COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *TELUS Communications Inc. v. Telecommunications Workers Union,* 2024 BCCA 403

Date: 20241204
Docket: CA50115

2024 BCCA 403 (CanLII)

Between:

TELUS Communications Inc.

Appellant
(Defendant)

And

Telecommunications Workers Union, United Steelworkers Local Union 1944

Respondent
(Applicant)

Before: The Honourable Madam Justice Horsman
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated August 8, 2024 (*Telecommunications Workers Union v. TELUS Communications Inc.*, 2024 BCSC 1613, Vancouver S245097).

Counsel for the Appellant:	P.D. McLean
Counsel for the Respondents:	R.C. Gordon, K.C.
Place and Date of Hearing:	Vancouver, British Columbia November 8, 2024
Place and Date of Judgment:	Vancouver, British Columbia December 4, 2024

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Summary:

TELUS applies for leave to appeal an injunction preventing TELUS from implementing work changes pending the appointment of an arbitrator under the Canada Labour Code to determine the union's grievances. Held: Leave to appeal is not required. The injunction was issued pursuant to the court's inherent jurisdiction, and not Rule 10-4 of the Supreme Court Civil Rules. As such, it is not a limited appeal order.

Reasons for Judgment of the Honourable Madam Justice Horsman:

[1] The applicant, TELUS Communications Inc. ("TELUS") applies for leave to appeal an order granting the respondent's application for an interlocutory injunction in the context of a labour dispute. There is a preliminary issue as to whether leave is required in this case.

Factual background

[2] TELUS is a federally-regulated telecommunications company. Its labour relations are governed by the *Canada Labour Code*, R.S.C. 1985, c. L-2 [*Code*]. The respondent is the current certified bargaining agent under the *Code* for the majority of TELUS' unionized employees (the "Union").

[3] On July 9, 2024, TELUS informed the Union of two initiatives that would impact bargaining unit members working as "customer experience agents" ("CE Agents") out of certain call centres:

a) the closure of a call centre in Barrie, Ontario, and the consolidation of the impacted work and jobs at other call centres including a call centre in Montreal; and

b) a change to TELUS' work from home program that would require the affected CE Agents in TELUS' At Home Agent program to work in the office more frequently.

(the "Initiatives")

[4] In relation to the Initiatives, TELUS advised the Union that:

a) Each affected worker at the Barrie call centre would have a choice between redeploying to the Montreal call centre or taking a severance package under TELUS' voluntary severance program. Affected employees would be asked to elect between these options by August 9, 2024, although TELUS was prepared to extend the deadline for employees considering relocating to Montreal. Employees electing to relocate to Montreal were not expected to report to the Montreal call centre until October 1, 2024, at the earliest.

b) The affected CE Agents in the At Home Agent program would be given the option of attending at the office as directed or taking a voluntary severance package. An election between these two options had to be made by August 9, 2024. Part-time attendance at the office would not be required until September 16, 2024.

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[5] On July 29, 2024, the Union delivered two grievances, alleging that the Initiatives violated the parties' Collective Agreement. Pursuant to the Collective Agreement, the grievances were to be determined by an arbitrator.

[6] On the same day, the Union filed a notice of civil claim in the Supreme Court of British Columbia seeking an injunction restraining TELUS from taking steps to implement the Initiatives pending the decision of the arbitrator appointed to hear the grievances. The Union also filed a notice of application on August 1, 2024 seeking the same relief. The "Legal Basis" for the relief, in both the notice of civil claim and notice of application, was the "(i) *Supreme Court Civil Rules*; (ii) section 39 of the *Law and Equity Act*, R.S.B.C., c. 253 as amended; (iii) the inherent jurisdiction of the Court". The notice of application specifically relied on R. 10-4 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*SCCR*].

[7] In the body of the notice of civil claim and notice of application, the Union cited the judgment of the Supreme Court of Canada in *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd*., [1996] 2 S.C.R. 495, 1996 CanLII 215 [*Canadian Pacific*] in support of the court's

jurisdiction to grant a "Standalone Injunction" pending an arbitrator's decision where the *Code* contained a remedial gap. The Union described the court's jurisdiction as "a residual discretionary power to grant interlocutory relief", that flows from "the inherent jurisdiction of [the court] over interlocutory matters".

