

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 6/2008

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SETTLEMENT OF DISPUTE

BETWEEN

UNIVERSITY OF TECHNOLOGY JAMAICA

AND THE

UNIVERSITY AND ALLIED WORKERS UNION

AND THE

*AWARD*

I.D.T. DIVISION

MR D. HUNTER

- CHAIRMAN

MR.E. PALMER

- MEMBER

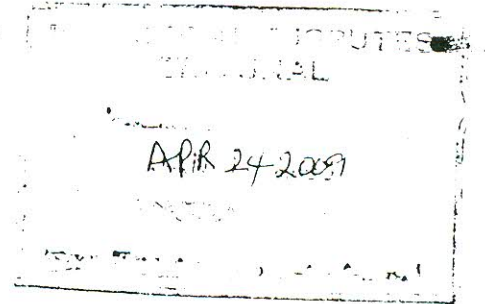
MR D. TREVOR McNISH

- MEMBER

DECEMBER 9 , 2008

IDT 6/2008

INDUSTRIAL DISPUTES TRIBUNAL  
AWARD  
IN RESPECT OF  
AN INDUSTRIAL DISPUTE  
BETWEEN  
THE UNIVERSITY OF TECHNOLOGY JAMAICA  
AND THE  
UNIVERSITY AND ALLIED WORKERS UNION



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**REFERENCE:**

By letter dated April 14, 2008, the Honourable Minister of Labour and Social Security pursuant to Section 11A(1) (a) (1) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference was as follows:

"To determine and settle the dispute between the University of Technology Jamaica on the one hand, and the University and Allied Workers Union on the other hand, over the dismissal of Ms. Carlene Spencer."

### DIVISION:

The Division of the Tribunal which was selected in accordance with Section 8(2)(c) of the Act and which dealt with the matter comprised:

|                      |   |                              |
|----------------------|---|------------------------------|
| Mr. Donovan Hunter   | - | Chairman                     |
| Mr. Evert Palmer     | - | Member, Section 8(2)(c)(ii)  |
| Mr. D. Trevor McNish | - | Member, Section 8(2)(c)(iii) |

### REPRESENTATIVES OF PARTIES:

The Company was represented by:

|                      |   |                                   |
|----------------------|---|-----------------------------------|
| Mr. G. Goffe         | - | Attorney-at-Law                   |
| Ms. A. Rockhead-Reid | - | Employee Relations Officer, (HRD) |

The Union was represented by:

|                     |   |                                |
|---------------------|---|--------------------------------|
| Mr. Lambert Brown   | - | President, U.A.W.U.            |
| Mr. M. Johnson      | - | 2 <sup>nd</sup> Vice President |
| Mr. O. Campbell     | - | Negotiating Officer            |
| Ms. Carlene Spencer | - | Aggrieved Worker               |

### SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during fourteen (14) sittings between the 2<sup>nd</sup> July 2008 and 25<sup>th</sup> September, 2008.

## BACKGROUND TO THE DISPUTE

The dispute is between the University of Technology Jamaica hereinafter referred to as UTECH or University and the University and Allied Workers Union hereinafter referred to as the Union over the dismissal of Miss Carlene Spencer for unauthorized absences between the 5<sup>th</sup> June to 20<sup>th</sup> July 2006. The University contends that the period in question was sought by Miss Carlene Spencer for her Vacation Leave, but she failed to get an approval from her immediate supervisor and took the time off from her job. The Company considers the breach serious enough to have dismissed her.

The Union disagreed with the dismissal and contended that Miss. Carlene Spencer did get approval to go on leave.

## HISTORY OF THE DISPUTE BASED ON THE BRIEFS OF THE PARTIES AND EVIDENCE SUBMITTED

### UNIVERSITY'S CASE

Miss Carlene Spencer was employed to the University as a Laboratory Technician on 18<sup>th</sup> October, 2004. Miss Spencer applied and received approval to proceed on three (3) days Departmental Leave for the period of May 29-30, 2006 and one day for the 2<sup>nd</sup> June, 2006. Miss Carlene Spencer applied for vacation leave but failed to complete the application process which includes:

- (a) Complete and sign leave application form.
- (b) Deliver form to immediate supervisor for approval.
- (c) Receiving approval from supervisor upon conditions being fulfilled by employee.

