

Citation: *United Brotherhood Carpenters
v. BC Carpenters*
2003 BCSC 432

Date: 20030320
Docket: S003443
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, DOUGLAS J. McCARRON, JAMES E. SMITH,
WAYNE COX, MICHAEL AUTZEN and DAVID WRIGHT on their
own behalf as members of United Brotherhood of Carpenters
and Joiners of America and on behalf of and representing
all members of United Brotherhood of Carpenters and
Joiners of America**

PLAINTIFFS

AND:

**BRITISH COLUMBIA PROVINCIAL COUNCIL OF CARPENTERS,
LENNOX EMBREE, DAVID FLYNN, G.R. & S. HOLDINGS LTD.
and ON THE LEVEL PUBLISHERS LTD**

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE BROWN

Counsel for the Plaintiffs:

R. Hordo Q.C.
D. Fetterly

Counsel for the Defendants:

A. McDonell, Q.C.
M.T. Ghikas

Dates and Place of Trial:

October 15 -18, 21-25,
October 28-31 &
November 1 & 4, 2002
Vancouver, BC

INTRODUCTION

[1] The plaintiffs, United Brotherhood of Carpenters and Joiners of America (the "International"), its President, Douglas J. McCarron and four other members of the International seek possession of the books and records of the defendants British Columbia Provincial Council of Carpenters ("Provincial Council"), G.R. & S. Holdings Ltd. and On The Level Publishers Ltd.

[2] The defendants have refused to produce the books and records because, they say, the plaintiffs are acting in bad faith and seek the books and records for an improper purpose.

BACKGROUND

[3] The International is an organization founded in 1881. Its headquarters are in Washington, D.C. It is an international organization of workers. Douglas J. McCarron is its President.

[4] The Provincial Council is a trade union in British Columbia. There are 24 local unions in British Columbia which are affiliated with the Provincial Council. There are two locals in British Columbia which are not affiliated with the Provincial Council.

[5] The Provincial Council is affiliated to the International. All of the members of local unions are members of the International. The Provincial Council is a subordinate body of the International chartered by it in 1943.

[6] The International is governed by its constitution, which all members promise to uphold. That constitution provides, in s. 10B:

The General President may personally, or by deputy, take possession for examinations of all books, papers and other records, including all financial records, of any Local Union, District Council, State Council or Provincial Council, summarily when necessary, and the same shall remain in possession of the General President within the jurisdiction of the Local Union, District Council, State Council or Provincial Council until a complete report has been made and filed. During said examination a representative of the Local Union, District Council, State Council or Provincial Council may be present.

It provides in s. 30A:

If, at any time, a Local Union, Council or other subordinate body should withdraw, lapse, dissolve, be suspended or expelled, or otherwise cease to function as a chartered subordinate body of the United Brotherhood, all Property, Books, Charter and Funds held by, or in the name of, or on behalf of said Local Union, or other subordinate body must be forwarded immediately to the General Secretary-Treasurer for such use or disposition in the interests of the membership of the United Brotherhood as the General President in the exercise of his or her discretion may direct.

Section 27D of the constitution provides:

The title to all property of the State and Provincial Councils shall be held in the name of the Trustees of the State and Provincial Councils and/or their successors in office. ...

[7] G.R. & S. Holdings Ltd. is a company which was incorporated in 1970 by the Provincial Council. It holds the assets of the Provincial Council. Those assets were valued at approximately \$7,000,000 as at the end of 2001. The defendant On The Level Publishers Ltd. is a company controlled by the Provincial Council. It publishes the Provincial Council's newsletter, "On The Level".

[8] On June 9, 2000 Douglas McCarron issued what has been referred to as the 10B directive to the Provincial Council. In that directive he said:

I have reviewed the resolutions passed at the Provincial Council Convention held in April of this year and the recent correspondence from the Constitution Review Committee dated May 26, 2000. The resolutions and subsequent correspondence imply that the Provincial Council may attempt to cease functioning as a subordinate body of the United Brotherhood under the present constitutional framework. That potential circumstance or similar development makes it incumbent upon me to have an accurate inventory of all of the Brotherhood's assets in the Province of British Columbia should it become necessary to protect the interests of the Brotherhood and its members.

[9] He directed that the Provincial Council make available its records and documents for examination by representatives of KPMG, his designee pursuant to s. 10B of the constitution.

[10] The Provincial Council refused to produce its books and records.

[11] This action was commenced in June 2000. Many individuals were examined for discovery, producing more than 20 substantial volumes of examination for discovery transcripts. The trial took three weeks.

[12] At first blush this would appear to be a simple documents' application. How did it become such all-encompassing litigation? To understand this litigation and put it in context requires a review of some of the history of the relationship between the International and the Provincial Council. I do not propose to review all of it, merely to choose some examples to illustrate the genesis of this litigation.

