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Docket: CA 174187
CA 174188
CA 174189

NOVA SCOTIA COURT OF APPEAL
[Cite as: *Tardif v. McGrath, 2002 NSCA 56*]

Roscoe, Hallett and Cromwell, JJ.A.

BETWEEN:

FERN TARDIF and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 625

Appellants

- and -

BRAYNE MCGRATH

Respondent

AND:

FERN TARDIF and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 625

Appellants

- and -

INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS LOCAL NO. 1 ("CAW/MWF Local No. 1"), BLAISE YOUNG and FRED PICKREM

Respondents

AND:

FERN TARDIF and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 625

Appellants

- and -

HALIFAX SHIPYARD, a Division of Irving Building Inc.

Respondent

REASONS FOR JUDGMENT

Counsel: Ronald A. Pink, Q.C. and Gordon N. Forsyth for the appellants
C. Scott Sterns and Tammy Manning for the respondent McGrath
Ronald Pizzo for the respondent Union
Brian G. Johnston, Q.C. and Rebecca K. Saturley for the respondent Halifax Shipyard

Appeal Heard: January 15, 2002

Judgment Delivered: April 22, 2002

THE COURT: Leave to appeal is granted but the appeal is dismissed in relation to the injunction issued in favour of the Shipyard; leave to appeal is granted and the appeals are allowed in relation to the injunctions issued in favour of the Marine Workers and individual respondents per reasons for judgment of Cromwell, J.A.; Hallett and Roscoe, JJ.A. concurring.

CROMWELL, J.A.:

I. Introduction:

[1] Trade unions organize workers so that they can take collective action to further their collective interests. Such action will often have the effect of exerting economic pressure and sometimes of inflicting economic harm on employers. While at one time action of this sort was considered to be criminal conspiracy, conduct in restraint of trade or illegal for other reasons, modern labour law recognizes and protects the right of workers to take collective action to promote their interests. However, that right is not absolute.

[2] The appellants Local 625 of the International Brotherhood of Electrical Workers and its business agent, Mr. Tardif, undertook collective action for the purpose of obtaining work on favourable terms for the Local's members. Their action, however, was found by a judge of the Supreme Court of Nova Scotia to be *prima facie* illegal and was restrained by an interlocutory injunction. Underlying their appeal from that decision is the question of whether Local 625 and Mr. Tardif exceeded the limits of lawful collective action; the precise issue is whether the judge erred in granting the injunction.

[3] It will be necessary to set out both the evidence and law in considerable detail, but it may be helpful at the outset to provide a brief review of the facts and my conclusions.

[4] The respondent Halifax Shipyard ("Shipyard") has a collective agreement with the respondent Local 1 of the Industrial Union of Marine and Shipbuilding Workers of Canada ("Marine Workers"). Many trades, including electricians, are employed under that agreement. The Shipyard obtained a major contract to carry out work on an oil rig. The work requires a large number of electricians. The Shipyard decided to try to hire electricians to do this work under its collective agreement with the Marine Workers rather than to subcontract the electrical work.

[5] The appellants, International Brotherhood of Electrical Workers, Local 625 ("Local 625") and Mr. Tardif, are respectively a trade union and its business agent. They did not like the Shipyard's plan. They thought that if the electrical work on the rig were subcontracted instead of performed in house at the Shipyard, Local 625's members would likely get to perform the work under the more favourable

collective agreement between the Local and the Construction Management Bureau. Therefore, in order to force the Shipyard to subcontract the electrical work, Local 625 told its members not to accept work on the rig at the Shipyard under the Marine Workers' agreement. The individual respondents, Messrs. Young, Pickrem and McGrath, are members of Local 625, but also work at the Shipyard as electricians. They did not obey Local 625's directive and, to punish their disobedience, Local 625 imposed disciplinary sanctions on them.

[6] The Shipyard, the Marine Workers and the individuals applied for injunctions to stop Local 625 from refusing to let its members work for the Shipyard on the oil rig and to stop the disciplinary action against its members who did so.

[7] The main allegations to support the granting of the interlocutory injunctions concern various forms of tortious interference with contractual and economic relations. The key allegation is that Local 625 set out to interfere, indirectly, with the contractual relationship between the Shipyard and the oil rig by wrongly telling its members not to accept employment at the Shipyard under the Marine Workers collective agreement. While there were many legal and factual issues argued on appeal, the focus of the debate is whether the judge erred in finding that Local 625's tactic was *prima facie* unlawful.

[8] While I would not support all of the judge's conclusions in relation to the various alleged unlawful means, I do not think he erred in finding, on a *prima facie* basis, that Local 625's actions were in violation of s. 58(1) of the **Trade Union Act**, R.S.N.S. 1989, c. 475 ("**Act**") and that the Shipyard had established, on a *prima facie* basis, that Local 625 and Mr. Tardif had committed the tort of indirect interference with the contractual relations between the Shipyard and the oil rig. There was, in my view, no adequate alternate remedy for the Shipyard. I am also of the view that the judge did not err in finding that the Shipyard had showed both that it would likely suffer irreparable harm if the injunction were refused and that the balance of convenience strongly favoured granting the injunction. I would, therefore, uphold the judge's decision to issue the injunction in favour of the Shipyard.

[9] I reach a different conclusion with respect to the injunctions in favour of the Marine Workers and the individual respondents. Having granted injunctive relief to the Shipyard, the injunction in favour of the Marine Workers served no purpose.

In relation to the individual respondents, Local 625 undertook to revoke all discipline imposed on these individuals and not to interfere with the employment at the Shipyard of those of the Local's members who have ongoing contractual relationships with the Shipyard. The individuals, therefore, could not show that they would suffer irreparable harm if the injunction were refused, provided, of course, that the undertaking was honoured. It follows that the Chambers judge erred in granting interlocutory injunctions at the instance of the Marine Workers and the individual respondents.

[10] In the result, I would grant leave to appeal but I would dismiss the appeal in relation to the injunction issued in favour of the Shipyard. However, I would allow the appeal and set aside the injunctions in relation to the Marine Workers and the individual respondents.

II. Facts:

[11] It will be helpful first to set out an overview of the collective bargaining and other contractual relationships which are relevant to the appeals and then to turn to the specific facts giving rise to the litigation.

[12] The Shipyard builds and repairs ships and marine structures including oil rigs. The Marine Workers is a trade union certified under the **Act** as the collective bargaining agent for all employees of the Shipyard except for certain excluded employees not relevant here. There is a collective agreement between these parties.

