IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Moon v. International Alliance of Theatrical Stage Employees (Local 891),* 2025 BCSC 2238

Date: 20251031
Docket: S242388
Registry: New Westminster

Between:

Kelly Moon

Plaintiff

And:

IATSE Local 891, Gary Mitch Davies, James Fantin, Gwendolyn Margetson, Michael Billings, Amanda Bronswyk, Dana Gaudet, David Curley and John Doe

Defendants

Before: The Honourable Justice Morley

Oral Reasons for Judgment

(Summary Trial)

Counsel for the Plaintiff:	M. Freedman
Counsel for Defendant:	J. D. Wong
Place and Dates of Hearing:	New Westminster, B.C. September 10-11, 2025
Place and Date of Judgment:	New Westminster, B.C. October 31, 2025

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[1] **THE COURT:** When I originally gave oral reasons, I reserved the right to edit a written version for errors and clarity. I have made edits within these parameters. The result has not changed, nor has the basis for it.

Overview

[2] The plaintiff Kelly Moon was the Senior Steward for the defendant Local 891 ("Local 891" or the "Local") of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada ("IATSE") for 12 years, from the beginning of 2008 to the end of 2019. This was an elected, paid position. She won four elections, each of which gave her a three-year term, before she was defeated by the defendant Amanda Bronswyk in November 2019. This case arises out of the circumstances of that defeat.

[3] Ms. Moon attributes her loss to the distribution, approximately a year earlier, of an audit report arising out of an investigation into her use of a business credit card provided to her by Local 891 ((the "Report" or "Audit Report"). There is no suggestion, either in the Report or in the evidence, that Ms. Moon misappropriated Local funds. However, the Report found, and the evidence supports, that she used the card for personal expenses, before repaying them and, in some cases, took cash advances. This was contrary to a policy that she had signed off on in March 2009, which prohibited any use of the card for personal expenses or for cash advances and required supporting receipts. The Report found violations of these policies up to 2017. The Report also set out the specific transactions Ms. Moon engaged in. It was (briefly) made available to the membership of Local 891 through its website at the end of January 2019.

[4] The disclosure of information in the Report was the subject matter of a complaint by Ms. Moon to the Office of the Information and Privacy Commissioner ("Privacy Commissioner") pursuant to the *Personal Information Privacy Act* (*PIPA*). The Privacy Commissioner found that the disclosure of the fact that Ms. Moon had breached Local 891 credit card policies to the membership was legitimate. However,

the unnecessary inclusion of specific transactions and the lack of measures to avoid unauthorized leaks were found to be offside *PIPA*.

[5] The substantive question before me is whether any of this gives rise to a civil action for damages against the Local or against the individual defendants, who were members of Local 891's Executive Board in December 2018, either under *PIPA* or the *Privacy Act* or pursuant to a common law cause of action. The procedural question is whether, and to what extent, this can be determined by summary trial.

[6] Ms. Moon claims she would have won the election were it not for what she characterizes as illegal and tortious actions by the individual defendants. She seeks damages for the difference between what she would have made had she been re-elected for another three-year term and what she made in her alternate employment, along with non-pecuniary losses for breach of privacy and psychological injury. She says her claims require a full trial to be determined fairly.

[7] For reasons I will set out at length, I make the following findings:

a) This action should be resolved by summary trial. The necessary facts arise out of minutes, the findings of the Privacy Commissioner and were, in this case, supplemented by cross examination before the court of Mr. Davies, one of the defendants and Ms. Moon's opponent within the internal politics of Local 891. I can find the necessary facts and it is in the interests of justice that the parties get an answer, especially given how litigious and long-standing this dispute has already been and its continuing effect both on the Local and on Ms. Moon.

b) By the principle of issue estoppel and/or similar relitigation principle, both Ms. Moon and Local 891 are bound by the Privacy Commissioner's determinations regarding the ways in which the disclosures of, and information in, the Report did — and did not — violate *PIPA*. While the principle of issue estoppel does not strictly

apply to Ms. Moon's action as against the other defendants, the broader principle of abuse of process by relitigation means that Ms. Moon cannot succeed if her causes of actions against those defendants require findings contrary to those of the Privacy Commissioner. I therefore can assume, as against the Local, that the Report should not have included discrete transactions that unnecessarily violated Ms. Moon's privacy and that the Local should have had in place better security to prevent unauthorized disclosure. On the other hand, I can presume against Ms. Moon that the basic purpose of the Report — communicating with the members of the Local when one of their officers had failed to follow appropriate rules limiting use of business credit cards — was legitimate.

c) On the evidence, none of the violations of *PIPA* with respect to the Report materially affected Ms. Moon's election chances. She was a polarizing figure within the Local for a number of reasons, including but not limited to the violations of the credit card policy. It is not plausible that the result would have been different if the Report had redacted the details that it should have. It would be speculation to say enough members of the Local decided to vote against Ms. Moon as a result of her failure to use the business card appropriately, but if they did, they were within their rights to do so. In a democratic process, the electorate does not have to have "cause" for deciding against a particular candidate, such as would be necessary to impress a judge in a wrongful dismissal case. Each voter just needs to have reasons that seem good enough to them.

d) Ms. Moon has no claim in contract. Her contractual employment relationship with the Local was subject to the necessity of obtaining re-election. The election has already been held to have been valid by the International Union and Justice Sukstorf. Therefore, she cannot claim damages for lost employment. Assuming, without deciding, that

"loss of chance" damages are available, I find that Ms. Moon has not shown a substantial likelihood that her re-election chances were affected by the Local's breaches of *PIPA*.

e) Ms. Moon has no claim under s. 1 of the *Privacy Act*. She established that the individual defendants, with the exception of Mr. Davies, approved the disclosure of a Final Report that contained private information protected by *PIPA*. However, the evidence before me is that while the Executive Board went too far in disclosing individual transactions by Ms. Moon, they were motivated by a desire for transparency to the members about financial dealings by their paid officials and were acting within the contours of legal advice they received. Ms. Moon has therefore not established that this was "wilful" and therefore the breaches of *PIPA* do not give rise to a claim under the *Privacy Act*.

f) Ms. Moon has not established the existence of a common law tort of public disclosure of private fact in British Columbia. She has not established a claim of negligence against the Local in light of its reliance on legal advice. She has not established the tort of conspiracy, whether by legal or illegal means. She has not established "actual harm" and therefore no cause of action under s. 57 of *PIPA*.

[8] I therefore dismiss the claim, except as against John Doe.

Factual Background

[9] Local 891 is the certified bargaining agent for technicians and artists working in film and television production in British Columbia. It is a chartered local of IATSE, which is an international union representing workers in North America's entertainment industry. The Local's financial assets all derive from the dues of its members. It has a local constitution and its members and officers are also bound by IATSE's international constitution and bylaws.

[10] Local 891 is a highly democratic institution. The “senior steward” position is one of three elected paid positions under Local 891’s local constitution, along with the president and the business agent. All three positions are full-time. The president is considered an “officer”, while the business agent and senior steward are “officials”. Other officers are the vice-president, corresponding secretary, recording secretary, treasurer, member-at-large and sergeant-at-arms. These officers, along with the president, constitute the “Executive Board”. The named defendants were the members of Local 891’s Executive Board in December 2018. The significance of that month will become evident later in my reasons.

