

CITATION: Remcan Projects LP v. Wallace, 2026 ONSC 3571
COURT FILE NO.: CV-24-00729584-0000
DATE: 20260617

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: REMCAN PROJECTS LP, Planitiff

AND:

STUART WALLACE, PAUL HICKEY, RICHARD ROCCO, MATTHAEU
ALLOWAY, MALCOLM MOFFATT, MICHAEL GALLAGHER, JOHN DOE,
and JANE DOE, Defendants

BEFORE: Justice Papageorgiou

COUNSEL: *Bonnie Robert Jones and Andrew Schjerner*, for the Plaintiffs, for the Planitiff

Christine Davies and Erin Sobat, for the Defendants - Stuart Wallace, Paul
Hickey, Richard Rocco, Matthaeu Alloway, Malcolm Moffatt, and Michael
Gallagher, for the Defendants

HEARD: January 5, 2026

ENDORSEMENT

Overview

- [1] Remcan Projects LP and Remcan Projects GP Inc. (collectively “Remcan”) are engaged in the construction industry.
- [2] The Labourers International Union of North America, Ontario District Council (“LIUNA”) is involved in a campaign to organize a union for Remcan’s workers.
- [3] There are currently 16 ongoing proceedings before the Ontario Labour Relations Board (the “OLRB” or the “Board”) relating to LIUNA’s attempts to organize this union. The reason there are so many applications is that in the construction industry, certification of unions is based on the geographic location where the employees work. As such, there are a number of different certification applications relating to the same union and employer.
- [4] On July 12, 2024 Remcan filed a Response to the Application for certification in the 16 applications, in which it alleged that none of the employees in one of the areas were employed in construction work and that the Board should not rely on membership evidence because LIUNA had engaged in deceitful activities including having its representative attend at a hotel and masquerade as Remcan management to obtain Remcan employee hotel

room numbers. It argued that membership evidence obtained through subterfuge or deceit should not be accepted.

- [5] The Board then ordered the parties to make submissions on issues including the status of employees in the prospective bargaining unit on the date of the Application as well as any other legal or factual disputes.
- [6] On July 26, 2024 LIUNA filed an unfair labour practice application alleging that when Remcan learned of the Union's organizing campaign, it began an immediate anti-union action intended to unlawfully coerce employees from supporting the Union and intimidate Union Organizers in breach of ss. 70, 72, and 76 of the *Labour Relations Act*, 1995, S.O. 1995, c. 1, Sch. A (the "Act"). It alleged that Remcan had filed false information about LIUNA which caused employees to withdraw their support. LIUNA sought remedies including remedial certification under s. 11 of the Act. It alleged that an employee had told LIUNA that a Remcan employee had been told by someone else at Remcan to write a letter saying that he did not want to join the Union and that the other employees had done so even though it was not true because they were afraid of being fired.
- [7] On July 31, 2024, Remcan filed its responding submissions to the Board, in which it raised issues of LIUNA misconduct. I will particularize the nature of these responding submissions below.
- [8] Then on October 17, 2024, Remcan began this claim against the Union Organizers personally, without naming LIUNA.
- [9] The Statement of Claim seeks damages for inducing breach of contract in the amount of \$100,000, damages for intentional interference with contractual relations in the amount of \$250,000, damages for civil conspiracy in the amount of \$250,000, punitive damages in the amount of \$500,000, as well as an injunction restraining the Defendants from "interfering" directly or indirectly with Remcan's business activities, and from using Confidential Information owned by Remcan.
- [10] The defendant Union Organizers bring a motion to stay this proceeding on the basis that: a) the subject matter of this dispute is one of labour relations, including construction labour relations, which is a highly specialized subfield under the Act and which is subject to the exclusive jurisdiction of the OLRB; b) the proceeding is an abuse of process; c) the proceeding is barred by the *Rights of Labour Act*, R.S.O. 1990, c. R. 33 ("ROLA"); and/or d) the matter does not disclose a reasonable cause of action.
- [11] The Union Organizers claim that this proceeding is a blatant and strategic attempt to interfere with the certification of the LIUNA union. They claim that the impact of this proceeding will be a chilling effect on the Union Organizer's ability to continue attempts to organize this union.

Decision

- [12] For the reasons that follow, I grant the motion and stay the action.

Issues

- [13] Issue 1: Are the matters set out in the Statement of Claim within the exclusive jurisdiction of the Board?
- [14] Issue 2: Is the proceeding an abuse of process?
- [15] Issue 3: Is the claim barred by *ROLA*?
- [16] Issue 4: Does the claim disclose a reasonable cause of action?

Analysis

Issue 1: Are the matters set out in the Statement of Claim within the exclusive jurisdiction of the Board?

The Law

- [17] The Defendants rely on r. 21.01(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 which provides that a defendant may move to have an action stayed or dismissed on the ground that the court has no jurisdiction.
 - [18] Jurisdiction is only ousted when the subject matter of the dispute is in the exclusive jurisdiction of an administrative tribunal. In *Skof v. Bordeleau*, 2020 ONCA 729, 456 D.L.R. (4th) 236, the Court of Appeal directed that to strike a claim on the basis of a lack of jurisdiction, it must be clear and unequivocal that the jurisdiction has been removed or ousted: *Skof* at para. 9. See also *Pileggi v. C.U.P.W.*, 2005 CanLII 14323 (ON SC) at para 40; *Oribine v. Novello*, 2022 ONSC 4302 at para 8.
 - [19] As noted by the Supreme Court in *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, 1991 CanLII 57, jurisdiction must have expressly or impliedly been conferred on the tribunal by its enabling statute or otherwise.
 - [20] *Weber v. Ontario Hydro*, [1995] 2 S.C.R 929, is the leading decision on the analytic framework used to determine whether a matter falls within the exclusive jurisdiction of a labour tribunal. Authorities have drawn a two-part framework from *Weber*:
 - a) The court should first determine the substance of the tribunal's jurisdiction.
 - b) The essential character of the dispute should be examined to see if it falls within the tribunal's exclusive jurisdiction.
- Oribine v. Novello*, 2022 ONSC 4302, 2022 A.C.W.S. 2807 at para. 10.
- [21] This two-part test applies whether or not there is a collective agreement already in place: *Oribine* at paras. 16-18, citing *Dagher v. McDonnell-Ronald Limousine Services Ltd.*

(1999), 46 O.R. (3d) 97, 181 D.L.R. (4th) 751 (C.A.) at paras. 22-24 and *Myrtezaj v. Cintas Canada Ltd.*, 2008 ONCA 277, 90 O.R. (3d) 384 at paras. 37-39.

