COURT OF APPEAL FOR ONTARIO

CITATION: R.W. Tomlinson Limited v. Labourers' International Union of North America, Local 527, 2025 ONCA 861
DATE: 20251212
DOCKET: COA-24-CV-0896

Tulloch C.J.O., Pepall and Pomerance JJ.A.

BETWEEN

R.W. Tomlinson Limited, Tomlinson Ready Mix, a division of R.W. Tomlinson Limited, 2839034 Ontario Inc. c.o.b. as Material Supply and Logistics Tomlinson Environmental Services Ltd. c.o.b. as Industrial Waste Division

Plaintiffs/Responding Parties (Appellants)

and

Labourers' International Union of North America, Local 527*, Luigi Carrozzi*, Shawn McLaughlin*, Carlo Trunzo*, Robert Martins*, and "John Doe"

Defendants/Moving Parties (Respondents)*

David P. Taylor and Sean Grassie, for the appellants

Ernie Schirru and David Rosenfeld, for the respondents

Heard: March 20, 2025

On appeal from the order of Justice Thomas J. Carey of the Superior Court of Justice, dated July 30, 2024, with reasons reported at 2024 ONSC 4039.

Tulloch C.J.O.:

Table of Contents

A. INTRODUCTION

[1] This appeal requires careful attention to several structural principles that shape Ontario's labour relations system: the rule of law, access to justice, and the proper respect owed to specialized tribunals charged with administering a legislative scheme. Taken together, these principles guide how jurisdiction and decision-making sequencing are allocated between courts and labour arbitrators, ensuring that every dispute has an appropriate adjudicative forum and that parallel proceedings do not undermine the statutory process.

[2] The motion judge's decision illustrates the need to balance and reconcile these principles. He correctly held that the appellant, R.W. Tomlinson Limited

("R.W. Tomlinson"), as a party to the collective agreement, must arbitrate its dispute with the respondent union. But he also concluded that the Superior Court lacked jurisdiction over the claims of two related, but legally distinct corporate appellants not bound by the collective agreement, 2839034 Ontario Inc. ("283 Ontario") and Tomlinson Environmental Services Ltd. ("Tomlinson Environmental"), because their claims arose from the same dispute. While that conclusion prevented an attempt to undercut labour arbitration through parallel litigation, it also produced a jurisdictional dead end: two corporate appellants left without an available forum, since a labour arbitrator has no authority over non-parties to the collective agreement. Such outcomes invite structural scrutiny.

[3] I would adopt a nuanced answer to this challenge that reconciles all the governing principles. To safeguard structural rule of law and access to justice principles, the Superior Court must retain jurisdiction over claims involving non-parties to the collective agreement, because a labour arbitrator has no personal jurisdiction over them. At the same time, respect for the integrity of labour arbitration requires the court to consider whether to temporarily stay such parallel litigation pending arbitration between the parties to the collective agreement. This approach avoids both jurisdictional dead ends and the risk that the parties or related entities may use litigation involving non-parties to undercut the arbitral process.

[4] For these reasons, I would allow the appeal in part. I would set aside the order dismissing the claims of 283 Ontario and Tomlinson Environmental for lack of jurisdiction and replace it with a temporary stay pending the arbitration between R.W. Tomlinson and the respondent union. I would otherwise dismiss the appeal.

B. BACKGROUND

[5] The appellant, R.W. Tomlinson, is a construction corporation engaged in activities such as road and sewer work and the supply of concrete. Its road and sewer workers are unionized and represented by the respondent, Labourers' International Union of North America, Local 527 (the "Union"). The employees in its Ready Mix division, which produces and supplies concrete, are not unionized. "Ready Mix" is simply a brand name used by R.W. Tomlinson and is not itself a separate corporation or legal entity.

[6] R.W. Tomlinson is part of the Tomlinson Group of Companies (the "Tomlinson Group"), an Ottawa-based group of companies providing environmental, construction, and transportation services. The Tomlinson Group is not a separate legal entity and is not a party to this appeal.

[7] The other two appellants, 283 Ontario and Tomlinson Environmental, are separately incorporated members of the Tomlinson Group. Although each maintains its own operations, their business activities are coordinated within the Group's shared infrastructure and management systems. The Union does not represent employees at either company.

[8] When the collective agreement between R.W. Tomlinson and the Union expired, the Union commenced a lawful strike. The associated picketing disrupted access routes, customer relationships, and supply chains across the Tomlinson Group. The picketing targeted R.W. Tomlinson's properties, shared properties used by all the appellants, and certain properties used exclusively by 283 Ontario and Tomlinson Environmental.

[9] During the strike, the appellants commenced this action against the Union and four Union leaders — the respondents Luigi Carrozzi, Shawn McLaughlin, Carlo Trunzo, and Robert Martins — seeking injunctive relief and alleging that the strike caused commercial harm across the Tomlinson Group. Two days later, the Superior Court issued a consent order establishing a picketing protocol. Picketing ended the following day when a settlement was reached between Ottawa roadbuilding employers and unions, resulting in a new collective agreement that was applied retroactively to the strike period. This settlement and agreement bound R.W. Tomlinson and the Union, but did not apply to 283 Ontario or Tomlinson Environmental.

[10] Nearly a year and a half after the settlement, and as the renewed collective agreement approached renegotiation, the appellants began to actively pursue the litigation. They amended their claim to proceed under the simplified procedure and sought monetary damages for common law torts.