[11] In addition to the Executive Board, Article 7 of the local constitution creates a larger collective body, the Executive Committee, which includes the elected representatives of the departments of the Local, which represent the various crafts in film and TV production, as well as the members of the Executive Board. The Executive Committee is empowered to make decisions on behalf of Local 891 between General Membership meetings and to approve annual budgets.

[12] The ultimate source of authority in the Local is the general membership meeting, which occurs quarterly.

[13] The other bodies of the Local that are significant to these events are:

a) Trial boards. These are *ad hoc* bodies convened under Article 11.2 of the Local Constitution to decide charges under the union’s constitution or by-laws brought by one member against another.

b) The Local has an Audit Committee to address financial issues.

[14] Article 8.3(b) of the Local Constitution sets out the duties and responsibilities of the Senior Steward as follows:

i. executing and enforcing the collective agreement, which is the main duty and responsibility of the Senior Steward;

ii. appointing or overseeing the election of a production shop steward on every production and appointing or overseeing the election of a preproduction shop steward when necessary;

iii. overseeing and assisting shop stewards in their interactions with members and employers and acting as the liaison between the employer representatives and Local 891;

iv. working only under the direction of the executive board and reporting to it;

v. working towards establishing and making a friendly and cooperative dialogue with industry employers.

[15] Article 9.3 of the Local Constitution provides that the Senior Steward is paid an annual salary, benefits and a monthly expense allowance, as recommended by the Audit Committee and Executive Board, and as approved by a two-thirds majority of the Executive Committee.

[16] Ms. Moon deposes that she became a Local 891 member in June 1991. She won election as Senior Steward at the end of 2007 and began her first term on January 1, 2008. She was provided a credit card by the Local for expenses, such as travel on union business.

[17] Beginning in 2008, Ms. Moon used the credit card for personal expenses, including purchases at clothing boutiques, hotels, casinos, an eye clinic and for cash advances.

[18] The exact amount of unauthorized personal expenses in 2008 is disputed, because there is not agreement on which expenses were unauthorized, but there is no question that Ms. Moon used the card for some personal expenses, and the amount was clearly in the tens of thousands of dollars. It is also undisputed that Ms. Moon paid the monies back, so this is not a matter of misappropriating Local funds.

[19] On February 16, 2009, the Local's Executive Board approved a new "Finance Policy RE: Credit Cards", which I will refer to as the "Credit Card Policy".

[20] The Credit Card Policy is not in evidence, in its totality, but there are excerpts in the audit reports that I will discuss later, and it is not in dispute that these excerpts are correct. They state, in relevant part:

> Personal expenses are prohibited from being charged to I.A.T.S.E. Local 891 credit.
>
> [...]
>
> All charges to I.A.T.S.E. Local 891 credit must be accompanied by supporting receipts indicating the specific purpose for the financial expense. The specific purpose should include names of people and the intent of the expense. Please retain receipts and submit on a monthly basis when requested by accounting department. Please note that the credit card stub alone is not sufficient; the accompanying receipt must show the details of the items purchased.
>
> [...]
>
> Cash advances from I.A.T.S.E. Local 891 credit cards are not permitted.

[21] According to all the Audit reports that I will discuss later, Ms. Moon signed the credit card policy on March 3, 2009.

Ms. Moon Brings Internal Union Charges Against the Board

[22] Ms. Moon deposes that up to and after her re-election in 2016, she experienced conflict with Mr. Davies, then the president of the Local and with other Executive Board members. This conflict came to head with April 2017 letters from the Executive Board to Ms. Moon.

[23] The nature of these differences is neither here nor there for the purposes of this action. But it is significant that they were sufficiently serious to result in Ms. Moon filing charges under the union's internal processes against first, Mr. Davies and the then-treasurer defendant Amanda Bronswyk on May 5, 2017 and then, on May 8, 2017, against the entire Executive Board.

[24] Ms. Moon's charges were taken to a trial board convened under Article 11.2 of the Local's Constitution (the "Trial Board").

[25] On July 10, 2018, a majority of the Trial Board dismissed the charges. The majority found that two of the three charges were completely without reasonable merit. They fined her for bringing them.

[26] With respect to the third charge, which was specifically in relation to the April 2017 letters, the majority of the Trial Board dismissed the charges, but did not find that they were falsely preferred. The majority was critical of both Ms. Moon and Mr. Davies in getting the local to the situation it was in:

> [T]he Trial Board wishes to make known our disappointment in how Charge 3 unfolded. While we believe the purpose of Ms. Moon's charge was because of a genuine and not unreasonable belief that the Constitution and Bylaws had been violated, although we do not agree with that conclusion, we have no doubt that Ms. [Moon] was still affected by her dislike for Mr. Davies when filing Charge 3. As a member, Ms. Moon has every right to proffer reasonable or appropriate charges. However, we do not think she would have laid this charge so readily had she taken time to reflect on the situation and separated it from the anger that she feels towards Mr. Davies. […] Conversely, the Trial Board does not believe matters would have escalated as far as they did, had Mr. Davies set aside his own dislike for Ms. Moon and responded to her concerns with more diplomacy.
>
> In sum, the differences in positions advanced by Ms. Moon and responded to by Mr. Davies which resulted in this charge being laid, could and should have been handled in a different matter. With good faith and a genuine willingness to resolve the differences on both sides, a resolution would have avoided the necessity of this long, difficult and obviously costly proceeding.

[27] The Trial Board fined Ms. Moon $500 for each of the two charges that it found to be false and malicious.

[28] Ms. Moon appealed the Trial Board decisions to IATSE's International President, as provided for by the union constitution.

[29] On November 26, 2018, the International President denied Ms. Moon's appeal of the dismissal of the charges. However, he allowed her appeal of the finding that two of the three charges were false and malicious on the grounds that this determination was outside the jurisdiction of the Trial Board. As a result, he removed the fines.

[30] The Trial Board process was very expensive for the Local. Ms. Moon, the defendants and the trial board all required counsel, paid for by the membership. The overall cost to the Local, as of May 13, 2019, was $434,837.64. This was commented on at general meetings, and while there may have been differences as to who was at fault, there is no question in my mind that the membership of the Local was unhappy with the expense.

[31] Ms. Moon points to these events as supporting an inference that subsequent actions by the Executive Board were motivated by ill-will to her. The defendants point to the same events to suggest that there were reasons, other than the disclosure of the Audit Report, for her failure to win re-election in the Fall of 2019.

[32] I am prepared to find, on the basis of these events, that Ms. Moon and Mr. Davies were on opposite sides of a dispute internal to union politics, and that neither of them wanted the other re-elected. They were, in effect, political opponents in the world of union politics. To greater or lesser degrees, the other defendants, as members of the Executive Board that had been the subject of these charges, found themselves on the opposite side of Ms. Moon in this conflict, although the evidence suggests to me that they all had independent judgment and did not necessarily agree with Mr. Davies about everything.

[33] I am *not* prepared to make a finding that this political opposition amounted to ill will or malice. There is no evidence of that at all.

[34] As democratic institutions, unions almost invariably have internal politics and things can sometimes get heated. As anyone dimly familiar with the history of British Columbia’s labour movement is aware, there is nothing new about that, and arbitrating such disputes is not a job the courts have either sought or been invited to take up.

[35] It is not part of my role here to decide whether the positions of Ms. Moon, Mr. Davies or the more moderate position expressed by the Trial Board were correct or were the right direction for the Local. However, I am prepared to find that the

Local's membership was divided on this question, with partisans of each of the factions represented in the membership. No doubt there were others who blamed both factions for what was a costly dispute.

