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IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
The Honourable Mr. Justice Pitfield
June 3, 2004

BETWEEN:

OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION

PLAINTIFF

AND:

**OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION,
LOCAL 15, OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL
UNION, LOCAL 378, CANADIAN NATIONAL COMMITTEE OF THE OFFICE
AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION,
JERRI NEW, ELAINE JACKSON, SHEILA MORRISON**

DEFENDANTS

Counsel for the Plaintiff:

**T.C. Arsenault
D.M. Aaron**

**Counsel for the Defendants:
Office and Professional
Employees' International Union
Local 378 and Jerri New**

B.A. Laughton

**Counsel for the Defendants:
Office and Professional
Employees' International Union,
Local 15, Elaine Jackson
And Sheila Morrison**

R.L. Edgar

[1] **THE COURT:** This is an application by the Office and Professional Employees' International Union for an interim injunction against named defendants including two Locals of the Union operating in the Province of British Columbia, and certain representatives either of those Unions or of the Canadian National Committee ("CNC") of the Union.

[2] The application arises as a consequence of an action having been commenced on June 1, 2004, or if not then, on May 31, 2004, but in any event summarized in a statement of claim filed June 1, 2004.

[3] The substance of the action, about which I will say more in due course, is this. The plaintiff claims the defendants are operating in contravention of a provision of the Union's Constitution whereby the Canadian Locals may pursue autonomy or independence from the International Union. The plaintiff says that the International president, Mr. Goodwin, has exercised the power conferred by Article X of the Constitution and has directed that the Canadian Locals and the CNC must comply with a process settled by the International Union if Canada and its Locals are to seek autonomy from the International Union. The plaintiff says the defendants have not complied with the directive and the plaintiff is suffering damage as a result. The plaintiff seeks to enjoin that

conduct. I will return in due course to the substance of the action.

[4] The chronology with which I am concerned is the following. It is apparent from the affidavit material which has been thoroughly reviewed by counsel on behalf of all parties, that there are bones of contention between the Canadian Locals and the International Union. I need not be concerned about their origin, their depth or the manner in which they might eventually be resolved. My concern is to consider whether or not an injunction of the kind which is sought by the plaintiffs is warranted in the circumstances.

[5] The history most recently appears to be this. The Union has its head office either in New York or Washington, D.C., or a combination of the two. It operates both in the United States and Canada. The statement of claim suggests that there are some 145,000 members of the Union in total of which 34,000 are members in Canada and the remainder International members by which I assume is meant United States of America members. The operation in Canada is governed by the Constitution. To a great extent the powers of the Canadian Locals are vested in an entity, board or emanation called the CNC.

[6] The Constitution of the Union of the International contains material provisions in the context of this

application. The first is Article X, Section 1, which provides as follows:

ARTICLE X

Duties of President of the International Union

SECTION 1. It shall be the duty of the President to preside at all Conventions; to interpret the Constitution; to exercise supervision over the affairs of the International Union throughout its jurisdiction; to sign all official documents; to travel whenever required in the interest of the International Union; and the President shall submit to each regular Convention a report of acts and doings between Conventions.

[7] The other article of importance in the present context is Article XIV, which in Sections 1 and 3 provides as follows:

ARTICLE XIV

Canada

SECTION 1. CANADIAN AUTONOMY. The Office and Professional Employees International Union fully recognizes the right of the Local Unions within Canada to establish their own autonomous national union if such is the desire of a majority of Office and Professional Employees International Union members within that country.

SECTION 3. CANADIAN CONVENTION. (a) Canadian Conventions shall be held each three (3) years and shall convene some time during the months of April, May or June in a city designated by the Canadian National Committee. Canadian Conventions shall be held for the purpose of establishing policy on matters affecting the Canadian membership. Special Conventions may be called by the Canadian National Committee.

[8] Most recently the discussion has turned to the financial contribution which the Canadian Locals are to make to the American Locals or perhaps better stated, to the International Union generally. Reading between the lines, it appears that the nature of the problem is that the American Locals are of the view that they have been subsidizing the strike benefits and defence funds that are maintained for the benefit of the Canadian Locals and their members.