[13] Douglas McCarron was elected in 1995 as the General President of the International. Over the years, the United Brotherhood of Carpenters' membership had been dropping off, and contracts had been going to non-Union workers or to workers not affiliated with the Brotherhood. In McCarron's

view it was essential that there be a comprehensive restructuring of the organization in the United States and Canada. He and the Executive of the International set about making this a reality. Essentially, that program of restructuring is dictated by the general president. It is not designed or driven by individual members, locals, provincial or state councils. It is imposed "from above".

[14] This approach to restructuring did not sit well with the majority of the British Columbia membership, which was opposed to the International imposing its plans unilaterally without allowing affected members to vote on the proposed changes. These changes involved, among other things, forced mergers of locals without a vote of affected members, the transfer of power and bargaining rights from the Provincial Council to more than one newly-established Regional Council and the replacement of elected officers and delegates of the Provincial Council with officers and delegates to be appointed by General President McCarron or his appointee.

[15] While General President McCarron's restructuring plans appear to have been implemented without particular opposition throughout the United States and virtually all of Canada, it has not been so in British Columbia. The majority of the membership in British Columbia has been and continues to be

adamantly opposed to McCarron's plans for restructuring. McCarron regards restructuring in British Columbia as one of his most important objectives.

[16] While the restructuring initiative has brought the conflict between the Provincial Council and the International to new heights, the relationship between the British Columbia members and the International has been a thorny one for several years.

[17] I have appended a selection of resolutions passed at annual conventions of the Provincial Council from 1985 to 2000. These resolutions have a common, annually reiterated theme: dissatisfaction with the International; with paying the per capita tax to the International, for which the members say they get nothing in return; and a desire for autonomy from the International.

[18] Similar resolutions were passed year after year at the annual conventions of the Provincial Council. These resolutions illustrate the attitude of the members of the Provincial Council toward the International and the decades-long grievance that members of the British Columbia Provincial Council have held with the International.

[19] Some of the other significant events which serve to illustrate the relationship between the Provincial Council and the International are described below.

Status of the Provincial Council in British Columbia

[20] There have been various cases before the Labour Relations Board of British Columbia with respect to the authority of the Provincial Council in British Columbia. In ***Stearns Catalytic Ltd.***, BCLRB No. 112/85, the issue was the status of twelve international unions and a committee of those unions to exercise collective bargaining rights under the ***Labour Code***, R.S.B.C. 1979, c. 212. In that decision the Board concluded:

Our conclusions may be summarized as follows:
Neither the 12 International Unions nor the GPC [General President's Committee for Maintenance in Canada] are trade unions within the meaning of the Code. The GPC is not a council of trade unions within the meaning of the Code. Neither the 1983 Agreement nor the 1984/86 Maintenance Agreement between the Employer and the 12 International Unions is a collective agreement within the meaning of the Code. Pursuant to s. 46(a) of the Code, the certified Local Unions have the exclusive authority to bargain collectively for the units for which they have been certified and to bind their respective units by a collective agreement. We decline to make any further declaration or order in respect of the Local Unions, the GPC or the International Unions.

[21] In ***Commonwealth Construction Co.***, IRC No. C204/88 the Board confirmed that the Provincial Council has the authority

to make applications for certification on behalf of its constituent locals.

Merger of Local 1237 into Local 2397 and Local 1998

[22] In approximately 1997 Locals 1237 and 1998 started merger discussions. A merger agreement between the locals was signed on April 22, 1999. Locals 1237 and 1998 wrote to the International requesting approval from the International to the merger of Locals 1237 and 1998.

[23] On June 3, 1999 Douglas McCarron wrote to the locals to acknowledge receipt of the merger documents. In that letter he stated:

There appears to be compelling reasons for the merger of Local Union 1237 into Local Union 1998.

He advised that he had assigned District Representative Ray Drisdell to meet with representatives of both locals on the merger issue.

[24] The President did not give notice to either of the locals that he was considering a merger between Locals 1237 and 2397.

[25] Drisdell met with the Executive of each of Locals 1998 and 1237 in June 1999. The only merger discussed was that between Locals 1237 and 1998. Drisdell did not raise the issue of a potential merger with Local 2397. The union

members were aware that Drisdell would be preparing a report and asked for a copy of the report. He indicated that it was not standard practice to release a copy.

[26] Drisdell's report concluded, "There is no logic in merging the School Board employee members with a Construction Local." He recommended that the 27 school board members of Local 1237 be merged with Local 2397 school board members in Fort St. John and that the 85 construction worker members of Local 1237 to be merged with Local 1998 in Prince George. He had not canvassed these possibilities in his meetings with the locals.

[27] In August 1999 McCarron determined under s. 6A of the constitution (which provided him with the discretion to merge locals without their agreement) that the carpenter members of Local 1237 should be merged into Local 1998 and the school board members of Local 1237 into Local 2397. He directed that Local 1237 should be dissolved effective October 1st, 1999.

[28] Locals 1237 and 1998 appealed this decision to the General Executive Board of the International. After consideration of the material put before it, the General Executive Board voted to deny the appeal.