[36] I also consider the evidence and actions of both Ms. Moon and the individual defendants in light of this pre-existing dispute. I do not think any of them are lying, but like all human beings, they experience and relate events in light of their pre-existing commitments and biases.

The Credit Card Investigation

[37] In early June 2017, Ms. Moon used her business credit card to make what she accepts were personal expenses. These expenses came to $283.70. She paid back $266.70 on June 14, 2017. (Presumably the difference was an error). The issue had come to the attention of Ms. Bronswyk, in her role as treasurer by June 13, 2017, when she reported to the Executive Board "some financial irregularities regarding credit card usage that [had] just come to her attention."

[38] Ms. Moon deposes that she used the corporate cards for travel costs to accompany a terminally-ill friend who was in medical distress and that she self-reported the breach of the credit card policy before the June 13, 2017 Executive Borad meeting. These would be highly mitigating circumstances, but, as Ms. Moon acknowledges, she was still operating contrary to the policy that she was aware of and had signed on to.

[39] The credit card irregularities were reported again at the June 26, 2017 Executive Committee meeting under the Treasurer's report. Ms. Moon was at that meeting. She admitted that the credit card irregularities mentioned in the Treasurer's report were from her use of the credit card, contrary to restrictions imposed on it as a result of her earlier violations of the credit card policy.

[40] By letter dated June 26, 2017, Ms. Bronswyk informed Ms. Moon that the Local had commenced an investigation into her noncompliance with the credit card

policy and was seeking her responses, information, outstanding receipts and repayment of monies as necessary.

[41] On June 30, 2017, Mr. Davies informed Ms. Moon that her gas card and credit card were being cancelled and that she would have to submit expenses after the fact from then on.

[42] The minutes of the June 26, 2017 Executive Committee meeting were included in the agenda for a general membership meeting held July 30, 2017. Ms. Moon says that when this meeting was held, she again admitted to using the credit card for non-IATSE purposes, explaining the extenuating circumstances.

[43] The investigation was assigned to the Local's external controller, Derek Haqq, in consultation with the Chair of the Audit Committee, Joanne Quirk.

[44] The investigation did not progress quickly. On January 9, 2018, Ms. Moon left a phone message with Ms. Quirk, apparently requesting a letter from the Audit Committee.

[45] Ms. Quirk replied as follows:

> I am not sure what letter you are expecting and from whom? [...]
>
> In regard to your credit card or gas cards the Audit Committee's recommendation was that the union follow the credit card policy.
>
> Which meant that your credit card privileges would be revoked because you violated the policy more than a few times when you used the union's card for personal reasons.
>
> My role was to help sort out outstanding receipts. Which I believe we have done.

[46] Ms. Moon requested a letter from Ms. Quirk "to follow up with the closure of the investigation". I agree with Ms. Moon that she was not asking a "report", but just for written confirmation that the investigation was over. Ms. Moon appears to have inferred from Ms. Quirk's response that it had been completed.

[47] However, in fact, the investigation was not over. On November 16, 2018, Mr. Whitfield emailed Ms. Moon, copying Mr. Davies, as President, Ms. Bronswyk, as Treasurer, Ms. Quirk and Mr. Haqq:

> I have been asked to meet with you and conclude the credit card investigation that was undertaken by our Controller and Treasurer on behalf of the Audit Committee, before the end of the year. Can you provide me with some dates or times that we can meet? Joanne [i.e., Ms. Quirk] and our Controller would also be in attendance.
>
> Otherwise, I can send you the investigation report and you can respond in writing.

[48] Ms. Moon responded by providing available dates and also asking for the report. A draft of the report was sent to Ms. Moon and then she and the Audit Committee discussed it.

The Audit Report

[49] The first draft of the audit report is dated November 20,. This was sent to Ms. Moon. It contains statements marked in red that appear to reflect one of the Audit Committee member's interpretation of, or response to, Ms. Moon's comments at the first meeting where they must have discussed an earlier version of it. The statements in black appear to be from the version originally provided to Ms. Moon.

[50] The November 20 draft Report chronologically lists the expenses determined by the Audit Committee to be improper or questioned. Ms. Moon's response on specific expenses is included in red. It is clear that she denied wrongdoing and regarded the investigation as retaliatory, but she conceded that she had on some occasions used the credit card for personal expenses.

[51] In her submissions, Ms. Moon says the allegations in the Report have not been proven. However, she has admitted that she used the Local credit card for personal expenses and admitted that the charges referred to in the Report happened, although not that *all* of them were non-compliant with Local policy.

[52] The November 20 Draft Report included specific transactions dating back to 2008.

[53] The exact amount of the expenses that were truly “personal” is disputed between the parties. However, there is no dispute that the transactions recorded in the November 20 Draft Report occurred or that many of them were personal, or failed to have the requisite receipts. There were a number of cash advances after the date Ms. Moon signed the credit card policy.

[54] The Audit Report stated the monetary amounts of unauthorized transactions as follows:

a) In 2008, $43,185.71

b) In 2009, $2,407.20

c) In 2010, $2,177.28

d) In 2011, $8,080.36

e) In 2012, $1,058.00

f) In 2013, $468.00

g) In 2014, $1,261.00

h) In 2015, $1,530.02

i) In 2016, $292.64

j) In 2017, $266.70

[55] On November 21, 2018, a new version of the report was prepared and provided for Ms. Moon’s comment. Ms. Moon objected to one inclusion, which was kept out of all subsequent drafts and all drafts relevant to this action.

Disclosure of the Audit Report

[56] On November 28, 2018, the Audit Committee met. Mr. Davies and Ms. Bronswyk were present for the Executive Board. The draft Report was

considered. The Audit Committee resolved to have a special meeting with the Executive Board to present the report details with counsel and the controller present. At the Audit Committee meeting, it was suggested that the special Executive Board meeting occur on December 4, 2018.

[57] The Local has waived privilege on the content of the December 4, 2018 special Audit Committee-Executive Board meeting, which Mr. Davies characterized as an “open discussion” to ask counsel questions. Detailed minutes were taken by the Secretary at the time, and Mr. Davies confirmed that they accurately reflect the meeting.

[58] The Minutes demonstrate the following:

a) The Local had two lawyers present. As Mr. Davies acknowledged, their expertise was in labour law, not privacy law. The Local has used specialized privacy lawyers on some occasions, but did not decide to do so in this case.

b) Both the Board and the Audit Committee agreed that the Board should take sole responsibility for what should be done with the Report.

c) One Audit Committee member asked whether there was a legal concern regarding perceived retaliation against Ms. Moon.

d) Counsel said that there was no legal concern with retaliation.

e) Counsel also stated that *PIPA* would not extend to charges on a company credit card and that there would be no legal impediment to sharing the Report in all of its detail with the membership.

f) The Audit Committee recommended that the membership be informed of “all details provided in the report”.

g) At the end of the meeting, the Audit Committee and the Controller left and the Executive Board continued to deliberate. While the minutes

> suggest legal counsel remained at this point, Mr. Davies recalls them leaving as well, and I accept this memory to be true, at least for a portion of the discussion. The Minute recording this indicates that there was no final decision made: "Further discussion by the Executive Board on what other information might need to be gathered and discussed before submitting a report to the membership."

