

Cited as:

**Noster (Re)**

IN THE MATTER OF the Labour Relations Code

Jan Noster, applicant, and  
Construction Workers' Union (CLAC), Local No. 63, respondent

[1999] Alta. L.R.B.R. 211

[1999] A.L.R.B.D. No. 8

Board File: GE-02748

**Alberta Labour Relations Board****J.L. Wallace, Vice-Chair, S. Gaal and R. Campbell, Members**

March 24, 1999.

**Appearances:**

For the applicant: Robert R. Blakely (counsel), Jan Noster.

For the respondent: Daniel J. McDonald, Q.C. (counsel), Co Vanderlaan.

*Unions — Discipline of members — s. 24 — Mandatory due process provision — CLAC Constitution purporting to suspend by summary process in violation of Code — Member was not advised of a specific charge under Constitution — Charge not specific enough to satisfy Code provisions.*

*Unions — Discrimination — s. 150(1) — Decision to commence expulsion provisions arbitrary, discriminatory and motivated by political considerations — Breach of Code established.*

*Unions — Discrimination — s. 150(3) — Circumstances of complaint required Board to deal with complaint immediately — Unlawful discipline denying member status to assert political rights in an election — Board exercised discretion to hear and decide complaint without requiring resort to internal procedures.*

*Board — Remedial power — s. 16(1) — Order to cease and desist — Order to terminate disciplinary proceedings — Order that election process terminated and that CLAC make a new good-faith decision on candidacy.*

Jan Noster gave notice that he intended to stand for election to the Christian Labour Association of Canada Local 63's ("CLAC") Local Board. The incumbent Local Board commenced expulsion proceedings for allegations of violating the "pledge" against Noster and suspended him pending those proceedings. The incumbent Local Board also determined that they would not allow Noster to stand for election for union office. At the commencement of the hearing, CLAC conceded that the summary suspension violated s. 24 of the Code, and the Board so declared.

The Board determined that the complaint should be dealt with immediately. The CLAC Constitution

provides no particular process or time frame for appeals, nor did it contain assurances that the appeal would be heard in a reasonable period of time. Matter involved denial of member's right to assert political views in an election which was underway. Board exercised discretion to hear and decide without requiring complainant to resort to internal appeal procedure.

The Board noted that there was no provision in the CLAC Constitution that could arguably support a charge of violating the "pledge", and that there was no notification as to which constitutional provisions or membership obligations Noster allegedly violated. The Board further noted that not only was the charge in this case not specific enough to satisfy s. 24 of the Code, the Constitution failed to specify any disciplinable offence of any certainty of which there could be a charge. The decision to commence expulsion proceedings amounted to arbitrary and discriminatory conduct motivated by political considerations in violation of s. 151(1) of the Code.

The Board ordered CLAC to cease and desist its breaches of the Code in respect of Noster. The Board ordered CLAC to terminate the proceedings at which the expulsion resolution was to be dealt with. As the decision to leave Noster off the ballot was part of the wrongful decision to commence expulsion proceedings it amounted to "disciplinary action or other penalty" for which the Board could order a remedy under s. 16(1)(b)(iv). The Board ordered CLAC to make a new, good-faith decision on his candidacy that is free of discrimination and that the current election process be terminated.

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#### REASONS FOR DECISION

¶ 1 Jan Noster is a member of the Construction Workers Union (CLAC), Local 63. Local 63 is affiliated with the Christian Labour Association of Canada. Mr. Noster is also a member and full-time employee of Local 1325 of the United Brotherhood of Carpenters and Joiners of America ("Carpenters") which is one of the member unions of the Alberta and Northwest Territories Building Trades Council (the "Building Trades"). We understate by noting that CLAC and the Building Trades unions are rival labour organizations in the Alberta construction industry.

¶ 2 This last spring, Mr. Noster gave notice that he intended to stand for election to Local 63's Local Board. Shortly thereafter the incumbent Local Board commenced expulsion proceedings against him and purported to suspend him pending those proceedings. It also determined that it would not approve him as a candidate to stand for union office. This caused his name to be omitted from the mail-in ballots distributed to members. Mr. Noster complained to this Board. The matter came on for hearing after the ballots had been received and when both a count of the vote and the expulsion proceedings were imminent. After hearing evidence and argument, the Board gave an interim preservative order staying the counting of the ballots and staying consideration of the resolution to expel Mr. Noster.