Miss Carlene Spencer had oral discussions with her supervisor, Mr. Michael Bramwell about going off on leave from the 5<sup>th</sup> June 2006 to the 20<sup>th</sup> July 2006 on condition that



Mr. Raymond Martin, Lecturer with responsibility for the Laboratory to which she was assigned, first approved the leave application. Miss Spencer failed to discuss the issue of her leave with Mr. Martin, neither did she return to Mr. Bramwell to have her leave application approved as required.

Miss Spencer did not sign the leave application form as required and did not verify whether the application had been approved prior to proceeding on leave.

Miss Spencer was expected to return from Departmental Leave on 31<sup>st</sup> May, 2006 but failed to do so and sent a message by a co-worker that she was ill. Miss Spencer was also absent from work on the 1st June 2006 but reported to the University that she was ill, she could not recall the name of the co-worker whom she conveyed this message to. The policy of the University requires an employee to report illnesses to the supervisor, not a co-worker.

June 3<sup>rd</sup> and 4<sup>th</sup>, 2006 was a weekend and Miss Spencer was not required to be at work for those days.

On 7<sup>th</sup> June, 2006 after noticing that Miss Spencer had been absent from work for over two (2) days, Mr. Bramwell took an unapproved leave form to the Human Resources Department to advise that she had proceeded on leave without approval. Under remarks, he commented "She is currently off" and signed the form.

Several attempts were made by Mr. Bramwell to contact her on her cellular phone without success.

Miss Spencer was expected to return from her unauthorized vacation leave on the 21<sup>st</sup> July 2006, but she did not. On July 24, 2006, a co-worker received a call indicating that Miss Spencer was ill. She failed to inform her supervisor of her illness and alleged that she had applied for Departmental Leave for that day, but by Memorandum from the University and Allied Workers Union, dated the 23<sup>rd</sup> August, 2006, the Union accepted that she was absent without

authorization for the 21<sup>st</sup> July, 2006 and recommended an oral warning for Miss Spencer, followed by counselling.

Miss Spencer did not return to UTECH until the 3<sup>rd</sup> August, 2006 at which time she presented a medical certification for the period 24<sup>th</sup> -28<sup>th</sup> July, 2006 and July 31<sup>st</sup> - 4<sup>th</sup> August, 2006. She admitted to having obtained the medical certificate because she had been informed by co-workers that Management had an issue with her leave. Miss Spencer reported for work on 8<sup>th</sup> August, 2006, and was suspended pending the outcome of the investigation on 9<sup>th</sup> August, 2006.

In a meeting held with Miss Spencer on the 11<sup>th</sup> August, 2006 she **admitted that she did not wait to get approval before proceeding on leave**, she had not been aware that her supervisor signed the leave form on June 7, 2006 until after her return to work. She was aware, however, at the time she went on leave that approval **had not** yet been given by her supervisor, Mr. Bramwell, because he was waiting for her to confirm to him that she had received approval from Mr. Martin.

Miss Spencer's unauthorized absence from work affected UTECH as she had forgotten to submit an important inventory report, which she knew, was due, but which she admitted in said meeting that she had forgotten about.

Under UTECH Disciplinary Code, unauthorized absence from work for a period of at least five (5) consecutive days is grounds for dismissal.

During the period of unauthorized absence, Miss Spencer received full pay.

On 3<sup>rd</sup> April 2007, a Disciplinary Tribunal constituted under UTECH'S Disciplinary Code, convened to hear a charge of "Unauthorized absence from work for a period of Thirty four (34) days from 5th June, 2006 to 21<sup>st</sup> July, 2006." Miss Spencer was given due notice to attend the hearing but did not object to the schedule date. **Notwithstanding, neither she nor the Union attended the hearing.** The Disciplinary Tribunal heard and considered the evidence presented, including the testimony of Miss Spencer's supervisor, and made a recommendation to the President to terminate Miss Spencer's services effective 30<sup>th</sup> April, 2007.