[11] The respondents moved to dismiss the action for lack of jurisdiction under r. 21.01(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, or alternatively to strike certain claims under r. 21.01(1)(b). They submitted that a labour arbitrator had exclusive jurisdiction pursuant to s. 48(1) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A (the "*LRA*") and the arbitration clause in the collective agreement, which mirrors that provision. Section 48(1) states:

> "Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable."

[12] The appellants argued that the Superior Court, not a labour arbitrator, had jurisdiction. First, they submitted that the arbitrator lacked personal jurisdiction over 283 Ontario and Tomlinson Environmental because neither was a party to the collective agreement. Second, they argued that the arbitrator lacked subject-matter jurisdiction because the dispute did not arise from the collective agreement, but from alleged tortious interference with private property, including the alleged blockading of their premises.

[13] The motion judge dismissed the action for lack of jurisdiction and, therefore, did not consider the motion to strike. After characterizing the appellants' delay in pursuing the litigation as concerning, he determined that their amended claim was a strategic attempt to gain leverage for the upcoming collective agreement negotiations. He concluded that the Ontario Labour Relations Board ("OLRB") had

exclusive jurisdiction because the matter involved a labour dispute.[1] He also found that there had been no blockade and that the respondents were entitled to picket at R.W. Tomlinson's head office, even though Ready Mix employees were not unionized. However, he did not address the appellants' argument that the claims by 283 Ontario and Tomlinson Environmental could proceed in court given that the arbitrator lacked personal jurisdiction over them.

C. ISSUES & STANDARDS OF REVIEW

[14] This appeal raises two principal issues:

1. Does the arbitrator have subject matter jurisdiction over the dispute between R.W. Tomlinson and the respondents?
2. Should the claims of 283 Ontario and Tomlinson Environmental be dismissed for lack of jurisdiction or temporarily stayed pending the arbitration of R.W. Tomlinson's claims?

[15] Both issues are reviewed for correctness. The essential character component of the first issue requires this standard because it concerns subject matter jurisdiction, and the scope of the collective agreement must be analyzed afresh because the motion judge did not interpret it: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107, at para. 9. The

[1] To clarify, the OLRB would only have exclusive jurisdiction to decide a grievance under a collective agreement if it accepted a referral by a party to that agreement: *LRA*, s. 133. Otherwise, a labour arbitrator would have exclusive jurisdiction over the grievance.

jurisdictional component of the second issue is also reviewed for correctness, as it turns on questions of law involving the interpretation of judicial precedent and statutory provisions: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8; *Black v. Owen*, 2017 ONCA 397, 137 O.R. (3d) 334, at paras. 37-38; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306, at para. 23. While discretionary stay decisions are ordinarily reviewed deferentially (*Aldo Group Inc. v. Moneris Solutions Corporation*, 2013 ONCA 725, 118 O.R. (3d) 81, at para. 30, leave to appeal refused, [2014] S.C.C.A. No. 31), the stay component of the second issue here is also reviewed for correctness because the motion judge did not consider a stay, and this court is exercising that discretion for the first time.

D. ANALYSIS

(1) R.W. Tomlinson Must Arbitrate

[16] I agree with the motion judge that R.W. Tomlinson, as a party to the collective agreement, must arbitrate its dispute with the respondents. The essential character of this dispute arises from that agreement, and the labour arbitrator, therefore, has exclusive subject-matter jurisdiction. Accordingly, I would affirm the dismissal of R.W. Tomlinson's claims, including those advanced on behalf of its Ready Mix division.

(a) The Law on Arbitral Subject-Matter Jurisdiction

[17] Before *Weber v. Ontario*, [1995] 2 S.C.R. 929, the prevailing view was that tortious or criminal picketing fell to the courts, not arbitrators, because it engaged general common law doctrines rather than specialized labour relations principles: *Re Canex Placer Ltd. and CAIMAW, Local 10*, [1975] 1 Can. L.R.B.R. 269 (B.C.L.R.B.), at pp. 275-6; *Energy & Chemical Workers Union, Local 691 v. Irving Oil Ltd.* (1983), 47 N.B.R. (2d) 205 (C.A.), at paras. 5-6, 9.

[18] *Weber*, however, replaced this formalistic distinction with a contextual approach. Under *Weber*, arbitrators have exclusive subject-matter jurisdiction pursuant to s. 48(1) of the *LRA* if the collective agreement expressly or implicitly covers the essential character of the dispute – in other words, if the dispute arises from the agreement. The facts underlying the dispute determine its essential character, not legal labels like “common law tort” or “labour dispute.” As well, arbitrators may apply the common law; it is not reserved for the courts: *Weber*, at paras. 41-44, 52, 54-56; *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14, [2000] 1 S.C.R. 360, at para. 25; *Horrocks*, at paras. 13, 22, 51.

[19] Thus, the pre-*Weber* caselaw’s assumption that arbitrators lack jurisdiction over disputes involving tortious conduct – even at the picket line – no longer holds. Rather, arbitrators can decide such disputes if the collective agreement covers

them, even if they involve violent or criminal conduct: *K.A. v. Ottawa (City)* (2006), 80 O.R. (3d) 161 (C.A.), at para. 16 (distinguishing *Irving Oil*).