[29] Locals 1237 and 1998 then applied to the Labour Relations Board, their application funded by the Provincial Council. Evidence was led before the Labour Relations Board that the International had, in Alberta, Prince Edward Island and Northern California, dissolved various district councils and locals and merged them without a vote of the affected membership.

[30] In *United Brotherhood of Carpenters and Joiners of America, Local 1998 (Re)*, BCLRB Decision No. B77/2000 the Board notes that it has a limited role in supervising internal union affairs and goes on to say at paras. 78 and 82:

Union mergers may take place independently of any section 37 application, but they may not be effective to transfer bargaining rights unless an application is made and a declaration issued. Before the transaction can obtain the sanction of the Board through a successorship declaration, the Board inquires into whether the predecessor and successor unions, as well as the employees, have given clear approval to the transaction. ...

Precedent aside, and as a matter of principle, I can also discern no labour relations policy reason for a difference in the requirement to conduct a vote where the locals merging are locals of the same international parent or subordinate branches of the same national parent. It is difficult to conceive of any distinction in principle that would require a vote where there is a merger between separate organizations, but no vote in a merger between other entities where there is an overarching relationship between the locals through the parent-local connection. ...

Facilitation Process

[31] In 1996/97 the International and the Provincial Council agreed to participate in a facilitation process with a view to attempting to resolve their differences with respect to restructuring. The facilitator, Mr. Lanyon, issued his report in April 1998. The parties were not able to resolve their differences and remain at odds over restructuring.

Trusteeship Proceedings, Local 1928

[32] In March 1998 the International conducted a s. 10B audit and commenced trusteeship proceedings against Local 1928. Local 1928 is known to be a supporter of the Provincial Council. Its business representative is the first vice-president of the Provincial Council. A thrust of the trusteeship proceedings was financial irregularity in the conduct of Local 1928. The proceedings were opposed by Local 1928 with funding from the Provincial Council. The proceedings were eventually concluded with a memorandum of agreement between the parties recognizing that there was no financial irregularity and with the local agreeing to modify certain practices.

Provincial Council Lobby to Provincial Government for Change to Labour Code

[33] In June 1999 the Provincial Council began lobbying the provincial government to amend the Labour Code to impose what are known as "just cause" requirements before an international union could impose supervision upon a British Columbia union, similar to legislation in place in Ontario. It appears that the Provincial Council was concerned that the International may attempt to wrest control from it by appointing a trustee, as had been attempted with Local 1928. The Provincial Council was not successful in its efforts to have the Labour Code amended.

Local Meetings

[34] In July 1999 General President McCarron travelled to Port Alberni to a meeting of members there in an effort to discuss his plans for restructuring in British Columbia. That meeting became a demonstration of members' dissatisfaction with Mr. McCarron's plans. The first question addressed to McCarron at the meeting was whether the members would be entitled to vote with respect to his restructuring plans. When McCarron answered "No", the members left the meeting.

Vancouver Island Mergers

[35] In August 1999 the International purported to establish a regional council on Vancouver Island and ordered the merger of three Vancouver Island locals, Locals 2068, 513 and 812 (which supported the Provincial Council's stance on restructuring) without a vote of the members of the locals.

[36] The Provincial Council supported an application to the Labour Relations Board by the Vancouver Island locals to require a vote on the proposed mergers. Following the ***United Brotherhood of Carpenters, Local 1998 (Re)***, *supra*, decision respecting the merger of Locals 1237, 2397 and 1998, Mr. McCarron revoked his directive with respect to Vancouver Island.

THIS ACTION

The 10B Directive

[37] As noted above, in June 2000 Mr. McCarron issued a directive to the Provincial Council to produce its books and records to KPMG. His stated reason in that directive was that the resolutions at the Provincial Council convention in April 2000 and activities of the Constitutional Review Committee suggested that the Provincial Council may attempt to cease functioning as a subordinate body of the United Brotherhood,

making it necessary to obtain an accurate inventory of the Brotherhood's assets in British Columbia.

[38] Subsequently, in an affidavit filed in this action, Mr. McCarron added that the Provincial Council's use of strike funds in 1999 created further cause for concern and that G.R. & S. holding the Provincial Council's assets made the 10B review even more pressing.

[39] Before me, Mr. McCarron referred to a problem that the International encountered in Prince Edward Island:

On Prince Edward Island the local took the assets of the Brotherhood and put it into another entity without us knowing, and we still today don't now whether we've got all those assets back. That was a legal case. And that was in my mind when I heard of this. I truly believed with those resolutions that the B.C. council was leaving the Brotherhood -- was going to leave the Brotherhood. So I wanted to -- I wanted to secure those assets.

Positions of the Parties

[40] The defendant Provincial Council sees the 10B directive as the first step by the International toward imposing supervision or a trusteeship on the Provincial Council, with a view to wresting control from the Provincial Council and taking over bargaining rights within the province of British Columbia. They say that this would give the International status which it does not currently have. Imposing trusteeship

on the Provincial Council would be a means for the International to break the existing stalemate on restructuring and avoid the necessity of holding a vote to transfer Provincial Council bargaining rights to newly created regional councils. They say that s. 10B is being used improperly, as a pretext to give legitimacy to these goals of the International.