The Substance of the Board's Jurisdiction

- [22] The Act is a statutory scheme governing labour relations in Ontario.
- [23] The Board has specialized expertise in administering labour relations in Ontario, including labour relations related to the construction industry, which is a distinct subspecialty “it was entrusted to regulate in accordance with industry-specific legislative rules”: *International Brotherhood of Electrical Workers, Local 1739 v. International Brotherhood of Electrical Workers*, 86 O.R. (3d) 508, 225 O.A.C. 341 (Div. Ct.) at para. 47.
- [24] There are specialized provisions in the Act relating to the construction industry for union certification. Applications for certification can be made under either s. 128.1 or s. 7. The Board may issue a certificate based on filed membership evidence in applications under s. 128.1 or following a vote in applications made under s. 7.
- [25] Pursuant to s. 76, which appears under the heading “Unfair Practices” (in operation with ss. 96 and 114, which I discuss below), the Board has the jurisdiction to adjudicate allegations of intimidation and coercion related to trade union applications:

Intimidation and coercion

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

- [26] Section 128.1(5) confirms that in card-based certification applications in the construction industry, the Board may consider “evidence and submissions relating to any allegation that section [...] 76 has been contravened or that there has been fraud or misrepresentation” if the Board considers it appropriate in making a decision under that section. Even post-certification, the Board retains the authority under s. 64(1) to address allegations of trade union misconduct and to revoke a union's certificate where it determines the certificate was obtained by fraud.
- [27] The Superior Court has recognized that adjudication of complaints of unfair labour practices and other violations of the Act is at the heart of the Board's specialized expertise, and that such disputes draw on the experience of the Board: *Warren v. Ontario Labour Relations Board*, 2013 ONSC 847, 305 O.A.C. 52 (Div. Ct.) at para. 8.
- [28] Section 114(1) gives the Board exclusive jurisdiction to exercise the powers conferred on it and to determine all questions of fact or law that arise before it:

114 (1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

- [29] As Doherty J.A. concluded with reference to s. 114, “It is hard to think of language that could speak more strongly in support of the finality of the [OLRB’s] decisions and the exclusivity of its jurisdiction”: *Myrtezaj* at para. 33.
- [30] Courts have consistently held that the Superior Court does not have jurisdiction to preside over an action that raises allegations concerning matters that fall within the ambit of the Act irrespective of the legal characterization: *Gendron v. Supply & Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298 at pp. 1326-1327; *Ball v. McAulay*, 2020 ONCA 481, 452 D.L.R. (4th) 213 at para. 43; *EllisDon Residential v. Limen Group Const (2019) LTD. et al.*, 2022 ONSC 1917, 2022 A.C.W.S. 679 at para. 4, application for leave to appeal dismissed, 2022 ONSC 399 (Div. Ct.); *A.C. Concrete Forming Ltd. v. The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity*, 2008 ONCA 864, 93 O.R. (3d) 529 at paras. 17-19; *Coleman v. Demers* (2007), 155 A.C.W.S. (3d) 862, 57 C.C.E.L. (3d) 139 (Ont. S.C.) at paras. 22 and 47; *Limen Group Ltd. v. Blair*, 2014 ONSC 4004, 242 A.C.W.S. (3d) 421 at para. 21, affirmed 2014 ONCA 680.

The Essential Character of the Plaintiff’s Claim/Dispute

The Essential Character of Remcan’s Claim Relates to Matters Within the Board’s Exclusive Jurisdiction

- [31] In considering this issue, what matters is not the characterization of the Claim but its substance.
- [32] The Statement of Claim alleges that:
- Certain Union Organizers approached Remcan employees at Comfort Inn in North Bay where they were staying while they were working at jobsites. The Union Organizers lied to Remcan employees by telling them that they were workers from out of town such that they were not affiliated with LIUNA. This approach was made in “an illegal attempt to, inter alia, interfere with Remcan’s economic interests.”
 - This caused employees distress, causing them to sign membership cards. The claim here includes specific references to incidents already raised before the Board.
 - Stuart Wallace is a supervisor employed with Remcan. He has access to software used by Remcan to locate and track vehicles it owns and the drivers assigned to the

vehicles. He conducted a series of searches in software to determine the locations, identities, and work cycles of Remcan employees (the “Remcan Confidential Information”). He shared this information with the defendants John Doe and Jane Doe, who then used this Confidential Information to file LIUNA certification applications at select times in select areas. This was done in an effort to certify jobsites that were guaranteed to have Remcan employees present.

- Then, one of the Union organizers used the Confidential Information to locate two Remcan employees at the Comfort Inn in Brockville. He deceived the front desk staff by falsely claiming to be a Remcan supervisor, obtained the room numbers for the Remcan employees. He was able to obtain access to one of these employees and introduced himself as a LIUNA representative. He asked the Remcan employee to sign a LIUNA membership card and the Remcan employee did so to remove the Union organizer from his room. Then the Remcan employee phoned a Remcan safety officer to express his concerns. Certain Union organizers induced an employee of Remcan, Mr. Wallace, to breach his contract of employment in this regard.
- The Confidential Information was similarly used to locate and approach a Remcan employee at the Comfort Inn in North Bay.
- The Confidential Information was also used to track and predict Remcan crew movements.
- In exchange for leaking the Confidential Information, Mr. Wallace received monetary compensation. Remcan characterizes this as bribery.
- The claims against Mr. Wallace have been settled.
- The claims against the Union organizers include that they induced Mr. Wallace to breach his employment contract, that they intentionally interfered with Remcan’s economic interests and did so,

to strategically file certification applications at select Remcan jobsites and to approach Remcan employees to speak with them about certification. As a result of the Defendants’ unlawful actions, Remcan has suffered significant economic harm. In addition to the harm caused to Remcan’s relationship with its employees, Remcan has been forced to spend substantial time, expense, and effort to discover what Confidential Information was leaked and by whom. This time, effort and expense has prevented Remcan from providing its usual high standard of service. This has damaged Remcan’s current client relationships and impaired efforts to make new ones.