[20] Following *Weber*, arbitrators have developed significant expertise concerning picketing. By routinely adjudicating employee discipline cases involving picketing which arise under the collective agreement, they have become adept at setting its bounds and carefully distinguishing acceptable conduct from illegitimate overreach: *Ball v. McAuley*, 2020 ONCA 481, 452 D.L.R. (4th) 213, at para. 104. As well, the courts have affirmed arbitral jurisdiction over picketing or picketing-related post-strike conduct where the dispute arose from collective agreement provisions which applied retroactively: *Burley v. Ontario Public Service Employees Union* (2004), 133 L.A.C. (4th) 97 (Ont. S.C.), at paras. 37-48; *Fuller v. Beecroft*, 2007 CanLII 293 (Ont. S.C.), at paras. 10-23.

(b) The Arbitrator Has Subject-Matter Jurisdiction

[21] I agree with the motion judge that the arbitrator has subject-matter jurisdiction, although I arrive at that conclusion by a different route.

[22] The appellants correctly note that the motion judge erred in suggesting that the mere presence of a labour dispute is sufficient to establish arbitral jurisdiction. Not every labour dispute is arbitrable; only disputes that arise from the collective agreement fall within an arbitrator's authority. A proper *Weber* analysis, therefore, requires consideration of both the essential character of the dispute and the scope of the agreement.

[23] Applying *Weber*, the arbitrator has subject-matter jurisdiction because the collective agreement encompasses the essential facts giving rise to the dispute. The renewed agreement applied retroactively and therefore governed the strike period. Although it does not expressly reference picketing, Article 4.1(a)'s management-rights clause grants R.W. Tomlinson exclusive authority over the conduct of its entire business and operations. Properly construed, this broad grant includes protection against picketing-related disruption of operations. The appellants allege precisely such interference – significant disruption of R.W. Tomlinson's business by blocking access to employees, subcontractors, customers, and suppliers. The essential character of the dispute – interference with the employer's business and operations – thus arises from the collective agreement.

[24] The jurisprudence supports this conclusion. In *Ball*, this court recognized that arbitrators possess the expertise required to evaluate picketing conduct contextually. In *Fuller*, the Superior Court held that a management-rights clause conferred arbitral jurisdiction over a picketing dispute because the employer's conduct engaged its managerial authority (at para. 23). The principle operates symmetrically: where union or employee conduct interferes with management rights, the same jurisdictional analysis applies.

[25] The appellants' counterarguments do not succeed. As explained above, R.W. Tomlinson cannot avoid arbitration by characterizing its allegations as

common law torts arising from picketing, nor can it circumvent arbitral jurisdiction by linking its claims to those advanced by 283 Ontario and Tomlinson Environmental. Claims involving non-parties, a matter I address later, do not displace arbitral jurisdiction over disputes between parties to the collective agreement: *Coté c. Saiano*, [1998] R.J.Q. 1965 (C.A.), at p. 1970; *Nadeau v. Carrefour des jeunes de Montréal*, [1998] R.J.D.T. 1513 (C.A.), at pp. 1516–19. Further, Article 12.1's strike prohibition does not negate the application of Article 4.1(a); Article 12.1 operates prospectively and reading it otherwise would retroactively prohibit the lawful strike that produced the agreement – an untenable interpretation.

[26] The motion judge also erred in finding that no blockade occurred. I agree with the appellants that a court hearing a r. 21.01(3) motion cannot resolve "disputed central questions of fact … going to the underlying merits of the claim," even if such facts are relevant to jurisdiction: *Hart v. Roman Catholic Episcopal Corporation of the Diocese of Kingston, in Canada*, 2011 ONCA 728, 344 D.L.R. (4th) 332, at para. 12, leave to appeal refused, [2012] S.C.C.A. No. 27. However, this error does not affect the result. The finding was offered in the alternative and was not determinative of the motion judge's principal conclusion that the dispute arises from the collective agreement.

[27] Finally, arbitration does not deprive R.W. Tomlinson of an available remedy. It may grieve an alleged breach of Article 4.1(a), even if the arbitrator

ultimately declines jurisdiction over some tort claims. Moreover, at this preliminary stage, I am not persuaded that the arbitrator lacks jurisdiction to determine those claims. Although the appellants rely on a 2001 arbitral award in which jurisdiction was declined (a decision subsequently upheld under the former patent-unreasonableness standard),[2] more recent arbitral authority recognizes jurisdiction over workplace tort claims.[3] Whether jurisdiction ultimately exists is for the arbitrator to decide, and I would not foreclose that determination.

(2) Addressing 283 Ontario and Tomlinson Environmental's Claims

[28] I turn next to the claims advanced by the non-parties to the collective agreement, 283 Ontario and Tomlinson Environmental. In my respectful view, the motion judge should not have dismissed these claims for lack of jurisdiction. Instead, he should have temporarily stayed them under r. 21.01(3)(a) pending the arbitration between R.W. Tomlinson and the Union. A temporary stay would have achieved the motion judge's central objective – preventing strategic parallel

---

[2] *O.P.S.E.U. v. Seneca College of Applied Arts & Technology* (2001), 102 L.A.C. (4th) 298 (Ont. Arb. Bd.), rev'd (2004), 73 O.R. (3d) 185 (Div. Ct.), aff'd (2006), 80 O.R. (3d) 1 (C.A.), leave to appeal refused, [2006] S.C.C.A. No. 281.