## UNION'S CASE

1. Miss Carlene Spencer has been employed to "the University" since 18<sup>th</sup> October, 2004 as a Technician. After discussion with Mr. Michael Bramwell her supervisor, she applied for thirty four (34) days Vacation Leave for the period June 5, 2006 to July 20, 2006.
2. The relevant form was filled out and referred by the Supervisor and approved by the Human Resource Management Officer.
3. Miss Carlene Spencer, while on Vacation Leave received her monthly salary for June, 2006.
4. While on vacation leave, Miss Spencer received no written or oral communication from "the University" querying or complaining about her absence from work or any issues relevant to her Vacation Leave.
5. On July 21, 2006, Miss Carlene Spencer was due to return to work from Vacation Leave. She was unable to resume work due to illness. Miss Carlene Spencer was pregnant at that time. She attended a doctor on July 24, 2006, and was pronounced unfit to carry out her occupation, where she was given five (5) days Sick Leave. She was ordered to have full bed rest. On July 31, 2006, Miss Spencer again attended doctor and received another Medical Certificate with five (5) days Sick Leave.
6. On August 3, 2006, Miss Carlene Spencer visited "the University" to hand in her Medical Certificates. She was told by one of her colleagues that the management had an issue with her leave. She went to her department to speak to the Head of the Department, Ms. Audrey Hussey. She was not there, so she left a note for her.

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7. Miss Carlene Spencer returned to work on August 8, 2006, and was called to the Human Resources Department. Mrs. Antoinette Rockhead-Reid, Employee and Labour Relations Officer, told her that there are some concerns with her Vacation Leave, and a meeting will have to be held with all the parties concern. This was the first time any issues re Vacation Leave was been raised.
  8. August 11, 2006 and August 18, 2006, meetings were held to discuss the matter. "The Union" was represented by Mr. Alexander Okuonghae, Chief Union Delegate, UAWU. The matter was not settled. Mr. Bramwell, her Supervisor, admitted that Miss Carlene Spencer discussed her intention to proceed on Vacation Leave with him. This he confirmed in the meeting on August 11, 2006.
  9. On August 22, 2006, Mr. Alexander Okuonghae wrote the Management of "the University" stating the Union's position on the matter, also objecting to the Management asking Miss Spencer to stay away from work since the 9th August, 2006, without any official notification to this effect.
  10. Miss Carlene Spencer applied for and was granted fifty-six (56) days Maternity Leave with full pay for the period October 20, 2006, to December 14, 2006.
  11. After December 15, 2006, she continued to receive half (1/2) salary while she remained off the job.
  12. The matter was referred to the President of the University who tabled the matter at the Council meeting held on December 11, 2006, and a Disciplinary Tribunal was established to hear the matter.
  13. On February 6, 2007, the Disciplinary Tribunal met to hear a charge against Miss Spencer for having taken leave for over thirty four (34) days without authorization. This was after the first date January 8, 2007, was cancelled.



14. Miss Carlene Spencer was represented by Mr. Lambert Brown, President of the University and Allied Workers Union. Mr. Brown raised several points in regards to the procedures in the case. One important point was how the charge was formulated. The Chairman adjourned the proceedings to await the issuance of the reformulated charge.
16. The Union was not satisfied that all concerns were addressed, so the matter regarding procedure in the case was referred to the Ministry of Labour and Social Security by letter dated March 15, 2007
17. On April 3, 2007, the Disciplinary Tribunal met to hear a charge against Miss Carlene Spencer for unauthorized absence from work for a period of thirty four (34) days from June 5, 2006 to July 21, 2006. The Disciplinary Tribunal found Miss Carlene Spencer guilty and recommended dismissal.
18. The Union was still waiting on the results from the Ministry of Labour and Social Security's intervention; therefore, Miss Spencer and the "Union" were not present at the hearing.
19. On May 17, 2007, the Union wrote the Ministry of Labour and Social Security on the dismissal of Miss Carlene Spencer.
20. On July 5, 2007, a meeting was held at the Ministry of Labour. The matter was not resolved.
21. After the meeting, the Ministry of Labour continued to have dialogue with the University's Management and on August 15, 2007, the Ministry of Labour and Social Security wrote the Union stating that the University was prepared to offer Miss Carlene Spencer an opportunity to appeal the decision of the Disciplinary Tribunal.
22. On September 11, 2007, the Union wrote the University appealing the decision to dismiss Miss Carlene Spencer.