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The chambers judgment: 2024 BCSC 1613 ("RFJ")

[8] Before the chambers judge, it was common ground that the court had the residual discretionary power to grant interlocutory relief that is not available under a statutory scheme such as the *Code*. However, they disagreed on the question of whether the *Code* provided an adequate remedy to the Union. TELUS argued that the remedial gap identified in *Canadian Pacific*—the absence of interlocutory powers for arbitrators under the *Code*—had been remedied by subsequent amendments to the *Code*. Thus, an arbitrator would have the power to grant the interlocutory relief the Union sought. The Union contended that the circumstances required an immediate remedy, and none was available under the Code until an arbitrator was appointed.

[9] On the question of the court's jurisdiction to grant the requested relief, the judge accepted the Union's argument that the *Code* did not provide a remedy in the circumstances of this case. He found that this was an "exceptional situation" because the timelines imposed by TELUS for implementing the Initiatives did not allow for the arbitral process to provide an adequate remedy: RFJ at para. 44. He further found that the fact that an arbitrator had not yet been appointed was not due to delay by the Union.

[10] The judge then held that the test for an interlocutory injunction—as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117—was met. He concluded that:

a) the Union had advanced arguable claims that the Initiatives breached provisions of the collective agreement;

b) if an injunction was not granted, there was a substantial risk of irreparable harm to affected employees who might be forced to move to another city; and

c) given the nature of the irreparable harm, the balance of convenience favoured maintaining the *status quo* pending the outcome on the merits.

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[11] The judge acknowledged the case law “holding that such injunctions should be the domain of the arbitrator”, and also the potential financial harm to TELUS of delaying the implementation of the Initiatives: RFJ at para. 55. In these circumstances, the judge found that it was in the interests of justice to grant the injunction, but limit its duration to two months after the appointment of an arbitrator. This would “give that arbitrator time to consider whether this or any other form of injunction should be continued”: RFJ at para. 57.

The leave application

[12] TELUS filed a notice of appeal of the chambers judgment on September 4, 2024, and an application for leave to appeal on October 7, 2024. By the time the leave application was heard, an arbitrator had been appointed (on August 12, 2024), an arbitration had proceeded (in mid-September). On October 15, 2024, the arbitrator issued a “bottom line” decision dismissing the Union’s grievances. By this point, the interlocutory injunction had expired.

[13] The parties’ arguments as to whether leave should be granted focussed on the issue of mootness. It is common ground that the expiry of the injunction renders TELUS’ challenge to the injunction moot. The issue of contention is whether there is a realistic prospect that a division of this Court would nevertheless exercise discretion to entertain the appeal.

[14] At the invitation of the Court, the parties also addressed the question of whether leave to appeal was required in this case. The Union argues that the injunction was issued pursuant to R. 10-4 of the *SCCR*, and thus the order of the chambers judge is a limited appeal order requiring leave. TELUS takes the position

that leave is not required because the jurisdictional basis for the injunction is the court's inherent jurisdiction rather than R. 10-4.

[15] Accordingly, this application gives rise to two issues: (1) is leave to appeal required, and (2) if so, should leave be granted.

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Analysis

Is leave to appeal required?

Legal framework

[16] Section 13(2)(a) of the *Court of Appeal Act*, S.B.C. 2021, c. 6, provides that an appeal cannot be brought in this Court from a "limited appeal order", unless leave has been granted by a justice of the Court. Rule 11 of the *Court of Appeal Rules*, B.C. Reg. 120/2022, prescribes the limited appeal orders that require leave to appeal. Rule 11(v) provides that an order granting relief under Part 10 of the *SCCR* (Property and Injunctions) is a limited appeal order.

[17] The categories of limited appeal are intended to set out an exhaustive list of when leave to appeal is required: *Yao v. Li*, 2012 BCCA 315 at para. 27 (Chambers), addressing the former R. 2.1 of the *Court of Appeal Rules*, B.C. Reg. 297/2001. As explained by Garson J.A. in *Clifford v. Lord*, 2013 BCCA 302 (Chambers):

> [29] In my view, *Aldergrove*, *Royal Bank*, *Yao*, and *Wallman* have interpreted *CAR* Rule 2.1 in a literal manner. These authorities hold that the rule does not require the court to look to the underlying proceeding but simply to the jurisdictional basis for granting the order. These authorities hold that the purpose of Rule 2.1 is to bring certainty and clarity to the question of leave to appeal.

