

CITATION: Holland L.P. v. Labourers International Union of North America et al., 2026
ONSC 2219
DIVISIONAL COURT FILE NO.: DC-25-00000641-00JR
DATE: 20260417

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Matheson, LeMay and Schreck JJ

BETWEEN:)
)
HOLLAND, L.P.) *Frank Cesario and Ryan J. Freeman, for the*
) Applicant
Applicant)
)
– and –)
)
)
LABOURERS INTERNATIONAL UNION)
OF NORTH AMERICA;) *Ben Katz and Emily Denomme, for the*
) Respondents Labourers International Union
ONTARIO PROVINCIAL DISTRICT)
COUNCIL;) of North America and Ontario Provincial
) District Council
)
ONTARIO LBABOUR RELATIONS)
BOARD)
)
Respondents) *Aaron Hart, for the Respondent Ontario*
) Labour Relations Board
)
) **HEARD in Toronto:** March 30th, 2026

LEMAY J.

REASONS FOR DECISION

Overview

[1] This is an application for judicial review brought by the Applicant, Holland L.P., for the review of a decision of an Ontario Labour Relations Board (“the Board”), dated July 8, 2025 (the certification decision), focusing on the related interlocutory decision of July 15th, 2021 (“the

jurisdiction decision”), 2021 CanLII 67617. In the jurisdiction decision, the Board determined that the Applicant’s employees were provincially, rather than federally regulated.

[2] As a result, the Board found that six applications for certification for bargaining rights that were filed by the Respondent, the Labourers’ International Union of North America, Ontario Provincial District Council, could proceed to a hearing on the merits. Five of these six certification applications were for the construction sector and covered various geographic areas across Ontario (“Board Areas”). The sixth application was for a group of employees working in the District of Algoma.

[3] The Applicant originally applied for judicial review of the Board’s jurisdiction decision before this Court in 2023. At that time, this Court determined that the application was premature (2023 ONSC 870) and dismissed it without prejudice to the Applicant’s right to seek judicial review once the merits of the certification applications had been determined.

[4] In July of 2025, the Board released the certification decision, dismissing three of the five construction certification applications. The Board certified the Respondent as the bargaining agent for two of its construction certification applications, the ones covering Board Areas 8 and 21. The decision was final as regards those five applications. Finally, the Board provided directions in respect of how the merits of the industrial certification application were to be addressed: 2025 CanLII 69824.

[5] The Applicant then sought judicial review of the certification decision, challenging the underlying jurisdiction decision, arguing that the Board’s decision determining that it was covered by provincial jurisdiction was incorrect. None of the other issues determined by the Board were disputed by the parties. Although the construction certification applications had all been determined, the Respondent argued that the application for judicial review was premature because the merits of the one non-construction certification application had not yet been determined. In the alternative, the Respondent argued that the Board’s decision was correct. At the hearing, both prematurity and the merits of the jurisdiction decision were argued together.

[6] For the reasons that follow, I would find that this Court should consider the merits of this matter regardless of whether it is premature. However, I would also find that the Board's decision is correct and would dismiss the judicial review application.

Facts

[7] There were no disputes over the facts as found by the Board. Indeed, the parties both accepted the Board's factual findings. The parties also agree on the legal principles and the standard of review. The issue in this case is the application of the facts to the law, and particularly whether the facts demonstrate that the Applicant's labour relations fall under the federal or provincial sphere. However, to understand my conclusion that the Board was correct in its' determination that the Applicant's labour relations fell under the provincial sphere, it is necessary to set out the facts in some detail.

[8] The Applicant is a multi-national track welding and repair company. Its operations in Canada primarily involve contracts with CN and CP for maintenance of the railway track infrastructure. Although the Applicant performs some work for provincially regulated entities, more than 90 percent of its business in Canada is with CN and CP, who are both Class 1 railroads. CN and CP have operations in most, if not all, of the provinces. The work that was being performed by the employees covered by the certification applications was for CN and CP.

