

Crown Employees
**Grievance Settlement
Board**

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**Commission de
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*des employés de la
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GSB#2001-0534, 2003-2944, 2008-3397
UNION#2001-0551-0001, 2003-0999-0023, 2008-0526-0018

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE GRIEVANCE SETTLEMENT BOARD

BETWEEN

Ontario Public Service Employees Union
(Hunt et al)

Union

- and -

The Crown in Right of Ontario
(Ministry of Attorney General)

Employer

BEFORE

Randi H. Abramsky

Vice-Chair

FOR THE UNION

Tim Hannigan
Ryder Wright Blair and Holmes LLP
Barristers and Solicitors

FOR THE EMPLOYER

Omar Shahab
Ministry of Government Services
Labour Practice Group
Counsel

HEARING

February 13, 2012.

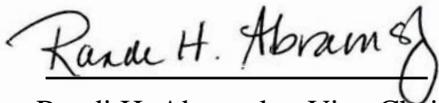
Decision

- [1] A dispute has arisen between the parties concerning the Employer's request for production of the transcript invoices and tax returns of the Court Reporters that the Union intends to call to give reply evidence. The Employer seeks these documents prior to the witnesses' testimony and the Union opposes that request.
- [2] The Union intends to call a number of Court Reporters, in reply, concerning the number of transcript pages, per hour, that they prepare, including what goes into preparing a transcript and how fast they can do so. The parties agree that the legal standard to be applied to the Employer's request is whether the documents are "arguably relevant" to the issues in dispute.
- [3] Having considered the facts, arguments and the case law provided, I conclude that the Employer is entitled to the witnesses' transcript invoices (for the years they would be testifying about) but not to their tax returns.
- [4] I conclude that the transcript invoices are "arguably relevant" because they shed light on the Court Reporter's experience preparing transcripts as well as the quantity or volume of transcripts that they have produced. This information would be of assistance in determining the witnesses' experience in regard to transcript production as well as in determining how quickly (or slowly) transcripts were produced.
- [5] The tax returns, however, are not "arguably relevant". The Employer primarily seeks the tax returns in order to determine if the transcript income reported to Canada Revenue Agency matches the individual's private transcript invoices (and Ministry invoices), with the idea that if they do not match and the employees' underreported their transcript income, presumably for financial benefits, their credibility regarding the speed at which they prepare transcripts should be negatively impacted. It argues that it would establish, potentially, "similar fact" evidence which the Employer could then rely upon. In my view, with respect, that is an improper "fishing expedition" as well as barred by the collateral fact rule. *Re OPSEU (Hunt) and Ministry of the Attorney General*, GSB No. 2001-0534 (Nov. 4, 2004, Abramsky)
- [6] If, at a later time, the same Court Reporter seeks compensation, their tax returns in so far as transcript income would be relevant and would have to be produced. *Re OPSEU (Hunt) and Ministry of the Attorney General*, GSB No. 2001-0532 (Sept. 1, 2010, Abramsky). That is not the present situation. The fact that a document may become "arguably relevant" at some future point in a litigation does not mean that a party may have access to it before then.

Conclusion

1. The Employer is entitled to production of the witnesses' transcript invoices for the years for which they will be testifying.
2. The Employer is not entitled to the witnesses' tax returns.

Dated at Toronto this 21st day of February 2012.

A handwritten signature in cursive script that reads "Randi H. Abramsky". The signature is written in black ink and is positioned above a horizontal line.

Randi H. Abramsky, Vice-Chair