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23. On November 9, 2007 the University responded by sending to the Union a copy of a letter addressed to the University to the response from their attorneys, Myers, Fletcher and Gordon.
  24. On November 21, 2007 the Union wrote the Ministry of Labour and Social Security requesting that the matter be referred to the Industrial Disputes Tribunal.

### TRIBUNAL'S RESPONSE

The University has not done justice for itself by operating a leave application process which is not documented, and hence is vulnerable to various interpretations.

Mr. Bramwell attested that this was correct when he referred to parts of the unwritten procedure being governed by "cultural norms." The Tribunal ponders about accountability in these circumstances. Of note at the hearing into this dispute, the Chairman of the Disciplinary Tribunal commented in a letter to the President of the University that he had to "acknowledge there were inaccuracies in the leave application process."

### The Evidence

- I. The evidence revealed that Mr. Bramwell and Miss Carlene Spencer had discussions about her taking leave effective 5<sup>th</sup> June 2006 to 20<sup>th</sup> July 2006 approximately one month prior to 5<sup>th</sup> June 2006.
- II. Mr. Bramwell did instruct Miss Spencer to inform Mr. Raymond Martin, Head of Division, Biological Science, of her intention to go on leave, which she did. Her discussion with Mr. Martin centered around her carrying out certain tasks before she proceeded on leave, but she was not aware of a time limit to complete the task.
- III. Prior to going on vacation leave she attempted to inform Mr. Martin of her departure but failed to locate him so she informed his Assistant, Mrs. Andrade.

- IV. There is evidence that Miss Spencer had filled out the leave form at least one month before 5th June 2006 and this was corroborated by Mr. Bramwell under cross-examination by Mr. Brown.
- V. In spite of the fact that Mr. Bramwell was aware that Miss Spencer would be proceeding on vacation leave the 5<sup>th</sup> of June 2006, he had never called her attention to the absence of her signature on the form with respect to her vacation leave and that the time she requested for her vacation had to be tentative as he had claimed.
- VI. The evidence disclosed that the procedure for applying for vacation leave was to seek an oral approval from the Supervisor and then state the required period for the vacation leave on the leave form, which is left in the faculty's office. The leave form will not necessarily be approved in the presence of the applicant.
- VII. Miss Spencer admitted she had not affixed her signature for the vacation leave requested due to an oversight, and we accept her explanation, as we cannot see what she would have gained by not signing the form.
- VIII. On 7<sup>th</sup> July 2006, Mr. Bramwell took Miss Spencer's leave application form to Miss Tricia Dawkins, the Leave Officer in the Human Resource Department and informed her that Miss Spencer had gone off without signing the form and enquired as to what he should do. Miss Dawkins informed him to make a remark and sign the form, which he did. His comment under the column identified as "Remarks" was "**she is currently off.**"
- IX. We considered it strange that Mr. Bramwell had informed Miss Dawkins that Miss Spencer had proceeded to go on leave without signing the leave form but failed to mention that he was not in approval.



X. Miss Dawkins initialed the relevant column on behalf of the Human Resources Management Department and entered the information on the computer, which she would not have done if she thought the leave was not authorized.

XI. This Tribunal considers it quite reasonable to infer that Mr. Bramwell had intended to approve the vacation leave for Miss Spencer and subsequently did when he affixed his signature to the leave forms and wrote "she is currently off".

#### **Absence for the 21<sup>st</sup> July, 2006**

Although Miss Spencer had applied for one day's Departmental Leave on the 21<sup>st</sup> July, 2006 this was not approved by Mr. Bramwell. We also took into account the letter from Mr. Alexander Okuonghae who conceded in a Memorandum to Miss Jennifer Ellis, Director Human Resources that Miss Spencer's Departmental Leave was without due approval.

