IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Bell et al. v. Stang and Telecommunications Workers Union,*** 2006 BCSC 998

Date: 20060630
Docket: S-061531
Registry: Vancouver

Between:

Bruce Bell, in his capacity as President of the Telecommunications Workers Union, Bruce Bell, Lesley Hammond, Allison Kuzyk, and Marjorie Shewchuk

Plaintiffs

And

Don Stang and Telecommunications Workers Union

Defendants

Before: The Honourable Mr. Justice Nathan Smith

Reasons for Judgment

(In Chambers)

Counsel for the plaintiffs	Leo McGrady, Q.C.
Counsel for the defendants	John Mostowich
Date and Place of Hearing:	June 15, 2006 Vancouver, B.C.

[1] A long and bitter labour dispute has left the Telecommunications Workers Union deeply divided. Delegates to a union convention voted to hold an immediate election for all executive positions, although about half of the executive members

had either one year or two years remaining in their terms of office. The issue before the court is whether the convention could legally take that step.

[2] The plaintiff Bruce Bell is the president of the union and the other three plaintiffs are business agents. They are among the executive members whose terms would be prematurely ended. They say that would amount to them being removed from office in a manner not permitted by the union constitution. Proponents of the convention resolution say it is a proper exercise in representative democracy, in which executive members are being asked to seek a new mandate from the membership.

[3] The Telecommunications Workers Union has 14,000 members in British Columbia, Alberta, Ontario and Quebec. Most of them are employed by Telus Communications Inc., which locked out its unionized employees for four months in 2005. Some union members consider the lockout and the new collective agreement that ended it to have been a defeat for the union and blame the executive, particularly Mr. Bell.

[4] The union operates under a representation system set out in its constitution. The highest governing body is the convention, which is composed of delegates elected by union locals. The convention elects the executive council, which currently has 20 members, including the president. This number was expanded from 17 at the last convention. Although only elected delegates may vote, any union member may attend the convention and run for an executive position. Article IV of the constitution states in part:

1. The Convention shall be the highest governing authority of the Union, subject to restrictions imposed by this Constitution.

2. The Executive Council shall exercise the authority of the Convention between Conventions. It shall take such action and render decisions necessary to carry out the resolutions and instructions of the Convention and to enforce the provisions of the constitution, subject to the right of appeal to the convention.

3. The president as the principal officer of the union shall have sole authority to interpret this Constitution and to carry out the policies of the union in accordance with this Constitution and the mandates of the Convention, subject to the right of appeal to the Convention.

[5] The elected executive council members are salaried officers of the union and are elected for three-year terms, with some executive positions being elected each year. The plaintiff Bell was elected in March, 2005 to fill the remaining term of a retiring president. That term was to expire in March, 2007. The plaintiff Marjorie Sewchuk's three-year term was also set to expire in March, 2007, while the terms of the plaintiffs Lesley Hammond and Allison Kuzyk were set to expire in March, 2008.

[6] The constitution includes a mechanism for recall of the elected salaried officers. This can be done at a special convention or, in defined circumstances, at a regular convention, but requires a two-thirds majority of convention delegates. An executive member can also be removed from office for various offences under the constitution, but this requires a trial before a board convened for that purpose, followed by a resolution of the executive. Amendments to the constitution require approval of two thirds of the membership voting in a referendum.

[7] The constitution requires the convention to meet annually during the first week of March, but special conventions can be called either by the executive council

or at the request of 25 per cent of convention delegates. The 2006 annual convention was scheduled to begin on March 7 and was to include elections for nine executive positions. A petition signed by 34 delegates requested a special convention to be held immediately before the regular convention. The special convention was stated to be for the purpose of considering a motion of non-confidence in the executive.

[8] The special convention was held on March 6, 2006. After lengthy debate, the non-confidence motion was passed by a simple majority vote. The proponents of the non-confidence motion expected the executive to resign, but none of the executive members did so. Mr. Bell had obtained a legal opinion that there was no provision in the constitution for removal of officers by a non-confidence vote and that any such vote would be a nullity.

[9] Following the refusal of the executive to resign, convention delegate Don Stang proposed a motion that all executive positions be put up for election for their remaining terms of office at the annual convention which was to begin the next day. That motion (the "Stang motion") passed by a vote of 64 to 48.

[10] The annual convention began as scheduled on March 7. However, Mr. Bell and others began this action and, on March 10, Stewart J. granted an interim injunction restraining the removal of the plaintiffs from office. That injunction was set to expire on June 30, 2006. The matter did not come on for a hearing on the merits until June 15, 2006. I therefore extended the expiry date of the interim injunction to July 17, pending release of these reasons.

[11] In ***Boe v. Hamilton***, [1990] B.C.J. No. 330 (S.C.) Bouck J. discussed the legal structure under which a trade union conducts its internal affairs and provided a detailed review of the authorities. The union is an association based on contract. The terms of the contract are set out in the union's constitution or other rules and are binding on all members. As with any contract, the court has jurisdiction to interpret the union constitution.