[59] I therefore find that no final decision was made to share the Audit Report with the membership at the December 4, 2018 meeting.

[60] In cross-examination, Mr. Davies stated the Board, from his recollection, was "gun shy" about further controversy. He had already lost an election to Keith Woods and so would be leaving his position as president in the New Year. While Mr. Woods may not have been fully aligned with Ms. Moon, he had not had the conflict with her that the other members of the Board and Mr. Davies had. Mr. Davies did not think it was his decision to make, but he favoured releasing the Report. He said this was because he thought transparency required it. However, under the Local's rules, the President could not present a motion and could not vote, except in case of a tie, and he denied that he voted on any motion to release the Report. I find this to be true.

[61] Since the Local has waived its privilege over its communications with its lawyers, I should note, as well, that the Executive Board received advice from the same lawyers that it was not *required* to disclose the Audit Report since it did not indicate any illegal activity. I find that the lawyers advised the Executive Board that they *could* release the Audit Report or not, and that the ultimate criterion was their view of what transparency required. They specifically received the advice that providing detailed transactions was permissible under *PIPA*. They could have sought advice from an expert in privacy law, but did not do so.

[62] On December 10, the Executive Board had another meeting, which was not *in camera*. Ms. Moon did not attend. The defendant Michael Billings (Sergeant-at-Arms) moved to adopt the Audit Committee minutes from the November 28 meeting. This was seconded by the defendant James Fantin

(Vice President). Nothing else relevant to this case is recorded to have happened at this meeting. In particular, no motion was made or passed to release the Audit Report to the membership. I find that if such a motion had been made or passed, it would have been recorded.

[63] I will discuss later the evidence Ms. Moon raises as showing that there was a motion to send the membership a message about the report at the December 10 meeting.

[64] Finally, on December 18, the larger Executive Committee met. This meeting was attended by Ms. Moon. A member of the Executive Committee, Ray Wohlford, asked if the Executive Board meeting recommended by the Audit Committee on November 28 took place. Mr. Billings stated that the newly-elected president, Keith Woods, would be briefed and then consulted about the best way to present the fruits of the investigation to the membership. Mr. Wohlford asked if the Executive Committee could see the report. Ms. Moon interjected that she had not yet seen the final report, and that she had understood the investigation was completed in 2017. Mr. Billings clarified that the draft Ms. Moon had seen was also the one that the Board received, and that the Audit Committee had only recently completed its investigation.

[65] The meeting was adjourned briefly so that the Board could consider whether the larger Committee would have access to the Report. It was decided to allow them to view it by appointment at the local hall. Mr. Billings committed to ensuring that Ms. Moon and the new president would receive the final version of the Report.

[66] I think it is clear that no final decision was made as to whether or how to release the Report to the broader membership in 2018. It was decided that members of the Executive Committee could individually view it.

[67] Mr. Davies ended his term as president of the Local on December 31, 2018 and Mr. Woods began his term on January 1, 2019.

[68] An Executive Board meeting was held on January 8, 2019. Mr. Davies did not attend as his term had expired. Ms. Moon attended, but, not surprisingly, not the *in camera* part that discussed the release of the Report. I do not have any direct evidence from anyone who attended that meeting, which includes the individual defendants with the exception of Mr. Davies.

[69] I do have *in camera* discussion notes recorded by the secretary and put into a database that Mr. Davies was able to access later when he returned to the presidency of the Local. I accept that this record is authentic in the sense of being what the secretary wrote down. To the extent there are questions of interpretation about what happened at the meeting, I consider the document to be hearsay of a kind that cannot be relied on in a summary trial. However, to the extent it sets out specific motions that are recorded as being passed, I accept that it is admissible as a business record of the Local.

[70] I am therefore not going to make any findings about the content of the discussions at this meeting. But I am prepared to find that a motion was moved by Mr. Fantin, and carried unanimously, to “send blast the membership to notify them that they can log in and access the report on their membership website”. I note that Mr. Woods, as president, would not have been able to vote on this motion under the Local’s rules.

[71] Ms. Moon claims that internal emails demonstrate that Mr. Woods and possibly others thought the 2018 Executive Board had “bindingly resolved to distribute the Report to the membership” and so the decision was not actually made in 2019. They do not show this. Assuming that the emails are admissible, what they show is that Mr. Woods wished he had more information prior to the January 8 meeting, but accepted that he was bound by the decision of that meeting.

[72] Mr. Woods reviewed the Report after that meeting and spoke to counsel and decided the release had to wait until Ms. Moon got the report. In fact, he expressed his dissatisfaction that the Board had not addressed the issue under Mr. Davies’ presidency and instead had left him with what he clearly thought was a no-win

political and legal issue. But his emails are consistent with the decision having been made on January 8 and with that decision being pursuant to the legal advice available at the time.

[73] Ms. Moon notes that the business representative also expressed his reservations about release. This is true, but irrelevant, since it was a decision for the Board.

[74] While Mr. Woods accepted that a decision to release the report had been made, and was binding on him, the other members of the Board were receptive to further discussion about *how* the report would be made available.

[75] As a result, there was a subsequent discussion on January 21, 2019 of the time and manner of release. Again, this is a hearsay record and none of the individuals who were present have provided evidence. I therefore rely on it only for the motions actually passed.

[76] Mr. Billings moved that “the final report available to the members on the members-only website be the full report inclusive of the statement details”. This passed with two abstentions.

[77] Another motion “to rescind the motion from the Dec 10th to send blast the membership” was passed, as was a motion to “announce the conclusion of the investigation report on the website in the E-Bulletin”. The former motion is referred to in the February 19, 2019 Executive Board meeting as “to rescind the motion from the Dec 10th 2019 In-Camera discussion to send blast the membership to notify them that they can log in and access the report on their membership website.”

[78] Ms. Moon asks me to infer from the reference in the wording of the January 21 motion to the “motion from the Dec 10th” that this must have been when the original motion authorizing release of the report was made. However, that is not what the minutes of the December 10 or January 8 meetings say, and they are the more reliable source for what motions were passed when.

[79] Minutes are accurate if they correctly record the wording of a motion, regardless of whether the motion itself has an implicit error. It is common ground that the version of the motion recorded in February 2019 must have been erroneous in some sense, since it refers to a motion on December 10, 2019, a date that was still in the future. Ms. Moon wants me to infer that what was meant was "December 10, 2018". I agree that this is the most sensible interpretation of what the *author of the motion meant*, but it does not follow that the *author of the minutes* meant that this was when the motion actually occurred.

[80] What the wording of the January 21 motion establishes is that its author, Mr. Fantin, *remembered* the relevant motion as being passed on December 10 when he formulated the motion on January 21. But it does not follow that the author of the motion was correct. It is more likely that he was wrong in his recollection than that the minutes, written contemporaneously by the secretary and subject to discussion by all the members of the relevant bodies, would be wrong.

[81] Because it was the wording of a motion, it could not itself be corrected in accordance with ordinary minute practice.

[82] Ms. Moon argues that this is a crucial point that needs to be addressed in a trial. With respect, I have no reason to think that at a trial the witnesses would not inevitably have to refer to the minutes to determine the dates of meetings that occurred six years ago. Even if a witness had a strong contrary memory, this would likely not be reliable. Significantly, Ms. Moon has not attempted to get evidence from Mr. Woods or discover any of the named defendants at the meetings, including Ms. Gaudet who prepared the minutes.

