a “fair and transparent election process”, which was the purpose of the amendments to create the Nominations Committee in the first place. In my view, the power to “investigate, resolve and remedy” complaints included the power to take appropriate sanctions to address misconduct. While the Nomination Committee had several methods at its disposal to “remedy” a Complaint (for eg. the publication of bulletins, which it used), I agree with the BCNU that it is arbitrary to determine that the line for that power must be drawn before removal of the Applicants from the ballot. If in fact other sanctions are not effective in remedying behavior, to deny the Committee the ultimate sanction of removal from the ballot is to potentially allow an unfair process to continue unabated. In my opinion, it is clear this was not the intent of the amendments to the Constitution in creating the Committee: the Committee was created – and given “teeth” – to avoid this very result. There was no other actor(s) under the Constitution given the broad powers of the Committee.

72. Both parties reviewed the Board’s decision in *Coleman*, BCLRB No. B282/95. In that case, the Board noted that the union’s constitution and bylaws are to be interpreted liberally:

101 An essential element of the structure of a trade union, at the local level, and between the local and any parent organization, is its constitution and bylaws. It is the key document upon which the trade union and its membership govern themselves. The constitution and bylaws contain the rights and obligations of the members to one another and towards the union; it contains the different levels of decision making, as well as the powers and duties of the officers involved in that decision making; it includes provisions outlining the relationship of the local to the parent; and it sets out the requirements for the elections of officers and for the setting of conventions.

102 At each convention there is an opportunity for the union to amend its constitution, and indeed there may be lively debate around this process of

amendments. A union's constitution is a vigorous social and political document, drafted by trade unionists themselves. Therefore, the constitution and bylaws ought not to be read (in the words of Laskin, J., as he then was) "...as if it was a common law conveyance. The construction should be liberal, not restrictive...": *Astgen et al. v. Smith et al.* (1969), 7 D.L.R. (3d) 657 at 684 (Ont. C.A.).

73. In my opinion a Union's bylaws are, as argued by the union, a contract between the union and its members and the Nomination Committee was responsible for interpreting those bylaws consistent with its responsibilities. The Committee had express jurisdiction with respect to the parties (i.e., the Applicants) and the subject-matter (i.e. the alleged breach of the election rules), and also express jurisdiction over remedy.

74. Not only did the Applicants have an obligation to obey the rules of the Nomination Committee and the broader Union in its policies, procedures and Constitution, due to their status as union members seeking to take part in an internal election, they specifically agreed to do so when they signed the Candidates Declaration. In my view, this is also a key factor.

75. All of the candidates were aware of what I will call the "ground rules" for this election before nominations were submitted and campaigns begun. Not only were they aware of those "ground rules", but they specifically agreed to be bound by them, and by the decision of the Nominations Committee, including the remedies imposed by that body, which could be removal from the ballot.

76. Further, all candidates were aware of the expectations outlined in the Candidate Responsibilities and in the BCNU policies, procedures, Constitution and rules, including the obligations not to make any false or misleading statements and to be prepared to establish the truth of any allegations made, which were questioned by the Nominations Committee. Further, all candidates were made aware that the Nominations Committee had the power to "investigate, resolve and remedy complaints", and – most importantly – all candidates were well aware when they signed their Candidate Declarations that the Committee had the power to enforce its rules and procedures with respect to the election, up to and including removing the candidates from the ballot. That authority was acknowledged by each of the Applicants when they signed those declarations.

77. Any doubt which might have existed regarding the extent of the powers of the Nomination Committee in “remedying” a complaint would have surely been clarified by this clear statement on the Candidates Declaration. I did not hear any evidence during these hearings of any candidate taking issue with this power prior to the Complaints being received, nor of a candidate seeking clarification of the basis of this power prior to executing this Declaration. Any member seeking an elected position was given clear notice that this would be how the BCNU policies and Constitution were in fact going to be interpreted, and they acknowledged this fact by executing their Candidates’ Declarations.

78. In my view, as trade union members intending to participate in the election, the Applicants had obligations to obey those rules: Whether this power was appropriately exercised in the circumstances of this dispute is the subject of question two.

Was this power exercised in a fair and reasonable manner?

79. After hearing and reviewing the evidence and argument in this hearing, I have determined that the power to remove the Applicants from the ballot was exercised in a fair and reasonable manner. This matter has evolved from the Applicants’ position that it has a largely unfettered right to free speech in a Union election. They exercised that belief extensively to the BCNU membership including through the use of electronic media after numerous warnings by the Nomination Committee.

80. With respect to the applicants’ right to free speech I am mindful of the historical importance of encouraging free speech in a democratic union environments. That includes rigorously defending the rights of union members and candidates for office to debate difficult issues with passion. However, free speech has its limits, including the making of unsubstantiated allegations or defamation of character. In the instant case, after reviewing numerous complaints and Facebook postings, the Nomination committee found that the postings were in violation of the Union’s election rules and not protected by the applicants right to free speech.