[9] The Applicant provides flash-butt welding and other track and maintenance construction. Flash-butt welding is a type of welding that uses electrical resistance technology to weld together pieces of rail to make one piece of continuous rail. These welds are performed using the Applicant's proprietary mobile unit that can move along the track. The flash-butt welding work is approximately 80 to 90 percent of the work that the Applicant performs for CN and CP. No other company in Canada provides flash-butt welding services.

[10] There are two primary types of welding that were discussed in the decision below. In addition to flash-butt welding, there is thermite welding, which involves using a form which is placed around a joint in the track. Molten steel is then poured into the form to connect the two pieces of rail. Thermite welding is cheaper than flash-butt welding, but flash-butt welding has three advantages over thermite welding. First, it takes approximately seven minutes to perform a flash-

butt weld, while it takes an hour to perform a thermite weld. Second, the flash-butt welds are stronger, which generally allows the trains to run faster along a flash-butt weld track. Third, the flash-butt welds last approximately seven times longer than the thermite welds.

[11] However, not every weld on a rail is a flash-butt weld. Some of them will be thermite welds, simply because of the remoteness of the location where the weld has to be performed or other constraints.

[12] While the Applicant is the only company that performs flash-butt welds for CN and CP, there are several companies (including the Applicant) that perform the thermite welds for CN and CP. At least some of the other companies performing thermite welds are bound to the provincial collective agreements with the Respondent.

[13] The Applicant has non-exclusive agreements with both CN and CP that have fixed terms of between three and five years and have generally been renewed. There was a period of time when CN decided to bring the flash-butt welding in-house and used its own employees to perform this work. CN purchased the equipment from the Applicant. In or around 2013, CN decided to stop performing the work in-house and sold the equipment back to the Applicant. Neither CN nor CP have performed any flash-butt welding since.

[14] Under the contract, the Applicant is required to have more than 95 percent uptime for CN and CP. That means that the Applicant has to be available between 95 and 98 percent of the time to perform work for CN and CP. In the words of the Vice-Chair, the Applicant is “on call”. The Applicant will be paid for “uptime” even when the Applicant’s employees are not actually performing work.

[15] The work on the rails must be scheduled for periods when trains are not running. When either CN or CP needs work done, they contact the Applicant’s sales managers. Those individuals, in turn, communicate the work information to the operations team. The Applicant’s managers then schedule the employees, including a designated foreperson.

[16] When the Applicant’s work is performed, the Applicant’s employees work alongside employees from CN or CP, as well as possibly employees of other contractors. The overall

direction of the work is managed by a CN or CP foreman. The Applicant will provide daily reporting on the work that is done, including reporting from its proprietary technology on the weld's integrity.

[17] When CN or CP have seasonal shutdowns, the Applicant also reduces their operations. However, not all of the Applicant's flash-butt welding is performed for CN and CP. The Applicant has contracts with other transit systems, railways and contractors. Those contracts are generally specific to a job, location or contract. In the time period that the Vice-Chair considered, those contracts made up less than ten (10) percent of the Applicant's total revenue in Canada. These agreements generally do not include the "uptime" provisions that I have described at paragraph **to come**.

[18] If the Applicant ceased its operations in Canada, CN and CP would have to either buy the equipment from the Applicant, find another company to perform the work or switch to entirely thermite welds. There is another company that does this work in the United States, but the Vice-Chair accepted that this other company had no operations in Canada.

Prematurity

[19] The Respondent argued that this matter was premature, as one of the certification applications was still outstanding, and that this Court generally does not consider the merits of an interlocutory decision until final decisions in all of the related proceedings are rendered: *Malekzadeh v. Ontario Labour Relations Board*, 2024 ONSC 2559 (Div. Ct.). The Applicant argued that since the certification decisions on five applications are final, this matter was ripe for judicial review and that the outcome of the industrial certification application would not change the underlying factual nexus of this case.

[20] The panel directed that the issue of prematurity should be argued together with the merits of the case. Having heard the arguments, I would reject the Respondent's position that this application is premature. The certification decisions are the final disposition of five of the six proceedings before the Board. In *Malekzadeh*, even though the Board had dismissed three out of four applications, the Board was still required to consider the merits of a duty of fair representation case, which would have represented a significant issue between the parties. In *Malekzadeh*, it

would have been necessary for this Court to have waited for the Board's reasons in the final proceeding before considering the judicial review of all of the decisions. That is not the case here, as the underlying factual nexus of the case is set.

