

Great Canadian Railtour Company Ltd. (respondent/plaintiff) v. Teamsters Local Union No. 31,
Rod Blackburn, Meghan Mulligan, Jennifer Safronik, Randy Terry, and persons unknown
(appellants/defendants)
(CA039253; 2012 BCCA 238)

Indexed As: Great Canadian Railtour Co. v. Teamsters Local Union No. 31 et al.

British Columbia Court of Appeal
Frankel, D. Smith and Garson, JJ.A.
June 1, 2012.

Summary:

Great Canadian Railtour Co. operated a tourist-oriented rail service. A labour dispute unfolded and Great Canadian locked out some of its unionized employees and continued operating using non-union employees and replacement workers. Great Canadian commenced a civil action, alleging that the union and some employees were engaging in picketing activities and were hindering and obstructing it from carrying on its business. Great Canadian sought injunctive relief.

The British Columbia Supreme Court, in a decision reported [2011] B.C.T.C. Uned. 973, granted an injunction restraining union activities near the entrance and exits of company facilities (first injunction). A week later Great Canadian sought further injunctive relief.

The British Columbia Supreme Court, in a decision reported [2011] B.C.T.C. Uned. 1720, granted an injunction (the second injunction), enjoining locked-out employees from: (a) "harassing in any manner" their employer's replacement workers, passengers, customers, suppliers, and others; (b) "unlawfully watching or besetting" any current employees; and (c) "following or pursuing" any current employees, customers, suppliers, and others. The union and its members appealed respecting the second injunction, arguing that: (a) harassing could not be enjoined because such action did not constitute an independent tort; (b) aspects of the order were vague and unnecessarily broad; (c) aspects of the order were made without a proper evidentiary foundation; and (d) the chambers judge relied on "improper evidence".

The British Columbia Court of Appeal dismissed the appeal. The court held that there was evidence before the chambers judge upon which he could conclude that the situation on the picket line had become more volatile since the first injunction was granted, and that further judicial action was needed to ensure that picketing remained within permissible bounds.

Injunctions - Topic 6303

Particular matters - Injury to trade - Picketing (incl. secondary picketing) - [See all **Labour Law - Topic 8867** and all **Labour Law - Topic 8870**].

Labour Law - Topic 8867

Industrial relations - Remedies - Injunctions - Interim - Power to grant - General - Locked-out union employees were enjoined from harassing the employer's replacement workers, customers, etc. - The union appealed, arguing that "harassing" could not be

enjoined because it was not an independent tort - The British Columbia Court of Appeal rejected the union's argument and dismissed the appeal - Here, a prima facie case of intimidation had been made out, so it was open to the judge to enjoin not only that tort, but also the related conduct - An earlier injunction had failed to deter the union's activities, rather the union had become more aggressive - It was open to the chambers judge to enjoin the union from harassing replacement employees, etc. to de-escalate the situation and prevent the commission of torts - In this case, harassing conduct had occurred and had contributed to the commission of the tort of intimidation - The judge was also rightly concerned about a potential breach of the peace - See paragraphs 48 to 56.

Labour Law - Topic 8867

Industrial relations - Remedies - Injunctions - Interim - Power to grant - General - The British Columbia Court of Appeal stated that "There is no requirement that every prohibition in an injunction be directed at conduct that itself amounts to a tort. In many cases it may be the combined effect of the various conduct, or the frequency of its repetition, which results in the commission of a tort (or crime). The primary issue in considering whether an injunction should be granted is whether there is conduct that amounts to a tort (or crime). To succeed on an application for an interim injunction, an applicant must make out a prima facie case that a tort (or crime) has been committed or is reasonably apprehended. It is only after that test has been met that a judge will consider what specific injunctive terms are necessary to address the wrongful conduct. When, as in the case at bar, a prima facie case of intimidation has been made out, it is open to a judge to enjoin not only that tort, but also related conduct, which although not tortious on its own, forms part of, or contributes to, the commission of that tort. The important question is whether the later prohibition is reasonably necessary to prevent a repetition of the tort ..." - See paragraph 52.

