

NEWS

Deadline: Wednesday at 12:00 noon. News Desk: 453-4983

Appeal Court overturns Burnley decision

by Gordon Loane

The legal battle may not yet be over in the case of a former UNB Assistant Comptroller suing the university to get his job back.

Fredericton lawyer Leslye Fraser says her client, Donald Burnley, is weighing several options after the New Brunswick Court of Appeal overturned a lower court decision that originally granted Burnley the right to return to his job.

Fraser says seeking leave to appeal to the Supreme Court of Canada remains an option. The deadline to file the appeal is next month. Burnley's lawyer says another option is to start a separate legal action for wrongful dismissal.

Burnley was dismissed from his position on January 9, 1992 after 17 years at the university. He unsuccessfully grieved his impending dismissal before UNB Vice President Finance and Administration James O'Sullivan.

A judge of the Court of Queen's Bench, Justice J. Hugh McLellan, on Judicial review, set aside the dismissal and ordered costs against the university of one thousand dollars plus disbursements.

Burnley claimed that he had not been given a fair hearing. In addition he claimed bias or apprehended bias on the part of the Vice-President and failure to comply with the University of New Brunswick Act (1984). Justice McLellan ruled that Vice-President O'Sullivan did not have the power to dismiss. That power, he said, rested with

the Board of Governors of the University.

Justice McLellan said the case began when an internal dispute began between UNB Comptroller John O'Brien and Burnley over what type of computing services best suited to the needs of the office. A re-organization of the office was also proposed.

Justice McLellan said Burnley took extreme exception to this proposed re-organization and his changed responsibilities. For example, Burnley said, "I find your treatment of myself insulting and ignorant as well as unacceptable." Comptroller O'Brien recommended his dismissal and suspended him.

Burnley then filed a grievance, a hearing before Vice-President O'Sullivan was held and Burnley was dismissed. His salary of over 60 thousand dollars was continued for one year.

In a letter to Burnley dismissing the grievance and relieving the Assistant Comptroller of his responsibilities, O'Sullivan gave reasons which included insubordination, job performance, conduct considered inconsistent with university policy, procedures and organizational effectiveness.

Justice McLellan held that the Assistant Comptroller, who is appointed by the Board of Governors of the university, is required by statute to keep the accounts of the university and holds office at the pleasure of the Board.

He further held that a policy adopted by the Board of Governors in 1983 authorized

the Vice-President to make a final and binding decision to terminate certain employees was ineffective for two reasons. First the UNB Act (1968) was replaced by the UNB Act (1984) invalidating the policy delegating powers of termination the previous year. Secondly, even if the 1983 policy was still in effect it was inconsistent with a section of the UNB Act which legislated that any question as to the powers and duties of any office or servant of the University shall be settled and determined by the Board, whose decision shall be final.

The university for its part contended that the UNB Act of 1984 did not have the effect of rescinding the 1983 policy adopted by the Board of Governors, empowering the Vice-President to terminate the employment of administrative staff.

And the three Justices of the Court of Appeal agreed. In a decision written and handed down by Justice Patrick Ryan with concurrence by Justices Angers and Hoyt on December 2nd, it was ruled that the lower court Judge erred in his interpretation of the UNB Act. "The Act gives the Board of Governors the right to delegate its powers with respect to dismissal of administrative personnel."

In addition, the Court of Appeal Justices said the 1983 policy of the Board was in effect at the time that Vice-President O'Sullivan used it. The policy not being inconsistent with the former or the present UNB Acts and not having been revoked by

the Board of Governors survived the 1984 UNB Act.

In addition, the Justices dismissed claims by Burnley that the university failed to accord to him a fair hearing and that O'Sullivan was biased or there was an apprehension of bias in his hearing of the issues. The Justices set aside the decision of the lower court which had quashed the January 1992 decision to terminate Burnley's

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- Justice Patrick Ryan

employment. The University was allowed one thousand dollars plus disbursements in costs.

News Notes

Parasitologist to speak at UNB

The director of parasitology at McGill University in Montreal will speak on parasites in humans and selected animals in a free public lecture at the University of New Brunswick in Fredericton.

On Thursday, Jan. 14, Marilyn Scott will give her talk, entitled *Parasites: A Special Way of Life*, in Room 146 of Bailey Hall at 4 p.m.

Dr. Scott is a distinguished parasitologist who received her undergraduate honors biology degree at UNB. She earned her Ph.D. at McGill before going to the University of London's Imperial College as a postdoctoral fellow.

