



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Industrial Scaffolding Inc. v. United Brotherhood of Carpenters and Joiners of America, Local 579*, 2026 NLSC 110

Date: September 8, 2026

Docket: 202601G4021

BETWEEN:

INDUSTRIAL SCAFFOLDING INC.

APPLICANT

AND:

**UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF
AMERICA, LOCAL 579**

RESPONDENT

Before: Justice Irene S. Muzychka

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: August 4, 2026

Appearances:

Stephanie M. Sheppard Appearing on behalf of the Applicant

Gordon N. Forsyth, K.C. Appearing on behalf of the Respondent

Authorities Cited:

CASES CONSIDERED: *RJR MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311

STATUTES CONSIDERED: *Labour Relations Act*, R.S.N.L. 1990 c. L-1; *Personal Property Security Act*, S.N.L. 1998, c. P-7.1

REASONS FOR JUDGMENT

MUZYCHKA, J.:

INTRODUCTION

[1] The Applicant, Industrial Scaffolding Inc. (ISI), sought a stay of an arbitration award pending the hearing of its application for judicial review. The hearing is scheduled for February 18, 2027.

[2] The issue under review arose from ISI's use of non-union workers in residential construction.

[3] ISI asserted that it and the United Brotherhood of Carpenters and Joiners of America, Local 579 (Union) had an agreement under which ISI agreed to be bound by the Collective Agreement between the Construction Labour Relations Association (CLRA) and the Union on all jobs across all sectors of the construction industry, as defined in section 54(1) of the *Labour Relations Act*, R.S.N.L. 1990 c. L-1.

[4] ISI alleges that at the time of signing the Voluntary Recognition Agreement (VRA2013) dated May 27, 2013, the Union lacked jurisdiction over work in the residential sector of the construction industry. By signing the VRA2013, ISI agreed

to be bound by the applicable Collective Agreement between the CLRA and the Union.

[5] At arbitration, ISI denied that non-union employees were performing scaffolding work within the Union's trade jurisdiction and asserted that the Union's claim was excessive, speculative, and punitive.

[6] ISI also claimed that it was denied due process because the arbitrator refused to postpone the hearing despite the unexpected unavailability of four witnesses ISI intended to call.

[7] ISI stated that it was denied the opportunity to present evidence and its case during the hearing.

[8] The arbitrator allowed the grievance and found:

- ISI violated the Collective Agreement by employing non-union members;
- The CLRA Collective Agreement applied to the residential sector (scaffolding work);
- The employer, ISI, failed to remit required union dues;
- ISI violated the CLRA Collective Agreement by failing to comply with dispatch and hiring procedures; and
- ISI owed the Union \$477,198.28 from August 2023 to August 2025.

[9] ISI claimed that irreparable harm would result if it were required to pay \$477,198.28 to the Union before its application for judicial review is heard. ISI stated that doing so would jeopardize the company's ability to operate.

[10] ISI claimed that the arbitrator committed the following reviewable errors:

- Erred in her application of the CLRA Collective Agreement to the work of ISI in the residential sector of the construction industry;
- Erred in failing to consider and examine the nature of the relationship and the actions taken by the parties to determine the extent and scope of ISI's voluntary recognition of the Union;
- Erred in relying on the Parol Evidence Rule in finding the CLRA Collective Agreement applied to the residential sector without considering or applying the doctrine of estoppel or applying the doctrine of estoppel, to the evidence before her;
- Erred in awarding damages retroactively to August 2023 without considering the provisions of the CLRA Collective Agreement and any temporal limitations on those damages; and
- Erred in denying ISI's request for a postponement, thereby depriving the Employer of the full opportunity to present evidence and its case, contrary to the principles of procedural fairness and natural justice.

UNION'S POSITION

[11] The Union asserted that the application for judicial review does not automatically stay enforcement of the arbitration award. A stay is a discretionary remedy, and ISI bears the burden of proving the circumstances justifying a stay of enforcement of the Award pending review.