[13] The International Brotherhood of Electrical Workers, Local 625 is a trade union with roughly 850 members in the construction industry and 50 in manufacturing. Fern Tardif is its business manager. Local 625 is a party to a Collective Agreement with the Construction Management Bureau Limited ("Bureau Agreement"). That agreement applies to employer members of the Construction Management Bureau as well as to other signatory employers and employers who agree to be bound by its terms. By virtue of s. 98 of the **Act**, the Bureau Agreement is automatically binding upon all unionized employers in the industrial and commercial sector of the construction industry. It is open to other employers to agree to apply the terms of the Bureau Agreement to work in other sectors of the construction industry or to non-construction work.

[14] Although work in the offshore oil industry is not considered by Local 625 as falling within the construction industry, it is not uncommon for employers to employ Local 625 members under the terms of the Bureau Agreement for work on the construction and maintenance of offshore oil rigs.

[15] Construction members of Local 625 work in both construction and non-construction industries, depending on the availability of work. Under Local 625's by-laws, the handling of jobs for unemployed members is under the supervision and direction of the business manager who is to devise practical and fair means of distributing jobs to qualified members. Construction members must obtain a referral from the business manager before commencing work for an employer: By-laws, Article XV, sections 12 and 13.

[16] The Shipyard employs a variety of trades people, including electricians who, as noted, are represented at the Shipyard by the Marine Workers. Some of these electricians hold dual membership in the Marine Workers and Local 625. Local 625 considers construction members who are working, but not in the construction industry, to be out of work for the purpose of distribution of the better paying construction work if such work becomes available. Therefore, an electrician working at the Shipyard who holds dual membership may be offered construction work by Local 625 as it becomes available. If the electrician accepts the construction work, he or she quits employment at the Shipyard to take the electrical construction work under the more lucrative Bureau Agreement.

[17] About 85 members of the Marine Workers are employed with the Shipyard as electricians and of them, about 35 are also members of Local 625. The three individual respondents fall into this group. Brayne McGrath, Fred Pickrem and Blaise Young are members of Local 625 and, as well, were employed at the Shipyard. Mr. McGrath was employed as a supervisor (a non-union position), while Messrs. Pickrem and Young were employed as electricians under the Local 1 collective agreement.

[18] The Shipyard (in fact Irving Shipbuilding Inc. of which the Shipyard is a division) has a contract worth more than $60 million with Ocean Rig 2 AS to complete and winterize the Eirik Raude Oil Rig (“oil rig”). A large work force of many trades is required to perform this work, including about 450 electricians. It is obvious that the Shipyard will require many more than the current number of electrician members of the Marine Workers to perform this work.

[19] The Shipyard decided that it would prefer not to subcontract the electrical work on the oil rig but rather would attempt to hire electricians directly to work under the Marine Workers' collective agreement. Local 625 and Mr. Tardif, however, did not think much of this plan. In the oil rig contract, they saw an opportunity. They thought that if the electrical work were subcontracted, the Local could reach agreement with the subcontractor to apply the Bureau Agreement. If so, the result would be not just work for electricians, but work at construction rates for members of Local 625 under their collective agreement with the Bureau.

[20] In order to try to take advantage of this opportunity, Mr. Tardif and the Local decided to prevent the Local's members from accepting work at the Shipyard on the oil rig by refusing to refer (or as they put it, to clear) out of work members for work there. On July 25, 2001, Mr. Tardif wrote to the Local's members as follows:

> The Halifax Shipyards has been in discussions with BMS Offshore with regards to subcontracting the above work on the Oil Rig which will be docked at the Woodside Terminal in Dartmouth, Nova Scotia. However, I am advised by the Labour Relations Officer in the Shipyards that they will be first trying to recruit Electricians and Apprentices and several other trades to do the work directly for the Halifax Shipyards. They will be looking at employing approximately four hundred (400) Electricians and Apprentices, and if they cannot recruit these workmen then they will subcontract the balance of the work to an outside contractor.
>
> The construction of this Oil Rig is under the jurisdiction of Local 625 as we have both marine and Construction jurisdiction for the IBEW in Mainland, Nova Scotia. The issue of clearing IBEW, Local 625 members and other IBEW members to work on this Project was discussed in detail at the Executive Board meeting on July 24, 2001. Considering the impact of this Project and other potential offshore Projects for our members and other IBEW members along with Unionized Contractors I have recommended to the Executive that no IBEW members be cleared to work on this Project unless they are working for a Unionized Contractor under a Collective Agreement signed with our Local Union. The Executive Board has unanimously supported and endorsed this recommendation.
>
> Therefore, all Local 625 members are hereby advised that they are not cleared to work on the construction of the Oil Rig that has been awarded to the Halifax Shipyards and will be docked shortly at the Woodside terminal in Dartmouth.

> This also applies to any member or members currently working for the Shipyards if they are requested to transfer from the Shipyards to this Project.
>
> In closing, the construction of this Oil Rig and other potential Oil Rigs which may be built in Nova Scotia should be done by Unionized Electrical Contractors with IBEW members working under our Collective Agreement that our members have fought for years to secure and maintain. With the cooperation of all IBEW Locals and their members this can be accomplished. If you have any questions regarding this letter please do not hesitate to contact me. Thanking all members for their anticipated cooperation and assistance.
> (emphasis added)

[21] Mr. Tardif explained his purpose in his affidavit filed in these proceedings:

> In making the decision to not refer / clear members of the IBEW, Local 625 and other IBEW members to work directly for Halifax Shipyard on the Eirik Raude Oil Rig Project, the Local Union's concern and sole objective has been to protect the interests of the members of the IBEW, Local 625 and to give full recognition to the skills and experience of the members through the better terms and conditions of employment found in our collective agreement with the Construction Management Bureau. It is the Local Union's intention that the members of the IBEW, Local 625 work on the Oil Rig only for a unionized electrical contractor under the terms and conditions of the Bureau collective agreement.
>
> ...
>
> It is important for all of the members that this work be performed under the terms of the Bureau collective agreement or a similar agreement negotiated with the Local Union. The wage rate for electricians under our collective agreement is almost $4.00 more than the wage rate for electricians under the collective agreement between the Industrial Union of Marine and Shipbuilding Workers, Local No. 1 ("CAW/MWF, Local No. 1") and Halifax Shipyard. In addition, any work performed by members of the IBEW, Local 625 under the CAW/MWF and Halifax Shipyard collective agreement would not require any contributions to the IBEW, Local 625 Pension Fund, or to the other funds established under the Bureau collective agreement. It is my understanding that the work on the Eirik Raude Oil Rig will require 450 full-time electricians for approximately six months. If the work is done under the Bureau collective agreement, significant employer remittances to the Pension Plan and other funds will be made to the benefit of all members of the Local Union. (emphasis added)

[22] Despite the direction from Local 625, the individual respondents (Messrs. McGrath, Pickrem and Young) continued to work on the oil rig after July 25. Local 625 preferred charges against them. They were denied adjournments and refused permission to be represented by legal counsel. At trial board hearings held in late August of 2001, each was found guilty, suspended from union membership for one year and fined the equivalent of the amount earned working on the oil rig.