The Union had made the point in evidence that Mr. Okuonghae wrote the Memorandum without consultation with Miss Spencer, but we have no evidence that the Union had written to the University advising that the Memorandum should be disregarded. It is also noteworthy that Mr. Bramwell had not approved the Departmental Leave. The Tribunal regards the absence of Miss Spencer on the 21<sup>st</sup> July 2006 as unauthorized.

#### **Failure to Attend the Hearing**

The University submitted that by letter dated 27<sup>th</sup> March, 2007 Miss Carlene Spencer was invited to attend a hearing convened by the Disciplinary Tribunal constituted under the Disciplinary Ordinance of the University.

Miss Spencer failed to attend the hearing and the Disciplinary Tribunal made the decision to hear the dispute in spite of her absence and subsequently recommended that she be dismissed.

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The University now contends that the very act of not attending the hearing after having been notified of the date, time and location is enough to sustain her dismissal, which the Industrial Disputes Tribunal should uphold. In response to the University's plea, there are several factors that have to be considered before deciding on this matter.

The dispute that arose out of the termination of Miss Carlene Spencer is between the University of Technology and the University and Allied Workers Union. The Union in this case acts on behalf of Miss Spencer. Subsequent to the hearing held on February 6, 2007, by letter dated March 15, 2007, the Union wrote the Ministry of Labour and Social Security requesting its intervention in a dispute with the University over the implementation of certain procedures which were to be employed in a hearing pertaining to disciplinary matters involving Miss Carlene Spencer and Mr. Alex Okuonghae. A copy of the letter was sent to the following persons:

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| Ambassador Derek Heaven  | - | Chairman, Board of Directors, UTECH |
| Professor Errol Morrison | - | President, UTECH                    |
| Mr. Alex Okuonghae       | - | Chief Union Delegate                |

When the Disciplinary Tribunal convened on April 3, 2007 Miss Spencer and her Union Representative were not present and the Chairman sought advice from Mr. Goffe, the University's Attorney, as to how they should proceed and made reference to a letter copied to him from the University and Allied Workers Union on behalf of the accused – Miss Spencer, to the Director of Industrial Relations and Allied Services at the Ministry of Labour.

We refer to Extracts from the Minutes as the matter was addressed:

**“Questions were posed to Mr. Goffe by the Chairman with regards to the intent of the letter. Does it mean that the matter was now out of the hands of the University? Does the letter justify the accused and her representative absence? Should the Tribunal go ahead with the proceedings?”**

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In response, Mr. Goffe sought confirmation of the precise date and time of the hearing and confirmation was given. At this point, Mrs. Rockhead-Reid enters the discussion and informed the Tribunal "of a discussion she had with the Officer at the Ministry of Labour assigned to this particular case. She said the Human Resources Management Department responded to a letter sent to the University by the Ministry of Labour inviting them to a meeting. In the letter they enquired of the Ministry's expectation with regards to this case. Should the University continue with its proceedings or should they wait on the external meeting, and they were advised that the Ministry's expectation was that the University continues with their internal proceedings."

Following Mrs. Reid's statement, Mr. Goffe was once again asked to give his advice. Mr. Goffe said:

"the principle of Natural Justice requires that the accused person be informed of the charges and be given an opportunity to be heard. This hearing would be the first opportunity afforded to the accused to be heard. In addition, this hearing was arrange to establish facts of the case whether or not the accused chose to be absent from the hearing, the Tribunal could use its discretion to proceed and any decision taken should stand."

The members of the Disciplinary Tribunal took the decision to proceed and concluded that Miss Carlene Spencer's services should be terminated.

### Findings

Mr. Goffe's recommendation to the Disciplinary Tribunal reflects a lack of knowledge in industrial relations best practices that are imperative in sustaining industrial harmony at the workplace.



Mr. Goffe made reference to Mr. George Kirkaldy's "Industrial Relations Law and Practice in Jamaica" in support of upholding the dismissal of Miss Spencer. We will also refer to the author's position in addressing the dispute under the sub-heading:

"Don't rush" page 81 the author opines

"Stay calm. Do not rush your enquiries or hearings to get the matter over with quickly. Usually the best approach is to have the interview and hold off on the action to be taken. In the interim further thought can be given to the outcome of the proceedings and provide an opportunity for discussion with the personnel or industrial relations department. This is particularly important where it appears that termination is likely. Termination is not a matter to be taken lightly as it could have serious consequences for the individual worker concerned – and the pattern of relationships in the organization."