[12] The Union argued that a stay of the Award is an equitable remedy that engages the court's judicial discretion. It cited the test in *RJR MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, in which the Supreme Court of Canada identified three factors to consider when determining whether a stay is appropriate:

- a. Is there a serious issue to be tried?
- b. Will the requesting party suffer irreparable harm if the stay is denied?
- c. Does the balance of convenience favour the granting of relief?

[13] The Union opposed ISI's application for a stay, arguing that it fails to meet the *RJR* test in that ISI has not established that it will suffer irreparable harm if the stay is denied and that the balance of convenience favours the Union as it would be deprived of the benefits of the Award.

ANALYSIS

Frivolous and Vexatious

[14] The threshold for the first stage of the *RJR* test is low. The court must consider whether the grounds raised in the application for judicial review are either frivolous or vexatious without undertaking a detailed determination of its merits.

[15] The Union does not contest that ISI has identified issues that are neither frivolous nor vexatious for purposes of the stay application. It states that its concession does not apply to every component of the Arbitration Award. For example, it notes that ISI admitted it owed unpaid health and welfare, pension, and other remittances for its unionized employees in the amount of \$121,034.95.

[16] The Union further stated that ISI's claim that the Arbitrator erred in awarding damages back to August 2023 was not raised at the hearing. Additionally, neither the Originating Application nor the materials filed in connection with the stay provided a legal or factual basis for its position that this constitutes a serious issue to be tried.

[17] The Union argued that the Court should decline to stay the amounts the employer has acknowledged are owed, even though other portions of the underlying Arbitration Award were disputed.

[18] In assessing the merits of the first stage of the *RJR* test, the Court should not delve too deeply into the merits of the case to avoid making a determination before all of the evidence is before the Court.

[19] The Union conceded that ISI has raised some (but not all) issues that are neither frivolous nor vexatious. ISI raised concerns about procedural fairness stemming from the denial of its request for a postponement, the misapplication of the Parol Evidence Rule, and the miscalculation of the Award due to the erroneous consideration of, or failure to consider, ISI's arguments.

[20] Having considered the parties' arguments and the evidence submitted in support of the Application, I find that ISI has met the threshold for the first stage of the *RJR* analysis, in establishing that there is a serious issue to be tried.

Irreparable Harm

[21] With respect to the second part of the *RJR* test, the Union submits that ISI has not provided any evidence which would establish that the form of prejudice alleged if ISI were required to pay the Award, cannot be adequately reversed, remediated or compensated if the proposed review ultimately succeeds.

[22] The Supreme Court in *RJR*, at paragraph 64, defines irreparable harm as referring to the nature of the harm suffered rather than its magnitude.

It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the

court's decision (*R.L. Crain Inc. v. Hendry* (1988), 1988 CanLII 5042 (SK QB), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid, supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, 1985 CanLII 154 (BC CA), [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[23] ISI claims that financial and business harm are “potentially irreversible”, citing statements by Leroy Coffey, ISI’s principal, who asserts that without a stay, ISI’s business operations will be jeopardized. The Union states that the information provided by ISI lacks detailed financial evidence and that the records disclosed fail to establish that payment of the Award would result in ISI having to cease operations or otherwise suffer irreparable harm.

[24] ISI has provided evidence of its financial situation, including copies of Aged Overdue Purchase Invoices as of July 20, 2026, a *Personal Property Security Act*, S.N.L. 1998, c. P-7.1 report showing a general security agreement over all present and after acquired property of ISI in favour of the Business Development Bank of Canada, financial statements for 2024 and draft statements for 2025, as well as other documentation showing the extent of ISI’s ongoing liabilities including a debt to CRA in the amount of \$540,176.16, on which it pays \$25,000 per month for GST/HST and \$25,000 per month for payroll remittances.