[23] By interlocutory notices dated August 30 and 31, the Shipyard, the Marine Workers and the individual respondents applied for interim injunctions. The orders sought were to prohibit Local 625 and Mr. Tardif from preventing Local 625 members from working for the Shipyard on the rig, from taking or enforcing any disciplinary action against the individual respondents and from interfering with contractual and economic relations relating to the oil rig. At the bottom of all of the allegations was the proposition that Local 625 acted unlawfully in its refusal to clear its members for work on the rig.

[24] The consolidated applications were heard by Gruchy, J. in chambers who granted an order on the Shipyard application in the following terms:

> **IT IS HEREBY ORDERED** that an Injunction is granted until the trial of this action, and the Respondents and all of their members, officers, servants, agents, representatives, employees and substitutes and any person or persons acting under the instructions of them, or any of them, and any person having notice of this Order is enjoined and restrained from doing any of the following acts:
>
> (a) Refusing to clear or prohibiting in any way any member of International Brotherhood of Electrical Workers, Local 625 (“IBEW, Local 625"), from working for the Applicant as a result of the July 25, 2001 letter from Fern Tardif or IBEW, Local 625 and any other directly related communication;
>
> (b) Enforcing any discipline, including suspension, fine or expulsion, against any members of the IBEW, Local 625 for working on the Eirik Raude, a Bingo 9000 design drilling rig (“Eirik Raude”), including Brayne McGrath, Blaise Young and Fred Pickrem;
>
> (c) Taking or threatening to take any disciplinary action, including expulsion or suspension from membership, imposing any fine or imposing any penalty whatsoever against any member of the

> IBEW, Local 625, because that member works for the Applicant on the Eirik Raude;
>
> (d) Interfering or attempting to interfere by unlawful means with, or inducing or procuring, or attempting to induce or procure the breach by intimidation, coercion, or by any unlawful means whatsoever, of any contract between the Applicant and any third party, including the Ocean Rig 2 AS, the Industrial Union of Marine and Shipbuilding Workers of Canada, Local 1, and any employees or prospective employees of the Applicant;
>
> (e) Interfering with or attempting to interfere with the economic relations of the Applicant through unlawful means;
>
> (f) Ordering, aiding, abetting, counselling, encouraging, procuring, conspiring, or combining in any manner whatsoever, whether directly or indirectly with any other person or persons to commit any of the acts herein before mentioned.

[25] Similar orders were made with respect to the applications of the Marine Workers and the individual respondents.

[26] It is from these orders that Local 625 and Mr. Tardif seek leave to appeal and, if granted, seek to have set aside by this Court.

III. The Decision of the Chambers judge:

[27] Gruchy, J. said that he would apply the *prima facie* case threshold for injunctive relief although he also appears to have applied the "serious question to be tried" test in parts of his reasons. He concluded that the threshold test had been met with respect to the torts of direct interference with contractual relations (which the learned judge seems to have equated with inducing breach of contract), indirect interference with contractual relations between the Shipyard and the oil rig, interference in the economic relations of the Shipyard and intimidation of members of Local 625. It will be helpful to summarize the judge's main conclusions with respect to each of these torts.

[28] I will turn first to his findings in relation to alleged direct interference with contractual relations. The judge identified several contracts which had allegedly been interfered with as follows:

(i) the Shipyard claimed interference with: (a) its contract with the oil rig; and, (b) its contract (collective agreement) with the Marine Workers;

(ii) McGrath and the Marine Workers claimed interference with their contracts with the Shipyard; and

(iii) Young and Pickrem claimed interference with their contracts with the Marine Workers.

[29] Gruchy, J. identified the elements of the tort of direct interference with contractual relations as being: (1) the defendant's knowledge of the contract and its terms; (2) the intention to interfere with contractual relations; (3) conduct by which the defendant prevents or hinders one party from performing a contract whether or not a breach ensues; and (4) damage suffered by the plaintiff. He continued:

> [57] There has been sufficient prima facie evidence placed before me whereby it may be concluded as follows:
>
> (1) The respondents had knowledge of each of the various contracts under consideration and their terms.
>
> (2) The respondents intended to procure a breach or other termination or hindrance of the contracts, with the exception of the contract which the Shipyard has between it and Ocean Rig 2 AS to complete the Oil Rig and with which the Shipyard claims the respondents intended to interfere.
>
> (3) The respondents conduct directly persuaded or hindered (or is attempting to hinder) the parties from performing their contracts.
>
> (4) All applicants have suffered damage.

[30] With respect to the tort of indirect interference with contractual relations between the Shipyard and the oil rig, interference in economic relations of the Shipyard and intimidation of Local 625 members, it was common ground before the judge that each required that some unlawful means be shown. He concluded that the following constituted a *prima facie* case of unlawful means:

> (1) the action of the IBEW, Local 625 in refusing to clear its members from work were discriminatory and contrary to s. 54(g) of the *Trade Union Act*;
>
> (2) the prohibiting by IBEW, Local 625 of its members from accepting employment from the Shipyard had the effect of preventing them from joining Local 1, a violation of s. 54(h) and 13(1) of the *Trade Union Act*;
>
> (3) the threatening of disciplinary action including suspension and possibly as a result the loss of pension benefits and other sanctions amounted to coercion and intimidation contrary to s. 58(1) of the *Trade Union Act*;
>
> (4) the denial of a fair hearing in the disciplinary actions against the personal applicants and in particular the denial of legal or other counsel;
>
> (5) the assertion by Mr. Tardif to members and others on behalf of IBEW, Local 625, that his union had "jurisdiction" in the marine sector. The applicants assert that the jurisdiction of a trade union is that which is permitted or assigned to it pursuant to the provisions of the *Trade Union Act* and not that which the Union unilaterally declares by its own bylaws to be within its jurisdiction. If such claim to the members of IBEW, Local 625 was a false representation, then such an assertion was an unlawful means.