- Remcan also claims that the defendants engaged in a conspiracy to elicit the Confidential Information.

[33] Remcan argues that the essential character of the Claim as pleaded does not fall within the Board’s jurisdiction:

- Its Claim is a tort claim related to steps taken by Union Organizers to unlawfully obtain its Confidential Information in respect of where employees were working. It says the fact that the unlawful acts occurred during a certification campaign is merely incidental to the misconduct and does not change these matters into a labour relations dispute.
- It argues that the Union Organizers’ alleged actions cannot be considered unfair labour practices within the meaning of s. 76 because s. 76 only references seeking “by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union.” Even if bribery could be considered coercion or intimidation pursuant to s. 76, this would have to be bribery of an employee to compel them to become a member of a union. It argues that this would not include bribery of Mr. Wallace, who was a supervisor and would not have been part of the bargaining unit if the union was certified.
- It distinguishes the cases which have held that bribery falls within the ambit of the Board’s jurisdiction pursuant to s. 76, because these cases involved bribery of employees to become union members: *Labourers’ International Union of North America, Local 183 v. Innovative Civil Constructors Inc.*, and *Eiffage Innovative Canada Inc.*, 2020 CanLII 92559 (Ont. L.R.B.) at para. 30; *Labourers’ International Union of North America, Ontario Provincial District Council v. Concrete Systems Ltd.*, 2017 CanLII 26396 (Ont. L.R.B.) at para. 5.
- It argues that s. 114(1) only gives the Board exclusive jurisdiction to exercise “the powers conferred upon it by or under the Act”. It argues that since s. 76 does not clearly apply to the bribery allegation, the Board does not have any – let alone exclusive – jurisdiction over the matters set out in the Claim. It argues that there are also no other specific provisions of the Act pursuant to which it could complain about the conduct at issue to the Board in order to obtain relief for its alleged business losses and damages.

[34] There are a number of problems with Remcan’s argument.

[35] First, the Union Organizers alleged actions are not incidental to the proceedings before the Board. They were allegedly taken to assist with the organizing campaign.

[36] Second, there are allegations of conduct in the Claim that clearly fall within s. 76. These include the allegations that relate to the Union Organizers’ attendances at the Comfort Inn, lying to employees about who they were and/or intimidating them in order to get them to sign the union membership cards. This type of conduct clearly falls within coercive conduct and intimidation even taking into account Remcan’s interpretation of s. 76. In that regard, as noted, there is a pleading that the Union Organizers’ conduct caused employees such distress that they signed the membership card.

[37] Third, with respect to the allegations of bribery of Mr. Wallace, Remcan's interpretation of s. 76 is overly narrow.

[38] The *Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F provides that:

Rule of liberal interpretation

64 (1) An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.

[39] Section 76 does not say that the intimidation or coercion has to be directly **of** the employee. Rather, it says that "no person shall seek **by** intimidation or coercion to compel a person to become or refrain from becoming" a union member [Emphasis added]. Had the legislature intended this to narrowly mean direct coercion or intimidation of the employee, in my view, it would have been easy to say that clearly through language like "No person shall intimidate or coerce an employee into joining a union" or "It is an unfair practice to intimidate or coerce an employee into joining a union."

[40] The narrow interpretation advanced by Remcan is inconsistent with the remedial nature of the Act, inconsistent with the exclusive jurisdiction given to the Board over the certification process, inconsistent with one of the express purposes set out in the Act which is to "facilitate collective bargaining between employers and trade unions that are the freely designated representatives of the employees" and is also inconsistent with the express wording of s. 76.

[41] In *EllisDon*, the court observed that:

[57] [...] the Board recognizes that its duty is to look at the underlying realities of a situation and make determinations based on those realities, not based solely on the legal characterization the parties may wish to ascribe to them. Those factors lead me not to accept the plaintiff's more sweeping submission that the Board will not accept jurisdiction over its complaint or will not provide a remedy.

[42] In my view, s. 76, as written, encompasses any intimidation or coercion used to seek to compel employees to join a union, even if that intimidation or coercion is one step removed and begins with another party.

[43] Third and in any event, the Board need not ground its jurisdiction upon specific breaches of s. 76 or breaches of any other provision of the Act.

[44] Even if the matters alleged do not constitute unfair labour practices within the meaning of s. 76 or constitute specific breaches of specific sections of the Act, the question is whether or not the matters alleged fall within the ambit of the Board's exclusive jurisdiction over the certification process as set out in s. 128.1 and s. 7. As part of that process, the Board can consider all matters relevant to that certification application. The matters set out in the

Statement of Claim all relate to the way in which the Union has carried out the organizing campaign through the Union Organizers. The essential character of the Claims all relate to the certification process over which the Board has exclusive jurisdiction pursuant to s. 128.1 and s. 7.