[83] I therefore find that the actual decision to communicate to the members occurred on January 8, 2019. At the end of the month, the *method* of communication was rethought, but the *decision* to communicate was considered to have already been made. Mr. Woods felt hamstrung by the decision, but he accepted he was bound by the *current* Executive Board. He did not claim to be bound by the previous Executive Board.

[84] The final version of the Report, dated January 9, 2019, which was not substantially different from any of the previous drafts, was released on January 24, 2019 onto the Local's internal website, where it became available to all the Local's members. The fact that this had occurred was noted in the Local's E-bulletin.

[85] As I will discuss at greater length later, the Final Report itemized Ms. Moon's personal spending from 2008 on.

[86] Sometime in January before the official release, a December 2018 version of the Report was illicitly leaked to various members of the Local, including Mr. Davies, who was of course at that point an ordinary member. At that point, only staff, members of the Executive Committee, the lawyers, the Audit Committee, the controller and Ms. Moon had access to it. I will address the legal significance of this leak later.

Impact of the Release of the Audit Report on the Politics of the Local

[87] On January 27, 2019, shortly after the release of the Audit Report, the Local had a general membership meeting. Ms. Moon attended. The general meeting received the Audit Report, and there was a discussion.

[88] One member asked why the Audit Report was not sent out earlier and proposed the Local consider bringing charges under the Union's internal processes against Ms. Moon. Mr. Woods ruled this motion and a similar motion brought later at the meeting out of order because charges could not be laid by a general meeting.

[89] Mr. Woods clarified that the investigation occurred before his term and that the current credit card policy did not exist in 2008 when the first personal charges occurred.

[90] Another member argued that the release of the report violated privacy.

[91] After a second motion to bring charges was also ruled out of order, a member asked if there was any way for the Local to ask for Ms. Moon's voluntary resignation. She stated that she would not resign. A motion to that effect was ruled in order, and

was ultimately defeated on a secret ballot after some debate in which different perspectives were expressed. The vote was 72 for, 81 against, with six abstentions.

[92] Access to the Audit Report was deleted from the Local website on January 31, 2019. I do not have specific evidence about the reasoning behind this decision.

[93] On September 25, 2019, in response to calls to make the Audit Report available again, Mr. Woods emailed a letter to the membership stating that it would not be re-released. He claimed in that letter that the Audit Report contained information that should not have been released and that to do so again would expose the Local to liability.

[94] In late 2019, Ms. Moon ran for re-election as Senior Steward. During the election campaign, an unknown person left copies of the Final Report at production sites where members could see it. An online news site posted an article about the controversy within Local 891 that identified Ms. Moon and quoted from the Report and from Mr. Woods' September 25, 2019 letter.

[95] Ms. Moon deposes that she continued to face questions relating to the Audit Report through 2019 up to the time of the election in which her successful opponent was Ms. Bronswyk. There was a reference to a "credit card fraud report" at a Grip Department meeting in April 2019 by a Mr. Rod Haney, who was a supporter of Ms. Bronswyk.

[96] Ms. Moon's evidence shows that the Audit Report was one item that was discussed in the course of the Fall 2019 election campaign, and it was referred to by her opponents within the Local, which included Mr. Haney and Mr. Fantin, both of whom clearly were urging members to vote for Ms. Bronswyk. There is no evidence that they referred specifically to the discrete transactions or that these details had any impact on the election campaign. In the social media posts I have been referred to, Mr. Fantin referred both to the Audit Report and to Ms. Moon's unsuccessful charges against the Executive Board and the costs to the Local as a result.

[97] There were seven candidates for Senior Steward in the Fall Election, with Ms. Bronswyk and Ms. Moon leading the first ballot. On the second ballot, Ms. Bronswyk obtained 2,139 votes against 761 for Ms. Moon. As a result, Ms. Moon stopped being Senior Steward on December 31, 2019. She obtained alternative employment with the Teamsters, but it is not as lucrative as her role with Local 891.

Privacy Commissioner Decision

[98] On January 30, 2020, Ms. Moon made a formal complaint under s. 36(2)(a) and 36(2)(e) of the *Personal Information and Privacy Act* against Local 891 for inappropriate use and disclosure of her personal information. The complaint primarily concerned the drafting and release of the Audit Report.

[99] On August 21, 2023, Adjudicator Elizabeth Barker released Order P23-08 on behalf of the Privacy Commissioner. Her decision is indexed at 2023 BCIPC 76. She made a number of findings, some of which it would be repetitive for me to set out now, but I draw attention to the following:

a) A draft of the Audit Report was leaked to a union member in January 2019.

b) Local staff, who are members of Unifor, were able to log in to obtain the Report during the week it was on the Local website. This presumably includes staff who had no reason specific to their own role to access the information.

c) *PIPA* applies to Local 891 because it is a “trade union” under the *Labour Relations Code* and trade unions are included within the definition of “organization” set out in s. 1 of *PIPA*.

d) The leaks must have been committed by “members” or employees of Local 891. As a result of what she found to be breaches of s. 34 of *PIPA*, she attributed these leaks to the Local. Although it is not entirely

clear, I do not interpret her as saying the Local is vicariously liable for the actions of its members, which, as I will discuss, is contrary to Supreme Court of Canada authority.

e) Although the adjudicator was not provided with the draft report, it contained essentially the same personal information as the Final Report.

f) As a result of a concession by the Local, and because Ms. Moon was an elected official, the information in the Final Report was not "employee personal information" as defined in s. 1 of *PIPA*.[1]

g) Communicating Ms. Moon's personal information to the membership of the Local was "use", but not "disclosure" for the purposes of *PIPA*. The only disclosure was therefore to the online news source.

h) Ms. Moon did not give express consent to the use of her personal information in the form of the release of the Audit Report.

i) By using the credit card, Ms. Moon gave deemed consent to the Local for the appropriate use of the information to investigate the use of the credit card and provide *appropriate* communication to the membership. However, this was not a blanket deemed consent for communication of unnecessary details.

j) The adjudicator came to similar conclusions regarding s. 15(1)(c) of *PIPA* which provides for authorized use without consent. This provision permitted the Local to investigate and communicate in a reasonable way, which included sharing "most of the specifics" of Ms. Moon's

[1] I note that because this was a concession by the Local, it is binding on the Local as a result of issue estoppel. I have some doubts as to whether, as a general matter, information about an individual that otherwise fits within the definition of "employee personal information" would not count as such for the purposes of *PIPA* simply because the individual is an elected official. Because it was conceded, it was not necessary for Adjudicator Barker to determine and of course it is not for me to determine on this summary trial application, but I note my doubts because this may be an adjudicated issue in future.

unauthorized use of the credit card, including going back to 2008 for context. However, it was not reasonable for Local 891 "to include the detailed itemized lists of the complaint's spending/repayments in the Final Report." As the adjudicator put it, "The fact that the complainant spent X number of dollars at a particular store at a particular date was, in my view, an unreasonable level of specificity about her activities and not reasonably needed to inform the membership about the investigation."

k) The purposes of investigating and communicating to the membership are appropriate purposes under s. 14 of *PIPA* and justify the use of Ms. Moon's personal information in the minutes of the January 27, 2019 general meeting minutes and in the Audit Report "minus the detailed spending/repayment lists".

l) The Local did not demonstrate it had complied with its obligations under s. 34 of *PIPA* to protect personal information under its custody and control. It took some steps to minimize the possibility of leaks and to address them once they happened. However, it failed to meet "elementary security measures". It did not provide evidence of where it kept secure paper or electronic copies of the Audit Report. It did not demonstrate a privacy management program or policy, or privacy training and education to its staff and members.