[31] Gruchy, J. found that there was a *prima facie* case of indirect interference with economic relations between the Shipyard and the oil rig. He noted that it was Local 625's "... intention to force delay of the electrical work, thereby forcing employment under the IBEW contract with the construction trades." (para. 60). He similarly concluded that there was a *prima facie* case of interference with economic relations, holding that Local 625 and Mr. Tardif "... having knowledge of the various contracts under consideration interfered with them with the intention to injury(sic) by means of an economic loss...". (Para 61).

[32] With respect to the tort of intimidation, Gruchy, J. identified the elements of the tort as coercion of another to do or refrain from doing an act, use of a threat of unlawful means of compulsion, compliance by the person threatened, intention to injure the person threatened and damage suffered either by that person or another. Applying these elements to the facts as he found them, he concluded:

> [63] ... I do not have direct evidence before me of specific instances when members of IBEW, Local 625 have complied with the demand but it may be fairly inferred from the evidence before me that the effect of Mr. Tardif's letter to

> members and to other local unions within the Atlantic provinces when combined with knowledge of the actions taken by IBEW, Local 625 against the personal plaintiffs amounted to a threat which brought about compliance by members resulting in intentional injury to those forced to decline work, the Shipyard and Local 1.

[33] The learned judge next turned to the question of irreparable harm. He noted that where unlawful means are implicated, it is not necessary to show irreparable harm. He concluded, however, that irreparable harm had been shown:

> [63] ... The Shipyard has said it will suffer loss of reputation as a result of the defendants' activities. Similarly, the personal applicants claim loss of reputation and potential loss of employment as a result of the respondents' activities. It may be concluded that such losses will occur and be irreparable. It is also fairly arguable that the potential monetary loss which may be suffered by the Shipyard in the performance of a $60-million contract will be so substantial as to be a relevant consideration. On a prima basis I find that in the absence of injunctive relief each of the plaintiffs may suffer irreparable harm.

[34] Finally, the judge turned to the balance of convenience and concluded that this consideration strongly favoured the granting of the injunctions.

[35] I should add that the judge noted in his reasons that Mr. Tardif and Local 625 had undertaken in Mr. Tardif's affidavit to withdraw all discipline and sanctions against the individual respondents and to clear all members of Local 625 who have an existing legal relationship with the Shipyard for work on the oil rig.

IV. Threshold for Interlocutory Relief and Standard of Appellate Review:

[36] In this section, I will examine both the threshold test for the granting of interlocutory relief in the first instance and the standard of review which this Court applies on appeal from a decision to grant such relief. I combine the discussion of these two points because the standard of appellate review must, of course, be applied in light of the test which governed the exercise of discretion by the judge of first instance.

[37] As noted, the judge applied what he called the *prima facie* case threshold but it appears by that he meant that the applicants for the injunctions needed to establish a "serious question" by putting forward evidence that the respondents had

or were committing unlawful acts. On appeal, the parties accepted the judge's approach on this aspect of the case. I think it is necessary, however, to say a brief word about what this threshold standard means in relation to the legal underpinnings of the respondents' claims.

[38] In this case, the legal bases of the claims advanced consist of the various "economic" torts. The law in relation to these torts is not well developed; the learned editors of *Clerk & Lindsell on Tort* (18th, 2000) say that "...the general patterns of liability still contain 'ramshackle' elements.": at 24 - 01. They also note the important policy questions raised by the formulation and application of these torts, particularly their relationship to rights of free speech and association: at 24 - 01.

[39] The invocation of these torts in the labour relations context is particularly troublesome and nonetheless so in light of the fact that most areas of labour relations law have been entrusted primarily, if not exclusively, to specialized labour relations tribunals: see for example, J. D. Heydon, *Economic Torts* (2d, 1978) at 8 - 10 and George W. Adams, *Canadian Labour Law* (2d, looseleaf, updated to November 2001) at 11.300 ff.

[40] The submissions of the parties in this case underline both the complexity of the law in relation to these economic torts and the need to define with great care the role of the court in labour relations issues. But it is important to remember, in my view, that this is, first and last, an appeal in an interlocutory proceeding. In such cases, neither the judge of first instance nor this Court is called on to make a final determination of the rights of the parties.

[41] This case raises difficult, controversial and important questions of law concerning the scope of some of the economic torts. In my view, however, at the threshold stage of an application for an interlocutory injunction, the court is not obliged to pronounce on such questions other than to be satisfied that there is an apparently sound legal basis for the applicants' claims. As Lord Diplock said in **American Cyanamid Co. v. Ethicon Ltd.**, [1975] 1 All E.R. 504 (H.L.) at 510, "It is no part of the court's function at this stage of the litigation ... to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial." This statement was approved by the Supreme Court of Canada in **Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.**, [1987] 1 S.C.R. 110 at 130.

[42] I would therefore not interpret the chambers judge's reasons in this case as making definitive pronouncements about highly controversial issues regarding the elements of the economic torts. I would stress that both his role at first instance and ours on appeal is not to do so, but rather to address the question of whether the prerequisites for interlocutory relief were established.

[43] The order under appeal is both interlocutory and discretionary. It is not disputed by the parties that this Court may only intervene if persuaded that wrong principles of law have been applied, there are clearly erroneous findings of fact or if failure to intervene would give rise to a patent injustice: see for example **Gateway Realty Ltd. v. Arton Holdings Ltd. and LaHave Developments Ltd.** (1990), 96 N.S.R. (2d) 82 (S.C.A.D.) at paras. 10 - 13.

[44] In a leading case on the subject in the House of Lords, which has been followed by both the Supreme Court of Canada and this Court, Lord Diplock, for the unanimous House, emphasized that the role of an appellate court on an appeal from a decision to grant or to refuse an interlocutory injunction is initially one of review. The appellate court is to determine whether the judge at first instance misunderstood either the law or the facts: **Hadmor Production Ltd. v. Hamilton**, [1983] 1 A.C. 191 at 220; **Gateway, supra** at para. 13; **Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.**, **supra** at 154 - 156.

[45] It follows, therefore, that the task of the Court on this appeal is to determine whether the judge at first instance exercised his discretion by applying correct legal principles to a reasonable view of the facts and reached a result that is not manifestly unjust. It is only in the event that we determine, applying these tests, that the judge's order must be set aside that we are entitled to exercise an independent discretion to grant or refuse the interlocutory injunctions: see Robert J. Sharpe, *Injunctions and Specific Performance* (looseleaf edition, updated to November, 2001) at para. 2.1310.