Labour Law - Topic 8867

Industrial relations - Remedies - Injunctions - Interim - Power to grant - General - A union argued that Donald, J.A.'s reasons in *Prince Rupert Grain Ltd. v. Grain Workers' Union, Local 333* (BCCA 2002), stood for the proposition that conduct which was neither a tort nor a crime could never be enjoined - The British Columbia Court of Appeal could not accept that *Prince Rupert Grain* stood for the proposition the Union sought to extract from it - Further, the Supreme Court of Canada in *Pepsi-Cola v. R.W.D.S.U.* (2002), did not, in adopting the "wrongful action approach", intend to preclude courts from ever enjoining conduct that was neither tortious nor criminal in and of itself - Rather, it left it open to courts to fashion remedies responsive to the situation at hand - See paragraphs 50 and 51.

Labour Law - Topic 8870

Industrial relations - Remedies - Injunctions - Interim - Picketing - To restrain - Locked-out union employees were enjoined from "harassing in any manner" their employer's replacement workers, customers, etc. - The union appealed, arguing that the words "harassing in any matter" were vague and overbroad because the word "harassing" had no clear and defined meaning - The British Columbia Court of Appeal dismissed the appeal -

The court opined that the word "harass" was well understood and was sufficiently precise to put picketers on notice as to the type of conduct in which they were not to engage - The term provided adequate guidance and did not impair the ability of picketers to peacefully and lawfully communicate their message - See paragraphs 57 to 61.

Labour Law - Topic 8870

Industrial relations - Remedies - Injunctions - Interim - Picketing - To restrain - Locked-out union employees were enjoined from "unlawfully watching or besetting" their employer's replacement workers, customers, etc. - The union appealed, arguing that the words "watching or besetting" were overbroad, as picketing itself was a form of watching and besetting, the purpose of which was to dissuade others from conducting business with an employer - Therefore, the "watching or besetting" provision could result in a contempt finding based on peaceful and lawful picketing - The British Columbia Court of Appeal dismissed the appeal - The court held that the impugned provision would not prevent the union from communicating its message because the "watching or besetting" was a compendious term with a known meaning in the context of an injunction - See paragraphs 61 to 68.

Labour Law - Topic 8870

Industrial relations - Remedies - Injunctions - Interim - Picketing - To restrain - Locked-out union employees were enjoined from "following or pursuing" the employer's replacement workers, customers, etc. - The union appealed, arguing that this provision was overbroad as it prevented any sort of communication with others and lawful secondary picketing - The British Columbia Court of Appeal dismissed the appeal - The court held that there was an evidentiary basis for the judge to conclude that further following or pursuing could result in the commission of a tort, and the court did not agree that the circumstances required him to craft a more tailored or narrow prohibition - In the context of this particular labour dispute, the prohibition the judge imposed did not unreasonably limit the union's ability to communicate its message - See paragraphs 69 to 71.

Labour Law - Topic 8870

Industrial relations - Remedies - Injunctions - Interim - Picketing - To restrain - [See all **Labour Law - Topic 8867**].

Cases Noticed:

Pepsi-Cola Canada Beverages (West) Ltd. v. Retail, Wholesale and Department Store Union, Local 558 et al., [2002] 1 S.C.R. 156; 280 N.R. 333; 217 Sask.R. 22; 265 W.A.C. 22; 2002 SCC 8, consd. [para. 42].

Prince Rupert Grain Ltd. v. Grain Workers' Union, Local 333 et al. (2002), 174 B.C.A.C. 305; 286 W.A.C. 305; 8 B.C.L.R.(4th) 91; 2002 BCCA 641, consd. [para. 49].

Vancouver Museums and Planetarium Assn. v. Vancouver Municipal and Regional Employees' Union (1981), 27 B.C.L.R. 73 (C.A.), reld to. [para. 53].

TNL Construction Ltd. v. British Columbia and Yukon Territory Building and Construction Trades Council, [1994] B.C.J. No. 3181 (S.C.), reld to. [para. 56].

Sun-Rype Products Ltd. v. Teamsters Local Union No. 213, [2008] B.C.T.C. Uned. 82;