[9] Sometime prior to March 22, 2004, Mr. Goodwin indicated to the CNC that the International Union might be requesting additional contributions from Canadian members. At a meeting of the CNC held March 22, 2004, Mr. Goodwin advised that the recommendation of the International Union was that an increased contribution of \$2 per member per month would be sought by the Union. The CNC expressed the opposition of the Canadian Locals to that proposal.

[10] The affidavit evidence, not contradicted by Mr. Goodwin, indicates that in response to the discussion that ensued on March 22, 2004, Mr. Goodwin advised that it was open to the CNC to accept the proposed increase, that is \$2 per member per month over a three-year period, or to create an autonomous national Canadian Union with an affiliation with the International Union. The reference in that regard is

contained in the affidavit of Serge Cadieux, part of the material before me. I am advised that the meeting adjourned with no resolution of the problem that appeared to emerge at the meeting regarding the increased charge.

[11] The next step in the process was a meeting of some arm of the International Union in Las Vegas on April 6 and 7. In the course of those meetings on those days, the Canadian Locals, through the CNC, presented a proposal for Canadian autonomy. The American Locals responded with a proposal for American local autonomy. I need not be concerned with the manner in which the proposals each emerged or the sequence in which they emerged. Both proposals were discussed at the meeting. Autonomy or separation as between Canada and the United States was clearly on the table from both sides so that the dispute was presumably one that principally pertained to terms.

[12] The meeting in Las Vegas was followed by further discussions and ultimately a meeting in Washington, D.C. on May 4 and May 5, at which the CNC members in attendance were advised that the president had relied on Article X, Section 1 to interpret the Constitution in order to settle upon or define a process by which the Canadian locals would pursue autonomy under Article XIV, Section 1.

[13] The discussions on May 4 and May 5 were followed by a letter from Mr. Goodwin to the CNC dated May 14, 2004, a portion of the text I read as follows:

...It is therefore my interpretation of the OPEIU Constitution that whether or not the issue of establishing an autonomous national union should be submitted to the OPEIU members in Canada is an issue that must be decided by a Canadian Convention. Only if a Convention calls for such an expression of desire may the matter be further pursued.

If a Canadian Convention makes such a request, then as President of the OPEIU it is my interpretation of the OPEIU Constitution that such a desire should be measured by a procedure to be established by the International Union. As the officer to exercise supervision over the affairs of the International Union and the Executive Officer of the Executive Board I conclude that such a procedure would be a secret ballot vote of all of the OPEIU members in Canada. I believe it would be best if that vote were conducted by some independent body which the International Union would engage.

Article XIV, Section 1 requires that the desire for such action must be established by a majority of OPEIU members within Canada, as opposed to a majority who choose to vote.

[14] I am advised and discern from the affidavit evidence before me that in response to that letter, and most likely as a result of conversations and the meetings of May 4 and May 5, the members of the CNC, including those individuals who are named as defendants in this action, embarked upon a program designed to develop a procedure or process which would ultimately lead to the autonomy of the Canadian Locals. This

was done by the adoption of a series of resolutions, or propositions as they are referred to by the CNC, and the dissemination of information on CNC or Local bulletin boards explaining to members that which was going on. The process ultimately led to the circulation to the members in Canada of a document called "Canadian Autonomy Authorization", an example of the text of which is the following:

I, _____, member of OPEIU, Local 378, want my Local, together with other Canadian OPEIU and SEPB Locals, to establish their own autonomous national Canadian Union and to take appropriate action at a date to be determined by the Officers of the Canadian National Committee.

The reference to "SEPB" is, I believe, a reference to the acronym for the Union operating under its French name in Quebec.

[15] The fact of the CNC's activities became evident to the International and in particular to Mr. Goodwin, and the result was the action, which I have described, commenced on June 1, 2004, and this application for an injunction restraining CNC, Local and individual conduct.