[41] The plaintiffs say, simply, that the constitution is a contract; the defendants must comply with s. 10B of the contract and produce the books and records. They say that the defendants' suspicions are unfounded and misguided. They say that the 10B directive is a legitimate exercise of the general president's discretion, in response to the Provincial Council's apparent intention to sever ties with the International.

Discussion

[42] There is, truly, only one issue at the crux of this litigation: is the International exercising its s. 10B discretion for an improper or collateral purpose, for a purpose not intended by the constitution?

[43] There is no real dispute between the parties as to the applicable law. The plaintiffs assert that the constitution

is a contract, binding upon the defendants. The defendants do not take issue with this proposition.

[44] Both rely on the recent Supreme Court of Canada decision in **Berry v. Pulley** (2002), 211 D.L.R. (4th) 651. At paras.

48-9 the court considered the nature of a union constitution:

In light of the above, the time has come to recognize formally that when a member joins a union, a relationship in the nature of a contract arises between the member and the trade union as a legal entity. By the act of membership, both the union and the member agree to be bound by the terms of the union constitution, and an action may be brought by a member against the union for its breach;.... I say that this relationship is in the nature of a contract because it is unlike a typical commercial contract. Although the relationship includes at least some of the indicia of a common law contract (for example offer and acceptance), the terms of the contractual relationship between the union and the member will be greatly determined by the statutory regime affecting unions generally as well as the labour law principles that courts have fashioned over the years. With this in mind, for ease of reference I will refer to the membership agreement between the individual member and the union as a contract.

Having said that there exists an enforceable contract between union members and the union, I believe it is worth elaborating on several factors which make this contract unique. First, it is essentially an adhesion contract as, practically speaking, the applicant has no bargaining power with the union. Moreover, in many situations, union membership is a prerequisite to employment, leaving the individual with little choice but to accept the contract and its terms. Finally, it must be borne in mind that a statutory labour relations scheme is superimposed over the contract between the member and the union, and can create legal obligations.

Consequently, the contract must be viewed in this overall statutory context. ...

(emphasis added)

[45] The defendants assert, and the plaintiffs agree, that where a discretion is conferred as in s. 10B of the constitution, that discretion must be exercised in good faith. It cannot be exercised for some private advantage or purpose foreign to the power. The defendants rely on **Allen v. Townsend** (1977), 16 ALR 301 (Fed. Ct. of Aust., F.C.).

[46] From these authorities I take the following principles:

1. The courts will apply a duty of good faith in the exercise of discretion conferred by a contract. This is true of contracts generally as well as union constitutions, contracts of adhesion which, as the Supreme Court of Canada has noted in **Berry**, are not really negotiated.
2. By "good faith", I mean discretion exercised for proper contractual purposes, not for collateral or extraneous purposes.
3. The party which asserts bad faith has the burden of proof. The plaintiffs do not need to prove that they are acting in good faith.

[47] In this case, the defendants have satisfied me that the discretion is being exercised for purposes extraneous or collateral to the contract.

[48] As will be apparent from the brief historical review in these reasons, these parties are locked in a long-standing political battle. Witnesses before me referred to the battle as a war. This litigation itself is evidence of that battle.

[49] I am satisfied that the 10B directive was issued to obtain a political advantage in the ongoing political skirmishing between the International and the Provincial Council. This is not a proper contractual purpose.

[50] I do not accept that the 10B directive was issued to obtain an accurate inventory of the assets of the Brotherhood in British Columbia. Internal financial statements are presented to the executive of the Provincial Council at meetings held from time to time during the year. Some of the plaintiffs in this action were members of the executive during the period in question. They acknowledged that any questions they may have had with respect to the finances of the Provincial Council were answered and that they had access to any financial records they wished at all times.

[51] Audited financial statements are prepared and presented to each annual convention of the Provincial Council. In addition, the carpenters have a mechanism by which three of their members are appointed as trustees. The trustees review the books and records of the Provincial Council annually. The evidence before me satisfies me that this is not a superficial review. The trustees report to the annual convention of the Provincial Council. An example of such report presented to the 2000 Annual Convention for the year 1999 is attached as Appendix B to these reasons. The plaintiff Michael Autzen was a trustee in 1998, 1997, and 1996 and would have been well familiar with the process. Mr. Autzen and Mr. Wayne Cox were members of the executive of the Provincial Council. Neither of these gentlemen raised any questions as to the assets of the Brotherhood in British Columbia which would be expected had there been any real concern with respect to an inventory of the assets.

[52] Furthermore, Mr. McCarron did not ask Mr. Autzen or Mr. Cox about the assets of the Provincial Council. At question 214 of Mr. McCarron's discovery, he was asked:

Q Okay. Two of your co-plaintiffs, Mike Autzen and Wayne Cox, are on the Provincial Council, aren't they?