[3] See Andrew Lokan & Maryth Yachnin, "From *Weber* to *Parry Sound*: The Expanded Scope of Arbitration" (2004) 11 C.L.E.L.J. 1, at pp. 16-17, citing *Bear Creek Lodge and H.E.U. (Scott)* (2002), 106 L.A.C. (4th) 254 (B.C. Arb. Bd.) (J.I. McEwen), and *Tenaquip Ltd. and Teamsters, Local 419* (2002), 112 L.A.C. (4th) 60 (Ont. Arb. Bd.) (E. Newman); Brian Etherington, "*Weber*, and Almost Everything After, Twenty Years Later: Its Impact on Individual *Charter*, Common Law, and Statutory Rights Claims", in Elizabeth Shilton and Karen Schucher, eds. *One Law for All? Weber v Ontario Hydro and Canadian Labour Law: Essays in Memory of Bernie Adell* (Toronto: Irwin Law, 2017) 25, at pp. 57-58, citing *Canadian Union of Public Employees, Local 133 v. Niagara Falls (City)*, [2005] O.L.A.A. 228, 81 C.L.A.S. 1 (Ont. Arb. Bd.) (R.O. MacDowell), *Kawartha Pine Ridge District School Board v. Elementary Teachers' Federation of Ontario* (2008), 169 L.A.C. (4th) 353 (Ont. Arb. Bd.) (G. Luborsky), and *Ontario and OPSEU, Re* (2015), 253 L.A.C. (4th) 60 (Ont. Grievance Settlement Bd.) (F. Briggs).

litigation from undercutting labour arbitration – while also avoiding the jurisdictional vacuums that result when litigants are left without access to either an arbitral or judicial forum for claims involving non-parties. That approach best reflects the structural principles at play – the rule of law, access to justice, and respect for the labour arbitration process – and it reconciles all the governing precedents.

[29] To explain this conclusion, I begin by addressing the principle that courts should prevent parallel litigation from undermining arbitration, and then turn to why a temporary stay – rather than jurisdictional dismissal – is typically the appropriate remedy to achieve this goal in the case of non-party claims.

(a) Courts Should Prevent Attempts to Undercut Arbitration

[30] *Weber* recognized that parallel court proceedings between the parties to a collective agreement undercut labour arbitration. Such proceedings introduce delay and cost, risk inconsistent outcomes, and replace specialized arbitrators with generalist courts and adversarial litigation – thus frustrating the statutory objectives of speed, accessibility, expertise, strengthening ongoing relationships, and minimizing economic disruption: *Weber*, at paras. 46, 49, 56-57.

[31] Parallel litigation involving non-parties can pose similar risks. As this court recognized in *Giorno v. Pappas* (1999), 42 O.R. (3d) 626 (C.A.), at pp. 630-32, litigants sometimes use such litigation to circumvent arbitration. Sometimes, unionized employers add related non-parties as plaintiffs or sue non-parties related to the union: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, 2007

NSCA 38, 253 N.S.R. (2d) 144, leave to appeal refused, [2007] S.C.C.A. No. 278; *Soulos v. Leitch*, 2005 CanLII 13790 (Ont. S.C.), *per* Nordheimer J. Other times, unionized employees sue non-party employees or managers: *Piko v. Hudson's Bay Co.* (1998), 41 O.R. (3d) 729 (C.A.), at p. 734, leave to appeal refused, [1999] S.C.C.A. No. 23, citing *Ruscetta v. Graham* (1998), 36 C.C.E.L. (2d) 177 (Ont. C.A.), leave to appeal refused, [1998] S.C.C.A. No. 220, and *Dwyer v. Canada Post Corp.*, 1997 CanLII 1110 (Ont. C.A.). Like parallel litigation between the parties, such strategies risk frustrating labour arbitration's goals of speed, accessibility, and expertise.

[32] *Giorno* held that courts should prevent these risks from materializing. In that case, a unionized employee sought to sue a non-party manager despite having already grieved the same underlying workplace dispute, which fell within the arbitrator's subject-matter jurisdiction. Because permitting this parallel lawsuit to proceed would have undermined the arbitral process, this court stopped it in its tracks. As Goudge J.A. explained, courts must prevent attempts to sidestep arbitration through strategic recasting of the parties to the dispute: at p. 632; see also *K.A.*, at paras. 22-23.

(b) *Giorno*'s Assumed Remedy Merits Closer Scrutiny

[33] While *Giorno*'s holding that courts should prevent parallel litigation involving non-parties from undercutting labour arbitration remains good law, the remedy it employed to achieve this goal – jurisdictional dismissal – merits closer

scrutiny. The case from which *Giorno* adopted this remedy, *Weber*, did not address non-party claims because both parties were bound by the collective agreement: at para. 32; see also *Coté*, at pp. 1967-8. However, following *obiter* comments in *Piko*, *Giorno* assumed that *Weber* required jurisdictional dismissal whenever the arbitrator had subject-matter jurisdiction, even for claims involving non-parties: *Giorno*, at p. 632, citing *Piko*, at p. 734.