[16] The action commenced by the plaintiff is not the only matter of concern or relevance in this application. The conduct of Mr. Goodwin in relation to the Locals or the CNC and member activities in Canada and British Columbia has been

stern and earnest, to say the least. In a letter of May 28, 2004, Mr. Goodwin wrote to Pierre Gingras, who was the Canadian legal counsel to the OPEIU to advise that he was dismissed from service. In his letter of dismissal Mr. Goodwin stated the following:

This action is taken because you have participated in and supported actions which are not in the best interests of the International Union who employed you.

I need not worry about whether or not an action will result from the dismissal but the fact of the dismissal is clear.

[17] On May 28, 2004, Mr. Goodwin wrote to the defendant, Ms. Jerri New, criticizing her conduct in what can only be described as the strongest terms:

This action [a reference to her action in relation to the autonomy proceedings] continues your disingenuous, deceptive and decoying tactics which have been part of your behaviour throughout our discussions in recent months. Other members of CNC and Canadian OPEIU officials have supported you and joined in this behaviour which constitutes insubordination since your duties as a Canadian Director are to be carried out "in consultation with the International President" as provided in Article XIV, Section 2 of the OPEIU Constitution.

Mr. Goodwin closed his letter by stating:

Your failure to immediately answer the questions [asked of her in the letter] or to respond to the request for copies of documentation made in this

letter will clearly constitute yet another example of your insubordination.

[18] I refer to the evidence of others which has been tendered before me and in particular an affidavit of Serge Cadieux in which Mr. Cadieux recites the fact that Mr. Goodwin has clearly indicated that he would change the Constitution at the opening of the International Convention in order to prevent the conduct of any democratic process by Canadians with a view to establishing an autonomous national union. I need not worry about whether or not the statement made by Mr. Cadieux is true. Suffice to say there is evidence of the statement having been made to Mr. Cadieux. The reference to the Convention is a reference to the International Convention scheduled to take place in Florida later this month.

[19] The concerns expressed in other affidavit material and in the submissions of counsel are that there is a plan afoot by the International with a view to bringing amendments to the floor of the convention at the end of June in order to amend the Constitution so as to deny or remove the right of the Canadian Locals to pursue autonomy as provided in Article XIV, Section 1 of the Constitution. There is material, and I need not say much more about it at this time, which suggests that at the least draft resolutions have been prepared and

discussed indicating the International is proceeding in that direction.

[20] I note that the Constitution does not prevent matters from being brought before the Convention in the absence of advance notice to members. In that regard Article 5 of the Constitution permits matters to be brought to the floor of the convention on a two-thirds vote of those in attendance and Constitution amendments may be made on a majority vote of two-thirds of those in attendance at the time that the vote to amend is taken. I need not be concerned about the question of whether or not the International is in a position to procure the two-thirds majority that is required. Suffice to say that more than two-thirds of the members are from American Locals and presumably more than two-thirds of the representation at the International Convention will be Americans as opposed to Canadians.

[21] I recount this background for this reason. The application which is made before me seeks injunctive relief which is a form of equitable relief that the court is empowered to grant. It is of paramount importance that a person or organization which seeks an injunction of the kind which would essentially restrain the Canadian Locals, the CNC and members in Canada make full, fair and frank disclosure of

all circumstances relevant to the application. The character of Mr. Goodwin's correspondence as well as the obtuse responses in his reply affidavit material regarding the purposes for which conduct and actions are being taken by him, leave me with no confidence whatsoever that the International Union is intent upon working toward a peaceful separation if that should indeed be the wish of the Canadian members. In that regard, I reject out of hand Mr. Arsenault's submission to the contrary, the effect of which is that the International is interested in pursuing the democratic process. The affidavit material and the conduct of the International to date, as well as the absence of clear outline of the Union's intended course of conduct and the action which is proposed in relation to the Canadian Union and its desire for autonomy, leave me in the position where I must infer that they do not come here in good faith having made full, fair and frank disclosure to the court as required. For that reason alone I would reject the plaintiff's application for the interim injunction.

[22] I am aware that others may take a different view. With that in mind I propose to provide my reasons as to why I would have rejected the application in any event had I been of the view that the International was before the court acting in

good faith as it is absolutely required to do under the law of British Columbia regardless of what the law may be elsewhere.