[18] To facilitate the application of R. 11 of the current *Court of Appeal Rules*, an order should state the jurisdictional basis on which it is grounded: *Araya v. Nevsun Resources Ltd.*, 2019 BCCA 104 (Chambers) at para. 12. However, "[the] court must be correct in identifying the jurisdictional basis for its orders": *A.A.A.M. v. Director of Adoption*, 2017 BCCA 27 at para. 29.

[19] Two decisions of this Court have explored the question of whether leave is required to appeal an interlocutory injunction: *Bacon v. British Columbia (Minister of Finance)*, 2020 BCCA 218 (Chambers) and *Teal Cedar Products Ltd. v. Mashari*, 2021 BCCA 353 (Chambers) [*Teal Cedar*].

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[20] In *Bacon*, the appellants unsuccessfully sought injunctive relief to prevent British Columbia from enforcing legislation pending the hearing of their petition, which challenged the constitutionality of that legislation. The appellants filed a notice of appeal of the order refusing the injunction. The respondent applied to have the appeal quashed on the basis that leave to appeal was required. The appellant argued that leave was not required because the jurisdictional basis for the order was s. 10 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, and not R. 10-4 of the *SCCR*, because R. 10-4 did not apply to a petition proceeding.

[21] The appellant's notice of application in *Bacon* stated that the injunction was sought pursuant to R. 10-4 of the *SCCR*. Justice Goepel reasoned that if the underlying notice of application specifies the jurisdictional basis for the order, that will usually be conclusive as to whether leave to appeal is required. However, he went on to address the appellant's argument that, notwithstanding their reliance on R. 10-4 in the court below, the court did not have jurisdiction to issue the injunction under R. 10-4. Justice Goepel rejected this argument, finding that R. 16-1(18) of the *SCCR* gives the court the power to apply any other rule in the *SCCR* to a petition proceeding, even where the petition has not been referred to the trial list. As such, R. 10-4 was the jurisdictional basis for the appellant's request for an injunction. The applicant therefore required leave to appeal, and the appeal was quashed.

[22] In *Teal Cedar*, neither the entered order nor the notice of application identified the jurisdictional basis for an interlocutory injunction issued against persons impeding Teal Cedar's logging activities. Two individuals arrested for violating the injunction sought to appeal it. They argued that leave was not required because, in the absence of any reference to R. 10-4 of the *SCCR* in the order or notice of

application, the jurisdictional basis for the injunction must be the court's inherent jurisdiction. Alternatively, they sought leave to appeal.

[23] In her judgment in *Teal Cedar*, Saunders J.A. noted that the applicants were correct in their assertion that the Supreme Court has inherent jurisdiction to issue interlocutory injunctions. However, this did not answer the question of whether the injunction was a limited appeal order. Justice Saunders noted that the *SCCR* establishes the "comprehensive framework for litigation in the court", and that these procedural rules co-exist with the court's inherent jurisdiction: at para. 13. She stated:

> [20] I consider that the correct question in such cases is not whether the order invoked the inherent jurisdiction of the court but whether it came through the *Supreme Court Civil Rules*. In my view, where a particular rule of the Supreme Court of British Columbia addresses the process, the procedure provided by that rule applies for purposes of identifying its character as a limited appeal order. On this view, and consistent with the approach applied in *Bacon*, a judge must identify the rule, or rules, it came through to resolve the application of R. 2.1 of the *Court of Appeal Rules*. This approach has the benefit of consistency in the application of R. 2.1, takes the appealability of an order away from the vagaries of draftsmanship of applications and orders where the authority for the order sought or obtained may be omitted, and avoids a search for inherent jurisdiction as to which, as I have explained, the Supreme Court's processes naturally invoke.
>
> [Emphasis added.]

[24] In *Teal Cedar*, there was an application for an order that "[was] fully within a rule listed in R. 2.1 [now R. 11] of the *Court of Appeal Rules*": at para. 21. Therefore, the injunction order took its procedural character from R. 1014, and leave was required.