[34] This assumption raises important structural concerns. Access to a forum for dispute resolution is foundational to just government. Without it, the rule of law, access to justice, and the goal of holding wrongdoers accountable are all threatened. Jurisdictional dismissal of non-party claims poses this very threat. By permanently removing the judicial forum without providing an arbitral one in its place, it denies litigants any forum to adjudicate these claims: *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31, at para. 38; *Bremer Vulkan Schiffbau und Maschinenfabrik v. South India Shipping Corporation Ltd.*, [1981] A.C. 909 (H.L.), at p. 977; *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, [1996] 2 S.C.R. 495, at paras. 5, 8; *Nadeau*, at p. 1519; *Bruce v. Cohon*, 2017 BCCA 186, 412 D.L.R. (4th) 191, at paras. 84-86, leave to appeal refused, [2017] S.C.C.A. No. 307.

(c) The Remedy of Jurisdictional Dismissal Is Unavailable

[35] The Supreme Court's clarification of the principles governing arbitral and court jurisdiction in *Bisaillon v. Concordia University*, 2006 SCC 19, [2006] 1 S.C.R. 666, has now overtaken the remedy prescribed by *Giorno*. Where a labour arbitrator lacks personal jurisdiction over non-party claims, a court must accept jurisdiction over such claims and use other tools to prevent them from undercutting arbitration. This is also consistent with the language and purport of s. 48(1) of the *LRA*.

(i) *Bisaillon* Rejects Jurisdictional Dismissal of Non-Party Claims

[36] The caselaw following *Weber* and *Giorno* establishes that dismissal of non-party claims for lack of jurisdiction is unavailable where labour arbitrators lack personal jurisdiction over the non-parties. The Supreme Court made this clear in *Bisaillon*, and this court reached the same conclusion in *Skof v. Bordeleau*, 2020 ONCA 729, 456 D.L.R. (4th) 236, leave to appeal refused, [2021] S.C.C.A. No. 17, and in *London Life Insurance Co. v. Dubreuil Brothers Employees Assn.* (2000), 49 O.R. (3d) 766 (C.A.), leave to appeal refused, [2000] S.C.C.A. No. 496.

[37] In *Bisaillon*, LeBel J. explained that arbitrators require both subject-matter and personal jurisdiction in order to hear a grievance:

> [29] [A] grievance arbitrator's jurisdiction depends on two factors. The first has to do with the subject or the nature of the dispute; this is the subject-matter aspect of the arbitrator's jurisdiction. The second factor relates to the persons who are parties to the dispute; this therefore is

> the personal aspect of the arbitrator's jurisdiction. [Citations omitted; emphasis added.]

[38] He further clarified that the first requirement, subject-matter jurisdiction, is governed by *Weber*. Arbitrators have such jurisdiction only where the "essential character" of the dispute arises from the collective agreement: *Bisaillon*, at paras. 30-33, citing *Weber*, at para. 52.

[39] LeBel J. then turned to the second requirement, personal jurisdiction:

> [39] I will now turn to the *in personam* jurisdiction of grievance arbitrators. … [T]he arbitrator responsible for hearing grievances arising out of the collective agreement … has no jurisdiction to hear claims of persons to whom the agreement does not apply. … [A] grievance will be possible only to the extent that the disagreement involves parties with a connection to the agreement in question, that is, the employer and the certified union or the employees to whom the collective agreement applies.
>
> [40] When a grievance arbitrator finds it impossible to resolve a dispute or part of a dispute because he or she does not have jurisdiction over the parties, the ordinary courts retain jurisdiction over the dispute. … [T]he grievance arbitrator cannot claim to have authority over … third parties … [unless they] voluntarily and expressly submit[] to a grievance arbitrator's jurisdiction[.]
>
> [41] … [T]hird parties will not be legally bound by the award. [Citations omitted.]

[40] From these passages, three principles emerge. First, a labour arbitrator's jurisdiction has two distinct dimensions: subject-matter jurisdiction, governed by *Weber*, and personal jurisdiction, which depends on whether the litigants are bound by the collective agreement or otherwise agreed to arbitrate. Second,

arbitrators have no personal jurisdiction over litigants who are not parties to the collective agreement unless they voluntarily and expressly agree to arbitrate. Third, when an arbitrator lacks personal jurisdiction over some parties to a dispute, the ordinary courts retain jurisdiction, and any arbitral award cannot bind those non-parties.

[41] This third principle reflects the Superior Court's constitutional role as a court of original general jurisdiction. It has inherent authority, even without statutory grant, to decide matters not assigned exclusively to another tribunal: *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27, [2021] 2 S.C.R. 291, at para. 51; *Regina Police Assn.*, at para. 26. Accordingly, where labour arbitrators lack personal jurisdiction over non-parties, the Superior Court assumes jurisdiction: *Nadeau*, at p. 1519.

[42] Consistent with these principles, this court's post-*Giorno* jurisprudence affirms Superior Court jurisdiction over claims involving non-parties. In *Skof*, the court set aside the motion judge's jurisdictional dismissal order and held that the Superior Court had jurisdiction over an employee's claims against his employer and supervisor because the collective agreement did not apply to him: at paras. 10-16. In *London Life*, the court held that an employee could only sue an insurer in Superior Court because the insurer was not a party to the collective agreement: at paras. 23-24, 31, 35. While both cases also determined that arbitral subject

matter jurisdiction was absent, it appears that each nonetheless treated the lack of personal jurisdiction as a sufficient basis for affirming Superior Court jurisdiction.

