

*Cited as:*  
**Lynch and United Grain Growers Ltd.**

**Re: Adjudication under Division XIV - Part III of the  
Canada Labour Code - Complaint of Alleged Unjust Dismissal  
Between  
Albert Lynch, and  
United Grain Growers Ltd.**

[1998] C.L.A.D. No. 843

Canada  
Labour Arbitration

**B.P. Schwartz, Adjudicator**

November 17, 1998

(2 pp.)

**Appearances:**

No appearances mentioned.

---

Preliminary Award -  
Whether the Hearing Should be in Public

- 1** Several pre-hearing matters have arisen, and I would like to indicate how I currently view them.
- 2** The issue has arisen as to whether the hearing should be open to the public.
- 3** I have reviewed the textbooks and case law in the area.
- 4** A leading textbook, Brown and Beatty, CANADA LABOUR ARBITRATION, 3rd edition, suggests that the arbitral decisions to date have found that there is a presumption that a hearing will be public when the arbitrator or adjudicator is acting under a statutory mandate. My mandate here is statutory; it derives from the Canada Labour Code rather than a collective agreement or other private contract.

**5** On the other hand, there is a thorough review of the earlier decisions in a thoughtful award by arbitrator Bruce in *Re Malapsina University College and Malapsina College Faculty Association*, 53 L.A.C. (4th) 93. The arbitrator concludes that there is no presumption in favour of a public hearing when the arbitrator has a statutory mandate. Rather, in each case the arbitrator should consider all the factors on both sides.

**6** This is an unjust dismissal case under the Canada Labour Code. The system of adjudication is imposed by statute and the adjudicator is appointed by the Minister. That is a substantial measure of governmental intervention. Other things being equal in a particular case, I would tend to think that the public ought to be able to scrutinize hearings to see how the system is working and to follow up with appropriate comment and suggestions for improvements as needed.

**7** However, I do not find it necessary to decide this case on the basis of any distinctions between public or private hearings. I will assume that there is no presumption one way or the other. Instead, I have formed an opinion on the basis of the specific considerations advanced by both parties in the context of this particular case.

**8** The (former) employee, Mr. Lynch, contends that he wants the hearing in public for two reasons. He submits that his friends and family want to provide him with support at the hearing and he wants to clear his reputation in his local community.

**9** The employer is concerned, however, that the employee will attempt to use the hearing as a forum for airing attacks on the employer's general business ethics and that these attacks will be unfounded and irrelevant to the issue of whether he was unjustly dismissed.

**10** At this stage in the proceedings, when I have not heard sworn testimony from either side, I am prepared to assume the sincerity of the concerns expressed by both parties with respect to the issue of whether the hearing should be public or private.

**11** Both sides have cited considerations that are, in principle, reasonable. The employee wants support and an open opportunity to clear his name; the employer does not want to be subjected to gratuitous and public attacks on its general integrity.

**12** In response to the employer's concerns, the employee sent a letter which seems to indicate that both sides do concur on the proper purpose of the hearing: no more and no less than to determine whether the employee was unjustly dismissed. In any event, as the presiding adjudicator, I will be in a position to take reasonable steps to ensure that the proceeding stays on track. I also reserve the right to reconsider the question of the openness of the hearing as circumstances may require.

**13** For now, however, it is my intention that it be open to the public.

**14** Again, my decision on this point has been made, of course, without the benefit of sworn testimony by either side, or cross-examination from either side, and is completely without prejudice to any view I may eventually take with respect to the merits of the case and credibility of any particular individual or party.

**15** Several other matters have arisen.

**16** I have directed that the employer present its case first, because that is the general practice in unjust dismissal cases. The parties are free to make submissions as to any issues concerning burden of proof, in general or on specific matters.

**17** I have been asked to quash several subpoenas on the basis that the persons involved could not possibly contribute to the determination that I have been asked to make. I am awaiting a response by the employee before making a decision in this regard.

qp/s/clw