81. Mr. Offley was previously an elected member of the Union's Council. The Council is the vehicle for democratically establishing Union rules and policies. Mr. Offley chose to resign that position and run for the office of BCNU President. During the election campaign Mr. Offley and the other applicants were clearly entitled to call for:

- Review of BCNU officer travel expense policies if elected;
- Review of maid or cleaning costs in BCNU owned properties;
- Review and implementation of BCNU procedures to ensure proper decision making.

82. What is clearly not protected by the right to free speech is:

- Making unfounded or unsubstantiated allegations of misuse of Union funds by opponents;
- Making unsubstantiated allegations of opponents engaging in depriving members of a democratic union.

83. To be eligible run for office in the BCNU, candidates must agree to follow the Code of Conduct and election rules. The applicants acknowledges the validity of the rules and agreed that they could be removed for the ballot for violations. In doing so the Committee is not assessing discipline. It is removing the candidates from the ballot due to ineligibility flowing from violation of their agreement to follow election rules.

84. In evaluating the Nomination Committee's decision I have reviewed the extensive documentary evidence and considered a broad list of factors. Those factors are as follows:

- The nature and content of the expression;
- The visibility of the expression;
- The sensitivity of the issue discussed;
- The truth of the statement made;
- The steps taken by the Candidate to determine the facts before speaking;
- The prior efforts, if any, made by candidate to raise the concerns with the union;
- The timing of the statements made in the election process;
- The impact on the Union's ability to conduct its affairs after the election; and
- The extent to which the Union's or opponents reputation was damaged

85. I am satisfied that the applicants were aware of the Code of conduct and election rules for eligibility and were bound by it. The removal of the applicants as candidates from the ballot in these circumstances was not arbitrary, discriminatory and/or in bad faith. In this context I find that

the right of free speech is not unfettered and must be balanced against a candidate's duty and obligation to ensure that her or his actions do not violate reasonable election rules.

86. The decision of the Nomination Committee to remove was made after several warning and just as the voting was to begin. The unfortunate reality is that the potential effect of unsubstantiated allegations made at such a crucial time in the process cannot be repaired once voting starts. Waiting for the last minute to make such postings on social media and email cannot be ignored. Removal of a candidate is not an exact science, however, based on the evidence, I believe the action of the Nomination Committee was reasonable and justifiable.

87. I disagree with the Applicants that section 10 of the *Labour Relations Code* is brought into play in this dispute, requiring natural justice procedures as established in the *Coleman* decision. Section 10 requires that natural justice be afforded to "certain internal union affairs". In my view, removal from the ballot is not such an affair. I am persuaded in this regard by the reasoning in *Bitz v. IUOE, Local 963 BCLRB No. B073/2005*, which is also a case of disputed election issues, although that resulted in removal of elected officials after the election due to breach of election rules which is arguably a more serious loss than the "opportunity loss" to participate in an election which has been suffered by the Applicants in this dispute. In that case, the complainants argued that the remedy of "re-running" the election was one which was "disciplinary" and attracted section 10 protections. The Labour Board disagreed. The Board found that the issue was not dealt with by the Union as a "disciplinary" matter. The removal from office and re-running of the campaign was determined to be a "corrective measure taken in response to a determination that election campaigns had not been conducted in compliance with the Union's constitution" (at para. 69). In my view, this decision is on "all fours" with the case before me.

88. In my view, as established in the evidence of Michelle Nelson, the procedure which was followed by the Nominations Committee in responding to the continuing complaints brought by the Applicants was fair and reasonable in all respects, as was the ultimate decision taken to remove those Applicants from the ballot. Michelle Nelson was a credible witness who, along with her fellow committee members, was required to perform a very difficult job in a very short timeframe, under trying circumstances. She gave evidence of a procedure that was carefully crafted and

followed to ensure that complaints that were received, investigated and remedied by the Committee, where appropriate (and there were significantly more this election than in past elections in which she also served on the Committee). This included advising the parties of the Complaint, investigating the Complaint, advising the parties of the result, and providing a timeframe in which to have the Complaint remedied. In fact, in my view the Nomination Committee went beyond a fair and reasonable procedure when it gave the Applicants multiple opportunities to respond and correct false or misleading allegations.

89. The thrust of the evidence in this dispute was that the Applicants continued to express the feeling – despite increasing sanctions from the Nominations Committee and despite repeated requests to justify their unfounded allegations – that they should be able to say what they felt about other candidates – regardless if the allegations were unfounded – and “let the membership decide”. However, this was not what the election rules allowed.