2008 BCSC 165, reld to. [para. 56].
Adams Laboratories Ltd. v. Retail, Wholesale & Department Store Union, Local 580 (1980), 23 B.C.L.R. 74 (C.A.), reld to. [para. 56].
Braber Equipment Ltd. v. Fraser Surrey Docks Ltd. et al. (1999), 130 B.C.A.C. 307; 211 W.A.C. 307; 1999 BCCA 579, reld to. [para. 58].
Culligan Canada Ltd. et al. v. Fettes et al. (2010), 366 Sask.R. 24; 506 W.A.C. 24; 326 D.L.R.(4th) 463; 2010 SKCA 151, reld to. [para. 60].
Fletcher Challenge Canada Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 1092 (1998), 103 B.C.A.C. 136; 169 W.A.C. 136; 48 B.C.L.R.(3d) 98; 155 D.L.R.(4th) 638 (C.A.), reld to. [para. 62].
Everywoman's Health Centre Society (1988) v. Bridges, [1989] B.C.J. No. 2454 (S.C.), affd. (1991), 54 B.C.L.R.(2d) 273; 78 D.L.R.(4th) 529 (C.A.), reld to. [para. 66].
Everywoman's Health Centre Society (1988) v. Bridges (1993), 109 D.L.R.(4th) 345 (B.C.S.C.), reld to. [para. 67].
Telus Communications v. Telus Communications Workers Union, [2005] B.C.T.C. Uned. 539; 2005 BCSC 1163, dist. [para. 69].
Circuit Graphics Ltd. v. Canadian Assn. of Industrial Mechanical and Allied Workers, Local 1 (1981), 31 B.C.L.R. 5 (S.C.), reld to. [para. 80].
Hertz Canada Ltd. v. Canadian Office and Professional Employees Union Local 378 et al., [2010] B.C.T.C. Uned. 678; 2010 BCSC 678, reld to. [para. 80].

Counsel:

L.B. McGrady, Q.C., and M.J. Prokosh, for the appellants;
G. Litherland and F.D. Hume, for the respondent.

This appeal was heard in Vancouver, British Columbia, on February 6, 2012, before Frankel, D. Smith and Garson, J.J.A., of the British Columbia Court of Appeal. The following decision was delivered for the court by Frankel, J.A., on June 1, 2012.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon

Injunctions - Topic 6303

Particular matters - Injury to trade - Picketing (incl. secondary picketing) - Locked-out union employees were enjoined from harassing the employer's replacement workers, customers, etc. - The union appealed, arguing that "harassing" could not be enjoined because it was not an independent tort - The British Columbia Court of Appeal rejected the union's argument and dismissed the appeal - Here, a prima facie case of intimidation had been made out, so it was open to the judge to enjoin not only that tort, but also the related conduct - An earlier injunction had failed to deter the union's activities, rather the union had become more aggressive - It was open to the chambers judge to enjoin the union from harassing replacement employees, etc. to de-escalate the situation and prevent the commission of torts - In this case, harassing conduct had occurred and had contributed to the commission of the tort of intimidation - The judge was also rightly

concerned about a potential breach of the peace - See paragraphs 48 to 56.

Injunctions - Topic 6303

Particular matters - Injury to trade - Picketing (incl. secondary picketing) - The British Columbia Court of Appeal stated that "There is no requirement that every prohibition in an injunction be directed at conduct that itself amounts to a tort. In many cases it may be the combined effect of the various conduct, or the frequency of its repetition, which results in the commission of a tort (or crime). The primary issue in considering whether an injunction should be granted is whether there is conduct that amounts to a tort (or crime). To succeed on an application for an interim injunction, an applicant must make out a prima facie case that a tort (or crime) has been committed or is reasonably apprehended. It is only after that test has been met that a judge will consider what specific injunctive terms are necessary to address the wrongful conduct. When, as in the case at bar, a prima facie case of intimidation has been made out, it is open to a judge to enjoin not only that tort, but also related conduct, which although not tortious on its own, forms part of, or contributes to, the commission of that tort. The important question is whether the later prohibition is reasonably necessary to prevent a repetition of the tort ..."
- See paragraph 52.

Injunctions - Topic 6303

Particular matters - Injury to trade - Picketing (incl. secondary picketing) - A union argued that Donald, J.A.'s reasons in *Prince Rupert Grain Ltd. v. Grain Workers' Union, Local 333* (BCCA 2002), stood for the proposition that conduct which was neither a tort nor a crime could never be enjoined - The British Columbia Court of Appeal could not accept that *Prince Rupert Grain* stood for the proposition the Union sought to extract from it - Further, the Supreme Court of Canada in *Pepsi-Cola v. R.W.D.S.U.* (2002), did not, in adopting the "wrongful action approach", intend to preclude courts from ever enjoining conduct that was neither tortious nor criminal in and of itself - Rather, it left it open to courts to fashion remedies responsive to the situation at hand - See paragraphs 50 and 51.