- [45] Furthermore, with respect to the alleged misappropriation of Remcan's alleged Confidential Information through the bribery of Mr. Wallace, even if Remcan's argument about the strict interpretation of s. 76 is right, Remcan's argument fails to take into account the entire wording of s. 114(1) which sets out the Board's exclusive jurisdiction. Section 114(1) does not only direct that the Board has jurisdiction over specific breaches of the Act. It also directs that the Board has jurisdiction "to determine all questions of fact or law that arise in any matter before it."
- [46] It is important to understand the current proceeding before the Board, and the questions of law and fact that the Board will have to decide based upon Remcan's own submissions in these proceedings.
- [47] The various proceedings before the Board have been consolidated.
- [48] Although Remcan has not filed a formal unfair labour practice application with the Board, Remcan has raised the same following issues in submissions and its pleadings to the Board:
- As noted above, in its response to LIUNA's application dated July 12, 2024, Remcan alleged that the Board should not rely on membership evidence submitted with LIUNA's application because LIUNA had engaged in deceitful activities. This included allegations that a representative of LIUNA attended a hotel and masqueraded as Remcan management to obtain Remcan employee hotel room numbers. It argued that membership evidence that has been obtained through subterfuge or deceit is suspect and ought not be relied upon for a card-based certification. These exact facts have been alleged in the Claim.
 - As noted, the Board requested submissions on the status of employees in the bargaining unit on the date of the certification application, and in respect of any other factual or disputed issues. In Remcan's July 31, 2024 response to the Board's request, Remcan raised the following matters that are also alleged in the Claim:
 - LIUNA had "engaged in a sustained campaign in which it has served and/or served and filed multiple Applications for certification without valid support while actively harassing and threatening Remcan employees when they are at their lodging between shifts." It referenced the same allegation in the Claim that a Union organizer had lied and denied he was with the Union when asked and that the Union Organizer approached employees at the Comfort Inn before their shift.
 - LIUNA's submissions to the Board contained corporate information and records which it had improperly accessed and/or appropriated, which it (or

members acting on its behalf) had obtained by breaching express policies and rules and to access and steal corporate information. **It alleged that this conduct constituted actionable interference in contractual and business relations, was a breach of individual privacy rights and was an appropriation as well as a potential conspiracy to injure.** It calls the information improperly taken “Corporate Information” before the Board but “Confidential Information” in the Claim but these relate to the same underlying facts. It does not specifically reference the tort of inducing breach of contract but again, this tort relates to the same underlying facts.

- [49] While no explicit reference to bribery of Mr. Wallace has been made in its submissions to the Board, to prove its claims before the Board, Remcan will still have to address how the Union Organizers obtained the Confidential Information which is through the alleged bribery of Mr. Wallace, even if they have not raised it specifically.
- [50] Further, the bribery allegation is not at the heart of the Claim before the Superior Court. Bribery is not even a separate tort in Canada. What is at the heart of this proceeding is the alleged improper access to alleged Confidential Information (Corporate Information) and the torts related to this. The alleged bribery is a fact that supports the torts pleaded.
- [51] Even if bribery has not been specifically raised before the Board by Remcan, it would be inappropriate to split the claim.
- [52] Remcan may still raise issues related to bribery before the Board to prove that the Confidential Information (Corporate Information) was improperly accessed or misappropriated.
- [53] Thus, all of the torts pleaded in the Claim have been specifically referenced by Remcan in its submissions before the Board and relate to the same underlying facts even if it has somewhat different terminology in some respects.
- [54] Thus, since Remcan itself has already raised these issues before the Board, these are questions of fact and law that arise in the matter already before the Board; the Board has exclusive jurisdiction over them pursuant to s. 114(1) as a result.
- [55] Therefore, the essential character of Remcan’s complaints all relate to the Union’s organizing campaign, the application for certification pursuant to s. 7 or 128.1, specific alleged breaches of s. 76 in respect of alleged coercion and intimidation and also relate to issues of fact and law that Remcan itself has already raised before the Board. These are all matters over which the Board has exclusive jurisdiction.
- [56] Recasting Remcan’s complaints as torts and a claim for damages and an injunction does not change the essential character.

The Board's Powers

- [57] The Board is empowered to address the issues raised by Remcan and to provide an appropriate remedy.

The Board Can Dismiss the Application for Certification

- [58] Subsections 128.1(8) and (9) empower the Board to dismiss an application for certification in the construction industry where a trade union or person acting on behalf of a trade union has contravened the Act such that the membership evidence provided does not likely reflect the true wishes of the employees in the bargaining unit.
- [59] Further, s. 128.1(5) provides as follows:

Exception: allegation of contravention, etc.

(5) Nothing in subsection (4) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened **or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section.** [Emphasis added]

- [60] The allegations related to what the Union Organizers misrepresented to Remcan employees clearly falls within this section. The allegations of bribery to obtain the Confidential Information that Union Organizers then used falls within this section as this can be seen as a type of fraud, particularly when giving the Act the large and liberal interpretation to achieve its purposes. That is, the alleged bribery involved dishonesty, and deception to achieve an unfair advantage.
- [61] Pursuant to s. 11.1 the Board may order another representation vote or dismiss an application for certification where a trade union or person acting on behalf of a trade union contravenes the Act such that the true wishes of the employees in the bargaining unit were not likely reflected in a vote.

The Board Has the Power to Apply Tort Law

- [62] The OLRB has the power to apply common law principles from tort law: *Caressant Care Nursing & Retirement Homes Ltd. v. Priest* (1999), 2000 C.L.L.C. 220-010, 24 Admin. L.R. (3d) 192 (Ont. S.C.) at para. 41.

The Board Can Order Rectification and Damages

- [63] Section 96 permits the Board to inquire into any complaint alleging a contravention of the Act and where a settlement cannot be reached, the Board may make orders that the person cease doing the act or directing that the party rectify the act complained of.
- [64] The Board's obligation to rectify may include payment of damages to the wronged party: *FCI Concrete v. Buttcon Limited*, 2017 ONSC 3326 at para. 18, affirmed 2018 ONCA 268;

A.C. Concrete Forming at para. 24; *United Food and Commercial Workers International Union (A.F.C.-C.I.O.-C.L.C.) v. Jacmorr Manufacturing Limited*, 1987 CanLII 3071 (Ont. L.R.B.) at paras. 32-34; *United Steelworkers of America v. Radio Shack*, 1979 CanLII 817 (Ont. L.R.B.) at paras. 90-91, affirmed (1980), 30 O.R. (2d) 29, 115 D.L.R. (3d) 197 (Ont. H.C.); *National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) v. National Grocers Co. Ltd.*, 2003 CanLII 47388 (Ont. L.R.B.) at para. 4; *Oribine v. Novello*, 2022 ONSC 4302, 2022 A.C.W.S. 2807 at paras. 46-48.