V. Analysis:

[46] The chambers judge and the parties have approached their analyses of the case by examining the various torts which the respondents allege that Local 625 and Mr. Tardif have committed. I have found it convenient to organize my analysis somewhat differently. I have approached the case by first examining the

claims advanced by the Shipyard and then those advanced by the Marine Workers and the individual respondents.

A. The Shipyard's Claim for Interlocutory Relief:

[47] The judge found, on various legal bases, that the Shipyard had made out a *prima facie* case of unlawful activity by Local 625 and Mr. Tardif, that the Shipyard would likely suffer irreparable harm if the injunction were not granted and that the balance of convenience strongly favoured the issuing of the injunction.

[48] The judge's finding respecting the balance of convenience is not challenged on appeal. The appeal as it relates to the Shipyard's injunction, therefore, boils down to two main issues: whether there was a sufficient legal foundation for the granting of an interlocutory injunction and whether the Shipyard had established, to the required threshold standard, that it would suffer irreparable harm.

[49] I turn first to consider the issue of irreparable harm. The judge found that if irreparable harm needed to be established, he was satisfied that the Shipyard had shown, to the required threshold standard, that it would suffer loss of business reputation if the appellants' activities were not enjoined. The appellants make three main arguments on this issue.

[50] First, the appellants submit that the Shipyard led no evidence that it had a reputation to lose with respect to this type of work or that the effect of the refusal to clear its members for work on the rig would harm the Shipyard's reputation. I cannot accept this submission. Mr. Thompson's affidavit set out in some detail what he feared would be the repercussions for the Shipyard if work on the oil rig were not completed on time and on budget. In my view, the judge made no error in finding, on a *prima facie* basis, that there was a substantial risk that, in the absence of the injunction, the Shipyard would suffer damage to its commercial reputation.

[51] Second, the appellants argue that even if the Shipyard did lose any reputation, that loss is quantifiable in damages. This submission, with respect, is not anchored in reality. If, as this argument assumes, the failure to complete this work on time and within budget will detrimentally affect the Shipyard's commercial reputation, it is a reasonable inference that the impact of that detrimental effect on future contracts will be difficult or impossible to calculate in

money. Damage to business reputation is a well-recognized type of irreparable harm: see **RJR-MacDonald, supra** at p. 341.

[52] Third, the appellants say that there was no evidence as to the potential monetary loss that may be suffered by the Shipyard because of, and directly related to, the refusal to clear by the Local. The short answer to this point is that the Shipyard did not need to establish a *prima facie* case of monetary loss if a substantial risk of irreparable harm was established.

[53] I would hold, therefore, that in the context of an appeal from the issuance of an interlocutory injunction, the judge made no reviewable error in finding that the Shipyard had established a substantial risk of irreparable harm if the interlocutory injunction were not granted.

[54] I turn next to the appellants' attack on the judge's finding that the Shipyard had established on a *prima facie* basis an infringement of its legal rights by Local 625 and Mr. Tardif. In my view, it is only necessary to consider one of the legal bases on which the Shipyard relied, namely, its claim that Local 625 and Mr. Tardif indirectly interfered with its contractual relations with the oil rig.

[55] The tort of indirect interference consists of interfering, by unlawful means, with the performance of a contract. The word "indirect" refers to the fact that the interference is not applied directly to one of the contracting parties but to a stranger to the contract to act in a way that will cause a contracting party to break the contract or which will hinder its performance: see J. G. Fleming, *The Law of Torts* (9th, 1998) at 759; Klar et al *Remedies in Tort Law* (Looseleaf, updated to release 1, 2001) Volume I at 8 - 22. The tort is also often referred to as interfering by unlawful means with the performance of a contract. Its essence is intentional interference by unlawful means.

[56] A well known example is **Merkur Island Shipping Corp. v. Laughton**, [1983] 2 A.C. 570 (H.L.). In **Merkur**, the action was by shipowners against a union representing employees of a tug company. The union persuaded its tugmen members to breach their contracts of employment with the tug company by refusing to operate tugs assigned to remove the ship. The result was that the ship could not leave port. As Lord Diplock put it at pp. 606 - 607, the contract interfered with was the charter, the form of interference was immobilizing the chartered ship and the unlawful means by which the interference was effected was

by procuring the tugmen to breach their contracts of employment. The shipowners had to rely on interference with, rather than breach of, their charter because the charter excused time lost due to labour disputes; the charterer was, therefore, not in breach of the charter but the performance of the charter had obviously been interfered with.

[57] The point of common law addressed by the House of Lords in **Merkur** was whether the tort of interfering by unlawful means with the performance of a contract could be made out by proof that the defendant procured the breach of a contract (i.e., between the tugmen and their employer) which breach, in turn, hindered the performance of the primary obligation under the charter, although not its breach. The House answered this question in the affirmative, holding that it is sufficient if the interference hinders one party's performance of a contract, even though it does not actually result in its breach.

[58] The unlawful means in a case of indirect interference may often be procuring the breach of another contract. In **Merkur** itself the union induced its tugmen members to breach their contracts of employment with the tug company which, in turn, indirectly interfered with the performance of the charter between the ship owner and the charterer. In the present case, however, the alleged unlawful means relate to various breaches of the **Act** resulting from Local 625's refusal to clear its members for work and the imposition of penalties on those who disobeyed.

[59] In relation to this tort, the appellants attack both the judge's legal and factual findings. I will first consider the appellants' two main submissions on questions of fact.

[60] The appellants submit that the judge erred in finding that "... the respondents had knowledge of each of the various contracts under consideration and their terms" and that they intended to procure a breach or other termination or hindrance of the contracts ...": para. 57 of the judge's reasons.

[61] The judge made no reviewable error of fact in concluding, with respect to the contract between the Shipyard and the oil rig, that the appellants intended to interfere with its performance. The knowledge element of the tort does not require actual knowledge of every detail of the contract: see for example, *Clerk & Lindsell* at para. 24-16; L.N. *Klar,* **supra** at page 8-15 ff. There was evidence that Mr. Tardif discussed this contract with Mr. Thompson, and Mr. Tardif's letter to

members of Local 625 dated July 25, 2001, demonstrates sufficient knowledge of that contract. The letter and Mr. Tardif's affidavit make clear that the Local's purpose was to force the Shipyard to subcontract the electrical work and pay more for the services of the electricians it required. If Local 625's plan succeeded, the Shipyard would pay 400 electricians four dollars more for every hour worked. To my mind, that is both a substantial and an intentional hindrance of the Shipyard's performance of its contract with the oil rig.