Discussion

[25] I take from the foregoing review of the law that the question of whether an order is a limited appeal order is not conclusively determined by the jurisdictional basis stated in the notice of application, or even in the order. First, the cited jurisdictional basis may be incorrect: *A.A.A.M.* Second, even where the parties and the court correctly identify the court's inherent jurisdiction as a jurisdictional basis for an order, that does not, in itself, mean that the order is not a limited appeal order.

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The court's inherent jurisdiction grounds many of the procedural rules codified in the *SCCR*. If a particular rule of the *SCCR* addresses the process, and that rule is one included within the list of limited appeal orders, then leave is required even if the order invoked the inherent jurisdiction of the court: *Teal Cedar*.

[26] In the present case, the chambers judge's reasons do not address the jurisdictional or procedural basis for the injunction. The entered order references R. 10-4 of the *SCCR*, as does the notice of application. The notice of application, and the notice of civil claim, also refer to s. 39 of the *Law and Equity Act* and the court's inherent jurisdiction.

[27] The parties agree that the decision of the Supreme Court of Canada in *Canadian Pacific* describes the jurisdictional basis for the court to grant an interlocutory injunction in relation to an arbitration process under the *Code*. In *Canadian Pacific*, the BC Supreme Court granted an injunction restraining Canadian Pacific Ltd. from changing the work schedule pending the hearing of a grievance by an arbitrator in relation to the change. At this time, the *Code* did not provide a mechanism for obtaining interlocutory relief. In upholding the injunction, the Supreme Court of Canada described the source of the court's jurisdiction to fill this gap as follows:

> 5 The governing principle on this issue is that notwithstanding the existence of a comprehensive code for settling labour disputes, where "no adequate alternative remedy exists" the courts retain a residual discretionary power to grant interlocutory relief such as injunctions, a power which flows from the inherent jurisdiction of the courts over interlocutory matters: *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219,* [1986] 1 S.C.R. 704, at p. 727. The "residual discretionary jurisdiction in courts of inherent jurisdiction to grant relief not available under the statutory arbitration scheme" was most recently affirmed by this Court in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, at paras. 41, 54, 57 and 67, and *New Brunswick v. O'Leary*, [1995] 2 S.C.R. 967, at para. 3.

[28] Applying this "governing principle" to the facts of the case, the Supreme Court of Canada found that:

> 6 […] There was, in the words of this Court in *St. Anne Nackawic*, "no adequate alternative remedy". The British Columbia Supreme Court, by contrast, was empowered to grant interlocutory injunctions such as that which

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> the union sought in the exercise of its inherent jurisdiction: *Law and Equity Act*, s. 36 [now s. 39]. It would appear to follow that the court had the power to grant an injunction against imposition of the new schedule for the interim period pending a decision from the arbitrator appointed under the Code.

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[29] The Court rejected the submission of Canadian Pacific Ltd. that a court can only issue an interlocutory injunction if a party also seeks final relief in that same court. The Court noted that in *Channel Tunnel Group Ltd. and another v. Balfour Beatty Construction Ltd. and others*, [1993] 1 All E.R. 664, [1993] 2 W.L.R. 262, the House of Lords held that the court has power to grant interlocutory relief that is ancillary to a final order, even where the final order will be granted by another court or arbitral body. Canadian courts had applied *Channel Tunnel* "for the proposition that the courts have jurisdiction to grant an injunction where there is a justiciable right, wherever that right may fall to be determined": *Canadian Pacific* at para. 16.

[30] There is no doubt, in light of *Canadian Pacific*, that the interlocutory injunction issued by the chambers judge had its jurisdictional source in the court's inherent jurisdiction, as codified in s. 39 of the *Law and Equity Act*. What is less clear is whether the injunction "came through the *Supreme Court Civil Rules*": *Teal Cedar* at para. 20. If the injunction fell within the scope of R. 10-4, then the injunction is a limited appeal order and leave to appeal is required. If the injunction did not come through R. 10-4, then its sole basis was the court's inherent jurisdiction and leave is not required.