- [65] Remcan argues that the Board's powers to grant damages is not adequate because it is not empowered to grant damages for all of the conduct Remcan alleges. Again, it argues that the Board's ability to award relief (apart from deciding not to certify a union) is premised on breaches of the Act and not all of the conduct would constitute specific breaches of the Act. In particular, it again asserts that the alleged bribery of Mr. Wallace to obtain Remcan's Confidential Information could not be considered intimidation or coercion within the meaning of s. 76.
- [66] I disagree that the Board could not provide an adequate remedy for the harms alleged:
- a) Again, the language of s. 76 is broad enough to encompass this conduct for the reasons I have already set out above.
 - b) To the extent that Remcan seeks damages for the fact that employees signed membership cards as a result of the alleged conduct, and ended up supporting LIUNA's certification application, these are not damages that a court can award because no employer has the right to be free from union certification. The Supreme Court of Canada has held that to satisfy the tort element of damage, the loss sought to be recovered must be the result of an interference with a legally cognizable right or "an injury to a right that can be the subject of recovery in tort law": *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, [2020] 3 S.C.R. 504 at paras. 18 and 23. *Mohammad v. Sajjad-Hazai*, 2021 ONSC 8490, 340 A.C.W.S. (3d) 23 involved a claim against a Law Society of Ontario staff member for dismissing his complaint regarding a lawyer. The court found that the claim could not have resulted in an award of damages even if successful and struck the claim without leave to amend: *Mohammad* at paras. 15-17.
 - c) Remcan claims that the Union Organizers' conduct damaged Remcan's relationship with its employees. There is no evidence before me to support this claim, not even a bald statement in an affidavit. This claim is also not supported within the body of the facts pleaded. The Claim alleges that employees who were allegedly approached did not want to join the union and contacted the employer. It is unclear how this could have in fact constituted damage even as pleaded. For those employees who decided they wanted to join the union, again this type of claim for damages is not justiciable because employees are permitted to join unions. Their decision to do so cannot constitute damage to the employer's relationship with them entitling the employer to damages. In

any event, the conduct of approaching employees and pressuring them at the hotels they were staying at, indisputably falls within s. 76 as constituting intimidation and coercion. The Board could award damages for this conduct if proven.

- d) To the extent that the damages claimed relate to the fact that LIUNA obtained Confidential Information on the location where employees were working, the Board's Rules of Procedure and Information Bulletins applicable to the Remcan Applications (including but not limited to Information Bulletin #9) require parties to disclose information necessary to the determination of disputes related to applications for certification. In the construction industry this includes employee names, job titles or positions, job sites, nature of work performed, and documents including payroll records, timesheets, and other records addressing the work performed, where it was performed, and by which persons. This includes information, documents and records that would otherwise be confidential business information, including the information described as "REMCAN's confidential information" and "Further REMCAN Confidential Information" at paras. 15 and 22 of the Claim. While clearly the Union Organizers were not entitled to use Wallace to steal this information, it is unclear what damages could be awarded for the actual use of this information since it arguably had to be provided in any event.
- e) Remcan also claims damages for the allegedly substantial time, expense and effort it incurred to figure out what Confidential Information was leaked and by whom. It alleges that this has prevented Remcan from providing its usual high standard of service which has damaged its current client relationships and impaired efforts to make new ones. This is not well particularized in the Claim. Further, Remcan filed no evidence on this motion to support the claim that it suffered these kinds of damages, not even a bald statement setting out anything at all about what costs and time it incurred. Remcan's failure to file any evidence at all to support the legitimacy of this claim is fatal given: i) LIUNA's allegation that this proceeding is nothing more than a tactical attempt to interfere with the certification process, and ii) the factual matrix before me which supports the inference that this is the case. In any event, in my view, the Board could award damages pursuant to s. 76 for reasons I have already set out above.

[67] Even if the Board was not empowered to grant specific damages to Remcan because not all of the alleged conduct may constitute specific breaches of s. 76, a court may still decline to exercise jurisdiction on the grounds that the arbitrator's powers are sufficient to remedy the wrong: *Weber*, at para. 62.

[68] A further consideration here is that the torts alleged are all economic torts. In *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, [2014] 1 S.C.R. 177 at para. 34, the Supreme Court cautioned against the expanded use of economic torts in the labour relations context. This is because there is an inherent risk "in the economic torts generally

that they will undermine legislated schemes favouring collective action in, for example, labour relations and interfere with fundamental rights of association and expression.”

- [69] In my view, particularly given the absence of any evidence before me supporting the alleged damages suffered, the Board’s power to decline to certify the union is a sufficient remedy to address Remcan’s real concern which is that the union may be certified in circumstances where it has pursued its certification applications in an unfair or improper manner.

The Board Can Award Interim Relief

- [70] The Board also has the power to grant interim orders and so has the power to grant the interim relief requested in the Claim to restrain the conduct complained of: *Brick and Allied Craft Union et al. v. Marble, Tile & Terrazzo, Local 31*, 2007 CanLII 16241 (Ont. L.R.B.) at para. 22; *EllisDon*, at para. 20.

Remcan Can Still Seek Relief for the Matters it Alleges

- [71] The fact that Remcan has not specifically sought relief before the Board related to all of the matters set out in the Statement of Claim (like the bribery allegation) or sought to add the Union Organizers as parties to the existing OLRB application does not assist it; it should have done so and still can supplement its allegations with a specific request for relief.