[43] These principles from the subsequent jurisprudence make clear that *Giorno*'s assumption – that jurisdictional dismissal is appropriate whenever arbitrators have subject-matter jurisdiction – can no longer stand. As *Bisaillon* and *Skof* confirm, dismissal for want of jurisdiction is justified only where the arbitrator has both subject-matter and personal jurisdiction. Where personal jurisdiction is absent, the Superior Court's residual authority remains, as in *London Life*.

(ii) The Statute Bars Jurisdictional Dismissal

[44] Like the jurisprudence, the statute points to the same conclusion. As Goudge J.A. held in *London Life*, a textual, contextual, and purposive interpretation of s. 48(1) of the *LRA* supports allowing courts to hear claims involving non-parties.

[45] Beginning with the text, the law requires clear and express statutory language to remove the Superior Court's jurisdiction or extinguish the right to sue: *Skof*, at paras. 8-9; *Berardinelli v. Ontario Housing Corp.*, [1979] 1 S.C.R. 275, at p. 280. This rule matters because litigants are presumptively entitled to seek relief in Superior Court where specialized statutory schemes — like labour arbitration — are unavailable. It also explains why courts retain inherent authority to grant remedies, such as injunctions, that lie outside an arbitrator's powers: *Brotherhood*, at para. 8.

[46] The text of s. 48(1) does not remove the right to bring claims involving non-parties in court. It does not state, or even imply, that such claims must be arbitrated. Instead, it only mandates arbitration of disputes "between the parties" to a collective agreement. The Supreme Court explained that this phrase "covers both parties" and provides "redress for a breach of the agreement by either party": *O'Leary v. New Brunswick*, [1995] 2 S.C.R. 967, at para. 9. As *London Life* held, this language limits mandatory arbitration to disputes between the parties arising from the collective agreement: at paras. 22-23; see also *Bohemier v. Centra Gas Manitoba Inc.* (1999), 170 D.L.R. (4th) 310 (Man. C.A.), at paras. 18, 33, leave to appeal refused, [1999] S.C.C.A. No. 185; *Vale Inco Newfoundland & Labrador Ltd. v. U.S.W.*, 2010 NLTD(G) 124, 299 Nfld. & P.E.I.R. 73, at paras. 50-51, leave to appeal granted, 2010 NLCA 74.

[47] Because statutory interpretation begins with and focuses on the text, the clear and precise words "between the parties" are decisive: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316, at paras. 24, 28; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10.

[48] The context reinforces this conclusion. Section 56 makes a collective agreement binding on the employer, union, and bargaining unit employees.[4] As *London Life* recognized, this shows that arbitrators do not have jurisdiction over non-parties: at paras. 22-23. Section 48(18) confirms the same point by limiting the binding effect of an arbitral award to those same groups.[5]

[49] The legislative purpose is also consistent. As *London Life* explained, the legislature intended to empower employers and unions to resolve disputes arising between them – not to compel arbitration of claims involving non-parties: at paras. 24, 31. Thus, the legislature implemented its efficiency policy, recognized in *Weber*, by requiring party arbitration rather than non-party arbitration. This legislative choice must be respected. Instead of expanding arbitral jurisdiction beyond this statutory limit, courts must use other legally available tools to advance efficiency: *CAW-Canada v. Sun Life Assurance of Canada* (2000), 135 O.A.C. 115 (C.A.), at paras. 5, 8–9, leave to appeal refused, [2000] S.C.C.A. No. 429; see also *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, [2020] 3

---

[4] Section 56 states: "A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement."

[5] Section 48(18) states: "The decision of an arbitrator or of an arbitration board is binding,

(a) upon the parties;

(b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision;

(c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and

(d) upon the employees covered by the agreement who are affected by the decision,

and the parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision."

S.C.R. 426, at para. 10; *CISSS A*, at para. 24; *R. v. Breault*, 2023 SCC 9, 481 D.L.R. (4th) 195, at para. 26; *TELUS Communications Inc. v. Wellman*, 2019 SCC 19, [2019] 2 S.C.R. 144, at para. 90.

[50] Finally, this interpretation upholds the rule of law – a principle which statutory interpretation respects when possible: *Piekut v. Canada (National Revenue)*, 2025 SCC 13, 502 D.L.R. (4th) 1, at para. 98. By preserving court jurisdiction over claims involving non-parties, it avoids jurisdictional vacuums that would undermine the rule of law, access to justice, and wrongdoer accountability: *Brotherhood*, at paras. 5, 8; *Nadeau*, at p. 1519; *Bruce*, at paras. 84-86.

(d) Temporary Stays Prevent Litigation from Undercutting Arbitration

[51] Instead of dismissing non-party claims for lack of jurisdiction, courts should consider whether to temporarily stay them pending labour arbitration pursuant to s. 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. This lawful remedy reconciles all the governing principles, protecting arbitration while simultaneously safeguarding the rule of law, access to justice, and judicial discretion.