[25] The 2025 financial statements of ISI show accounts receivable totaling \$912,210 as of December 31, 2025, with approximately \$534,641 attributable to an ongoing mechanic’s lien claim, leaving about \$377,000 in current receivables. The Balance Sheet shows significant assets in excess of \$2,000,000. However, the bulk of its assets consists of capital assets such as scaffolding, trailers, furniture and equipment, accounts receivable, income taxes recoverable, and amounts due from shareholders.

[26] The shareholder's equity is valued at approximately \$700,000. The Union argues that ISI's significant equity belies its claim that paying the Award would place it in financial jeopardy.

[27] The difficulty with that argument is that the equity is substantially composed of receivables (of which about only 40% is currently recoverable) and capital assets. There is no cash pool to draw on without borrowing to pay the Award, which ISI claims it cannot do. The Statement of Cash Flows for the year ended December 31, 2025, shows a deficiency of \$457,067 at the end of the year.

[28] The Union proposes that ISI could sell capital assets to satisfy the Award or make monthly payments thereon. ISI submits that it has high monthly cash outflows for loan payments, credit cards, line of credit payments, payroll, CRA remittances, and monthly lease obligations. It says it is currently unable to make monthly payments on account of the Award. Selling the capital assets would require the bank's consent, which ISI argues is unlikely because the assets are required to maintain the business' operations. A reduction in business would then affect ISI's ability to maintain its debt payment obligations.

[29] I am satisfied that the financial information filed in support of this application demonstrates that raising \$477,198.28 to pay the Award at this time would likely be difficult. ISI has no cash reserves, and selling assets would impair its ability to maintain business operations, which could result in loans being called. I cannot determine how much ISI could borrow, as this information was not provided, other than ISI asserting through its principal that its accountant advised the company would not qualify for a loan of that amount given the outstanding amount owed to CRA.

[30] Despite that, I am satisfied that the Union's proposed means of satisfying the Award would likely affect the business' ongoing operations. It is unclear whether it could result in the failure of ISI. However, a review of ISI's financial

statements and ongoing obligations leads me to believe that this outcome is more than speculative at this time.

[31] I therefore find there is merit in ISI's submission that irreparable harm may ensue if the stay is not granted. Failure of the business could not be remedied if the decision on the merits of the judicial review is in its favour.

[32] The Union notes that ISI has not established that, if it succeeds in its review of the Arbitration Award, the Union would be unable to repay the funds if the Award were overturned. ISI did not argue that the Union is impecunious or that, if successful, its funds could not be repaid.

[33] While that may be the case, if the Union were to take steps to enforce the entire award, I am satisfied that ISI would suffer irreparable harm in the form of business failure.

Balance of Convenience

[34] Thirdly, the *RJR* test asks the Court to weigh the balance of convenience between the two parties. Who is likely to face more significant harm if the Court grants or denies the stay?

[35] The Union submits that the balance of convenience favors it because it has a *prima facie* entitlement to its award and that a stay would deprive it of its benefits. ISI maintains that the balance of convenience favors it on the basis that the impact on the business operations would be significant. ISI submits that there is no evidence that union members would be affected by the non-payment of the award pending the hearing on the merits of this matter.

[36] ISI further asserts that the Union's submission that payment of the Award reflecting the amounts ISI acknowledged were owing (while self-represented at the arbitration hearing) remains in dispute. ISI claims that these amounts can't be accurately calculated given the issues raised in its application for judicial review.

[37] Without access to the entire record, I cannot determine what amount would be appropriate for imposing a partial stay.

[38] I must consider which of these two parties will suffer the greater harm from the granting or refusal of the stay pending a determination of the review on the merits. I note that a date has already been set for the hearing of the within matter on February 18, 2027; therefore, the matter will proceed expeditiously.

[39] Having considered the arguments on behalf of both parties and the evidence submitted in support of the within application, I am satisfied that the balance of convenience favours ISI. I therefore order that the decision of the Arbitrator be stayed pending review.

[40] Costs shall be in the cause.

IRENE S. MUZYCHKA
Justice