The Fact that the Claim Is Against Different Parties Does Not Preclude the Relief Sought

- [72] The fact that the Claim is brought against the Union Organizers as opposed to the Union does not change the analysis.
- [73] The Statement of Claim pleads that the defendants were LIUNA’s employees or organizers acting on its behalf. There is no pleading that they were involved in any other capacity than as employees, representatives or agents of the Union in the organizing campaign.
- [74] As set out above, the Act governs allegations of misconduct by “persons” as well as “person[s] acting on behalf of a trade union or council of trade unions” (s. 96), which includes each of the individual Union Defendants (s. 76) and which may give rise to remedies relevant to a union’s organizing campaigns such as remedial dismissal of an application (ss. 11.1, 128.1(8) and (9)). All of the allegations in the Claim are, at their core, allegations of labour relations misconduct in the course of a union organizing campaign under the Act that fall under the Board’s jurisdiction and broad remedial powers.
- [75] The Board also has broad powers under s. 111 including the power to require any party to furnish particulars or produce documents, and to summon and enforce the attendance of witnesses and compel them to give evidence and produce documents in the same manner as a court. Further, a trade union or corporation may apply to the Board under s. 109(1) for consent to prosecute individuals, corporations, or trade unions for an offence under the Act, including fines under s. 104.

[76] As the court observed in *Coleman v. Demers*, at para. 49:

Finally, I am satisfied that Joseph McCabe stands in the same position as the union, CAW-Canada. Both the pleadings and the submissions of the parties make it clear that Mr. McCabe is named solely in his capacity as union representative. To this extent, his status as a Defendant does not alter the jurisdictional character of the dispute. It remains, in its essential character, a claim against the union for a breach of its duty of fair representation.

The Board Should Make the Final Determination of its Jurisdiction

[77] Finally, the initial determination of what the Board has the jurisdiction to do under the Act should be made by the Board: *International Union of Bricklayers and Allied Craftworkers v. Coelho*, [1998] O.J. No. 5449 (Ont. C.J.) at paras. 4 and 20; *Limen Group Ltd.* at paras. 15-16; *Ellis-Don* at paras 51-62.

[78] As observed by Firestone J. (as he then was) in *Limen Group Ltd.* at paras. 25-26, 28:

[25] Section 98 of the *LRA* gives the OLRB the power to make substantive and procedural interim orders in a pending proceeding. In addition, s. 96(4) provides the OLRB with powers to remedy violations by providing a complaint and enforcement mechanism.

[26] Given the exclusive jurisdiction of the OLRB as outlined above, the interim relief available to the plaintiffs from the OLRB must be exhausted. [...]

[28] [...] Here, the plaintiffs have not brought any proceedings to the OLRB regarding the issues for determination in this action. It is not in the interests of justice to invoke this court's inherent jurisdiction to consider granting interim or interlocutory relief given that the very issues for determination are within the exclusive jurisdiction of the OLRB, which is a specialized tribunal with special expertise in labour relations. Such decision is in keeping with the principles and method of procedure set forth in *Weber*.

[79] Parties should first seek relief from the Board and turn to the Superior Court only when relief is determined by the Board to be beyond its jurisdiction: *Coelho* at para. 20; *Limen Group Ltd.* at paras. 15-16; *Ellis-Don* at paras. 51-63.

[80] Remcan has failed to pursue relief for its allegations at the Board beyond pleading certain facts (but not all) that are also pleaded in its Claim and in its Response dated July 14, 2024, and suggesting that the Board should disregard certain membership evidence or strike certain information from the Remcan Applications. To date, Remcan has not: 1) brought a complaint under s. 96 against any of the Defendants under the Act; 2) sought to add any of the Union Organizers as a party to any of the Remcan Applications, or 3) sought particulars or production from the Union in respect of its allegations. This is despite having had numerous opportunities to respond to the Union's applications since July 2024 and having

been specifically directed by the Board to raise any factual or legal disputes that may arise at any time during the course of the Remcan Applications.

Issue 2: Is the proceeding an abuse of process?

- [81] I agree that the proceeding is also an abuse of process and should be stayed pursuant to r. 21.01(3)(c) or (d) on that basis.
- [82] Rule 21.01(3)(c) permits a court to stay an action where:
- (c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter.
- [83] Rule 21.01(3)(c) requires the court to consider whether the continuation of the action would cause prejudice and injustice and whether the stay would be unfair to the plaintiff: *Cashin Mortgages Inc. (Verico Cashin Mortgages) v. 2511311 Ontario Ltd.*, 2024 ONCA 103, 170 O.R. (3d) 107 at para. 18; *Brigaitis v. IQT, Ltd. c.o.b. as IQT Solutions*, 2014 ONSC 7 (CanLII) at para 68.
- [84] I agree with the submission that even though the suit is against Union Organizers, the substance of the Claim is against the Union. Again, there is no allegation that the Union Organizers are acting in any other capacity than on behalf of the Union in connection with the organizing campaign. Pursuant to the Act, the Union is directly liable for the actions of persons acting on its behalf: ss. 11.1, 128.1(8) and (9).
- [85] Remcan argues that the matter is not an abuse of process because the doctrine of res judicata only prevents the re-litigation of previously adjudicated and finally decided matters: *Furney v. Hazan*, 2025 ONCA 73 at para 12. It argues that although there are common issues, the issues before the Board have not been adjudicated to a conclusion and as such, r. 21.01(3)(c) cannot apply.
- [86] This is plainly wrong because the wording of this rule specifically relates to “pending” actions in another jurisdiction.
- [87] Rule 21.01(3)(c) may also apply even where there may be different parties.
- [88] In *Cashin*, the respondent brought both a counterclaim and a second action naming additional defendants not involved in the first action. The motion judge found that the “spirit” of r. 21.01(3)(c) applied even though the two lawsuits did not comprise exactly the same parties. The Court of Appeal agreed on this point, commenting that both Rules 21.01(3)(c) and (d) invoke the doctrine of abuse of process “to prevent a multiplicity of proceedings or the re-litigation of an issue, such as in the commencement of another proceeding that replicates the same or similar issues and is against some or all of the same parties”: *Cashin* at para. 17. The court concluded that the second action dealt with “the same principal issue” and “effectively the same parties”: *Cashin* at para. 20. As there was no viable explanation for the second action, the court inferred that the plaintiff had

improper motives and intended to intimidate the defendants into submission through inconvenience, delay and expense associated with an additional proceeding.