Injunctions - Topic 6303

Particular matters - Injury to trade - Picketing (incl. secondary picketing) - Locked-out union employees were enjoined from "harassing in any manner" their employer's replacement workers, customers, etc. - The union appealed, arguing that the words "harassing in any matter" were vague and overbroad because the word "harassing" had no clear and defined meaning - The British Columbia Court of Appeal dismissed the appeal - The court opined that the word "harass" was well understood and was sufficiently precise to put picketers on notice as to the type of conduct in which they were not to engage - The term provided adequate guidance and did not impair the ability of picketers to peacefully and lawfully communicate their message - See paragraphs 57 to 61.

Injunctions - Topic 6303

Particular matters - Injury to trade - Picketing (incl. secondary picketing) - Locked-out union employees were enjoined from "unlawfully watching or besetting" their employer's replacement workers, customers, etc. - The union appealed, arguing that the words

"watching or besetting" were overbroad, as picketing itself was a form of watching and besetting, the purpose of which was to dissuade others from conducting business with an employer - Therefore, the "watching or besetting" provision could result in a contempt finding based on peaceful and lawful picketing - The British Columbia Court of Appeal dismissed the appeal - The court held that the impugned provision would not prevent the union from communicating its message because the "watching or besetting" was a compendious term with a known meaning in the context of an injunction - See paragraphs 61 to 68.

Injunctions - Topic 6303

Particular matters - Injury to trade - Picketing (incl. secondary picketing) - Locked-out union employees were enjoined from "following or pursuing" the employer's replacement workers, customers, etc. - The union appealed, arguing that this provision was overbroad as it prevented any sort of communication with others and lawful secondary picketing - The British Columbia Court of Appeal dismissed the appeal - The court held that there was an evidentiary basis for the judge to conclude that further following or pursuing could result in the commission of a tort, and the court did not agree that the circumstances required him to craft a more tailored or narrow prohibition - In the context of this particular labour dispute, the prohibition the judge imposed did not unreasonably limit the union's ability to communicate its message - See paragraphs 69 to 71.

Labour Law - Topic 8870

Industrial relations - Remedies - Injunctions - Interim - Picketing - To restrain - Locked-out union employees were enjoined from harassing the employer's replacement workers, customers, etc. - The union appealed, arguing that "harassing" could not be enjoined because it was not an independent tort - The British Columbia Court of Appeal rejected the union's argument and dismissed the appeal - Here, a prima facie case of intimidation had been made out, so it was open to the judge to enjoin not only that tort, but also the related conduct - An earlier injunction had failed to deter the union's activities, rather the union had become more aggressive - It was open to the chambers judge to enjoin the union from harassing replacement employees, etc. to de-escalate the situation and prevent the commission of torts - In this case, harassing conduct had occurred and had contributed to the commission of the tort of intimidation - The judge was also rightly concerned about a potential breach of the peace - See paragraphs 48 to 56.

Labour Law - Topic 8870

Industrial relations - Remedies - Injunctions - Interim - Picketing - To restrain - The British Columbia Court of Appeal stated that "There is no requirement that every prohibition in an injunction be directed at conduct that itself amounts to a tort. In many cases it may be the combined effect of the various conduct, or the frequency of its repetition, which results in the commission of a tort (or crime). The primary issue in considering whether an injunction should be granted is whether there is conduct that amounts to a tort (or crime). To succeed on an application for an interim injunction, an applicant must make out a prima facie case that a tort (or crime) has been committed or is reasonably apprehended. It is only after that test has been met that a judge will consider what specific injunctive terms are necessary to address the wrongful conduct. When, as in

the case at bar, a prima facie case of intimidation has been made out, it is open to a judge to enjoin not only that tort, but also related conduct, which although not tortious on its own, forms part of, or contributes to, the commission of that tort. The important question is whether the later prohibition is reasonably necessary to prevent a repetition of the tort ..." - See paragraph 52.

Labour Law - Topic 8870

Industrial relations - Remedies - Injunctions - Interim - Picketing - To restrain - A union argued that Donald, J.A.'s reasons in *Prince Rupert Grain Ltd. v. Grain Workers' Union, Local 333* (BCCA 2002), stood for the proposition that conduct which was neither a tort nor a crime could never be enjoined - The British Columbia Court of Appeal could not accept that *Prince Rupert Grain* stood for the proposition the Union sought to extract from it - Further, the Supreme Court of Canada in *Pepsi-Cola v. R.W.D.S.U.* (2002), did not, in adopting the "wrongful action approach", intend to preclude courts from ever enjoining conduct that was neither tortious nor criminal in and of itself - Rather, it left it open to courts to fashion remedies responsive to the situation at hand - See paragraphs 50 and 51.