An active researcher in her field, Dr. Scott is the current vice-president of the Canadian Society of Zoologists. Recently, she was awarded the Baldwin Medal, which is given for outstanding contributions to the field of parasitology by the American Society of Parasitologists.

For more information, contact Michael Burt or A.R.A. Taylor in UNB's department of biology at 453-4692 or 453-4583.

Caribbean Circle information

1) The Caribbean Circle presents the first movie nite for 1993 - Eddy Murphy's *Boomerang*. Date: Saturday January 16; Time: 7:00 PM; Venue: Spanish Lounge, Carleton 323; Members Only - Free Entrance.

2) All Caribbean Circle members are invited to the first general meeting for 1993. Date: Sunday January 17; Time: 2:30 PM; Venue: Room 103 Student Union Building.

Please contact member of the executive for more information and to contribute your ideas:

President: Gordon Porter Tel: 458-0680
Vice President: Aurelius Gordon Tel: 458-5776
Treasurer: Veda Bowlin
Secretary: Maureen Ritchie Tel: 457-2642
P.R.O.: Anna Van Loon
Social Activities Director: Bassy Haynes Tel: 450-6638.

Career Centre programs

(UNBPRI) UNB Counselling Services Career Centre is offering three programs, the first of which will centre on career orientation.

Have you wondered what services the Career Centre offers students? To obtain information about the range of services we offer, attend one of our weekly group orientation sessions in the Alumni Memorial Building. Come find out about career testing; skill identification; career workshops; and the Career Library. Choose the options that best suit your needs. Please call ahead to register.

The second Career Centre program will deal with how to choose a major:

Does this describe you? "You aren't sure you are in the right Faculty or you can't decide what to major in". We are offering a two hour workshop on Tuesday, January 12, 1993 from 9 - 11 in the Alumni Memorial Building. Let us help you with decision making. Call by January 11 to register.

The Centre's third workshop addresses issues of career planning:

This workshop is for students who want to look at career planning. A one-day workshop will explore how to make decisions; how interests affect your decisions; what part your values and lifestyle preferences make in your decisions and how to identify the skills you possess as clues to career choice. The workshop is offered on Saturday, January 30, 1993 from 9:00 a.m. - 4:30 p.m. in the Alumni Memorial Building. A \$10.00 fee covers lunch, snacks and materials. Registration is limited to 20 people. Deadline to register is January 27, 1993.

To register: Call UNB Counselling at 453-4820.

SU emergency loan program

by Karen Burgess

The UNB Student Union is implementing a new emergency loan program for full time undergraduate students at UNB.

James van Raalte, S.U. Vice President Finance and Administration, explains that the program is meant to assist students who might not be able to get into university because of short term financial problems.

The loan, which could provide a maximum of \$500 to a needy student, will be interest free for two months, and will be repaid at 3% per month after that two month period.

The fund, which will be established this week, will total from five to ten thousand dollars, and will be augmented by \$2500 per year in the future. Funds for the initial amount will come from within the Student Union's existing budget, with some funds coming from the now defunct Student Directory's budgeted allotment.

Applications for the loan will be available early next week, and students eligibility will be determined by a three-person Emergency Loan Committee.

van Raalte points out that this program is intended to augment

programs already established by the University, and as only a very limited number of students can receive the loan in one year, students requiring emergency funding should go to the University first.

He says that "it is discouraging that the government doesn't make funding post-secondary education a priority. This Emergency Loan Fund is only a Band-Aid on a much larger problem."

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cost of the repairs to Lady Dunn Hall. The total cost could approximate 200 thousand dollars he says.

What caused the fire still remains a mystery. Inspector Richard Arnold of the Fredericton City Fire Department says the cause of the blaze is undetermined and the file has now been closed. Arnold says arson has been ruled out.

The electrical wiring in the building is sound, and careless smoking did not cause it either. Arnold says his office has received several calls from concerned parents wondering about the state of the residence's electrical wiring system. "We've checked it out and it's sound," Arnold says.

Residents affected by the fire could still receive some assistance if they need it, UNB

Student Union Vice-President Finance James van Raalte says. Applications for emergency loans to a maximum of five hundred dollars can be picked up at the Student Union offices in the SUB.

"The amount of money we have available is limited," Van Raalte says, "but we're willing to assess the needs of the Dunn residents and all other students. We may be able to help about twenty students he says but maybe more if there is a need."

The loan can include money for portions of tuition, books or other expenses. "So far no one has approached us," he says. Van Raalte says the undergraduate awards office may be able to help the residents as well. Susanna Weisner of the UNB's Awards office was not available for comment.