[23] The action which was commenced by the plaintiff essentially seeks to enjoin the CNC from soliciting the views of Canadian members until such time as the Canadian Unions have "knuckled under" to the process which Mr. Goodwin views himself to have the right to dictate by application of Article X of the Constitution. I have cited Article X, Section 1 of the Constitution. It is clear on its terms that Mr. Goodwin, as the International President, is entitled to interpret the Constitution. He is not empowered to amend it. He is not empowered to enact processes and procedures for which the Constitution does not provide and in respect of which no specific power has been given to him.

[24] Article XIV, Section 1 of the Constitution is clear. It provides that the International Union respects the right of Canadian locals to pursue autonomy if that should be the wish of a majority of the members of the Canadian locals. I share the International's view that that means a majority of all members in Canada, not just a majority of those who choose to respond or to vote in any way in response to any question that might be put to them whether at a convention or otherwise.

[25] There may be, and I only say may be, some suggestion that Article XIV, Section 3 requires or permits or directs the CNC to deal with issues of policy at a Canadian convention. That said, I can see nothing in the Constitution which suggests that the manner in which the will of the majority of the members in the Canadian Locals, which may in fact be a choice to remain with the International, is a matter of policy in respect of which a convention must decide on process as opposed to the CNC which is responsible for Canadian operations, deciding on that process.

[26] The steps which have been taken to date, represented most clearly by the Canadian Autonomy Authorization, are directed to ascertaining whether or not members of Locals in British Columbia want their Locals, together with other Canadian OPEIU Locals, to establish their own autonomous national Canadian Union and to take appropriate action at a date to be determined by the officers of the CNC. On the face of it I can see nothing in the Constitution or in the form itself that would suggest that there is a *prima facie* case that the CNC or any of the Locals or members is acting in contravention of the Constitution by attempting to identify the opinion of members in Canada.

[27] The second aspect of the plaintiff's claim is that in proceeding as it has, the CNC has made misrepresentations to the members in order to procure positive signatures or favourable responses to the Canadian Autonomy Authorization. I need not worry about whether or not misrepresentations have been made. I will state that the allegations in that regard made by Mr. Goodwin are conclusory rather than statements of fact and, as such, they are not binding upon me. In the event that any representations have been made, then the action as framed by the International is that it has the right to proceed against the defendants for damages for deceit and damages for misrepresentation as well as damages for inducing breach of contract.

[28] The tort of deceit requires a representation, deception by which is meant fraud, reliance on the deception, and damages. There is no evidence of deceit or deception. Nothing done by the defendants was directed at, or intended to be relied upon by the plaintiff. Rather, all of that which has been done by the CNC is directed at its Canadian members. The claim in tort advanced by the International plainly and simply cannot reach the *prima facie* case hurdle.

[29] The action pertaining to inducing breach of contract is equally without substance. I say that because the members of

the Union in Canada were given the right by the International under Article XIV, Section 1 to pursue autonomy if that was the wish of the majority of the membership. There is no inducement of breach in any way, shape or form in the ascertainment of the opinion of members. If the International has a view to express to members that is contrary to the information which is being imparted to them by the CNC, it is perfectly at liberty to do so in the same way that the CNC is at liberty to do so.

[30] I would conclude, therefore, that the substance of the claim as framed by the statement of claim does not meet the *prima facie* arguable case threshold. There may be a case to be built around the question of how it is that the will of the majority is to be determined in conformity with Article XIV, Section 1 of the Union's Constitution. Most assuredly, as I have said, it cannot be done by the International president dictating the manner in which it is going to be done. It may be, as Mr. Arsenault suggests on behalf of the International, that a process for fair play, full discussion, and open discussion must be found in order to ensure that a decision which is obviously of immense consequence to Canadian members, to members in the United States with whom Canadians are brothers and sisters, and to the International Union will be

made on a fully informed basis so that the question of autonomy can be resolved on a peaceful basis. The issue cannot be resolved by hardball of the kind that has been played by the International in all of the circumstances as I discern them from the affidavit material before me.