Before responding to this point, it is necessary for the Tribunal to introduce its authority in the science of Industrial Relations. We refer to the following:

The Second Schedule of the Labour Relations and Industrial Disputes Act 1975, Section 1

(i) The Tribunal shall consist of –

(a) a Chairman and two (2) Deputy Chairmen, all of whom shall be appointed by the Minister and shall be persons appearing to the Minister to have sufficient knowledge of, or experience in relation to Labour Relations:

The three (3) members of the panel hearing this dispute have cumulatively eighty three (83) years of experience in Labour Relations Management.

Once the Ministry of Labour is invited in a matter involving the parties to a dispute, the discussion regarding resolution of the dispute cease until the matter that caused the Ministry's intervention is sorted out or some clear understanding has been reached between the parties.

We found the above statement attributed to Mrs. Rockhead-Reid, see page 13 to be extremely peculiar. How could the Ministry of Labour advise the University that they should continue to proceed with the hearing of this matter when the Union had sought its intervention on a matter that involved procedure? Mrs. Rockhead-Reid under cross-examination by Mr. Lambert Brown said "that was not precisely what she said at the meeting." This Tribunal has not been informed of what was said. She also went on to confirm that at a meeting at the Ministry of Labour, the Officer who had been assigned the dispute denied giving those instructions to UTECH.

We accept Miss Spencer's explanation that she had left it up to the Union to administer the dispute on her behalf. Hence, she had been waiting for a response from her Union.

Mr. Goffe referred to two (2) disputes where the Tribunal upheld dismissal of an employee where they failed to attend their respective hearings.

- (i) The Post Office vs. M.J. Jones (respondent) Employment Appeal Tribunal 1977 (IRLR 422).
- (ii) Jamaica Public Service Company and a Unit operator (IDT 47/85, Award 30<sup>th</sup> October, 1987).

Once again we will refer to Mr. George Kirkaldy's work, in our response:

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"The merits of the case

Each case must be considered on its own merit even though consistency is desirable. There may be extenuating circumstances surrounding what appears to be similar cases and the employee will most certainly feel that those circumstances must be considered."

We do believe this approach should equally be extended to the employer. The circumstances surrounding the disputes leading to those employees' absence from the hearing are not similar to that of Miss Spencer's.

In this instance, the Ministry of Labour had been invited by the Union to intervene which it had every right to do if it considered it prudent.

### CONCLUSION

The Tribunal concludes the following:

- (1) Miss Carlene Spencer's vacation leave for the period 5<sup>th</sup> June, 2006 to 20<sup>th</sup> July, 2006 was authorized and approved (See Exhibit 2).
- (2) Miss Carlene Spencer's application for Departmental Leave on the 21<sup>st</sup> July, 2006 was not authorized nor approved.
- (3) This Tribunal cannot sustain the dismissal of Miss Carlene Spencer for not attending the Disciplinary Hearing that was convened on the 3<sup>rd</sup> April, 2007.

### FINDINGS

The dismissal of Miss Carlene Spencer was unjustifiable.



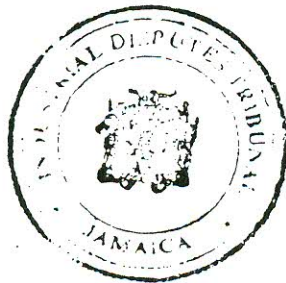
## AWARD

The Tribunal hereby orders the University to reinstate Miss Carlene Spencer from the date of her dismissal with full wages (less one day's wage) up to 15<sup>th</sup> December, 2008 or to the date she returns to her duties whichever is earlier.

DATED THIS 9<sup>th</sup> DAY OF DECEMBER, 2008

Witness:

*R. Creary*  
.....  
Royette Creary (Miss)  
Secretary to the Division



*Donovan Hunter*  
.....  
Donovan Hunter  
Chairman

*Evert Palmer*  
.....  
Evert Palmer  
Member

*D. Trevor McNish*  
.....  
D. Trevor McNish  
Member