[100] In broad outlines, I find that the Privacy Commissioner upheld the legitimacy and lawfulness of the investigation and the decision to report its conclusions to the membership in the form of a report. At the same time, including detailed spending/repayment lists in the Report was unnecessary and the Local did not demonstrate that it had suitable security measures or training. I note that this is surprising for what must be one of the most sophisticated private sector union locals in the province given the sensitive and intimate private information unions handle all

the time, especially in their role of conducting individual grievances, and I anticipate that Local 891 has improved its practices in this regard since.

Appropriateness for Summary Trial

[101] Ms. Moon disputes the appropriateness of resolving this case by summary trial.

[102] Rule 9-7(15)(a) of the Supreme Court Civil Rules provides that courts can resolve civil actions by summary trial unless they are:

a) unable to find the facts necessary to decide the issues or

b) are of the opinion that it would be unjust to decide the issues that way.

[103] The factors to be considered in making these determinations are set out in *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30–32, incorporating and adding to the factors set out in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.). They include:

a) the amount involved;

b) the complexity of the matter;

c) the urgency of the matter;

d) any prejudice likely to arise by reason of delay;

e) the cost of taking the case forward to a conventional trial in relation to the amount involved;

f) the course of the proceedings;

g) the cost of the litigation;

h) the time of the summary trial (relative to discovery and other pre-trial processes);

i) whether the summary trial may create an unnecessary complexity in the resolution of the dispute; and

j) whether the application would result in "litigating in slices".

[104] *Gichuru* reminds chambers judges (and counsel) that "all parties to an action must come to a summary trial hearing prepared to prove their claim, or defence". It is never enough for the respondent of a summary trial application to hope something might turn up later: *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 375 at para. 34.

Can I find the necessary facts?

[105] The key facts in dispute are:

a) Who made the decision to release the Audit Report to the membership and when? As I have already suggested, I believe I can make this determination based on the minutes and the evidence of Mr. Davies. If Ms. Moon believes that discovery of the defendants who were on the Executive Board in January 2019 or evidence from Mr. Woods would establish something different, (a) this is speculative, and (b) she has not explained why she has not already obtained that evidence.

b) Why did the Executive Board release the Audit Report to the membership? I can determine this based on the Minutes and the findings of the Privacy Commissioner.

c) Is the Local responsible for the leak of the draft of the Audit Report? Again, the findings of the Privacy Commissioner are sufficient to find the facts here.

d) Were the facts as set out in the Audit Report true? To the extent this is relevant, this was found to be the case by the Privacy Commissioner.

e) If the facts were true, was there any illegality in releasing them? This has also been determined by the Privacy Commissioner.

f) What was the impact of the release of those facts that should not have been released on the election? I believe I can determine the impact of the violations of *PIPA* based on the affidavit evidence. There is no reason to think a trial would bring in additional evidence.

g) Other than allegedly losing her job, what other damages did Ms. Moon suffer as a result of the release of the Audit Report? I can determine this based on Ms. Moon's affidavit.

[106] I lack direct evidence from anyone at the January 2019 Executive Board meetings about the deliberations that occurred at that time. This is, on the Local's account, which I accept, when the decision to release the Audit Report was made and also when the decision to do so including all the transactional details was made, despite some controversy on that point.

[107] I find, however, that Ms. Moon could have discovered any of the individual defendants other than Mr. Davies and obtained evidence that way. Perhaps she could also have obtained evidence from Mr. Woods or from the business agent at the time. I do not know, but that is the point: she has submitted no evidence of any steps to get this evidence.

[108] That is unreasonable since this dispute has been outstanding since January 2021 and September 2025 was really the last point at which the defendants could have brought a summary trial application prior to the trial dates themselves. If the information is missing, I must either presume it would not be helpful to Ms. Moon or that she has failed to come to the summary trial hearing prepared to prove her claim. Either way, I believe I can, and should, find the necessary facts based on the evidentiary record before me, including with the gap of having no direct evidence of the January 2019 deliberations. For the reasons already given, I believe I do have

admissible evidence of the actual decisions made, and when they were made, if not the debates that preceded them.

Would it be unjust to decide by summary trial?

[109] If I can find the necessary facts, the burden shifts to the respondent to the summary trial application to show that it would be unjust to decide the issues in a summary trial. I find that it would not. The amount involved, assuming Ms. Moon is successful, would be in the six digit range, which is substantial. A full trial, which would necessarily take more than a week, might well cost more than what is at stake.

[110] While the matter is not urgent, it is also one that should be decided in a timely way. The underlying issues have been divisive for Local 891 for years already. It is also in Ms. Moon's interest to get an answer. While there is currently a trial scheduled for six days beginning February 9, 2026, in my view it would be difficult to do a full trial, with *viva voce* evidence, in that time.

[111] To be sure, it would be possible to use those days to conduct a summary trial. Ms. Moon argues that this would be fairer than proceeding now for the following reasons:

a) Documents re leak investigation. Defendants say they have already produced all the non-privileged ones. Already have OIPC findings. I am prepared to proceed on the basis that Local 891 did not take appropriate steps to thoroughly investigate the leaks, in breach of *PIPA*, as found by the Privacy Commissioner.

b) Examination for discovery. I do not have a satisfactory explanation for why this has not already happened. Minutes have been disclosed and Mr. Davies, the President at the time, has been cross-examined. There are some complaints about lack of documents, but they are not out of the order for typical civil litigation and do not explain the failure to have discoveries.

[112] I do not agree with Ms. Moon that ruling on liability in a summary trial would be litigation by slices. A decision would be a final one on liability and damages and would not require a cycle of appeals.

[113] I find it is in the interests of justice to proceed by way of summary trial.

OIPC Decision, Issue Estoppel and Abuse of Process

[114] While "issue estoppel" in the strict sense does not apply between Ms. Moon and the individual defendants, based on the broader principle against relitigation set out in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, Ms. Moon cannot advance a claim contrary to the Privacy Commissioner's findings. The individual defendants do not dispute the ones that go against the Local.

Did the Violations of Ms. Moon's Privacy Found by OIPC Cause or Contribute to Her Election Loss?

[115] Given my findings on issue estoppel and abuse of process, Ms. Moon cannot recover losses that were caused by communication with the Local's membership about the fact that she had used the credit card contrary to Local policy, but may be able to recover — at least against the Local — for losses caused by the breaches the Privacy Commissioner found, namely those associated with the unnecessary disclosure of discrete transactions. (To be sure, whether she can recover these latter losses will depend on an analysis of her various statutory and common law causes of action, but they are available in principle, and the Local, at least, cannot deny that what it did was contrary to *PIPA*).

[116] The most significant loss for Ms. Moon, certainly financially and possibly psychologically as well, was the loss of the November 2019 election. It is on the basis of her claim that she can attribute this loss to the fault of the defendants that she claims the difference between what she would have earned as Senior Steward for the Local for the next three years and what she in fact earned.

[117] Thus it is obviously significant whether the breaches found by the OIPC would have made any difference in the election. I find that they would not.