[62] The appellants next say that the judge erred in finding that the Shipyard had suffered damage. In considering this submission, it is important to remember the difference between the need to establish all of the elements of a tort for the purposes of proving liability at a trial and establishing a *prima facie* case on an application for an interlocutory injunction. An interlocutory injunction may be issued before any breach of a legal duty actually has occurred or any harm actually has been suffered. As Sharpe puts it in his text *Injunctions and Specific Performance* at para. 1.670:

> Where the harm to the plaintiff has yet to occur the problems of prediction are encountered. Here, the plaintiff sues *quia timet* — because he or she fears — and the judgment as to the propriety of injunctive relief must be made without the advantage of actual evidence as to the nature of harm inflicted on the plaintiff. The court is asked to predict that harm will occur in the future and that the harm is of a type that ought to be prevented by injunction. ...

[63] In considering the question of irreparable harm the judge accepted that it is "... fairly arguable that the potential monetary loss which may be suffered by the Shipyard in the performance of a $60-million contract will be so substantial as to be a relevant consideration.": para. 63. Moreover, the whole purpose of Local 625's actions was to require the Shipyard to pay more for the electrical work. While the evidence may well not have supported a finding that the Shipyard had suffered damage at the date of the application, it was not unreasonable for the judge to conclude, as I think he did, that there was a high degree of probability that such harm would be suffered if the injunction were not granted.

[64] That brings me to the legal issues raised by the appellants. As noted earlier, I will confine myself to consideration of the Shipyard's allegation that Local 625 and Mr. Tardif indirectly interfered, by unlawful means, with the Shipyard's contractual relations with the oil rig.

[65] At the heart of this case is whether, on a *prima facie* basis, the tactic adopted by Local 625 and Mr. Tardif was unlawful and interfered with the contractual and economic relations between the Shipyard and the oil rig. For the reasons which follow, my view is that the Shipyard did show a *prima facie* case of indirect interference with its contractual relations with the oil rig.

[66] With respect to the claim of indirect interference with the contract between the Shipyard and the oil rig, the judge found that there was a *prima facie* case that Local 625 used five (5) unlawful means (which the judge identified) with the intention to force the Shipyard to subcontract the electrical work on the rig.

[67] In my view, the judge did not err in finding on a *prima facie* basis a substantial risk that unless enjoined Local 625's actions would hinder the performance of the contract between the Shipyard and the oil rig. As noted earlier, I am also of the view that if interference with performance of the contract occurs through the use of unlawful means, it is not necessary to show that the contract between the Shipyard and the oil rig was, in fact, breached; hindrance of performance (or in the case of a *quia timet* injunction, a high probability of future hindrance) is sufficient. In my view, Local 625 was shown to have, on a *prima facie* basis, the requisite knowledge and intention.

[68] The key question, therefore, is whether the judge erred in holding that there was a *prima facie* case of unlawful means. As noted earlier, the judge found the appellants had employed five means which I will set out again for convenience:

> (1) the action of the IBEW, Local 625 refusing to clear its members from work were discriminatory and contrary to s. 54(g) of the *Trade Union Act*;
>
> (2) the prohibiting by IBEW, Local 625 of its members from accepting employment from the Shipyard had the effect of preventing them from joining Local 1, a violation of s. 54(h) and 13(1) of the *Trade Union Act*;
>
> (3) the threatening of disciplinary action including suspension and possibly as a result the loss of pension benefits and other sanctions amounted to coercion and intimidation contrary to s. 58(1) of the *Trade Union Act*;
>
> (4) the denial of a fair hearing in the disciplinary actions against the personal applicants and in particular the denial of legal or other counsel;

> (5) the assertion by Mr. Tardif to members and others on behalf of IBEW, Local 625, that his union had "jurisdiction" in the marine sector. The applicants assert that the jurisdiction of a trade union is that which is permitted or assigned to it pursuant to the provisions of the *Trade Union Act* and not that which the Union unilaterally declares by its own bylaws to be within its jurisdiction. If such claim to the members of IBEW, Local 625 was a false representation, then such an assertion was an unlawful means.

[69] I turn first to the alleged breaches of the **Trade Union Act**. The appellants attack the judge's findings in relation to the **Trade Union Act** on a number of fronts. They say that the alleged breaches of the **Act** cannot form the basis of a civil cause of action, that the enforcement of the **Act**'s provisions lies with the Labour Relations Board not the courts and that such alleged violations cannot, therefore, form the basis of the unlawful means element of any of these torts. Further, the appellants submit that none of the alleged breaches was established on the facts.

[70] As noted, the trial judge found three violations of the **Trade Union Act**: discriminatory conduct by Local 625 against its members contrary to s. 54(g) of the **Act**, preventing its members from joining Local 1 in violation of ss. 54(h) and 13(1) of the **Act** and coercion and intimidation of its members contrary to s. 58(1) of the **Act**.

[71] It was conceded by the appellants during argument that the only forum in which the Shipyard may seek a remedy is the court; in other words, it was assumed by counsel that the Shipyard could not apply to the Labour Relations Board complaining about the alleged violations of the **Act** as between Local 625 and its members. While I would not wish to express any final opinion on this point, I will, in light of this concession, assume this to be the case for the purposes of the appeal.

[72] It follows, in my view, that with respect to the Shipyard's claim for injunctive relief, this is not a situation in which the court should decline jurisdiction in favour of the Labour Relations Board. Rather, this is one of the situations in which it is appropriate for the court to assume jurisdiction because, in the case of the Shipyard, there is no alternate, adequate remedy available. As McLachlin, J. (as she then was) put it in **Brotherhood of Maintenance of Way**

Employees Canadian Pacific System Federation v. Canadian Pacific Ltd., [1996] 2 S.C.R. 495 at 499:

> ... 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... (emphasis added)

[73] The questions therefore are: (a) whether the judge erred in finding that violations of the **Act** may constitute unlawful means and, if not, (b) whether he erred in finding that the respondents had established a *prima facie* case of breach of any of these provisions of the **Act**.

[74] The appellants say that a breach of the **Act** cannot constitute the unlawful means underlying the tort of indirect interference with contractual relations. The premise of this submission is that in order to constitute unlawful means, the statutory breach itself must support a civil cause of action. The appellants submit that breaches of these provisions of the **Act** do not give rise to any cause of action and therefore cannot constitute unlawful means citing, among other cases, **Lonrho Ltd. v. Shell Petroleum Co. Ltd.**, [1982] A.C. 173 at 183.