90. I find that, ultimately, the Applicants refused to accept the Committee’s authority with respect to their actions, and refused to accept the Committee’s determination of the truth or falseness of various contested allegations. The unwillingness to recognize that the maid service allegations was untrue – and its subsequent “republication” – even after being advised that it was a false allegation – demonstrates this. It further demonstrates that the Applicants were not responsive to the sanctions that were available to the Nomination Committee – short of removal from the ballot – and that this ultimate sanction was necessary in order to preserve a fair election.

91. While I have found the Committee’s actions appropriate the process can be improved. Ensuring that counsel to the Committee is aware of all complaints to the Committee and responses will ensure continuity of decisions. Administrative support for the Committee can also be improved. I will provide appropriate recommendations and orders to facilitate these and other process changes through BCNU council later in the decision.

92. It should be remembered that the Applicants were experienced union activists who at a critical juncture – when the Committee as preparing to remove them from the ballot – failed to take any steps to address the issue directly with the Committee who was seeking their response,

and instead used their time and energy to launch a social media campaign against the decision. At no time did the Applicants seek an extension of time to address the issue directly with the Committee, once they were advised that the Committee was intending to remove them from the ballot and sought their response.

93. This was not a situation where the procedure that was put in place was unfair or unreasonable with respect to the investigation and remedying of election process complaints. This was a situation where despite that procedure, the Applicants ultimately refused to accept the established authority of the Nomination Committee with respect to the election process and did so to their peril. In my view, it was not the procedure that failed the Applicants; the procedure did what it was designed to do. The Applicants were the masters of their own demise.

94. The evidence is that the SNC invited the Applicants to respond to them by providing information as to why they should not be removed from the ticket of nominations. This is clear evidence that, if provided with sufficient reason to do so, the members of the SNC were prepared to reconsider or rescind their decision. Not only did the Applicants not respond to the SNC's invitation, they did not even advise the Committee that they opposed the removal of their names from the ticket of nominations. As a season union leader Mr. Offley was aware of and has exercised the practice of requesting an extension of time limits to respond to a request for information. He had done so previously with the Committee and it was granted. When the Committee advised the slate that they were to be removed from the ballot subject to any further submissions by them. They were silent.

95. In the my opinion the evidence established that following the amendments to the Bylaws after the Germaine Report, the SNC has express authority to address Members' complaints about the election process. In this regard, Germaine stated at paragraph 162 of this Report "the Committee should be established as the final authority on the election from nominations to campaigns to the voting process."

96. Contrary to the Applicants' contention that the SNC has not provided a reasonable explanation as to why voting was not allowed to take place, the Committee has stated repeatedly

that in its assessment, as a result of the Applicants' misinformation campaign, a fair election process was no longer possible given the short time-line before voting began. In cases put before the arbitrator there were no provision similar to that establishing the role, responsibilities, duties and remedial authority of the Committee.

97. In this regard, considerable attention was given to *Bitz v. IUOE, Local 963*, [2006] B.C.W.L.D. 3315 in order to illustrate the Union's ability to deal with issues following an election. However, in *Bitz supra* as noted by the Committee the union had the luxury of time in determining a course of since the voting process had already taken place. The SNC maintains that in light of the Applicants' misinformation campaign, a fair election process was no longer possible.

98. The Applicants rely on *Bitz supra* maintaining that the remedial order was not the acclamation of the other candidates. Rather it was a new election. None of the cases involving irregularities in elections or violations of election rules provided that the other candidates were declared acclaimed.

99. In this case there is strong BCNU Constitutional authority for the SNC to do what it did. The Union's election code of conduct is clear, fair and reasonable. It does not prevent freedom of speech. It does contemplate that the SNC may hold candidates accountable for their speech or noncompliance with election rules. Candidates can lose eligibility for election if they refuse to honour their signed agreement or the rules in place.

100. No evidence was produced to support the Applicants' contention that the SNC was motivated by a concern that the Applicants were not suitable for office. In my opinion the Committee was motivated by its concern that a fair election process was no longer possible because of the Applicants' misinformation campaign.

101. The Applicants argued that the communications with staff and the incumbents unduly influenced the decisions of the Committee to remove the Applicants from the ballot. Ms. Nelson, Chair of the SNC provided two days of testimony and cross examination. Like Mr. Offley, her testimony was clear and concise. She maintained that neither she or the Committee were unduly

influenced by communications with staff, complainants, executive officers or the President of the BCNU. After careful consideration of her extensive testimony, I do not believe she was wrong in that regard. While I will make recommendations and orders in this regard aimed at ensuring that such communications do not occur they do not reflect any doubt on the integrity of the SNC.

102. It is also clear from the evidence that Mr. Offley, candidate for President, was also the leader of the slate. His conduct in preparing well in advance of the election for and planning the campaign were not fully known to the other members of the slate. His preparation and planning were the foundation for many of the actions and postings of the slate which were a clear violation of the rules of conduct. Responsibility for his conduct should not be fully born for the other members of the slate.