[31] Had the action been framed on the basis that something has to be done or some process has to be worked out under Article XIV, Section 1 to ascertain the majority view in Canada, I would have been inclined to say that the *prima facie* case threshold had been made out.

[32] In the face of such an amended pleading, the question with which I would be concerned is whether or not irreparable harm would be suffered in the event an injunction were not granted. I am not persuaded at all that irreparable harm would be suffered by the plaintiff by allowing the CNC to proceed with its attempt to ascertain the views of the majority of its members in Canada. The Constitution contemplates that those in Canada may depart from the International should they wish to do so. If that is regarded as irreparable harm then it is irreparable harm that results from the exercise of a Constitutional right, rather than from any breach of duty, breach of contract or any other label or appellation that one can attach to the situation.

[33] The third matter with which I would have to be concerned in the face of an amended pleading is the balance of convenience. Given the history that has surrounded the actions of the International to this point as evidenced by the affidavit evidence tendered by Mr. Goodwin, his correspondence, and the affidavit evidence of those who were in attendance at the various meetings, the balance of convenience favours refraining from granting any injunction. To do otherwise is likely to cause irreparable harm to the members in Canada as there is every likelihood, given the underlying theme of the affidavit evidence, that the International would act to curtail, severely restrict, or somehow impede the right to autonomy which has been recognized in this Constitution at the very least since 1977.

[34] In all of the circumstances I am satisfied that the application for an interim injunction should be and is hereby dismissed.

[35] What do you wish to do with respect to costs?

[36] MR. LAUGHTON: Well, My Lord, in my submission I adopt the submission that my friend Mr. Arsenault made. I read from his memo which says "The plaintiffs submit the costs in this motion should be severable from any further hearing on the merits."

[37] THE COURT: Well, I am not prepared to leave it as costs in the cause. I am going to deal with it right now. Mr. Edgar?

[38] MR. EDGAR: My Lord, one fact that you did find was that the International did not come here and make full, fair disclosure. It would be my submission that costs of this application should be granted but at a higher level than normal given that fact.

[39] THE COURT: Mr. Arsenault?

[40] MR. ARSENAULT: My Lord, I would make the note for the record that the correspondence you referred to in your Reasons is all disclosed in the plaintiff's affidavit material, so -

[41] THE COURT: Of course it is. That is exactly the point. Mr. Goodwin has not told me what he proposes to do with it.

[42] MR. ARSENAULT: I take your point on that last -

[43] THE COURT: I think the point should be clear.

[44] MR. ARSENAULT: And I understand, My Lord, if you're not - is the issue of costs in the cause at all -

[45] THE COURT: It is not for discussion.

[46] MR. ARSENAULT: -- for discussion.

[47] THE COURT: The question is on what terms will costs be granted payable forthwith as proposed at this application.

[48] MR. ARSENAULT: Well, I would submit that - can we make submissions on costs on another date?

[49] THE COURT: No.

[50] MR. ARSENAULT: Could I request that?

[51] THE COURT: No. I do not see that there is any reason to. It is either costs at Scale 3 against you or it is costs at some elevated scale, or it is special costs. Take your pick.

[52] MR. ARSENAULT: Well, I don't think that there could be an award of costs for special costs because there has been no finding of wrongdoing. We haven't had a trial, My Lord. We've simply - filed affidavit material -

[53] THE COURT: You have come here making an application which I have found has not been made with full, fair and frank disclosure. I will save you the problem. There is a long road to hoe in relation to this. I have tried to say that I think that the Union and the Canadian Locals should sit down and try to engage in some kind of reasonable discussion which is not hammering on the table saying do it my way or the

highway, but which will allow the will of the Canadian members to be determined. I will not make matters worse than they already are. I will award costs at Scale 3 payable forthwith by the International to each of Local 378 and Local 15. I will not award costs to the CNC or the individual defendants.

[54] Anything else?

[55] MR. ARSENAULT: No, My Lord.

[56] MR. LAUGHTON: No, thank you, My Lord.