¶ 3 The next day, April 24, 1998, we issued a letter decision finding that Local 63 had violated s. 24 and s. 150(1)(b) of the Labour Relations Code. The letter gave partial reasons and read as follows:

The panel in this matter (Wallace, Gaal, Campbell) has met and considered the evidence and submissions in respect of Mr. Noster's complaints against Construction Workers' Union (CLAC), Local 63 ("Local 63") under sections 19, 24, 149(f) and 150(1) of the Labour Relations Code.

These complaints involved internal union proceedings that are imminent, and that are presently stayed by an interim order of the Board given at the close of the hearing on April 23, 1998. The panel has therefore elected to give its decision immediately, with

full written reasons to follow. Following are our directives, together with the essential findings of fact and conclusions of law that support them. We will elaborate on our assessment of the evidence and our analysis of the applicable law in the later reasons.

We find:

1. That, as admitted by Local 63 prior to and during the proceedings, the suspension of Mr. Noster in Mr. Vanderlaan's letter of March 23, 1998 was imposed without due process as required by s. 24 of the Labour Relations Code
2. That the decision to commence new expulsion proceedings against Mr. Noster taken at the Local 63 Executive Board meeting of March 5, 1998 was a political decision based upon Mr. Noster's affiliation with the United Brotherhood of Carpenters, his known opposition to the leadership of Local 63, and his declared intention to seek office in Local 63, and not on any actions that constitute an arguable disciplinary offence.
3. The charge against Mr. Noster contained in the March 23, 1998 letter to him from Local 63 -- that "you are in violation of your membership pledge ..." is vague, devoid of particulars, and does not allow him to prepare full answer and defence when the expulsion resolution is presented to the membership meeting scheduled for April 25, 1998.
4. The decision to commence expulsion proceedings against Mr. Noster, together with the considerations that led to that decision mentioned in paragraph (1) above, were a substantial contributing cause to the decision of the Local Board immediately afterward to omit Mr. Noster's name from the slate of candidates presented to the membership for election to the two vacancies on the Local Board.

With those findings in mind, we conclude:

1. The decision to charge, and to commence expulsion proceedings against, Mr. Noster was arbitrary. The decision amounted to a discriminatory application of the standards of discipline of the trade union, contrary to s. 150(1)(b) of the Labour Relations Code.
2. The charge contained in the March 23, 1998 letter is not a "specific charge in writing" within the meaning of s. 24(a) of the Code. The commencement of expulsion proceedings on the basis of that charge violates s. 24 of the Code.
3. The Board's remedial authority in respect of s. 24 need not await the actual decision of the Union to impose discipline.
4. The circumstances of this case are such that the complaint should be dealt with by the Board without delay and without first requiring Mr. Noster to avail himself of any rights of appeal under the trade union's constitution.
5. We conclude that Mr. Noster by the wrongful commencement of expulsion proceedings also lost a right to be considered fairly and in good faith for inclusion on the Board's approved list of candidates. Full rectification of the

wrongful decision to charge and commence expulsion proceedings against Mr. Noster demands that his nomination for election to Local 63's Board receive fresh consideration by the existing Local Board. It is therefore necessary to direct that the ballots already cast be destroyed and the election process be recommenced at the point where the Local Board must consider which of the 15 candidates will stand on the ballot presented to the membership.

6. The Board need not interpret Articles 8.03 and 8.04 of CLAC's constitution. Any claim Mr. Noster wishes to make that the Local Board has no discretion to approve nominees for office and that he has an unqualified right to stand for election, is a matter for the Courts. We proceed on the basis that even under the Union's interpretation of these Articles, Mr. Noster had a right to fair consideration for candidacy that was not given.