[75] I cannot accept the premise of this submission. The cause of action relied on by the Shipyard is indirect interference with contractual relations. An element of that cause of action requires that the interference be brought about by unlawful means. The respondents rely on alleged breaches of the **Act** in establishing this element of their cause of action. They do not seek to obtain a civil remedy based solely on the breach of provisions of the **Act**. The unlawful acts relied on as an element of the tort pleaded do not have to support a civil cause of action on their own. Two cases from the Supreme Court of Canada illustrate the point.

[76] In **International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers, Building Material, Construction and Fuel Truck Drivers, Local 213 v. Therien**, [1960] S.C.R. 265, the Supreme Court of Canada held that breaches of the British Columbia **Labour Relations Act** constituted the unlawful means required as an element of the common law cause of action for interfering with Therien's business by unlawful means. Locke, J., speaking for the Court on this issue, said at p. 280:

> ... even though the dominating motive in a certain course of action may be the furtherance of your own business or your own interests, you are not entitled to interfere with another man's method of gaining his living by illegal means.
>
> I agree with Sheppard J.A. that in relying upon these sections of the Act the respondent is asserting, not a statutory cause of action, but a common law cause of action, and that to ascertain whether the means employed were illegal inquiry may be made both at common law and of the statute law
> (emphasis added)

[77] In **Gagnon v. Foundation Maritime Ltd.**, [1961] S.C.R. 435, one of the questions was whether breach of a provision of the New Brunswick **Labour Relations Act** constituted unlawful means as an element of the tort of conspiracy to injure. Ritchie, J. for the majority said at p. 446:

> In the case of *Therien v. International Brotherhood of Teamsters* (1959), 16 D.L.R. (2d) 646, 27 W.W.R. 49, Mr. Justice Sheppard of the British Columbia Court of Appeal had occasion to consider whether breaches of the *Labour Relation Act*s of that province by the defendant constituted "illegal means" whereby the company there in question was induced to cease doing business with the plaintiff. In the course of his decision, Mr. Justice Sheppard said at p. 680:
>
> > In relying upon ss. 4 and 6 of the statute the plaintiff is not to be taken as asserting a statutory cause of action. The plaintiff is here founding upon a common law cause of action within *Hodges v. Webb* [1920] 2 Ch. 70 which requires as one of the elements that an illegal means be used or threatened. To ascertain whether the means was illegal enquiry may be made both at common law and at statute law.
>
> When the *Therien* case, [1960] S.C.R. 265, 22 D.L.R. (2d) 1, reached this Court, Mr. Justice Locke, speaking on behalf of the majority of the Court, said at p.280:
>
> > I agree with Sheppard J.A. that in relying upon these sections of the Act the respondent is asserting, not a statutory cause of action, but a common law cause of action, and that to ascertain whether the means employed were illegal inquiry may be made both at common law and of the statute law.
>
> In light of these observations, it becomes unnecessary to embark upon the difficult exercise of determining whether or not a breach of s. 22(1) of the *Labour Relations Act* gives rise to a statutory cause of action because when inquiry is

> "made of the statute law" in the present case it discloses, as has been said, that the means here employed by the appellants were prohibited, and this of itself supplies the ingredient necessary to change a lawful agreement which would not give rise to a cause of action into a tortious conspiracy, the carrying out of which exposes the conspirators to an action for damages if any ensue therefrom.
> (emphasis added)

[78] I would conclude, therefore, that the judge did not err in finding on a *prima facie* basis that the alleged breaches of the **Trade Union Act** are capable in law of constituting the unlawful means element of these torts. I would also refer to **Westfair Foods Ltd. v. Lippens Inc.** (1989), 64 D.L.R. (4th) 355 (Man. C.A.), (application for leave to appeal refused 65 D.L.R. (4th) viii (S.C.C.); **Canadian Community Reading Plan Inc. v. Quality Service Programs Inc.** (2000), 141 O.A.C. 289 (C.A.) at paras. 30 - 33.

[79] The appellants' second point is that the judge erred in finding that the respondents had established a *prima facie* case of violation of any of these provisions. I have found it necessary to consider only the allegation in relation to s. 58(1) of the **Act**. That section reads:

> **58.(1)** No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union or an employers' organization.

[80] Under this section, the prohibited coercion and intimidation relate to efforts "... to compel a person to become or refrain from becoming or to cease to be a member of a trade union." (s. 58(1)). What is alleged here is that Local 625 improperly used its disciplinary powers over its members in an attempt to prevent them from accepting work on the oil rig under the collective agreement between the Shipyard and the Marine Workers.

[81] At the outset, I would underline that whether Local 625's conduct violates s. 58(1) of the **Act** raises an important, delicate and difficult question of labour relations law. The thoughtful discussion of this issue by the British Columbia Industrial Relations Council in **Ollesch and C.J.A., Locals 452 and 1251** (1990), 7 C.L.R.B.R. (2d) 1 demonstrates how the appropriate application of these provisions requires a careful balancing of the interests of unions and the collective and individual interests of their members in light of the overall purposes of the **Act**. Relevant considerations include the legitimate need for unions to protect their

own institutional interests, the rights of employees to become members of unions and their interests in pursuing opportunities for employment and the traditional and appropriate reluctance of courts and tribunals to intervene in internal union affairs. In short, there is at stake here the appropriate balancing of an individual's right to lawfully pursue a livelihood with the need for union loyalty to ensure effective collective action.

[82] Local 625's actions in this case had the objective of aggressively pursuing for its members the work obtained by the Shipyard and which the Shipyard intended to carry out under the terms of its collective agreement with the Marine Workers. The purpose of Local 625's actions was to prevent the work from being carried out under the terms of that collective bargaining arrangement and to force the Shipyard to subcontract the work so that Local 625's collective agreement with the Bureau could be engaged.

[83] In the **Ollesch** case, three members of the Carpenters Union were expelled from membership or threatened with expulsion. The three complained to the British Columbia Industrial Relations Council of violation of various provisions of the British Columbia **Industrial Relations Act**, R.S.B.C. 1979, c. 212, including a violation of s. 4(3) which reads as follows:

> 4.(3) A trade union or person acting on its behalf shall not seek, by the use of coercion or intimidation of any kind, to compel or induce a person to become, refrain from becoming or continue or cease to be a member of the trade union or another trade union.