[21] However, even if this matter was premature, I would exercise my discretion to hear the Application. No issues have been raised in respect of the merits of any of those five certification decisions. Indeed, in argument, counsel for the Applicant confirmed that waiting for the sixth decision would add nothing of substance to the record and counsel for the Respondent did not seriously dispute this assertion. The only issues before the Court are the issues raised in the Jurisdiction Decision, and they are ripe for consideration now.

The Issue and Standard of Review

[22] The principal issue in this case is whether, on the facts as found by the Board, the Applicant's employees are covered under derivative federal jurisdiction for labour relations purposes or whether they are covered under provincial jurisdiction.

[23] This is a question of the division of powers under the *Constitution Act, 1867*. As a result, the parties agree that the standard of review is correctness. As noted in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at paras. 53 and 55, respect for the rule of law requires the Court to apply the standard of correctness for constitutional questions.

[24] In conducting a correctness review, the Court should take the administrative decision-maker's reasoning into account. However, the reviewing Court is ultimately empowered to come to its own conclusions on the constitutional question: *Vavilov*, para. 54.

Analysis

a) The Legal Principles

[25] The parties were generally in agreement as to the legal principles that the Court should apply. They also agreed that the Vice-Chair articulated these principles correctly. The issue is in how the Vice-Chair applied these principles. However, in order to review the Vice-Chair's application of these principles, it is necessary to set them out.

[26] The starting point is the presumption that labour relations are a provincial matter engaging the provincial authority over property and civil rights under section 92(13) of the *Constitution Act, 1867*. That presumption can be rebutted in two circumstances: when the employment relates to a work, undertaking or business within the legislative authority of Parliament; or when the work is an integral part of a federally regulated jurisdiction (“derivative jurisdiction”): *Tessier Ltee. v. Quebec*, 2012 SCC 23, [2012] 2 S.C.R. 3, at paras. 17 and 18.

[27] In this case, CN and CP are clearly engaged in an interprovincial undertaking within the meaning of section 92(10)(a) of the *Constitution Act, 1867*. The Applicant, however, is not engaged in a direct federal undertaking. Therefore, the question is whether, by virtue of their involvement in CN and CP’s operations, the Applicant’s work should also fall under federal jurisdiction.

[28] In *Tessier*, the Court reviewed the case-law on the scope of derivative jurisdiction. The Court summarized that review as follows (at paras. 45-46):

[45] McLachlin J., writing in dissent, framed the case differently and in a way that is of particular assistance in this case. After noting that the gathering and processing plants themselves were not inter-provincial transportation undertakings (the direct jurisdiction test), she held that they could only be subject to federal regulation if they were integral to the inter-provincial pipelines. In applying the derivative approach, she emphasized that exceptional federal jurisdiction would only be justified when the related operation was functionally connected to the federal undertaking in such an integral way that it lost its distinct provincial character and moved into the federal sphere (para. 111). Like Dickson C.J. in *United Transportation Union*, McLachlin J. noted that the test is flexible. Different decisions have emphasized different factors and there is no simple litmus test (paras. 125 and 128). She considered the common management of and interconnection between the facilities and the pipeline and the dependency of the pipeline on the facilities and concluded that the facilities retained their distinct non-transportation identity. They were not vital, in the requisite constitutional sense, to the inter-provincial pipeline.

[46] So this Court has consistently considered the relationship from the perspective both of the federal undertaking and of the work said to be integrally related, assessing the extent to which the effective performance of the federal undertaking was dependent on the services provided by the related operation, and how important those services were to the related work itself.

[29] The parties agree that the Board correctly identified this test (see paragraph 49 of the reasons). The test is also set out in recent jurisprudence of the Court of Appeal: see *Ramkey Communications Inc. v. Labourers International Union of North America*, 2019 ONCA 859, 149 O.R. (3d) 1, at para. 62.