Accordingly, the Board:

1. Declares that Mr. Noster was suspended from membership in Local 63 contrary to s. 24 of the Code.
2. Declares that Local 63 charged and commenced expulsion proceedings against Mr. Noster contrary to s. 150(1)(b) of the Code.
3. Declares that Local 63 initiated disciplinary proceedings against Mr. Noster without serving him with specific charges, contrary to s. 24 of the Code.
4. Directs that Local 63 cease and desist this and similar breaches of the Code in respect of Mr. Noster.
5. Directs that the expulsion proceedings against Mr. Noster commenced by Mr. Vanderlaan's letter of March 23, 1998 and scheduled for consideration at the Local 63 membership meeting of April 25, 1998 be terminated.
6. Directs that the election of Board members closing April 24, 1998 be set aside and the mail-in ballots be destroyed without counting.
7. Directs that the Board of Local 63 recommence election proceedings at the point reached at the outset of the Board meeting of March 5, 1998; and that the Board re-determine which of the 15 nominated candidates will stand on the ballot. The Board is directed to determine that issue in good faith and without consideration of Mr. Noster's other union affiliation and his declared opposition to the current leadership of Local 63.

As compliance with directives (5) and (6) may occur in advance of our full written reasons being released, we think it appropriate to say at this time that, although we make no direction about the form of or process followed in any Local Board meeting that reconsiders the slate of approved candidates, it may be in the Local's best interests to craft an approval process that is much more transparent and open than the process followed in this case.

The Union's complaint under s. 19 is dismissed. Section 19 is a declaratory section, not a prohibition that is capable of being breached.

The Union's complaints under s. 149(f) and 150(1)(a) are dismissed, either as not being made out or as being surplusage and unnecessary to decide in view of the findings and remedies given.

This panel retains jurisdiction over any disputes that remain over implementation of this decision.

J. Leslie Wallace  
Vice-chair

¶ 4 These are our expanded reasons.

### I. The Facts

¶ 5 This is not the first attempt by Local 63 to discipline Mr. Noster. A previous suspension was the subject of a Board decision reported as *Jan Noster v. Construction Workers Union (CLAC), Local No. 63* [1997] Alta. L.R.B.R. 560 (the "Blair panel decision"). The Board described the essential facts as follows (at 561):

At a CLAC membership meeting on January 16, 1997, Mr. Noster participated in a manner consistent with his "dissident" status. At the conclusion of the meeting, and not unpredictably, he and Co Vanderlaan, CLAC's Alberta Saskatchewan Director, had heated words, including words by Mr. Vanderlaan which suggested that Mr. Noster's days as a CLAC member were numbered. Following an exchange of correspondence in which Mr. Noster and CLAC took differing views about the subject matter of the membership meeting, Mr. Noster was suspended from CLAC membership by letter dated February 7, 1997. Although he has subsequently been reinstated to membership as a result of a membership meeting in which a recommendation that he be expelled from CLAC was rejected, Mr. Noster continues to complain that CLAC's actions taken through Mr. Vanderlaan violated the Code.

(...) Obviously, Mr. Noster has succeeded in irritating some people within the CLAC organization, and in particular Mr. Vanderlaan. Further, the CLAC executive and Mr. Vanderlaan have apparently come to the conclusion that Mr. Noster's apparent role as an overt Carpenters "mole" is incompatible with his duties as a CLAC member. That debate is not one which we are prepared to referee in the course of this proceeding. Mr. Noster has, as a CLAC member, certain rights under the Code which he claims have been violated, and he is entitled to have the Board determine whether his complaint has merit.

¶ 6 The Board upheld Mr. Noster's complaint that his suspension had been imposed in violation of s. 24 of the Labour Relations Code. It held that s. 150 of the Code was inapplicable. As remedy the Board issued a declaration of the breach, Mr. Noster's suspension having already been reversed by resolution of the Local 63 membership. The Board reasoned as follows (at 564):

Section 24 places substantial procedural limits on the right of trade unions to suspend, expel, take disciplinary action or impose penalties on members. Specific charges must

be served personally or by double registered mail. Members are entitled to a reasonable time to prepare their defence to such charges. A full and fair hearing must be accorded, including the right to be represented by counsel. A finding must then be made that the member is guilty of the charges. Absent all these steps, among the things that a Union may not do is suspend. The fact that none of these steps occurred prior to the letter of February 7 purporting to suspend Mr. Noster (albeit on an interim basis) compels a finding that CLAC acted in violation of section 24, and we so declare.