A I believe they are, yes.

Q Yes. Did you ask them what assets the Provincial Council had?

A No.

Q Why not?

A I didn't.

Q I mean if your concern is to get a handle on the assets, why didn't you ask them?

A I didn't.

Q No explanation?

A No

[53] The second concern raised by the International is with respect to the use of strike and defence funds.

[54] This issue first arose in July 1997. It relates to the interpretation of a provision of the Provincial Council constitution. The International interprets this provision of the constitution to limit the amount of money the Provincial Council may spend on legal matters. The Provincial Council has a different interpretation. In an effort to end the debate, the Provincial Council proposed an amendment of its constitution to its members. The members voted in support of the amendment.

[55] The International refuses to consent to the amendment. The International constitution provides that until the

International consents to an amendment of the constitution of a provincial council, the amendment is not effective. The debate and the amendment have been an issue since 1997, although not always at the forefront of battles between these parties. It is currently a stalemate between the Provincial Council and the International since the International refused these amendments to the Provincial Council constitution in March 2001.

[56] Again, I do not accept that this issue is one of the concerns of the International leading to the issuance of the 10B directive. Each of these parties is well aware of the position of the other. There is no question as to the amount of money that is being spent on legal and defence matters. There is nothing that requires clarification. Any questions addressed to the secretary-treasurer, Mr. Flynn, have been responded to in writing. There is simply a stalemate between the parties.

[57] The third concern raised by the International for the 10B directive is a concern with respect to G.R. & S. Holdings Ltd. The constitution of the International requires that all assets of the Brotherhood be held by the trustees in trust. G.R. & S. Holdings was incorporated July 16, 1970. It holds the assets of the Provincial Council. Initially, the executive of

the Provincial Council agreed to act as directors of the company. A law firm acted as trustee and escrow holder of the shares. A declaration of trust was executed whereby all shares were held in trust for the Council. In February 2002 this error was corrected. Declarations of nominee ownership were executed to bring the holdings into compliance with the constitution of the International. Those declarations recite:

WHEREAS:

...

- D. In accordance with the Constitution of the United Brotherhood of Carpenters and Joiners of America the title to all property of the Council is required to be held in the name of the trustees of the Council and/or their successors in office (the "Trustees").

The undersigned HEREBY ACKNOWLEDGES AND DECLARES that the one share ... which is registered in my name, is held by me in trust for the Trustees on behalf of the Council....

[58] Each of the shareholders executed such a declaration. Accordingly, at least since February 2002 this has been a non-issue. I do not accept that it truly was a concern of the International. As I have noted above, audited financial statements are prepared on an annual basis for the Provincial Council conventions. Those include audited financial statements of G.R. & S. Holdings Ltd. The trustees in the trustees' report review the assets of G.R. & S. Holdings Ltd.

and disclose those. There has never been any issue raised prior to these proceedings by the International, by any of the plaintiffs in this action, or by the trustees with respect to G.R. & S. Holdings Ltd.

[59] Finally, I do not accept that the actions of the Provincial Council in passing the resolution in 2000 suggested to the International that the Provincial Council may illicitly remove assets properly belonging to the members of the International. It was apparent from the evidence before me that the Provincial Council is well aware of s. 30A of the constitution, that assets may be forfeited.

[60] Mr. McCarron, in his testimony, referred to the problem encountered by the International in Prince Edward Island. There, certain members of the executive of a carpenters' local affiliated with the International set up a competing labour union, transferred assets of the local to a new holding company for the new union and destroyed the books and records of the carpenters' local. The International brought action to recover the assets. The decision in that action is reported at *United Brotherhood of Carpenters and Joiners of America, Local 1338 v. Bradley* (1999), 174 Nfld. & P.E.I.R. 104 (P.E.I.S.C. (T.D.)).

[61] I do not accept that the circumstances here are akin to those. Nor do I accept that Mr. McCarron or the other plaintiffs believed them to be so. The Provincial Council has not been devious in its disputes with the International. Financial reporting is completed in a timely way. G.R. & S. has held the assets since its incorporation in 1970. The plaintiffs Cox and Autzen were members of the executive board of the Provincial Council in 2000 when the 10B directive was issued. Mr. Autzen remained on the executive board until February 2001. Mr. Cox has been a member throughout. They were privy to all financial dealings of the Provincial Council. As noted above, Mr. McCarron did not even question them with respect to the financial affairs of the Provincial Council. I do not accept that the 10B directive was issued from a concern that the Provincial Council would disassociate from the International and illicitly make off with assets.

[62] I have reviewed the reasons given by the International as well as the extensive history of dealings between the International and the Provincial Council in determining whether the defendants have satisfied me that the 10B directive was issued in bad faith. The burden is on the defendants. The plaintiffs did not have to establish any

reason, apart from the provisions of the constitution, for requiring production of the books and records.