103. As noted earlier in this award I have extensive authority pursuant to the Memorandum of Settlement dated June 1, 2017. Most significant in this section of my decision are those setting out the following:

1 All issues relating to the fairness of the Nominations Committee process regarding the 2017 BCNU election for President, Vice-President and Treasurer;.....

6 In resolving the issues in paragraph 1, the Arbitrator shall have the discretion to issue **any remedy he deems just and reasonable in the circumstances**, including but not limited to ordering a new election, an order of costs, and/or damages for defamation;(Emphasis Added)....

13 The parties agree there shall be no rights of appeal from the Arbitrator's award;

104. However, with the greatest of respect for the members of the British Columbia Nurses Union, Council, Convention Delegates and all their responsibilities contained in the BCNU Constitution and By Laws, I will be proposing recommendations for consideration and action within 120 days of this decision. Following consideration and decisions of the Council and Convention, I will be provided a copy of the resulting action of Council within six months of this decision. I will retain jurisdiction to review the actions of Council and Convention to issue any further orders to ensure the necessary measures are put in place to address the concerns set out in this decision and these recommendations.

Recommendations

105. Further to my previous comments concerning improvements to the election rules I am providing the following recommendations pursuant to the authority given to me in the Memorandum of Settlement. They are put forward for the purpose improving the BCNU's election process, including the Standing Nominations Committee efficacy. BCNU council

1. The Standing Nominations Committee should be responsible for receiving, investigating, resolving and remedying all complaints involving the election process, including those about both Provincial and Regional candidates. This would ensure consistency in the approach taken with respect to both Provincial and Regional candidates. It would also ensure that as many BCNU Members as necessary can actively participate and endorse candidates of his/her choice since only the 5 Members on the SNC would be required to maintain neutrality. This would have avoided the issues involving the Regional Nominations Committee.
2. The BCNU's Bylaws should be amended to include a "Final and Binding" clause, which would make it clear that the SNC's decisions are final and binding and any recourse would be either to the Labour Relations Board under Article 10 of the Labour Relations Code or to the courts if the matter involved a constitutional interpretation. This is intended to avoid a potential conflict of interest arising if an appeal of the Committee's decision was appealed to be adjudicated by either the Executive Committee or the BCNU Council. Since all Members of the BCNU Executive and BCNU Council would be candidates in a Province-wide election (except for those that chose not to run again) this would avoid a conflict of interest. It would also avoid the conflict of interest where a member of Council filed a complaint under Article 2.10 or Article 24 against one or more of the candidates.
3. Assignment of independent, external legal counsel will be receive copies of all complaints, responses and actions of the SNC. Counsel will advise the SNC on all matters and complaints and who would be consulted on all complaints having sufficient merit or on any other matter at the discretion of the Chair, Vice-Chair or the majority of the members of the SNC.
4. A Bylaw amendment making the Chair of the SNC, alternate or designate, an ex officio member of Council with voice, but no vote. This would eliminate the necessity of a "Council Liaison" person being officially designated by Council and it would allow the SNC to report directly to Council. This would have avoided the perception of a conflict with a member of Council being a candidate in the election and being the designated Council Liaison person.

5. All communications between any candidates and staff (including the Exec. Director) be channeled through the election mail box, unless responding to the SNC to an inquiry made directly by the Committee to the candidate(s).
6. The SNC needs to be adequately resourced including means of communication (cell phones, lap tops) for the Chair and Vice-Chair, including time-off for Union business for the Chair and Vice-Chair (or their alternates) to deal with complaints in a timely manner between the time nominations close until 3 days following the counting of the ballots. This includes assignment of staff to assist with administrative matters and communications with the BCNU membership.
7. A formal orientation program for all members of the Nominations Committee the content of which is to be reviewed and approved by independent, external legal counsel. External counsel will also provide orientation to all candidates upon approval for candidacy.
8. The SNC should develop a guideline outlining the range of reasonable, progressive and proportionate remedies that the SNC may impose as a result of breach of the election rules or campaign misconduct.
9. Minutes shall be kept of all SNC meetings, which should be reviewed and corrected at the commencement of the SNC's next meeting.

Disciplinary Charges Against the Applicants

106. The BCNU Constitution and Bylaws set out the governing rules of the Union. If a member breaches a duty the BCNU has authority to impose discipline under Articles 2.10 or Article 24. Article 24 .02 (Breach of Duty) provides a list of every members responsibilities. Article 24.03 sets out the Complaints process. Article 2.11 allows for Council to declare a member not in good standing under certain conditions notwithstanding the provisions of Article 24.