[30] In applying this test, it must also be remembered that the federal power in this area is exceptional and should be confined to situations where it is required to meet the exception embodied in section 92(10)(a) of the *Constitution Act, 1867*: *Tessier*, para. 45, *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322.

[31] In *Westcoast*, McLachlin J. (dissenting) noted (at para. 116) that “[b]ecause the federal power is exceptional, it follows that it should be extended as far as required by the purpose that animates it, and no further.” Although this passage was set out in dissent, the principle has found substantial support in subsequent case-law.

[32] The parties do not take issue with these principles and are *ad idem* that the Board properly identified them. The Applicant takes issue with how the Board applied these principles in three ways:

- a. That the Board fundamentally misapplied the derivative jurisdiction principle by, among other things, erring in its’ characterization of the Applicant’s operations, creating an artificial distinction by distinguishing between the technology used by the Applicant and the work performed by the Applicant and by adopting an unreasonably narrow view of what was required for CN and CP to operate effectively;
- b. Failing to consider the relationship of the federal undertaking and the Applicant’s employees from the perspective of the Applicant and not just CN and CP; and
- c. Wrongly following the Quebec Court of Appeal’s decision in *Madysta Telecom Ltee c. Commission des normes, de l’equite, de la sante et de la securite du travail*, 2020 QCCA 183.

[33] I start with the Board’s analysis of the derivative jurisdiction principles. Counsel for the Applicant argued that the approach adopted by the Board was too narrow, as it in essence reads out the concept of derivative jurisdiction. I disagree for two key reasons. First, the broad reading proposed by the Applicant would extend federal jurisdiction well beyond “the purpose that animates it”, by including maintenance and construction work that is not integral to the operation of the railway under federal jurisdiction. Just as in *Ramkey*, the work being done in this case is being done on the infrastructure of the railway and not its’ operation.

[34] In *Ramkey*, the Court set out the appropriate analytical focus in a case such as this (at para. 66):

[66] Respectfully, the Divisional Court erred by considering the extent to which the delivery of telecommunications services by Rogers and other telecommunications companies like Rogers was dependent on having a functioning network line and on work of the type performed by Ramkey's construction technicians. The proper focus is the extent to which Rogers and the other telecommunications companies, to which Ramkey's construction technicians provided construction services, were dependent on the services of Ramkey's construction technicians -- the particular employees under scrutiny: *Tessier*, at para. 38.

[35] The focus, in other words, is on CN and CP's dependence on these services. In this case, the Board grappled with the interrelationship between the railways and the Applicant. I see no error in that analysis, particularly since CN took some of the flash-butt welding work in-house at one point in the past, and that there are other provincially regulated contractors that perform thermite welding. The companies performing thermite welding appear to be in a similar position to the provincially-regulated companies providing services to Rogers in *Ramkey*.

[36] The Applicant argues that they are the only business that performs flash-butt welding and, as a result, their operations are integral to the operations of CN and CP. The problem with that argument is that it distinguishes the Applicant from the other provincially regulated companies that provide thermite welding on the basis of the technology that they are using rather than the function that they are engaged in. The boundaries that determine whether a business falls under provincial or federal jurisdiction should not be drawn based on the nature of the equipment that is used to perform the work. The boundaries should be drawn on a functional basis, which means considering what work is actually performed and how it fits into the federally regulated business.

[37] In this case, the work that is actually performed is on the maintenance of the infrastructure of the railways and not on the operation of the railways themselves. This can be contrasted with the decision in *Labourers International Union of North America, Local 183 v. Rail-Term Inc*, 2014 CanLII 19409. In *Rail-Term*, the Board considered the issue of derivative jurisdiction. Rail-Term moved trailers and containers throughout the rail yard to enable trains to be loaded and unloaded. Rail-Term was found to be federally regulated under the derivative jurisdiction principle. The reasoning in *Rail-Term* was, simply put, that unloading the train at the end of an interprovincial

trip is an integral part of the trip itself. This made the work that Rail-Term was engaged in at the yard a federal undertaking.