[63] As noted above, I have concluded that this is a political battle which has made its way to the courts. The 10B directive was issued to obtain a political advantage in the ongoing International/Provincial Council battle and not for the purposes intended by the contract. Accordingly, I will not order production of the books and records as sought by the plaintiffs.

COUNTERCLAIM

[64] The defendants counterclaim, seeking damages for breach of contract. While I have concluded that the court will not enforce the s. 10B directive because the International is exercising its discretion pursuant to s. 10B for purposes collateral to the contract (to achieve political advantage in its ongoing political dispute with the Provincial Council), I am not satisfied that issuing the 10B directive was an actionable breach of contract. In addition, the defendants have not established any damages arising from such a breach.

[65] The defendants seek punitive damages, relying on **Whiten v. Pilot Insurance Co.** (2002) 209 D.L.R. (4th) 257 (S.C.C.), 2002 SCC 18. As **Whiten** indicates, there must be an actionable

wrong, in addition to the breach sued upon, before punitive damages may be awarded. In *Whiten* the insurer had a distinct and separate duty to deal with policy holders in good faith. The breach of that separate duty allowed the court to award punitive damages. Even if I were to assume that the International had a separate obligation to deal with its members in good faith, there has not been the malicious, oppressive and high-handed misconduct required before the court will award punitive damages.

[66] The defendants have also requested special costs, again citing the "reprehensible conduct" of the International. The defendants quote from the B.C. Court of Appeal decision of *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 at para. 17 where the Court said:

... the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all-encompassing expression of the applicable standard for the award of special costs.

[67] There is nothing reprehensible in the conduct of the litigation itself to justify an award of special costs. As I have said repeatedly, the battle between the Provincial Council and the International is a political battle. That is

a reason for the court to refuse to enforce the s. 10B directive. It is not a basis for awarding special costs against the plaintiffs. While this has been hard-fought litigation, it has not been conducted in a reprehensible way.

[68] Finally, the defendants seek an order compelling approval of an amendment to s. 20A of the Provincial Council constitution. This relief was not pleaded and not raised until closing argument. I will not deal with it in these proceedings.

[69] The action and counterclaim are dismissed. If necessary, the parties may make further submissions as to costs.

APPENDIX A

In 1985, the 43rd Annual Convention of the B.C.

Provincial Council of Carpenters resolved:

M-1 - CANADIAN AUTONOMY

... That all Canadian delegates to the 1986 International Convention pursue the goal of Canadian autonomy in accordance with the Canadian Labour Congress minimum standards policy.

...

M-8 - PER CAPITA TAX TO INTERNATIONAL

WHEREAS: The per capita tax paid to the International is a tremendous drain on the Local Unions; and

WHEREAS: The membership receives little value for its dollar in the way of benefits or services:

THEREFORE BE IT RESOLVED: That the Provincial Council open negotiations with the General Office with the view to having the per capita tax reduced to a realistic level.

And a further resolution:

M-9 - CANADIAN LABOUR CONGRESS PER CAPITA TAX

... That the Provincial Council continue to pressure the General Office either to forward that portion of the per capita tax to the Canadian Labour Congress or to return it to the Local Unions; and

BE IT FURTHER RESOLVED: That if such requests are unsuccessful, the Provincial Council then urge all Local Unions in B.C. to send resolutions to the 1986 International Convention to be held in Toronto, demanding refunds and/or reaffiliation.

In 1986 at the 44th Annual Convention a number of resolutions were passed dealing with Canadian autonomy and the per capita tax paid to the International, of which the following is an example:

WHEREAS: Canada is an independent, sovereign country, with a social, cultural, economic, and political life which has differences from that of the United States of America; and

WHEREAS: The democratic rights, the aspirations, and the concerns of each one of our members must be of equal importance, regardless of whether that member lives in the United States or Canada or elsewhere; and

WHEREAS: The Brotherhood's General Officers have not visibly responded to the Canadian autonomy resolution to the 1981 Centennial General Convention or to the follow-up submissions from the Canada Conference of Carpenters or the Western Canadian Conference of Carpenters:

THEREFORE BE IT RESOLVED: That there must be Canadian officers, elected by Canadians, responsible to Canadian members, to serve on the General Executive Board; and

BE IT FURTHER RESOLVED: That the control of the Canadian dues and per capita tax should rest in the hands of a new Canadian office, which would in turn

be responsible for financing the union's activities in Canada; and

BE IT FURTHER RESOLVED: That the United Brotherhood of Carpenters and Joiners of America must adopt a policy of Canadian autonomy in accordance with the Canadian Labour Congress minimum standards policy; and

BE IT FINALLY RESOLVED: That this Convention direct the Provincial Council Executive Board to pursue vigourously the making of the principle of Canadian autonomy a reality.