107. If a member is disciplined under either Article 2 or 24 a BCNU Hearing Board has authority to impose one or more of the following penalties:

- A reprimand;
- A fine;
- Terms on continued membership or return to membership;
- Suspension or Termination of Membership;
- Any other penalty it considers appropriate under the circumstances.

Will Offley Article 24 Charge

108. On February 14, 2017, a complaint was filed against Mr. Offley alleging breaches of Article 24:

- a. Sending and email to undisclosed list of recipients containing false and misleading information about the President's salary and benefits;
- b. Improperly retaining and disclosing confidential information obtained by Mr. Offley during his term as Executive Councillor- OH&S; and
- c. Distributing a letter from Ms. Duteil's legal counsel to an unknown list of recipients despite an express statement that the letter was confidential and not for distribution.

109. After receiving notice of the complaint, Mr. Offley requested Ms. Sorenson recuse herself as chair of the Complaints and Investigation Committee which she did. To date the hearing into the Article 24 charge against Mr. Offley has not taken place and the charge is included in this case.

Applicant's Article 24 Charge

110. On May 24, 2017 the Nominations Committee recommended Council find the Applicants not in good standing Under Article 2.10 and recommended that Article 24 disciplinary charges be filled. The BCNU submits and I find that the Applicants' campaigning was marked by multiple infractions of Campaign Guidelines and a resistance to complying with multiple requests and directions of the Committee.

111. The BCNU's position is that the actions of the Applicants prior to, during and following the election constitute a breach of their duties under Article 24 of the BCNU Constitution and Bylaws. Specifically, the BCNU argues that the Applicants breached the following duties:

- a. Article 24.02(1)(b) - Revealing, without proper authorization, information confidential to the Union to anyone not entitled to it;
- b. Article 24.02(1)(d)- Publishing or circulating, either orally or otherwise, false reports or deliberate misrepresentations concerning the Union or any Member in respect to any matter connected with the affairs of the Union;
- c. Article 24.02(1)(f) - Commencing, or advocating that a Member commence a proceeding in a Court or tribunal against the Union, any Officer, or any Member, in any matter concerning the affairs of the Union, without first exhausting all remedies provided for in this Constitution and Bylaws;

- d. Article 24.02(1)(1) - Committing a fraud in a Union election, or otherwise interfering with, or attempting to interfere with, the rights of a Member provided for in this Constitution and Bylaws;
- e. Article 24.02(1)(p) - Unlawfully receiving, removing, retaining, destroying, erasing, mutilating or misappropriating any property belonging to the Union or in the possession of the Union;
- f. Article 24.02(1)(t) - Wrongfully interfering with any Member, Officer or any other authorized representative of the Union, in the discharge of her duties under this Constitution and Bylaws;
- g. Article 24.02(1)(u)-Failing to fulfil her duties as an Officer or as a member of Council;

112. In its May 22, 2017 email and letter to the Applicants the Committee informed the Applicants that as a result of the Applicants' conduct, an Article 24 complaint would be filed. The Committee specifically referred to the following acts:

- i. Publication of statements regarding asbestos that were previously removed from Mr. Offley's candidate statement;
- ii. Publication of the May 4, 2017 email entitled "Get Out of Jail Free Card";
- iii. Publication of the May 5, 2017 "Ways to Help" email;
- iv. Publication of the May 9, 2017 email entitled "Campaign Pledge - BC Nurses Vote For Change- Reducing Presidential Salary and Benefits";
- v. Re-publication of the maid service claim after the Applicants previously undertook to remove this reference;
- vi. Publication of the May 17, 2017 blog post entitled "Convention Blog"; and
- vii. Publication of the May 19, 2017 email entitled "Why I Resigned".

113. The BCNU also relies upon the acts of the Applicants following receipt of the May 22, 2017 notification by the Committee that the Applicants would be removed from the ballot, subject to any further information that the Applicants may provide regarding remedy, such acts the BCNU argues include but are not limited to the following:

- a. Publication of the May 22, 2017 blog post entitled "BC Nurses' Union Cancels Democracy";
- b. Publication of the May 23, 2017 blog post entitled "Demand Your Right to Vote";
- c. Publication of the May 24, 2014 news release titled "BCNU "Toxic" Workplace", which was republished as a May 27, 2017 blog post titled "Former BCNU Vice President Calls Union's Internal Climate "Toxic"";
- d. Publication of the May 27, 2017 blog post entitled "Pretexts, Innuendo and Falsehood - Looking at the BCNU Election Committee Statement";
- e. Publication of the May 29, 2017 blog post and news release

titled "BC Labour Relations Board Grants Hearing on May 30";

f. Publication of statements on the "GoFundMe" page established by a supporter of the Applicants and to which the Applicants have referred their supporters;

g. Public statements made to the media, including statements made to the Vancouver Sun and to CKNW.