[52] There is no legal bar to a temporary stay in this context. Section 106's broad authority to stay "any proceeding in the court" permits temporarily staying non-party claims in favour of a parallel proceeding with different parties: *Canada Systems Group (EST) Ltd. v. Allendale Mutual Insurance Co.* (1983), 41 O.R. (2d)

135 (Div. Ct.), at p. 139.[6] Such temporary stays attract a lower threshold than permanent stays. They are frequently granted if two proceedings substantially overlap and temporarily staying one pending the other's completion would increase efficiency and reduce duplication: *Ainsworth Lumber Co. v. Canada (Attorney General)*, 2001 BCCA 105, 85 B.C.L.R. (3d) 62, at paras. 10, 15; *Allarco Entertainment 2008 Inc. v. Rogers Communications Inc.*, 2009 CanLII 68464 (Ont. S.C.), at para. 24, *per* Pepall J.; *Hollinger International Inc. v. Hollinger Inc.* (2004), 11 C.P.C. (6th) 245 (Ont. S.C.), at para. 5.

[53] More fundamentally, temporary stays directly advance *Weber*'s efficiency policy and realize *Giorno*'s vision by respecting arbitration and preventing attempts to undercut it. They prevent a multiplicity of proceedings, avoid inconsistent results, and minimize expense and inconvenience: *Penn-Co Construction Canada (2003) Ltd. v. Constance Lake First Nation*, 2008 ONCA 768, 76 C.L.R. (3d) 1, at para. 4; *Ghosh v. Domglas Inc.* (1986), 57 O.R. (2d) 710 (H.C.), at pp. 714-15, *per* McKinlay J. As well, they respect the statutory decision-maker's expertise and the statutory procedure's accessibility and remedial flexibility, enabling the court to decide any outstanding issues with the benefit of the statutory decision-maker's opinion: *Pyke v. Tri Gro Enterprises Ltd.* (2001), 55 O.R. (3d) 257 (C.A.), at paras. 55-64, leave to appeal refused, [2001] S.C.C.A. No. 493; *Mahar v. Rogers*

[6] Section 106 states: "A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just."

Cablesystems Ltd. (1995), 25 O.R. (3d) 690 (Gen. Div.), at pp. 696-700, *per* Sharpe J.

[54] A temporary stay also safeguards the rule of law and access to justice. Unlike a jurisdictional dismissal or a permanent stay, a temporary stay preserves litigants' access to a forum, ensuring that they are not deprived of an ultimate remedy after the statutory dispute-resolution process concludes: *Delsom Estates Ltd. v. Delta (Municipality)* (1994), 53 L.C.R. 241 (B.C.S.C.), at p. 247, *per* Saunders J.; *Fareau v. Bell Canada*, 2023 ONCA 303, 482 D.L.R. (4th) 462, at paras. 122-23, leave to appeal refused, [2023] S.C.C.A. No. 282.

[55] Finally, temporary stays preserve judicial discretion and prevent unjust results. A stay pending administrative proceedings, while often favoured, is never automatic. Like any temporary stay, the moving party must justify it by showing that its advantages outweigh any prejudice to the responding party: *Cirone v. Park Lawn Co.* (2008), 233 O.A.C. 337 (Div. Ct.), at para. 11; *Areva NP GmbH v. Atomic Energy of Canada Ltd.*, 2009 CarswellOnt 1149 (S.C.), at para. 19. Thus, courts have denied stays which would unduly prejudice parties with urgent claims, especially if the party in question is vulnerable: *Nadeau*, at p. 1519; *Lehman v. Davis* (1993), 16 O.R. (3d) 338 (Gen. Div.), at pp. 349-50; *Farris v. Staubach Ontario Inc.* (2004), 32 C.C.E.L. (3d) 265 (Ont. S.C.), at paras. 20-21.

(e) The Governing Test for Parallel Non-Party Claims

[56] For ease of application, I distill my analysis above into a two-step framework for courts deciding r. 21.01(3)(a) motions that addresses both arbitral jurisdiction and the court's discretionary authority to manage parallel proceedings. This framework reconciles the governing principles and precedents. By preserving the court's jurisdiction over non-party claims unless the non-party has expressly consented to arbitration, it respects *Bisaillon*, honours legislative limits on arbitral jurisdiction, and avoids jurisdictional vacuums that threaten the rule of law and access to justice. At the same time, it respects *Giorno* by allowing courts to stay proceedings involving non-parties that undercut arbitration.

(i) Step One: Jurisdiction

[57] First, the court must determine whether the labour arbitrator has both subject-matter jurisdiction and personal jurisdiction:

1. Subject-matter jurisdiction: Apply *Weber*. Does the "essential character" of the dispute arise from the collective agreement?
2. Personal jurisdiction: Apply *Bisaillon*. Are the parties before the arbitrator bound by the collective agreement, or have they expressly and voluntarily submitted to arbitral authority?

[58] This inquiry determines whether the litigation remains in court. If the arbitrator has both subject-matter and personal jurisdiction, the court must dismiss

the proceeding for want of jurisdiction. If the arbitrator lacks either or both forms of jurisdiction, the Superior Court retains jurisdiction and must proceed to step two.

(ii) Step Two: Temporary Stay

[59] Second, the court must determine whether to temporarily stay the litigation pending labour arbitration between the parties to the collective agreement. While the moving party bears the onus and the court retains discretion, stays are favoured to achieve *Giorno*'s goal – preventing litigation from undermining arbitration and promoting coherent, efficient decision-making. The following two-stage framework guides judicial discretion:

1. Evaluate the strength of the factors favouring a stay, including:

    a) **Efficiency:** avoiding a multiplicity of proceedings, minimizing expense and inconvenience, and approaching overlapping facts and issues consistently; and,

    b) **Respect for labour arbitration:** including its expert decision-makers, accessible procedures, and flexible remedial powers.