In 1987 at the 45th Annual Convention of the British Columbia Council of Carpenters the following resolution was passed:

M-4 - CANADIAN AUTONOMY

WHEREAS: The International union provides few services to its Canadian members; and

WHEREAS: The International union has not taken seriously demands by its Canadian membership for autonomy; and

WHEREAS: The cost of maintaining affiliation to the International union continues to rise; and

WHEREAS: The dollars spent in maintaining the International affiliation are desperately needed for organizing and servicing the B.C. carpenters; and

WHEREAS: The Carpenters' Local Unions in B.C. have paid a double per capita tax to the International union, in the amount of affiliation fees to the Canadian Labour Congress; and

WHEREAS: There is on overwhelming desire on the part of B.C. carpenters to be masters in their own house:

THEREFORE BE IT RESOLVED: That a referendum vote be held throughout the province of British Columbia on full Canadian autonomy; and

BE IT FURTHER RESOLVED: That the Provincial Council be empowered to negotiate with the International the terms of full Canadian autonomy under instructions that all properties held by the Local Unions in this province remain with the Local Unions and that a formula be established whereby the International union will return to the Provincial Council a reasonable portion of all monies held in trust for the B.C. members; and

BE IT FINALLY RESOLVED: That the B.C. membership offer to continue fraternal relations with the International union on the basis of equality and mutual respect.

[emphasis added]

In 1996 at the 53rd Convention of the Provincial Council the members resolved:

M-11 - HEAD OFFICE PER CAPITA TAX

WHEREAS: The United Brotherhood of Carpenters and Joiners of America is, from Head Office down through the Local Unions, demanding higher and higher dues from fewer and fewer members; and

WHEREAS: In some instances, higher dues actually are accomplished by fewer services; and

WHEREAS: The ever-increasing per capita tax to the International is a good example of paying more and receiving less:

THEREFORE BE IT RESOLVED: That the B.C. Provincial Council of Carpenters take a proposal to

the Canada Council that we immediately negotiate a reduced per capita tax to the International for Canadian affiliates.

In 1997 the membership resolved:

N1 - MODEL COUNCIL BYLAWS

WHEREAS: The United Brotherhood of Carpenters and Joiners of America have produced new model council bylaws; and

WHEREAS: Democratic principles, such as election of business representatives, ratification of collective agreements, and membership referenda on the constitution and bylaws are lacking:

THEREFORE BE IT RESOLVED: That the B.C. Provincial Council of Carpenters adopt a position of being not in favour of making changes consistent with the International's model council bylaws; and

BE IT FURTHER RESOLVED: That any changes to the B.C. Provincial Council of Carpenters' structure be made in accordance with our current Constitution and Bylaws, which required approval through referendum vote of the membership.

In 1998 the membership resolved:

M-10 - CANADIAN AUTONOMY

WHEREAS: The resistance to the International's restructuring is still being upheld in British Columbia; and

WHEREAS: The International is now attempting to take different steps to eventually weaken our position by holding kangaroo courts to consider putting Local Unions under supervision; and

WHEREAS: The process taken by the International is denying "natural justice" contrary to the labour relations laws of British Columbia:

THEREFORE BE IT RESOLVED: That the BC Provincial Council of Carpenters demand that Carpenters Union members in British Columbia have rights and privileges that are afforded by Canadian law, which should and must be followed; and

BE IT FURTHER RESOLVED: That the Provincial Council insist that the International adhere to Section 10 of the BC Labour Code whenever the International is involved in investigations, hearings, mergers, or any other matters involving members or affiliated Local Unions of the BC Provincial Council of Carpenters; and

BE IT FINALLY RESOLVED: That this resolution be forwarded by this convention to the Canada Council of Carpenters' convention.

...

M-13 - UNION RESTRUCTURING

WHEREAS: The General Office of the United Brotherhood of Carpenters and Joiners of America, under the leadership of General President Douglas McCarron, has been implementing without a vote of the membership a restructuring of the union; and

WHEREAS: This restructuring has resulted in the removal of the vested rights of the members, including the right to elect the leadership and the right of the membership to ratify collective agreements; and

WHEREAS: The American leadership of the union is trying to impose this restructuring program on Canadian Local Unions of the Carpenters' Union:

THEREFORE BE IT RESOLVED: That the BC Provincial Council of Carpenters continue to resist the American proposed model of restructuring; and

BE IT FURTHER RESOLVED: That the Provincial Council pursue a restructuring of the union in British Columbia with a model that makes sense for British

Columbia, and that this new structure be ratified with a referendum vote of the membership.

...