- [89] The court has an inherent power to prevent the misuse of its procedures in a way that would be manifestly unfair or which would bring the administration of justice into disrepute: *Cashin* at para. 17.
- [90] Here there is no persuasive explanation for the Claim given that these issues have been raised before the Board and given the Board's powers to provide an effective remedy. Permitting this action to proceed would cause prejudice and injustice because the Union Organizers and Union would be forced to fight Remcan on multiple fronts. There is no injustice to Remcan because it has the ability to raise all the same issues before the Board and seek a sufficient remedy.
- [91] In the alternative, I agree that the action is an abuse of process pursuant to r. 21.01(3)(d).
- [92] Rule 21.01(3)(d) permits a court to stay an action where:
- (d) the action is frivolous or vexatious or otherwise an abuse of the process of the court.
- [93] Abuse of process can apply even where there is no mutuality of parties: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77; *Winter v. Sherman Estate*, 2018 ONCA 703, 295 A.C.W.S. (3d) 755 at paras. 7-8.
- [94] In *SIF Solar Energy Income & Growth Fund v. Aird & Berlis LLP*, 2024 ONCA 946, 2024 A.C.W.S. 6667 at para. 32, the Court of Appeal observed that r. 21.01(3)(d) fills a potential gap under r. 21.01(3)(c) where the second proceeding overlaps with another proceeding but not all the parties are the same.
- [95] Duplicate proceedings which result in a multiplicity of proceedings can amount to an abuse of process: *Saskatchewan (Environment) v. Metis Nation*, 2025 SCC 4, 500 D.L.R. (4th) 279 at paras. 38-40.
- [96] There are also concerns about multiplicity of proceedings even where some matters are within the exclusive jurisdiction of the Board but it may not have exclusive jurisdiction over others. In *A.C. Concrete Forming* at para. 26 the Court of Appeal stated:
- [26] Finally, I wish to comment on the appellant's submission in oral argument that even if those parts of its pleading which relate to the collection of fees or dues are within the Board's exclusive jurisdiction, the motion judge ought to have struck only those parts and allowed the balance of the claim -- which it says relates to enforcement -- to proceed. As this suggestion was not put to the motion judge, it ought not to be raised here on appeal for the first time. Furthermore, the unnecessary bifurcation of proceedings flowing out of the same factual matrix is to be avoided -- where related issues arise from a dispute, they should be heard by a single adjudicative body to the extent jurisdictionally possible. [...] If courts fail to

defer completely to the Board's jurisdiction in circumstances such as these, violence is done to the comprehensive statutory scheme designed to govern the relationship between the parties -- the assumption of jurisdiction, even over a limited part of the claim, would fly in the face of the demonstrated legislative intent to provide an exclusive and comprehensive mechanism for labour dispute resolution.

- [97] See also *Coelho* at paras. 18-20 where the court held “The fundamental problem, as I see it, is that if I were to grant the interim orders sought by the plaintiffs, my interim order would determine an important, indeed, central issue of the dispute between these parties that is before the OLRB.”
- [98] Remcan references *Saskatchewan (Environment) v. Metis Nation* at para. 39, where the Supreme Court indicated that the fact that two or more proceedings involve ongoing legal proceedings which involve the same or similar parties is not in itself sufficient for a finding of abuse of process because there may be situations where a party has a valid reason for bringing separate or related proceedings. In such circumstances, a multiplicity of proceedings can serve to enhance the administration of justice.
- [99] This reasoning does not apply here because there is no valid reason to bring this Claim when most of the issues set out therein are already raised before the Board in the proceedings before it, where the Board has the power to meaningfully provide a sufficient remedy and where Remcan has not even sought to raise all of these issues and seek a remedy before the Board. Had it done so and the Board declined jurisdiction or indicated it could not sufficiently remedy the alleged harm, the situation may have been otherwise.
- [100] There is clear risk of duplication, inconsistent findings and confusion if these issues proceed both before the Board and the Superior Court on parallel tracks. Permitting this would also undermine the Board’s jurisdiction over its own proceedings and cause a chilling effect over the Union Organizers’ and LIUNA’s ability to pursue the Application.
- [101] In all the circumstances I conclude that the Claim was commenced as a tactical maneuver to fight the organizing campaign on multiple fronts and is an abuse of process.

Issue 3: Is the claim barred by the *Rights of Labour Act*?

- [102] I disagree that this proceeding is barred by ROLA.
- [103] *ROLA* provides as follows:

Trade union

2. A trade union and the acts thereof shall not be deemed to be unlawful by reason only that one or more of its objects are in restraint of trade.

Acts done by two or more members

3.(1) Any act done by two or more members of a trade union, if done in contemplation or furtherance of a trade dispute, is not actionable unless the act would be actionable if done without any agreement or combination.

Trade union, party to action

(2) A trade union shall not be made a party to any action in any court unless it may be so made a party irrespective of this Act or of the *Labour Relations Act*.

[104] LIUNA argues that Remcan does not raise anything other than certification harms arising in the context of a union organizing campaign or because of documents and information obtained that would have reasonably been required to be provided to the Board in any event. It again points out that the Legislature has determined that disputes such as this are within the Board's jurisdiction. It argues that *ROLA* prevents this proceeding.

[105] However, *ROLA* does not apply.

[106] I begin by noting the historical context. *ROLA* was enacted when unions had just begun to emerge: *Windsor Salt Ltd./Sel Windsor Ltée.*, 2023 ONSC 1431 at para. 16. They would have been considered unlawful conspiracies in restraint of trade in the absence of legislation that permitted them: *Lawrence v. International Brotherhood of Electrical Workers (IBEW) Local 773*, 2017 ONCA 321, 138 O.R. (3d) 129 at para. 23:

[23] The judgment of Goudge J.A. in *P.I.P.S.C. v. Canada (Attorney General)* (2002), 2002 CanLII 19258 (ON CA), 62 O.R. (3d) 682, [2002] O.J. No. 4831 (C.A.) puts the *Rights of Labour Act* in its proper historical context. The Act was passed in 1944, a time when trade unions were first emerging as important institutions, and the Act "offered some protection to trade unions and the fledgling system of labour relations of which they were a part" [page137] (para. 17). In the words of the appellants' own factum, the Act was designed to protect unions from "the unforgiving common law, which viewed trade unionism as an unlawful combination in restraint of trade". Since that time, trade unions and collective bargaining have undergone an "extraordinary evolution" and for unions to "be able to properly fulfill the functions now expected of them, courts must treat them as juridical entities" (*P.I.P.S.C.*, at para. 27).