[12] Before addressing what I see as the main issue in this case, I wish to briefly dispose of two other matters that were raised in argument. First, the union objects to Mr. Bell bringing this action "in his capacity as president" of the union and asserts that Mr. Bell can and should be recognized as a plaintiff only in his personal capacity. I am not persuaded that anything of consequence turns on this issue and do not propose to address it.

[13] Second, the plaintiffs argue that, in addition to failing to comply with constitutional procedures, the convention delegates effectively disenfranchised the entire union membership in the choice of the executive. They say this is because the membership, when they elected delegates, did not know that all executive positions would be vacant, much less who would be running for them. Notice of those matters may have influenced the votes of individual members for delegates or their consideration of whether to seek office.

[14] The notice argument would have much greater force in a union that elected its executive by a vote of the full membership or at an "open" convention where all members who wished to attend and vote could do so. However, this union has

chosen a representation structure in which the membership does not directly participate in the election of the executive. The membership elects delegates without necessarily knowing who the candidates for executive office will be or how their elected delegates will vote. It was pointed out that Mr. Bell himself was elected president at a convention when the office unexpectedly became vacant long after the membership had chosen the voting delegates.

[15] The real issue in this case is whether the convention had any authority in, or arising out of, the constitution that allowed them to open all executive positions for election at the same time. Counsel for the union argues that the decision was made as a legitimate and necessary response to the executive's refusal to respect the non-confidence motion. The analysis must therefore begin with the validity and effect of the non-confidence motion.

[16] The plaintiffs do not question the right of the convention delegates to introduce, debate and vote on a non-confidence motion. At the very least, such a vote represents the delegates' strong opinion on the executive's performance. It is an opinion that is particularly important in that it comes from the very body that elected the executive in the first place.

[17] Officers of any organization who are the subject of such a non-confidence vote would usually, as a practical matter, give serious consideration to resigning. The very fact that such a motion has been passed would raise serious questions about their ability to function effectively in office. They would have to ask themselves whether remaining in office would be in their own or the organization's

best interest. However, that is not the same thing as saying there is a positive requirement to resign, enforceable either by the organization or by the court.

[18] There is no specific provision in the constitution for a non-confidence motion, much less a requirement that anyone resign as result of one. Counsel for the union argues that such an obligation must necessarily be implied as a basic element of responsible government. For example, he points out that in the Parliament of Canada or the Legislature of British Columbia, a government that loses a non-confidence motion must resign. However, that requirement is not spelled out in any written rule or constitutional provision, nor is there any such written requirement governing the Parliament at Westminster, from which the practice was inherited.

[19] The practice in parliament or the legislature exists by constitutional convention. Professor Hogg defines a constitutional convention as rule regarded as obligatory by those to whom it applies, usually because it has been invariably followed over such a long period of time that it has come to be generally regarded as obligatory (*Peter W. Hogg, Constitutional Law of Canada*, 3rd ed. looseleaf (Scarborough, Ont: Carswell, 1997) at 1-21).

[20] Although there appear to have been some instances in the union's history where individuals (not the entire executive) have resigned following a non-confidence motion, the union is not parliament. It is, as said above, a contractual association of individuals bound by the rules they have set for themselves. I was referred to no authority that the concept of a constitutional convention, developed in a public body by centuries of practice and tradition, can be imported into a private

contractual arrangement. In any event, one of the features of constitutional conventions is that they are not enforceable by the courts (*Hogg* at 1-17).

[21] Because the union constitution is a contractual arrangement, it is open to the court to imply terms, but that should be done with great caution and only where such an implied term is necessary to give effect to the document's purpose, not merely when an implied term seems reasonable: see ***Boe v. Hamilton*** at ¶97. While it may be reasonable for executive members to resign following a non-confidence vote, I do not think it is necessary for the proper operation of the union to imply a section requiring resignation into the constitution, which sets out other ways of removing executive members.

[22] I now turn to the legality of the Stang motion. The provisions by which executive members are elected and removed are spelled out in the constitution. In ***Boe v. Hamilton***, Bouck J. noted that union constitutions should not be construed as if they were statutes and the court should approach the task of interpretation with some flexibility. However, he did say that some provisions in a union constitution must be strictly construed.

[23] The requirement for strict construction has been applied primarily in cases involving expulsion or suspension of members. In ***Tippett v. International Typographical Union, Local 226 et al.*** (1976), 63 D.L.R. (3d) 522 (B.C.S.C.) Anderson J. said at ¶51:

> [T]he laws of the union, insofar as they deal with the expulsion of members, will be strictly construed and before a member can be expelled he must be proven guilty of a clear breach of the laws of the

union. It must be an offence "known to the laws of the union.

[24] In ***Boe v. Hamilton***, the plaintiff allegedly assaulted a union official at a meeting. The plaintiff was removed from office as a business agent and barred from holding office or attending meetings. Bouck J. declared the union's action illegal because there was nothing in the constitution that specifically made the conduct complained of an offence. He also found that the procedure was defective because the laying of charges was approved by a majority vote of members at a meeting, when the constitution required a majority vote of all members of the local.