Mr. Noster also complains that CLAC's actions violated section 150. In a nutshell, that section prohibits discriminatory application of membership rules and discipline standards. We note that section 150 contains provisions aimed at achieving the exhaustion of internal remedies (subject to certain exceptions) which are absent from section 24. In our view, section 150 contemplates situations where there has been apparent compliance with section 24, but where notwithstanding the correctness of the procedure followed there is discriminatory application of rules and standards. In a case such as this one, section 24 trumps section 150 - CLAC was not in a position to apply membership rules or disciplinary standards to Mr. Noster at all, because it had not ensured that the procedural prerequisites for such application were achieved. In this regard we note that section 24 creates a procedural buffer which may serve to protect against, among other things the discriminatory application of rules and standards. Since CLAC was not in a position to engage in such an exercise at all, we see no purpose in considering whether it did so discriminatorily. In cases like this one, a complete remedy will generally be achieved by a finding that section 24 has been violated and whatever remedies might fit the particular facts.

¶ 7 Even before the Blair panel decision was rendered, a new dispute between Mr. Noster and the Local 63 executive over election procedures had started to brew. To understand this dispute we need to consider Local 63's election procedures. Election procedures in locals affiliated with CLAC are set out in Article 8 of CLAC's constitution, which says in part:

8.02 Local Board members shall be members in good standing of the Local. A Local Board shall normally consist of a President, a Vice-President, a Secretary, a Treasurer, and an Assistant Secretary-Treasurer. (...)

8.03 The Local Board has the right to present a nomination of candidates for the above-named offices. The membership shall be informed of the Board's nominees at least two weeks prior to the meeting at which the elections are to be held. The members may present names of possible nominees to the Local Board. Nominations for any office may be added from the floor at the meeting at which the elections are held, but only by a two-thirds majority vote of those present. No one shall be nominated who is not a member in good standing of the Local, or has not indicated his willingness to serve if elected, or is not qualified to give leadership that is in harmony with this Constitution, or whose conduct might reflect unfavourably upon the CLAC.

8.04 The officers shall be elected at the first meeting of the Local after the end of the calendar year. All officers shall be declared elected if they receive a majority vote at a legally constituted meeting. In case an additional vote is necessary, the person receiving the highest number of votes shall be declared elected. A legally constituted meeting is one of which the members have been properly notified. The Local Board may conduct elections by mailed ballots if geographic distances within the Local's area

of jurisdiction are likely to prevent members from attending the meeting at which elections are to be held. The membership shall be given reasonable time to respond to the Board's invitation for possible nominees before the Board prepares the final slate of nominees. In case of mailed-ballot elections, nominations may not be added from the floor at the meeting at which the ballots are tabulated. In the event of a tied vote, the Board shall resolve the matter by the toss of a coin.

¶ 8 We heard testimony from Mr. Vanderlaan and we received meeting minutes that elaborate on the way in which Local 63 interprets these constitutional provisions. We learned that in a typical election procedure for this local, the incumbent Local Board commences the nomination process by inviting input from the membership on who might stand for election. Usually members suggest names by mail. Where the election is to be by mail-in ballot, which has occurred for the last several years, a membership meeting is held at which members can also nominate candidates from the floor.

¶ 9 Nominations from the floor are treated only as recommendations to the Local Board. The incumbent Local Board reserves to itself the decision on how many, and which, recommended candidates will be placed on the ballot and submitted to the electors. In doing so, the Local Board also reserves to itself the authority to apply the considerations in Article 8.03, including the discretionary considerations of whether the nominee is "qualifi[ed] to give leadership in harmony with the constitution" or guilty of "conduct [that] might reflect unfavourably upon CLAC." Only the nominees selected by the incumbent Board are placed on the ballot, which is then mailed to members.

¶ 10 Even before the release of the Blair panel decision, Mr. Noster had indicated his intention to seek election to the Local 63 Board. It is not entirely clear from the evidence when the nomination process commenced for the two Board vacancies to be filled in 1998. Nominations appear to have been on the agenda at a September, 1997 membership meeting. The process seems to have been nearly completed by the end of January, 1998, for on January 31 Local 63 held a membership meeting for which final nominations from the floor were on the agenda. Mr. Noster and Ken Eerkes were nominated from the floor. According to the election procedure outlined for us by Mr. Vanderlaan, this entitled Messrs. Noster and Eerkes to be among the recommended candidates considered by the Board for inclusion in the final list of candidates for the two open Board positions.