[31] I accept that the injunction issued in this was interlocutory, in the sense that it preserved a state of affairs pending steps in an ongoing labour dispute under the *Code*. However, I cannot agree that it is a "pre-trial injunction" that falls within the scope of R. 10-4 of the *SCCR*. Rule 10-4 provides a process for a party to seek interlocutory relief pending a final hearing in the BC Supreme Court. Rule 10-4(1) provides that an application for a pre-trial injunction may be made by a party "whether or not a claim for injunction is included in the relief claimed". Rule 10-4(2) provides that an application for a pre-trial injunction "may be made before the start of a proceeding". Rule 10-4(6) authorizes an application for an injunction after judgment in a proceeding in which an injunction "has been or might have been

claimed". In sum, the provisions of R. 10-4 contemplate that the pre-trial injunction is not the final relief sought in the BC Supreme Court.

[32] In the present case, the only relief sought by the Union in its notice of civil claim was an order restraining TELUS from implementing the Initiatives pending the appointment of an arbitrator. The injunction is final insofar as the process of the BC Supreme Court is concerned. There is no question, and TELUS does not dispute, that the court has residual discretionary jurisdiction to issue this type of relief, in appropriate cases where such relief is not available under the *Code*. However, in no sense can an injunction issued pursuant to this jurisdiction be viewed as a "pre-trial injunction" under R. 10-4, or as any type of ordinary civil proceeding contemplated by the Rules. The issuance of the injunction did not reflect an interlocutory step in the proceeding in the BC Supreme Court, but rather its conclusion.

[33] For these reasons, I find that the injunction was not made pursuant to Rule 10-4, and therefore it is not a limited appeal order. TELUS does not require leave to appeal.

Should leave to appeal be granted?

[34] In the event that I am wrong about the requirement for leave, I would nevertheless have granted TELUS leave to appeal, having regard to the well-settled test:

a) is the point on appeal of significance to the practice;

b) is the point of significance to the action itself;

c) is the appeal *prima facie* meritorious; and

d) will the appeal unduly hinder the progress of the action.

These factors "are considered under the overarching 'rubric of the interests of justice'": *Vancouver Shipyards Co. Ltd. v. Canadian Merchant Services Guild*, 2023

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BCCA 77 at para. 21 (Chambers), citing *Vancouver (City) v. Zhang*, 2007 BCCA 280 at para. 10 (Chambers).

[35] The issue TELUS wishes to raise on appeal is whether there is any remaining remedial gap in the *Code* in light of post-*Canadian Pacific* amendments that gave arbitrators a wide range of powers, including the power to make interim orders: *Code*, s. 60(1)(a.2). The question of whether, and to what extent, a remedial gap remains in the *Code* that justifies court intervention in a collective bargaining process is a matter of significance to the labour law practice. TELUS argues that there is no gap because it was open to the Union to use provisions of the *Code* that provide for interim relief and permit expedited processes. In other words, the Union had an adequate remedy under the *Code*, and thus there was no jurisdiction for the court to exercise. In my view, subject to my comments about mootness, TELUS' grounds of appeal are arguable. Granting leave would not unduly hinder the progress of the action because the action ended with the issuance of the injunction.

[36] The Union's primary grounds for opposing leave is the fact that the question of whether the chambers judge ought to have issued the injunction is moot. The Union says a division of this Court is unlikely to entertain a moot appeal, and the appeal will be of no practical utility to the parties in any event.

[37] There is a realistic prospect that a division of this Court would decline to exercise its discretion to hear this appeal. However, I cannot say that TELUS' appeal is bound to fail on that basis. TELUS raises legitimate arguments in favour of the Court hearing the appeal, despite its mootness. For the reasons I have already stated, the appeal is of significance to the practice. The issue of the scope of the court's residual discretion to make orders in the context of ongoing collective bargaining processes is an important one. The remedial gap identified by the chambers judge is temporally limited to the time between the filing of the grievance and the appointment of an arbitrator. The division may be persuaded the issue TELUS wishes to raise may recur and that it will inevitably be moot by the time it

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reaches this Court. TELUS' appeal is an arguable one, notwithstanding that it faces the hurdle of overcoming the problem of mootness.

[38] Accordingly, had leave to appeal been required, I would have considered it in the interests of justice to grant leave.

Disposition

[39] TELUS does not require leave to appeal the injunction order. The date for filing of TELUS' appeal record is 60 days from the date of this judgment. The subsequent filing deadlines will follow in accordance with the *Court of Appeal Rules*.

"The Honourable Madam Justice Horsman"

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