[38] This case also illustrates that, even on a narrow interpretation of derivative jurisdiction, there will be cases that are caught by it. The fact that derivative jurisdiction has a narrow application is part of the design of the concept, as derivative jurisdiction is not supposed to go beyond the bounds of the “purpose that animates it”.

[39] The second reason why I disagree with the Applicant’s view that the Board’s analysis of the derivative principles is too narrow focuses on the specific facts of the relationship. I acknowledge (as the Board did) that the Applicant is “on call” for CN and CP. However, neither railway directly supervises the Applicant’s employees. Instead, it provides instructions to the Applicant. The Applicant’s employees are independent from the railways, and the Board was correct in its’ conclusion that their work is “far removed” from the operation of an interprovincial railway.

[40] This brings me to the other two decisions that the Applicant relies on. Both of them are decisions of the British Columbia Labour Relations Board: *Re R.F. Welch British Columbia Ltd.*, 1982 CarswellBC 3675 and *Murrin Construction Ltd. v. CSWU, Local 1611*, 2002 CanLII 53412. Both of these cases are distinguishable from the facts before us. In *R.F. Welch*, the employees were integrated into the railway’s operation in such a complete way that they were actually supervised by railway supervisors. *Murrin* is closer to the facts in this case, but it can also be distinguished on the basis that CN was far more dependent on *Murrin* than either CN or CP was in this case (see para. 85 of *Murrin*).

[41] In the end, the Board in this case conducted a holistic analysis of the various facets of the relationship between the Applicant and the Respondent. That analysis took into account the various factors required in the analysis, and in particular the extent to which the effective performance of the railways was dependent on the services provided by the Applicant. Accepting the underlying facts as found by the Board, I see no error in this analysis.

[42] Given this analysis, the second and third arguments made by the Applicant can be briefly disposed of. I reject the Applicant’s argument that the Board failed to consider the relationship

between the Applicant and the federal undertaking from the Applicant's perspective. The Board grappled with the fact that the Applicant had proprietary technology that gave the Applicant a unique ability to provide a superior service to CN and CP. However, the mere existence of this proprietary technology is not sufficient to bring what would otherwise be a provincially regulated entity under federal jurisdiction. Further, the Board considered the amount of work the Applicant did for CN and CP from the Applicant's perspective, which was not determinative. I have set out my reasons for concluding that this would be a provincially regulated entity above.

[43] Finally, there is the Board's alleged error in relying on the *Madysta* decision. It is worth setting out the Board's conclusion about *Madysta* in its entirety (para. 75):

75. In reaching the conclusion on the facts before me that the presumption of provincial jurisdiction has not been displaced, I also note that the Quebec Court of Appeal decision in *Madysta Télécom ltée v. Commission des normes, de l'équité, de la santé et de la sécurité du travail*, [2020 QCCA 183 \(CanLII\)](#) at para. 86 suggests that, in order to fall under derivative federal jurisdiction, a local entity has to be an integral part of a *single* federal undertaking or business. In that case, the Court held that, since *Madysta* performed a similar amount of work for five different telecommunications companies, it was not integrated into any single federal undertaking. Similarly, in the present case, *Holland* did roughly the same amount of work for each of the two Class 1 railways in 2017 and a substantial amount of work for each of them in other years. As noted in *Madysta*, cited above, in order to fall under derivative federal jurisdiction, the entity at issue must be integral to a single federal undertaking rather than to a group of companies or to a sector.

[44] As I have noted above, the analysis in these types of cases is multifactorial. The fact that the Applicant worked for more than one railway was simply one more of the factors that the Board considered when it was analyzing the factual matrix in this case. When considered in the context of the whole analysis, I do not view the Board's reliance on *Madysta* as an error.

[45] For these reasons, I would dismiss the Applicant's arguments on the merits and uphold the Board's jurisdiction decision.

Disposition

[46] For the foregoing reasons, I would dismiss the application for judicial review. Having regard to the agreement of the parties, costs in the sum of \$7,500.00 all inclusive shall be paid by the Applicant to the Respondent.

LeMay J.

I agree

Matheson J.

I agree

Schreck J.

Released: April 17, 2026

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