¶ 11 Sometime before March 5, 1998, Mr. Vanderlaan came into possession of a copy of the Winter 1998 edition of the "Flash," the newsletter of the Alberta and Northwest Territories (District of Mackenzie) Regional Council of Carpenters and Allied Workers, a regional council of Carpenters locals including Local 1325. Mr. Noster serves as the Acting Editor of the newsletter. Three things in the newsletter upset Mr. Vanderlaan. First, it contained a short news item headlined "UBC's Jan Noster Challenges CLAC in Alberta." In part it read:

In an unusual and imaginative challenge to CLAC, UBC member Jan Noster joined CLAC Local 63 in Edmonton. Not unpredictably, Noster was quickly branded a dissident for the strong views he expressed at a CLAC membership meeting. He exchanged "heated words" with Co Vanderlaan, CLAC's Alberta Saskatchewan Director, and was subsequently summarily suspended on the recommendation of the Staff Council. And this is where things become interesting.

At the following membership meeting the Staff council recommendation that Noster be expelled was defeated by the rank and file. Noster then took CLAC to the Alberta Labour Relations Board in a complaint that CLAC had violated section 24 of the Code which prescribes the procedural rules of a trade union in disciplining its membership.

The Board ruled in favour of Noster on two counts. CLAC had violated section 24 and, in fact, the discipline procedures in CLAC's Constitution violate section 24 of the Code. This is a most interesting decision in view of the fact that CLAC and its research/public opinion ally, the Work Research Foundation, are concerned about "forced unionism" trampling on individual rights.

¶ 12 Second, there appeared a half-column advertisement for Mr. Noster's candidacy in the CLAC elections. It was clearly aimed at Carpenters members who also hold membership in CLAC. It said:

ARE YOU A CLAC MEMBER?  
 Make sure you are at the next meeting ...  
 January 31, 1998 at 9:00 AM  
 CLAC Hall  
 15505 Yellowhead Trail  
 Edmonton, Alberta  
 &  
 Vote for Jan Noster  
 Let's get me Elected !!!!!

¶ 13 This message was superimposed over an emblem, comprising a block-letter "CLAC" with a circle around it bisected by a diagonal line - the universal "Not Allowed" symbol - and in lettering around the circumference of the circle the words "Fight Back."

¶ 14 Last, there appeared on one page of the newsletter a small cartoon called "Here's Hoping." It showed caricatures of three persons on a sled about to be pushed by a fourth person over a precipice labelled "Oblivion". The lead figure is an aged man representing 1997, the old year. Behind him sit two men labelled "Company Union" and "Hard Times". They are about to be pushed over the edge by an infant representing 1998, the new year, who is telling them to "hold on tight!" An onlooking figure, an upright animal on snowshoes, is saying "Give `em a good shove, kid!" Nowhere is CLAC identified as the subject of the cartoon. Mr. Noster testified that the cartoon comes from a cartoon collection of his and is approximately 100 years old (though it was obviously altered to insert the dates "1997" and "1998").

¶ 15 Though this newsletter was published sometime between the release of the Blair panel decision on November 10, 1997 and the CLAC membership meeting of January 31, 1998, Mr. Vanderlaan either first viewed it or first acted upon it much later. The Local 63 Board met on March 5, 1998. On the agenda for that meeting was selection of the final slate of candidates for the 1998 election. Mr. Vanderlaan attended the meeting.

¶ 16 The minutes of this Board meeting record that the selection of candidates was item no. 10 at the meeting. Item no. 9 immediately preceding it dealt with disciplinary matters, in fact one disciplinary matter involving Mr. Noster arising out of the Carpenters newsletter. The minutes capture the discussion this way:

The Board has received copies of a Carpenter's Union Regional Council newsletter edited by Jan Noster. In this newsletter there are some defamatory items concerning CLAC. A cartoon, an ad urging Carpenter's Union members who are also CLAC members to vote on January 31, 1998 to elect Jan Noster even though there were no elections at this meeting, either scheduled or announced and an article full of

misinformation and lies concerning CLAC and its Alberta Director. In addition, there is an anti-CLAC logo in which Jan Noster asks for members votes.

Based on the above and the ongoing anti-CLAC conduct of Noster, the Board decides to initiate disciplinary action leading to the expulsion of Jan Noster from the membership of Local 63. The Alberta Director is instructed to start those proceedings in conjunction with legal council [sic] to ensure our action meets the requirements of the constitution and also of the Alberta Labour Relations Code. The process to be initiated as soon as possible to conclude at the next membership meeting with a resolution that Noster be expelled. On motion duly seconded this action is unanimously approved.