114. Further, the BCNU relies upon the fact that the Applicants agreed to be bound by the declaration contained within the nomination form. The Applicants agreed to a standard of conduct and cannot now be immune to internal discipline if they are found to have breached this standard. The Applicants submit that what the BCNU complains of is contained in their claim of free speech during an election campaign.

115. After considering the totality of the evidence and submissions in this case I find that the Applicant's conduct represents a departure from the appropriate standard of conduct to be expected of a union member participating in an election and the relevance Code of Conduct and that the application of discipline is appropriate in this case. While this is so, I also find that the Applicants should not all be treated equally as I also find after considering the totality of the evidence in this case that the Applicants are not equally blame worthy and culpable. To some extent Ms. Sharp and Ms. Lyth were victims to unknown conduct prior to and during the election process by Mr. Offley. Further, it is clear that Mr. Offley, while generally acting for the Applicants, took some actions without the consent of the other Applicants. This evidence was garnered through Mr. Offley's short but vigorous cross examination.

116. For these reasons I find that Mr. Offley is worthy of disciplinary sanctions and I find that he not be a member in good standing for a period of 8 years.

117. **Defamation**

118. The BCNU's submits that the Applicants are also liable for defaming the BCNU, its representatives and its staff as a result of various defamatory statements and publications by the Applicants, such statements and publications including but not limited to the following:

a. Sending an email to an unknown list of recipients containing false

and misleading information about the President's salary and benefits;

- b. The following publications made during the nomination and campaign process:
 - i. The Applicants' email titled " Campaign Pledge - BC Nurses Vote for Change
 - ii. Reducing Presidential Salary and Benefits";
 - iii. The Applicants' blog post "Convention Blog 1";
 - iv. The Applicants' blog post "Convention Blog 2";
 - v. The Applicants' email titled "Why I Resigned" which also included several attachments disparaging the conduct of the BCNU, its Council and staff;
- b. Such statements and publications made after the Applicants' removal from the ballot including but not limited to the following:
 - i. Publication of the May 22, 2017 blog post entitled "BC Nurses' Union Cancels Democracy";
 - ii. Publication of the May 23, 2017 blog post entitled "Demand Your Right to Vote";
 - iii. Publication of the May 24, 2014 news release titled "BCNU "Toxic" Workplace", which was republished as a May 27, 2017 blog post titled "Former BCNU Vice President Calls Union 's Internal Climate "Toxic"";
 - iv. Publication of the May 27, 2017 blog post entitled " Pretexts, Innuendo and Falsehood - Looking at the BCNU Election Committee Statement";
 - v. Publication of the May 29, 2017 blog post and news release titled "BC Labour Relations Board Grants Hearing on May 30";
 - vi. Publications of statements on the "Go Fund Me "page of the Applicants and statements made to the media including the Vancouver Sun.

Legal Test

119. In *Weaver v. Corcoran*, 2017 BCCA 160, the British Columbia Court of Appeal commented that "[t]he function of defamation law is to protect and vindicate reputation from harm that is unjustified".

120. The Supreme Court of Canada set out the elements of the tort of defamation in *Grant v. Torstar Corp.*, 2009 SCC 61, at paras. 28-29:

A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages:

- (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
- (2) that the words in fact referred to the plaintiff; and
- (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism: see, e.g., R. A. Smolla, "Balancing Freedom of Expression and Protection of Reputation Under Canada's Charter of Rights and Freedoms", in D. Schneiderman, ed., *Freedom of Expression and the Charter* (1991), 272, at p. 282. (The only exception is that slander requires proof of special damages, unless the impugned words were slanderous per se: R. E. Brown, *The Law of Defamation in Canada* (2nd ed. (loose-leaf)), vol. 3, at pp. 25-2 and 25-3.)

The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability.

121. In *Weaver* (citing *Lawson*), the court noted that words can convey a defamatory meaning in three ways:

- a) If the literal meaning of the words complained of are defamatory;
- b) If the words complained of are not defamatory in their natural and ordinary meaning, but their meaning based upon extrinsic circumstances unique to certain readers (the "legal" or "true" innuendo meaning) is defamatory; or
- c) If the inferential meaning or impression left by the words complained of is defamatory (the "false" or "popular" innuendo meaning).

122. If the literal meaning of the words are at issue, the court found that it was not necessary to go beyond the words themselves to establish defamation.

123. If the words at issue convey a potentially defamatory meaning by legal innuendo, the court found that the words may be defamatory because of a special meaning outside of general knowledge but known to the recipient.

124. If the words at issue convey a potentially defamatory meaning by inference, the court found

that the test is whether an ordinary person would infer a defamatory meaning from the words in the context in which they were used.