[118] I accept that the conclusion of the Audit Report, namely that Ms. Moon had violated the Local's credit card policy, was part of the election campaign. It was used as an argument against her by her political opponents within the Local, along with what the unsuccessful charges against the Board, which they argued had caused the membership to expend a great deal of money unproductively.

[119] Ms. Moon, for her part, was able to argue that the irregularities were based on an understandable human need to help a friend or were matters of paper work. The record before me suggests that there were a number of members of the Local who agreed with her, and thought that the Audit Report was retaliatory and was more likely to damage the Local's reputation than bring about financial transparency.

[120] As I will explain in relation to the causes of action, it is not for me to decide whether these violations of the credit card policy were trivial in light of Ms. Moon's broader contributions to the Local's well-being or disqualified her from continuing to hold office. That issue was for the membership.

[121] What is important for my analysis is that while the broader issue of misuse of the credit card was part of the election considerations, I have no evidence at all that any of the discrete transactions that should not have been revealed, or the totality of them for that matter, made any difference to even a single vote. Ms. Moon's explanations were communicated. She did not live up to the policy. Members would have reasons to support or oppose her continuing in that role. She was clearly controversial. Going through her evidence, it just shows that her opponents within the Local did not entirely believe her explanations. The *PIPA* violations do not change that.

[122] I accept that there is a reasonable possibility that the Report had an impact on the election, although I do not think Ms. Moon can establish that it had a determinative impact in the sense that she would have been elected but for its release. But I do not think there is even a reasonable possibility that the actual breaches of *PIPA* found by the Privacy Commissioner affected the result.

[123] Ms. Moon argues that she could not have lost the 2019 election because the membership blamed her for the expenses of the trial, since Mr. Davies lost the 2018 election, suggesting a majority of the membership blamed him. This does not follow. It is perfectly possible that there were portions of the membership who blamed both of them. Even if the trial expenditures were the only issue, that bloc, plus the partisans of Ms. Moon, might have been enough to defeat Mr. Davies, and the same bloc, plus the partisans of Mr. Davies, might have defeated Ms. Moon.

[124] In any event, it is not necessary for me to try to unravel the politics of the Local in 2018–2019 to conclude that there is just no evidence that it was the disclosure of the *specific, detailed transactions* that made any sort of difference to Ms. Moon's re-election bid.

Did Local 891 Brach Ms. Moon's Employment Contract?

[125] The first cause of action Ms. Moon pleads in her Further Amended Notice of Civil Claim is breach of contract, including what she says is an "obligation of good faith and fair dealing". Ms. Moon argues, as a basis for dismissing the summary trial application, that Local 891 has not addressed this pleading. Local 891 relies on its oral submissions and says that it is sufficient to find that there is no implied duty of good faith in termination for an elected position.

[126] In my view, there is some confusion on both sides about the governing legal principles of good faith in contract.

[127] Historically, common law Canada did not recognize a general principle of good faith in contract law: *Bhasin v. Hrynew*, 2014 SCC at para. 32. The general principle in Anglo-Canadian contract law was that motive does not matter to whether an act or omission is a breach of contract or, if so, what the remedy should be.

[128] However, developments in the last 30 years have modified this common law starting point.

[129] In *Wallace v. United Grain Growers*, [1997] 3 S.C.R. 701 at paras. 75–77, Iacobucci J. for a unanimous Supreme Court of Canada reiterated the general principle that, barring express terms to the contrary, there is no obligation on either employers or employees to have a "good faith" reason to continue with a common law contract of employment, nor is there a tort of bad faith dismissal. It is one of the major benefits of unionization that it provides a remedy of reinstatement for dismissal without cause and a system for no-fault redundancy, which non-unionized employees do not have in the absence of statutory intervention. Rather, there is a presumed term that parties to a common law employment relationship of indefinite duration will give reasonable notice or pay damages in lieu. However, in *Wallace*, the Supreme Court of Canada innovated somewhat in finding that bad faith in termination of employment could give rise to a longer notice period.

[130] Taken narrowly, *Wallace* would not apply here, because Ms. Moon's employment was for specified terms of three years and renewal was dependent on re-election. As a result, the common-law presumption of reasonable notice would not apply to her office. Ms. Moon did not have a common-law employer who could fire her during the course of her term: she could only be removed in accordance with the constitution of the Local and the International. By the same token, she did not have any expectation of remaining in office if she was defeated in a valid election.

[131] In the landmark decision of *Bhasin v. Hrynew*, 2014 SCC 71, the Supreme Court of Canada went further than it had in *Wallace* and established that "good faith contractual performance" is an "organizing *principle*" of the common law of contract in Canada, which can, in turn, underpin more specific operational rules, such as the recognition of legal *duties*. As *Bhasin* emphasizes, it is important not to confuse the two levels of analysis: an organizing principle is not an operational rule and therefore is not — or at least not directly — the basis for liability.

[132] In *Bhasin* itself, the Supreme Court of Canada recognized a *duty* of "honest performance" of contractual obligations. There is no doubt that this duty of honest performance applies to employment contracts and could, in the appropriate

circumstances, be a separate basis for liability of an employer: *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at para. 99 and *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26 at para. 40.

[133] What *Bhasin* did *not* do was recognize a general *duty* of good faith that applies in all contracts. Nor did it overturn the long-standing principle, asserted in *Wallace* that non-unionized employers do not have to have a good reason to discharge employees without cause, provided they give appropriate notice or damages in lieu thereof.

[134] In *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, the majority of the Supreme Court of Canada recognized, pursuant to the "principle" of good faith contractual performance, a more specific "duty" to exercise *discretion* provided for by a contract in good faith. Even if the contract itself sets out discretion as being unfettered, according to *Wastech*, it is still "constrained by good faith": *Wastech* at para. 62.

[135] The application of *Wastech* in the employment context is developing: *British Columbia v. Taylor*, 2024 BCCA 44. Clearly, it does apply in employment contexts. However, I find that it does not assist Ms. Moon.

[136] I will assume, for the sake of analysis, that the power the Executive Board had to release the Audit Report is properly conceptualized as a *contractual* power similar to the power to allocate waste among facilities that was at issue in *Wastech*.

[137] Under *Wastech*, the content of the duty of good faith is governed by the purpose for which the contractual power is granted. If the purpose for which it is actually used is contrary to that purpose and is improper, relative to the expectations underlying the contract, then the decision will not be in good faith. However, if the purpose of the use is consistent with the purpose for which it was granted, then it is not a question of whether it was exercised in a "morally opportune or wise fashion". In particular, in a business context, self-interest is not itself "bad faith". Thus the contractual duty to exercise discretion in good faith has to be rigorously

distinguished from a fiduciary duty, according to which the party with discretion must prioritize the interests of the person to whom the duty is owed.

[138] In this case, the more important distinction is between the duty of procedural fairness, which would exist in an administrative context, and the duty of good faith. The duty of good faith does require the Executive Board or other contractual decision maker to exercise their power in line with the reason for which it is given to them by the contract. But unlike the administrative law duty of procedural fairness, it does not give rise to an obligation to avoid a reasonable apprehension of bias or provide the procedural protections required by administrative law.

[139] As the Privacy Commissioner found, keeping the membership informed about the financial transactions of its officers with corporate credit cards is a legitimate purpose. Ms. Moon tries to argue that this purpose was polluted by the political opposition she faced from at least some of the members of the executive, especially in light of her prior actions of bringing charges against them.