¶ 17 Immediately after this discussion the Board turned to item 10, the setting of the slate of candidates for the 1998 Board election. Fourteen members had been nominated, including Mr. Noster. After discussion the Board endorsed six of the candidates to stand for election to the two vacant positions. The six included a Mr. Gerry Uitvlugt, a sitting member of the Board and a participant in the meeting. Mr. Noster was not one of the six. Mr. Vanderlaan testified that he was privy to the discussion and participated in it, and would have said that he did not think Mr. Noster would make a good leader; that he would not be able to give the leadership that is in harmony with CLAC's constitution. He testified that the Board took pains to deal with the election issue separately from the disciplinary proceeding against Noster, and that the wisdom of nominating Noster in light of his dissident status was not the subject of any discussion. After the Board set the slate, the meeting concluded with the appointment of a balloting committee, setting of the ballot mailout date and deadline for receipt of ballots, and approval of the written summary of election procedures to go out to members in the mailout.

¶ 18 Mr. Vanderlaan had been directed by the Local Board to seek legal advice in commencing disciplinary proceedings against Mr. Noster. He did not do so. He testified that he was unable to reach counsel in a timely manner and so took it upon himself to start the disciplinary proceedings without advice. The result was a letter of March 23, 1998 to Mr. Noster that we reproduce in its entirety:

Dear Jan:

The Board of Construction Workers' Union (CLAC), Local 63 has recently been made aware of your activities in opposition to Local 63. The Board has also been supplied with documents, which clearly indicate your attempts to discredit the work and representation policies of Local 63 and undermine the same. The Carpenters Union Regional Flash magazine indicates your attempts to undermine CLAC. Your recent organizing for the Carpenters Union also works contrary to CLAC interests.

The Board believes that you are in violation of your membership pledge made at the time you joined Local 63 as a member. The pledge states, "I hereby apply for membership in the above-named union, and pledge to uphold its Constitution and By-laws and faithfully to fulfil my membership obligations". This is the second time this has occurred and the Board hereby informs you of the following decisions and actions:

- 1) Effective immediately your membership in Construction Workers' Union (CLAC), Local 63 is suspended. All rights, privileges, and duties are likewise suspended. You may address the Board's actions and appeal the same at the next meeting of the Board scheduled for Monday, April 13, 1998. You may attend this meeting in person at 8:00 p.m. sharp to make

your appeal. You may be accompanied, if you so wish, by council [sic].

- (2) The Board plans to submit a resolution calling for your expulsion from the membership of Construction Workers' Union (CLAC), Local 63 at the next membership meeting scheduled for Saturday, April 25, 1998. You may attend and state your defense at 10:15 a.m. You may be accompanied by legal council [sic] if you so wish.

Should your appeal to the Board and the decision of the membership result in your expulsion, you may appeal that decision to CLAC's National Board, in accordance with the provisions of Article 6.05 of the Constitution, a copy of which is herewith enclosed.

Both the Board meeting and membership meeting will be held at the CLAC Training Centre at 15505 Yellowhead Trail, Edmonton Alberta.

On behalf of the Board,

[Signed]

Co J. Vanderlaan  
Alberta Director.

¶ 19 On April 7, 1998, Mr. Noster through counsel filed this complaint. His suspension appeal before the Board scheduled for April 13 was rescheduled to April 23, 1998. The suspension was ultimately withdrawn by letter of Local 63 counsel dated April 21, 1998. On April 24, the day of the closing of the mail-in ballot procedure and the day before the meeting to consider the expulsion resolution, the complaint came on for hearing before the Labour Relations Board, with the results already described.

## II. Legislation

¶ 20 The first section of the Labour Relations Code relevant to this matter is section 24:

24 No trade union shall expel or suspend any of its members or take disciplinary action against or impose any form of penalty on any person for any reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union, unless that person has been

- (a) served personally or by double registered mail with specific charges in writing,
- (b) given a reasonable time to prepare his defence,
- (c) afforded a full and fair hearing, including the right to be represented by counsel, and
- (d) found guilty of the charge or charges, and if a monetary penalty has been imposed, fails to pay it after having been given a reasonable time to do so.