125. Defences to defamation include justification, fair comment and qualified privilege.

126. Justification is an absolute defence in which the statements made or the facts upon which they are based are true and the comment was not made maliciously.

127. The legal test for the defence of fair comment was set out by the Supreme Court of Canada in *WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognisable as comment;
- (d) the comment must satisfy the following objective test: could any [person] honestly express that opinion on the proved facts?
- (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was [subjectively] actuated by express malice.

128. The defence of qualified privilege may rebut the inference that malice occurred when a statement was made. The defence may be used where a statement is made to discharge a legal, social or moral duty in regards to a subject in which the maker and the recipient have a legitimate common interest (*Litster v. British Columbia Ferry Corp.*, [2003] B.C.J. No. 817). This defence does not provide absolute privilege and it can be defeated if the plaintiff can show that the primary motive was actual malice (*Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130).

129. The primary remedy in defamation cases is an award for general damages to compensate for a loss of reputation. It is often difficult to quantify what the exact loss is because loss of reputation is an intangible injury. In *Hill*, the Supreme Court of Canada noted that general damages "are presumed from the very publication of the false statement and are awarded at large", meaning that damages are not restricted to the actual loss proved by the plaintiff. A plaintiff may also recover special damages that compensate for specific losses caused by the defendant.

130. The BCNU's submits that the Applicants' statements and publications at issue conveyed a defamatory meaning literally, inferentially or by legal innuendo and that an award of damages is appropriate in this case. The BCNU seeks an award of damages as a result of the Applicants' defamatory statements and publications.

131. The Applicants take issue with the BCNU' s characterization of the comments in question and raise all of the defences one would expect in the circumstances of this case.

132. After considering the submissions of the parties I find that the Applicants genuinely believed that disagreements based on assertions in their campaign materials would be addressed by a political debate within the membership and not in complaints filed with the committee. Expressions of views and opinions, comments and characterizations made during the campaign period were political speech and, in my view, stopped short of defamation. While this is so, I find that Mr. Offley did defame the BCNU following the Applicants' removal from the ballot and I hereby award the BCNU \$15,000 in damages against Mr. Offley to remedy the damage suffered by the BCNU as a result of such defamation.

Costs against Gail Duteil's Conduct

133. As set out above I have made an order for costs payable by the BCNU in the amount of \$75,000 to the applicants for the partial reimbursement of legal fees incurred during their prosecution in this case. I made this order in large measure due to the conduct of President Gayle Duteil during the course of the election and this hearing which I will expand upon below.

134. Prior to entering into this discussion it is worthy to note that the issues described below have caused me significant concern from the commencement of the arbitration of this matter. I also note that it is my view that the Applicants in this case were driven to incur significant legal fees to prosecute their claim in large measure believing that the actions of Ms. Duteil would result in new elections. Furthermore I note that I was inclined to order costs on a full indemnity basis and made this clear to the BCNU during the hearing. I was convinced by legal

counsel for the BCNU, following his cross examination of Mr. Offley, that costs on a full indemnity basis was not appropriate and I afforded the Applicants and the BCNU the opportunity to mediate this issue with my assistance and I was pleased that the BCNU and Applicants agreed to the sum of \$75,000 (instead of full costs on a full indemnity basis which would have been a much greater costs award against the BCNU).

135. Regarding the specific concerns regarding President Gail Duteil's complaints to the PNC the Applicants have pointed to a number of documents tendered into evidence that created the appearance of potential interference in the Committee's process and which reasonably caused the Applicants to maintain their challenge to their removal from the ballot.

136. In particular there were troubling pieces of evidence which created the appearance of potential interference in the Committee's process. The Applicants have pointed to a May 9, 2017 complaint to the Committee filed by Gayle Duteil who at the time was President of the BCNU and was an incumbent running for the position of president in the subject election. The Applicants argued and I accept that Ms. Duteil's May 9 complaint contains a threat to sue the Committee for defamation.

137. The relevant portion of that complaint reads:

"Should this be allowed to continue, I will seek further independent legal counsel as to the ongoing damages Mr. Offley is undertaking to my reputation and the actions of the nominations committee in permitting this to continue."

138. The email speaks for itself and in my view it is a reasonable conclusion that this amounted to a threat against the Committee if the Committee allowed the conduct complained of by Ms. Duteil to continue. Had it not been for the applicants' decision not to respond the Nominations Committee or seek an extension of time in order to respond before being removed from the ballot, this may have resulted in new elections.

139. The Applicants also pointed to the tone of Ms. Duteil's other complaints to the Committee to highlight the fact that Ms. Duteil behaved in a way that was aggressive and when combined with the May 9 complaint appear to illustrate attempts by Ms. Duteil to interfere with and

manipulate the Committee's processes.

