IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Bell et al. v. Stang et al.,***
2006 BCSC 1697

Date: 20060310
Docket: S061531
Registry: Vancouver

Between:

Bruce Bell, In His Capacity As President Of The Telecommunications Workers Union, Lesley Hammond, Allison Kuzyk, Marjorie Shewchuk, Rick Fleming, Ron Driscoll, Wes Nakano, Al Friesen, Cory Wardrop, Marcel Lafond, Patti Anderson, Nancy Curley, John Gallant, Donna Hokiro, Monte Worthington, Collin Anderson, Fran Miller and Julie Todd

Plaintiffs

And:

Don Stang And Persons Whose Names Are Unknown To The Plaintiffs

Defendants

Before: The Honourable Mr. Justice Stewart

Oral Reasons for Judgment

In Chambers
March 10, 2006

Counsel for Plaintiffs	L. McGrady, Q.C. C.J. Foy
Counsel for Defendants	J. Mostowich C. Keri
Place of Trial/Hearing:	Vancouver, B.C.

[1] **THE COURT:** (Oral) The Notice of Motion that came before me yesterday appears at Chambers Record Tab 2. I will take it as read.

[2] That there is a war raging within the union is obvious.

[3] The rule of law demands that a war within a union be not a revolution – by definition the lawless supplanting of one regime by another – but a contest conducted according to both public and private law.

[4] The private law of interest in the case at bar is the Telecommunication Workers Union Constitution which appears before me at Chambers Record Tab 3-A.

[5] It is of superordinate importance that in considering an application such as this for an interlocutory injunction a judge such as I keep front and centre that no decision on a point of fact that goes to the merits of the case or decision on a point of law that goes to the merits of the case is made at the conclusion of the application for interlocutory injunction. None. None whatsoever.

[6] It is also the better part of wisdom that a judge confronted with an application for an interlocutory order say as little as possible for it has been my experience that no matter how firmly the judge expresses what I have just said in paragraph 5 often, later, it becomes clear that those involved in the litigation have misunderstood the rules of engagement on an application such as this. Trouble results.

[7] With one eye on the submissions placed before me yesterday, I say as follows:

1. For present purposes it is enough that there is a decent argument to be made that the plaintiffs have status.

2. For present purposes it is enough that there is a decent argument to be made that sufficient of the plaintiffs' proffered cause of action (Chambers Record Tab 1) is known to the law that it provides a platform for discussion of the possible granting of an interlocutory injunction.

3. For present purposes, it is sufficient that I am of the view that at a trial those plaintiffs who are officers of the union have an arguable case to make that a motion passed on March the 6th, 2006, ordering that all positions of the executive council be up for election at the 2006 annual convention, regardless of the fact that their term or terms of office were not scheduled to expire prior to the date of the proposed election, amounted to a removal from office that was not duly constituted, that is to say, not known to the Union's constitution and that a wrong to the plaintiffs known to the law had occurred and a remedy was theirs to claim as of right or, the remedy being in the discretion of the court, pray for. Which of the latter two it might prove to be is of no moment for present purposes.

4. For present purposes it is sufficient that I am convinced that an unlawful ouster from office results in irreparable harm. To me that is

both self-evident and obvious on the authorities placed before me yesterday.

5. For present purposes it is sufficient that I am convinced that it is in the nature of the alleged wrong – unconstitutional removal from office of a duly elected union officer – that the balance of convenience must and does favour the granting of the injunction because if the plaintiffs be right then, since all power flows upward, thousands of members of the union will have had their membership rendered of no moment, a mere bagatelle, by the conduct of less than 100 delegates to the 2006 Convention; while on the other side is only lost time and wasted money. Enough said.

[8] I will grant an interim interlocutory injunction. In order to encourage the plaintiffs to view this as the little it is – a step – and not what it is not – the trial – I choose to make an order that will exist for a time and then fall to the ground. That will encourage the plaintiffs to push for a trial, of which this court now offers at least two varieties, one of which can come on in a hurry.

[9] I will grant an order, as I've said, limited as to time, but we must now focus on the detail. The problem is to stop some things from happening but not others. Yesterday counsel for the plaintiffs handed up a suggested form of order. The defendants opposed the granting of any order and chose not to hand up a suggested form of order, in the alternative, so to speak. So be it.

[10] I make the order in the terms suggested by the plaintiffs yesterday save and except: (a) the order will be an interim interlocutory injunction that will fall to the ground at 4 p.m. on June 30th, 2006; (b) pursuant to Rule 45(6) and what was said by the plaintiffs yesterday, the injunction will contain the undertaking of the plaintiffs to abide by any order that the court may make as to damages. There will be liberty to apply. The order may need tweaking. It is that kind of case. I am not seized of any future application either in law or in fact. The central provisions of the order are the following: this court orders that, 1, the defendants and all parties having knowledge of this order be restrained until trial judgment or other disposition of this action or until further order of this court from implementing or acting upon the resolution of the special convention of the Telecommunication Workers Union dated March 6th, 2006 purporting to declare all positions on the executive council of the TWU vacant and open for nominations and new elections by convention on March 10th, 2006 "Stang resolution." 2, in addition to, but not limiting the order in paragraph 1 above, any acclamations of executive council positions that have occurred as a result of the Stang resolution be enjoined until trial, judgment or other disposition of this action, or until further order of this court of this action. 3, the defendants and all parties having knowledge of this order be restrained until trial, judgment or other disposition of this action or until further order of this court from removing the following members of the executive council from office unless in accordance with either article 12 or article 18 of the TWU constitution. And there's then a shopping list of names. Those are the only portions of the order I choose to read out.

[11] Back to my reasons: pursuant to Rule 57(13)(a), the plaintiffs are entitled to one set of costs as costs in the cause. All right, that concludes this matter.

"A.M. Stewart, J."
The Honourable Mr. Justice A.M. Stewart