[84] There was intense rivalry between the Carpenters and GWU; the latter Union had successfully "raided" five Carpenter's bargaining units. The Carpenters considered the GWU a hostile rival union and did not want any of its members to hold GWU memberships. Moreover, as a result of entering into a collecting bargaining relationship with GWU, Micron Construction had been "tagged" with an unfair declaration by the building trades union.

[85] The three complainants, who were out of work, accepted employment at Micron, one as a non-union foreman and two as members of the GWU as that was a requirement of the collective agreement. The two who joined the GWU were expelled from the Carpenters Union, while the third (Betts) was threatened with expulsion should he join the GWU in future.

[86] Betts' complaint was dismissed by the Council because no action had been taken against him; the complaints of the other two complainants were upheld. The Council accepted as a fact that they were expelled because they joined the GWU and that in all of the circumstances of the case this constituted illegal coercion or intimidation to compel a person to refrain from becoming a member of a trade union. The Council (at p. 32), adopted the following statement from H.D. Woods, *Canadian Industrial Relations — Report of the Task Force on Labour Relations* (1968) para. 493, p. 151:

> Rules should not be such as to preclude union members from engaging in otherwise unlawful conduct unless that conduct seriously undermines the union's position as a bargaining agent. *Thus, for example, dual unionism would not be a legitimate cause for union discipline, especially where one union cannot supply a worker with regular employment opportunities, unless a member is actively engaged in trying to supplant one union by another*.

[87] The Council then stated at pp. 37 and 41:

> In our view, it is unfair and unreasonable to characterize the Complainants as disloyal to the Union, merely because they were required to join the GWU as a condition of employment under the Micron/GWU collective agreement, particularly given that they joined at a time when there was widespread unemployment and no work was available to them through the Union hiring hall. While they have breached section 42(L) of the Union's laws, we find that section to be overbroad insofar as it contemplates membership expulsion for joining a "rival" union *per se*, as a means of ensuring loyalty within Union ranks. ...
>
> To establish disloyalty, a union must point to evidence of a member's conduct which actually harms the union's institutional interests. ...
>
> In the circumstances of this case, we find the Union's threat to revoke membership and the actual revocations under section 42(L) to be a violation of s. 4(3) of the Act. The Union's threat of membership revocation, and the actual revocations, were intended to coerce the Complainants into abandoning their GWU membership. Applying the *Johnston* balancing-of-interests test to assess the Union's conduct within the scheme of the Act as a whole, the Union's actions were not attempts to preserve its own existence by taking defensive actions to resist aggressive conduct by the Complainants. The Union was the aggressor with Ollesch and Campagnolo the victims in an attack against the GWU. Thus the Union's conduct comes squarely within the s. 4(3) prohibition against "use of

> coercion ... to compel or induce a person ... to cease to be a member of ... another trade union".
>
> (emphasis added)

[88] While both the facts and the relevant statutory provisions in **Ollesch** are different from the present case, I think that a trial court could well be persuaded that the **Ollesch** principles should be applied to this case and that Local 625's conduct constituted coercion or intimidation contrary to s. 58(1) of the **Act**. I would conclude, therefore, that the Shipyard's allegation of interference by unlawful means is apparently, although of course not conclusively, well-founded in law. Accordingly, I do not think the judge erred in finding that there was a *prima facie* case that unlawful means by virtue of a breach of s. 58(1) by Local 625 had been established.

[89] This conclusion is sufficient to sustain the judge's decision to grant the injunction in favour of the Shipyard. I will, therefore, make no comment in relation to the other unlawful means found by the judge and nothing I have said should be taken as approval of those other findings.

[90] As noted earlier, counsel for the appellants takes the position that there is no remedy for the Shipyard before the Nova Scotia Labour Relations Board and I have assumed that to be the case. I note, as well, that the Board has held that the **Act** provides no means of redress before the Board for a breach of s. 58(1) of the **Act**: **Re Sheraton Nova Scotia, Metropolitan Entertainment Group and N.S.G.E.U. et al.**, L.R.B. No. 4600 dated April 24, 1998.

B. The Marine Workers and individual respondents' applications for injunctions:

[91] I have concluded that the judge properly enjoined Local 625 and Mr. Tardif from refusing to clear workers for employment on the oil rig pursuant to the Marine Workers collective agreement with the Shipyard. That injunction in favour of the Shipyard effectively gives the relief sought by the Marine Workers. The injunction granted to the Marine Workers, therefore, served no purpose and should be set aside.

[92] In the case of Messrs. Young, Pickrem and McGrath, Local 625 undertook to revoke all disciplinary action and not to interfere with their work on the oil rig. They, therefore, failed to show that they would suffer any harm, let alone

irreparable harm, if the injunction were not granted. It follows that the injunction should not have been issued provided that the undertaking is fulfilled.

[93] I would, therefore, set aside the injunctions in relation to Messrs. Young, Pickrem and McGrath provided that Local 625 gives effect to the undertaking given by Mr. Tardif in his affidavit in relation to the revocation of the discipline imposed on Messrs. Young, Pickrem and McGrath and provides a formal undertaking in writing as regards future discipline of them and other members with ongoing contractual relationships with the Shipyard.

VI. Disposition:

[94] In the result, I would grant leave to appeal but dismiss the appeal in relation to the injunction issued in favour of the Shipyard. I would grant leave to appeal and allow the appeals in relation to injunctions issued in favour of the Marine Workers and the individual respondents. I would set those orders aside on condition that Local 625 give effect to its undertaking in relation to individual respondents and provide a formal written undertaking to the Court, duly signed by its proper officers, to give effect to the undertaking provided by Mr. Tardif in his affidavit. If the parties cannot agree on the form of that undertaking, they may apply in writing to the panel to settle it. Issuance of the Court's final orders in the appeals with respect to the injunctions in favour of the Marine Workers and the individual respondents will be delayed until the form of undertaking has been agreed or settled. I would ask the parties either to advise the Court that these conditions have been satisfied or to make written submissions on that matter within ten (10) days of today's date.

[95] Costs as between the Shipyard and the appellants fixed at $2000 plus disbursements will be costs in the cause of the main action. Costs as between the Marine Workers, Messrs. Young and Pickrem and the appellants fixed at $1500 plus disbursements in total will be costs in the cause of the main action. Costs as between the appellants and Mr. McGrath fixed at $1500 will be costs in the cause of the main action.

Cromwell, J.A.

Concurred in:

Hallett, J.A.

Roscoe, J.A.