M-15 - REFERENDUM VOTES

WHEREAS: Democratic process has always been the cornerstone of the Carpenters Union in British Columbia, and its membership has been the decision-making body by resolutions to convention of the BC Provincial Council of Carpenters; and

WHEREAS: The BC Provincial Council of Carpenters' Constitution and Bylaws clearly states ways to approach constitutional amendments; and

WHEREAS: The membership of the Carpenters Union in BC has always voted by referendum on proposed changes to the Constitution, giving the membership a voice in the decision-making process; and

WHEREAS: The time-tested right to mark your x, signifying the will of the majority, is paramount to any democratic society, institution, or country:

THEREFORE BE IT RESOLVED: That this Convention go on record as supporting the BC Provincial Council of Carpenters' Constitution stipulating that *"The Executive Board may, at any time, submit any amendment deemed necessary to a referendum vote of the membership, and if it shall receive a majority vote of all votes cast it shall become law."*

In 1999 the membership resolved:

M-3 - CANADIAN AUTONOMY LEGISLATION

WHEREAS: Canadian carpenters should have the right to determine the direction and destiny of their union in their country without imposition of an American dictatorship; and

WHEREAS: Under Bill 80 in Ontario, American unions are prevented from arbitrarily inflicting their will on their Canadian members:

THEREFORE BE IT RESOLVED: That the B.C. Provincial Council of Carpenters call upon the B.C. Federation of Labour and the Canadian Labour Congress to lobby the B.C. and other provincial governments and the federal government for legislation similar to, but stronger than, Ontario's Bill 80.

Resolution M23:

M-23 - WITHDRAWING FROM INTERNATIONAL

WHEREAS: The International does nothing to assist its members in British Columbia; and

WHEREAS: We recognize the need to restructure:

THEREFORE BE IT RESOLVED: That restructuring should benefit the local (British Columbia) Brotherhood; and

BE IT FURTHER RESOLVED: That restructuring should include withdrawing from the International.

was voted on by the membership at the 1999 Convention but was rejected.

In 2000 the membership passed resolutions:

M-10 - BREACH OF CLC CONSTITUTION

WHEREAS: The International restructuring of the union includes Canada, and the International refuses to recognize that the laws and the trade union movement both are different in Canada from the United States; and

WHEREAS: The United Brotherhood of Carpenters and Joiners of America has embarked on a program to restructure the union which violates the principle of democracy by removing the right of members to vote within their union; and

WHEREAS: The Canadian Labour Congress constitution requires, in Article IX, that representatives speaking for their unions in Canada must be elected by Canadians; and

WHEREAS: The United Brotherhood of Carpenters and Joiners' General Executive Board Member, James Smith, sits on the Executive Council of the Canadian Labour Congress and was not elected by Canadians to be their representative; and

WHEREAS: Article VII of the Canadian Labour Congress Constitution, The Code of Ethical Practices, requires that union members have the right to vote for their own officers and representatives:

THEREFORE BE IT RESOLVED: That the British Columbia Provincial Council of Carpenters inform the Canadian Labour Congress and all its affiliated Labour Councils and unions that the United Brotherhood of Carpenters and Joiners' representative, James Smith, was not elected by Canadians and therefore his attendance at the CLC Executive Council is a breach of the CLC Constitution; and

BE IT FURTHER RESOLVED: To inform the Canadian Labour Congress and its affiliated unions and Labour Councils of the International's restructuring program which would remove the right of union members to vote and therefore breaches the CLC Constitution.

...

M-15 - INTERNATIONAL REPRESENTATIVES AT CONVENTIONS

WHEREAS: The International union has demonstrated that it is an anti-democratic organization and it is

trying to remove the democratic rights of BC Carpenters Union members; and

WHEREAS: It does not serve democracy to allow the anti-democratic International leadership the opportunity to attend the Provincial Council conventions; and

WHEREAS: Union members in BC have had to use union funds to defend themselves from frivolous and capricious attacks from the International; and

WHEREAS: In the past, International Representatives came to the convention to sit and take notes of the proceedings in order to fuel their nonsensical inquiries and possible litigation:

THEREFORE BE IT RESOLVED: That anyone on the International payroll not be invited to attend this Convention and all future conventions and other functions of the Provincial Council; and

BE IT FURTHER RESOLVED: That this Convention bar anyone on the International payroll from attending the Convention.

APPENDIX B

TRUSTEES' REPORT

We certify that we have examined the books and accounts of the British Columbia Provincial Council of Carpenters for the period January 1 to December 31, 1999, and have found that:

1. All revenue and expenditures of the Council have been recorded correctly in the appropriate ledgers.
2. Official receipts of the Council were issued for all revenue.
3. All revenue was deposited in the Council's credit union account.
4. All expenditures were paid by cheque drawn on the credit union account of the Council and signed by two of the following officers: President Len Embree, Secretary-Treasurer David Flynn, First Vice-President Patrick Haggarty, or Vice-President Martin Smith.
5. The above expenditures, in our opinion, met the legitimate expenses of the Council.
6. The Trustees have examined all bills and expense vouchers, and have found them to be in order.
7. The books of the Secretary-Treasurer are in balance.
8. The assets of G R & S Holdings Ltd. total \$7,461,694, as stated on the auditor's Financial Statement as a loan outstanding from the Council to G R & S Holdings Ltd. and as stated on the balance sheet of G R & S Holdings Ltd. as at December 31, 1999.

We have authorized disposal of all financial records, with the exception of ledgers and financial statements, covering the time prior to January 1, 1995.

_____"signed"
Jack McLellan
(Local 527)

_____"signed"
David Sewell
(Local 2106)

_____"signed"
Brian Zdrilic
(Local 2736)