140. The Applicants were genuinely concerned about the direction of the union and sought to engage in a political debate regarding the issues. The production of Ms. Duteil's complaints and specifically the May 9th complaint confirmed for the Applicants that there had been attempts on the part of the President to interfere and manipulate the Committee's processes and reasonably caused them to incur additional and significant legal expenses in pursuing their claims against the BCNU and the Committee. As mentioned earlier, the incumbents filed 13 complaints with the PNC. Of note is that Gayle Duteil filed 8 of the 13 and of her 8 complaints she demanded the removal of the Applicants from the ballot in 6 of her complaints. Further the tone of Gayle Duteil's complaints added to the concern.

141. I find that Ms. Duteil's interactions with the Committee amounted to a flagrant attempt to threaten, interfere with and manipulate the Committee's processes. While this is the case I also find that these attempts, in large measure because of the strength of character of Ms. Nelson and the other members of the Committee were not successful. For its part the Committee sought to conduct itself in a fair and reasonable manner consistent with BCNU policies and the principles of natural justice.

142. At my request Mr. Turner, counsel for provided written submissions on behalf of the Interested Parties to address the volume and tone of Ms Duteil's complaints to the Provincial Nominations Committee including her complaint of May 9, 2017 wherein Ms. Duteil references seeking legal counsel in respect of the actions of the Committee. Counsel noted that the conduct of Ms. Duteil was not put in issue in these proceedings. No relief is sought against Ms. Duteil or the other incumbents, except indirectly because they may have to face re-election - which is the basis upon which they sought and were granted intervenor status.

143. He maintained that the real issue in this proceeding was the conduct of the Nominations Committee, and whether they treated the Applicants fairly. The Interested parties say that the Committee did treat the Applicants fairly. The Committee gave the Applicants ample opportunity to address the multiple concerns raised by the Committee as a result of complaints by members,

which the Applicants failed to do.

144. Counsel submits that there is simply no evidence that the Committee was improperly influenced by the complaints made by Ms. Duteil, or that the Committee reached anything but an independent decision based on the facts. Each of the Interested Parties submitted Will Says. Each clearly said that they did not participate in the Committee's decision making process. No objection was taken to this evidence and the Applicants did not seek to cross-examine.

145. Counsel reviewed the will says of Ms. Duteil in detail. He also submits that Michelle Nelson was called to give evidence on behalf of the Committee. She gave clear evidence that she was not intimidated by Gayle Duteil or the other Interested Parties. In fact, her evidence is that she does not know the incumbents personally, and that she lives on Vancouver Island and was mostly located there during the times in issue. Michelle Nelson's evidence is that the Committee reached its decision to disqualify the Applicants without influence from and independently of the incumbents.

146. Counsel submits that it is true that the incumbents made complaints to the Committee, as they were entitled to do. Michelle Nelson's evidence about whether she was influenced or intimidated by the incumbents was not tested on cross-examination. It was not put to her that she or other members of the Committee were intimidated or felt threatened by Gayle Duteil or, in particular, Ms. Duteil's allusion to legal proceedings. He maintains that if such a suggestion had been put to Ms. Nelson, the Committee could have called a second witness, Kevin Barry, who was also a member of the Committee. However, that was not necessary in light of the evidence that was called and the cross- examination of Ms. Nelson.

147. Counsel submits that when Ms. Nelson was questions regarding comments in Ms. Duteil's complaint she responded that it was not something I want in a complaint. But not something I would consider a threat. She went on to testify that Ms. Duteil has a strong personality. I know this from the 2014 election. I did not think this was a threat.

148. I fully appreciate that Ms. Duteil was not a party to these proceedings and as a

result I will not consider making an award of costs against her personally. While this is so Ms. Duteil was the incumbent president of the BCNU and should have known better and conducted herself with standard of care equivalent to her experience and stature within the BCNU. I find that Ms. Duteil's conduct was improper and that there was a causal nexus between her improper conduct and the Applicants maintenance of their case against the BCNU and PNC which in the interests of fairness cannot be ignored. It was for these reasons that I have awarded costs against the BCNU in the amount of \$75,000. It is my hope that this award will send a message to dissuade those who would attempt to improperly use their power and influence to impact the decisions of a neutral body responsible for governing elections.

149. The potential negative impact of social and electronic media on union elections and affairs were a large factor in this dispute. They pose an ever increasing factor for all unions in the future. However, in the final analysis this dispute was very avoidable but for the conduct of two key individuals.

150. I want to thank counsel for the parties, intervenors and interested parties for the attention they have given in this matter which has been tedious at best. I also want to thank counsel for the manner they have dealt with it and my frustration that it could not proceed as quickly as originally planned.

151. I remain seized with respect to the application and interpretation of this Award.

Dated this 25th, Day of February, 2018.

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is written in a cursive, flowing style.

Tom Hodges

Arbitrator