[24] In *Berry v. Pulley*, [2002] 2 S.C.R. 493, [2002] S.C.J. No. 41, 2002 SCC 40, the Supreme Court of Canada recognized unions as "entities which possess a legal personality" and which are endowed, subject to "express legislative provisions to the contrary", with "legal status to sue and be sued in their own name" (paras. 3 and 46). The s. 3(2) remains on the books and it is an "express legislative provision" providing that an Ontario trade union may not be named as a party in an Ontario proceeding, although in *P.I.P.S.C.* the application of s. 3(2) was narrowly interpreted to permit unions in Ontario that derive their status from non-Ontario legislation to be named as parties. In the words of Goudge J.A., s. 3(2) is "something of an archaic legislative provision" (*P.I.P.S.C.*, at para. 15). While that

does not mean the Act can or should be ignored, it is a factor to be taken into account when the court is asked [to] use another archaic concept, that of "nullity", to characterize the effect of naming a trade union as a party. Irregularity or misnomer, certainly; but nullity, no.

- [107] *ROLA* never prohibited all actions against unions. Rather, s. 2 says that a union's action shall not be deemed to be unlawful only because one of the objects is restraint of trade. Then s. 3(2) prohibits a union from being a party to an action unless it could be made a party irrespective of *ROLA* or the Act. As such, a union could be made a party to an action as long as the action does not allege that a union's actions are unlawful because one of the objects of such conduct is in restraint of trade and as long as the Act does not prohibit a civil action, for example if the Board had exclusive jurisdiction.
- [108] In my view, this is how proceedings against union members should also be evaluated. That is, if the proceeding merely sues union members because they are engaged in activities seeking to certify a union, then it cannot proceed because members of a trade union are permitted by law to engage in activities seeking to certify a union.
- [109] This aligns with the wording in s. 3(1) which only protects conduct in furtherance of a trade dispute as long as the conduct would not be actionable without the parties engaging in a conspiracy.
- [110] The pleading here is that the union members are committing civil torts in the context of their attempts to organize the union. This type of conduct is actionable even if committed by one individual as long as the Board does not have exclusive jurisdiction. It is unclear why it would not be.
- [111] This further aligns with the mischief that *ROLA* was designed to address which was to prevent actions against union members (and unions) merely because they are organizing a union, which would have been in restraint of trade historically.
- [112] In my view, LIUNA is conflating the jurisdictional issue with the issue of what *ROLA* prohibits.

Issue 4: Does the Claim disclose a reasonable cause of action?

- [113] I also disagree that the entire Claim should be struck for failing to disclose a reasonable cause of action.
- [114] Rule 21.01(1)(b) permits the court to strike out a pleading where it discloses no reasonable cause of action. No evidence is admissible on such a motion. It must be plain and obvious and the court should only strike a claim on this ground in the clearest of cases. Facts plead are assumed to be true: *Folland v. Ontario*, 2003 CanLII 52139 (ON CA) at para 10; *Schreiber v. Federal Republic of Germany*, 2001 CanLII 23999 (ON CA).
- [115] The Union Organizers argue that the legislature has chosen to provide a comprehensive administrative scheme to promote and regulate collective bargaining. This scheme gives

effect to the guarantees of freedom of association and expression under the *Canadian Charter of Rights and Freedoms*. They again reference the risk that economic torts will undermine legislated schemes favouring collective action: *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.* at para 34.

- [116] They argue that a civil tort that claims damages for union organizing activity and applications by a union under the statutory scheme designed to promote and regulate collective bargaining goes to the very heart of the Supreme Court's concerns about interfering with collective action in the labour relations sphere. They argue that Remcan has no right to be free from union organizing activities, or from the statutory procedures that govern that activity or from the Board's supervisory jurisdiction over such procedures.
- [117] I agree that to the extent the claim for damages relates to the harm suffered as a result of the union ultimately being organized, that harm is not justiciable. Union certification cannot be an injury to an employer as this would be inconsistent with the establishment of the Act which expressly permits union certification. Here I note that Remcan says in its factum that it is not seeking such damages in any event.
- [118] I also disagree that just because the target of an organizing campaign can raise torts related to conduct that they could raise before the Board, this means that the same conduct does not disclose a reasonable cause of action.
- [119] A broad ruling that all economic torts against union organizing activity cannot proceed could work a real injustice in a given case and it is impossible to predict the fallout of such a determination which could potentially work an injustice in a given case.
- [120] It is also important to emphasize that this part of the motion is a pleadings motion where evidence may not be considered, only whether the pleading discloses a reasonable cause of action. While I have taken into account the absence of evidence of damages for the jurisdictional and abuse of process arguments, I cannot take that into account for the pleadings motion.
- [121] In this case, the harm alleged is not only the possibility of the union being certified or for costs arising from compliance with the Act. The harm alleged also relates to alleged breaches of confidence and the use of bribery to obtain Confidential Information and alleged damages suffered as a result of investigations to ascertain how that Confidential Information ended up being disclosed. Even though the Board has the power to order Remcan to provide the information as to where its employees are, this does not mean that that information is not confidential or that the Union Organizer's self-help in obtaining that information was appropriate or lawful.
- [122] Again, the Union Organizers are conflating the jurisdictional issue with the issue of whether or not a reasonable claim has been pled.
- [123] Therefore, I would not dismiss this Claim as a whole on the basis that it does not disclose a reasonable cause of action. There is no need to parse which parts may not disclose a reasonable cause of action because the action is being stayed for other reasons in any event.

Conclusion

[124] The action is stayed. The parties may make submissions on costs as follows: the Union Organizers within 7 days and Remcan within 7 days thereafter.

Papageorgiou J

Released: June 17, 2026