2. Weigh these benefits against any prejudice to the responding party, recognizing that significant delay, evidentiary prejudice, or vulnerability may sometimes justify allowing litigation to proceed despite overlap.

(f) Application: The Non-Party Claims Should Be Stayed

[60] Because the motion judge did not have the benefit of this framework, I would analyze the issue afresh. Applying these principles, the motion judge's central conclusion was sound – the claims of 283 Ontario and Tomlinson Environmental should not proceed at this time because they would undercut the labour arbitration between R.W. Tomlinson and the respondents. However, I reach this result by temporarily staying those claims pending the arbitration rather than by jurisdictional dismissal.

[61] At step one, the Superior Court has jurisdiction over the claims of 283 Ontario and Tomlinson Environmental. The arbitrator lacks personal jurisdiction over them because they are non-parties to the collective agreement who have not expressly agreed to arbitrate. This engages the court's residual jurisdiction and precludes jurisdictional dismissal.

[62] Turning to step two, the appropriateness of a temporary stay is properly before the court. It reasonably arises from the jurisdictional dispute the parties litigated because a stay is sometimes granted as an alternative to jurisdictional dismissal, and is contemplated in a motion under r. 21.01(3)(a): *1196303 Ontario Inc. v. Glen Grove Suites Inc.*, 2015 ONCA 580, 337 O.A.C. 85, at para. 87; *Donovan v. Waterloo (Police Services Board)*, 2022 ONCA 199, at paras. 41-42.

[63] I would temporarily stay the non-party claims because they substantially overlap with the labour arbitration. All relate to the same strike, the same picketing

activity, and the same alleged interference with business operations across a closely integrated corporate group. Allowing 283 Ontario and Tomlinson Environmental to litigate these issues in parallel would create a multiplicity of proceedings, generate unnecessary cost and delay, and risk inconsistent factual findings on shared questions – precisely the systemic harms *Weber* and *Giorno* caution against. Most importantly, permitting parallel litigation here would send the wrong message: that the managers of a unionized employer can undercut the very arbitral process to which they agreed by allowing related non-unionized entities under common control to bring collateral lawsuits found by the motion judge to be a strategic attempt to leverage upcoming collective agreement negotiations.

[64] In contrast, the labour arbitrator is best placed to address the overlapping issues. Through context-sensitive expertise and accessible procedures, the arbitrator can resolve those issues promptly and efficiently, thus streamlining the litigation and enabling the court to approach any residual matters with the benefit of arbitral findings and remedial perspective.

[65] No prejudice to 283 Ontario or Tomlinson Environmental outweighs the factors favouring a stay. Instead, arbitration's comparatively accessible and expedient procedure mitigates any delay concerns: *Ghosh*, at p. 715. 283 Ontario and Tomlinson Environmental did not actively pursue the litigation for a year and a half and only changed course to gain negotiating leverage. Such strategic

litigation to undercut arbitration is the very problem *Giorno* sought to prevent. There is no evident prejudice to the appellants.

[66] Because I would temporarily stay 283 Ontario and Tomlinson Environmental's claims, it is unnecessary for me to resolve the respondents' motion to strike them. The respondents may renew that motion in the Superior Court if and when the stay is lifted.

E. CONCLUSION

[67] I would dismiss the appeal as to R.W. Tomlinson and Ready Mix, but would allow the appeal in part as to 283 Ontario and Tomlinson Environmental by substituting a temporary stay for the jurisdictional dismissal. I would accordingly replace paragraph 1 of the motion judge's order with the following disposition:

> THIS COURT ORDERS that:
>
> 1. The claims of R.W. Tomlinson Limited and Tomlinson Ready Mix are dismissed for lack of jurisdiction.
> 2. The Superior Court of Justice has jurisdiction to hear the claims of 2839034 Ontario Inc. c.o.b. as Material Supply and Logistics and Tomlinson Environmental Services Ltd. c.o.b. as Industrial Waste Division.
> 3. The claims of 2839034 Ontario Inc. c.o.b. as Material Supply and Logistics and Tomlinson Environmental Services Ltd. c.o.b. as Industrial Waste Division are temporarily stayed pending the labour arbitration between R.W. Tomlinson Limited and the respondent Labourers' International Union of North America, Local 527.

4. The stay referred to in paragraph 3 shall continue until R.W. Tomlinson's grievance is settled by the parties, or determined by arbitration and the time has passed within which a judicial review must be launched. If R.W. Tomlinson judicially reviews the arbitrator's decision, the stay will continue until the judicial review is finally disposed of. However, if the Union judicially reviews the arbitrator's decision (other than by cross-motion), the stay shall be lifted without further application to this court.

[68] If the parties cannot agree on the issues of the costs of this appeal or any variation of the costs award below, I would order as follows:

- The appellants shall serve and file their costs submissions of no more than 5 pages plus a bill of costs within 10 days of the release of these reasons; and,

- The respondents shall serve and file their costs submissions of no more than 5 pages plus a bill of costs within 10 days of the receipt of the appellants' costs submissions.

Released: December 12, 2025 "M.T."

"M. Tulloch C.J.O."
"I agree. S.E. Pepall J.A."
"I agree. R. Pomerance J.A."