[25] The rationale for strict construction of provisions dealing with expulsion or suspension of members is the profound effect such action has on the rights of the individual. In addition to denying the member the ability to participate in the affairs of the union and in the collective bargaining process, expulsion or suspension from the union may affect a member's ability to continue in his or her employment.

[26] The right to hold union office has been treated as a matter of similar importance. In *Trade Union Law in Canada*, the authors stated at ¶6.640:

> The right to hold union office has been regarded by Canadian courts as a right of some considerable importance. Consequently, the judiciary has treated the removal of union officers from their elected positions with the same rigorous scrutiny as a claim for wrongful loss of union membership. (M. MacNeil et al., *Trade Union Law in Canada* (Aurora, Ont.: Canada Law Book, 2004)).

[27] In addition to, and at least as important as the individual right, is the integrity of the union as an important democratic institution within a democratic society governed by the rule of law. The rule of law is as important within the union as it is

in society at large. All members of the union have a right to expect that its affairs will be governed by its constitution, not by arbitrary actions of either the executive or the convention. As Stewart J. said at ¶s 2 and 3 when he granted the interim injunction in this matter:

> That there is a war raging within the union is obvious.
>
> 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.

[28] By advancing the date for election to all executive positions, the Stang motion had the effect of removing executive members from office by simple majority vote of the convention before the expiry of the terms to which they were elected. The constitution expressly sets out the terms for which executive members are elected and establishes two (and only two) separate procedures by which they may be removed from office before the end of their terms. Only one of those methods, the recall procedure, can be done by the convention and that requires a two-thirds majority.

[29] Counsel for the union argues that the Stang motion was not presented as a recall motion, but as an ordinary motion under the convention's general power to do all things for the proper disposition of business brought before it. That argument elevates form over substance. The action of the convention effectively removed executive members by creating a new, less onerous method of doing so. That new method does not exist in the constitution. It is, of course, open to the union to create such a procedure, but it would require the vote of the membership in a referendum

to amend the constitution. While I have said that I was not impressed with the argument that the membership had been denied a voice in the election of the executive, given the election system that exists, the fact that they have been denied a voice in amending the constitution is a serious matter.

[30] In the absence of a proper recall motion or a constitutional amendment, the convention delegates who wish to remove executive members may attempt to use the internal trial and discipline provision. I was told that such a process has been started against Mr. Bell and I make no comment on its use in these circumstances. The final option is to elect new executive members when the current terms of office expire.

[31] Counsel for the union argues that the convention has the ultimate authority to interpret the constitution. This is said to arise because the constitution says the president has sole authority to interpret the constitution, subject to appeal to the convention, and because when the convention is sitting, everything that is normally done by the executive falls to the convention. The effect of that, counsel says, is that all roads under the constitution lead back to the convention.

[32] However, the constitution makes the convention the union's highest governing body "subject to the restrictions imposed by this constitution." Those words, and indeed the whole constitution, would be meaningless if the convention could simply declare that "the constitution means whatever we say it means," regardless of the clear language in the document.

[33] Counsel for the union also submits that the constitution imports *Bourinot's Rules of Order* to deal with any specific situation about which the constitution is silent. The reference to *Bourinot's* appears in a section of the constitution dealing with convention rules, such as rules governing the time delegates may speak on a motion. After listing a number of rules, the section then says that "any situation not governed by the preceding will be governed by *Bourinot's Rules of Order*." Counsel says that the result of the non-confidence motion and the Stang motion reflects the will of the majority. Reference was made to a passage from *Bourinot's* which says that the decision of the majority must be accepted.

> The democratic right to introduce a proposition in the form of a motion, and of full debate and a free vote thereon, carries with it the obligation of the majority to respect its own decision to the same extent as the obligation of a minority to accept and respect decisions of the majority. In other words, a decision reached by due process must be recognized and observed as such by all concerned; if it involves action, of whatever nature, that action must be taken.

[34] The key words in that passage are "a decision reached by due process." The Stang motion may have reflected the will of the majority, but its effect was to remove executive members from office before the expiry of their constitutionally defined terms. The constitution sets out a "due process" for making such a decision, and it is one that requires more than a simple majority.

[35] In addition, the reference to *Bourinot's Rules Of Order* appears in a section of the constitution dealing entirely with procedural rules. Nothing in that section suggests that a very general statement in the book can be used to remove substantive rights that exist in the constitution.

[36] I conclude that the plaintiff's are entitled to the declarations sought. The motion passed by the special convention to put all executive positions up for election (the Stang motion) is *ultra vires* the union constitution and is null and void. The plaintiffs are entitled to continue in office, subject to any proper procedures that may be taken under the constitution, and the purported election by acclamation of a new president is null and void. The plaintiffs are entitled to costs.

Nathan H. Smith, J.