[140] The purpose for which the Executive Board had the power to communicate with the membership was the governance of the Local. The Audit Report was relevant to that purpose. It would therefore be inappropriate “judicial moralism” for me to inquire into the wisdom of its decision.

[141] I accept that the Executive Board did not — and could not —- have the kind of impartiality that would be expected of an administrative or judicial decision maker when it took the step of releasing the Audit Report. I also agree that it was not necessarily under a legal *duty* to release the Audit Report. However, it acted pursuant to legal advice and what it revealed was true. The membership had an interest in how its officers used Local property, which included the credit card.

[142] In this case, the appropriate context is not of business competition, but it is of internal union politics. That is also a potentially competitive business. The Board certainly could not make up dirt on a political opponent and there would be legal

remedies if it did so. But it was not obliged to put aside all partisanship as an administrative or judicial tribunal would be.

[143] The decision to include all the transactions in unredacted form violated *PIPA*, but I am not prepared to find it was contrary to the duty of good faith. This decision was based on legal advice. I will address the provision of legal advice at greater length in relation to the tort of negligence.

[144] There cannot be an expectation of renewal for an elected position. There is not a "duty of good faith" for the electorate. Rather, there is a principle of good faith that has to be consistent with the intention of the contract in the exercise of discretion by the Executive Board and other agencies of the Local.

[145] I do find, pursuant to the decision in *Wells v. Newfoundland*, 1999 CanLII 657 (SCC), [1999] 3 S.C.R. 199, that there was a contract of employment, nowithstanding Ms. Moon's status as an officer without a supervisor empowered to fire her. But this contract must have provided for termination of employment on loss of valid election. Validity of election was upheld by the International Union and the possibility of review was denied by Justice Sukstorf. There was therefore no breach of contract.

Section 1 of the *Privacy Act*

[146] The second cause of action pleaded by Ms. Moon is under the *Privacy Act*, R.S.B.C. 1996, c. 373. Section 1 (1) of that *Act* makes it a tort "actionable without proof of damage" for "a person, wilfully and without a claim of right, to violate the privacy of another."

[147] The elements of a claim under s. 1 of the *Privacy Act* were stated in *G.D. v. South Coast British Columbia Transportation Authority*, 2024 BCCA 252 [*G.D.*] at para. 42 as follows:

> a) Did the plaintiff have a subjective expectation of privacy in the information, and what was it?

b) Was the plaintiff's expectation of privacy reasonable in all the circumstances?

c) What was the act or conduct of the defendant said to violate that reasonable expectation of privacy?

d) Does any defence under the statute apply to the defendant's act or conduct, such as a "claim of right", or any of the defences in s. 2?

e) Was the defendant's act or conduct (including omissions), a *wilful* violation of the plaintiff's privacy?

[148] The defence of "claim of right" arises when the defendant had an honest set of beliefs that, if true, would constitute a legal justification or excuse: *Hollinsworth v. BCTV*, 59 B.C.L.R. (3d) 121, 1998 CanLII 6527 (C.A.) at para. 30. As *G.D.* makes clear, a "wilful" violation includes both intentional and reckless conduct, and the court should bear in mind the reasonable expectation of privacy at issue in the case and considering the nature, incidence and occasion of the act or conduct and any domestic or other relationship between the parties and any other relevant circumstances. However, unintentional conduct that does not rise to the level of recklessness cannot be considered wilful.

[149] In this case, while Ms. Moon may have had a subjective expectation that the fact of her use of the credit card contrary to Local policy would not be disclosed, that expectation was not objectively reasonable. However, her expectation that the specifics of individual transactions would not be shared was reasonable, as the Privacy Commissioner's decision makes clear. Thus, the release of the Audit Report violated those expectations and would therefore lead to liability if "willful", unless there is a defence, such as claim of right or those set out in s. 2 of the *Privacy Act.*

[150] I will turn first to the defences.

[151] While the Local and the individual defendants received legal advice that disclosure of these details would not be contrary to *PIPA*, that advice turned out to

be wrong. Since this is an error of law, not of facts, it does not constitute a defence of claim of right.

[152] In my view, none of the defences in s. 2 apply to the release of the specific transactions (as opposed to the investigation and existence of the Audit Report itself, which I have already found did not violate an objectively reasonable expectation of privacy).

[153] The question then arises as to whether the breach was “wilful”. In my view, the fact that it was made after taking legal advice means it was not. Reliance on a solicitor’s opinion is a defence to negligence, so it must negate a suggestion of “recklessness”: *Fullowka v. Pinkerton's of Canada Ltd.*, 2010 SCC 5.

[154] If an entity obtains incorrect legal advice about its obligations under *PIPA*, it may be sued under *PIPA*, but that requires, unlike an action under the *Privacy Act*, proof of “actual harm”. The entity cannot be sued under the *Privacy Act* if its breach was not wilful, and an entity that takes the trouble to obtain legal advice about the scope of its obligations, and then acts within the scope of that opinion, cannot be said to act wilfully.

[155] Unions are not vicariously liable for the actions of its members, as opposed to its executive or employees: *Fullowka* at para. 149. The post-January leaks could have been from anyone in the membership and therefore, while wilful, do not give rise to any liability for the defendants.

[156] The earliest leak was very likely the responsibility of an employee of the Local or a member of the Executive Board, the Audit Committee or of the Executive Committee. It is clear from *Fullowka* that the Local is vicariously liable for the acts of its employees or executive board. Whether it would be responsible for an act or omission by a member of an intermediary governance like the Audit Committee or the Executive Committee is less clear.

[157] In *Fullowka*, the Supreme Court of Canada established that the question of the scope of persons and their activities for which an organization like a union

should be liable depends on whether (a) there is already clear precedent establishing vicarious liability or (b) there is a sufficiently close relationship between the person and the union such that the purposes of vicarious liability would be fulfilled by establishing no-fault responsibility for the acts of those persons: *Fullowka* at paras. 147–148.

[158] While it is established that a local is vicariously liable for the acts or omissions of its staff and its executive officers, and not for its members, it is not established for intermediary governance institutions. In my view, it would overshoot the purposes of vicarious liability to make the local vicariously liable for everything a person in one of those bodies does. It may be vicariously liable for their fulfillment of their core functions under the union constitution, but it must be recognized that in a democratic institution like a union, the intermediary governance institutions are themselves vehicles of accountability, and they are therefore not either management of the local nor are they under its control. I have concerns that if vicarious liability were established, it would put unions and other non-governmental bodies in an impossible position. They would either have to put controls over their intermediary bodies inconsistent with their mission to provide accountability, or they would put the union or other organization in the position of being liable for matters they could not possibly control.

[159] To be sure, just because there is not *vicarious* (i.e. no-fault) liability for what members of intermediary governance bodies do, that does not mean their actions can never expose the Local to liability. But they can only do that if the staff or central executive acted in a way that meets the standard of liability, whether negligence or, in this case, “wifulness”. So if the Executive Board acted recklessly in permitting members of the Executive Committee to view the Report, then the Local would be liable. But I do not find this to be the case. Even if the Local’s strategy for sharing the Audit Report with the members of the Executive Committee was imperfect, it indicates some thought, and I find it was not *wilful*.

[160] While Ms. Moon has suspicions that one or more of the named defendants might have been responsible for the leak, she has no evidence.

[161] It follows that the Local and the named defendants are not liable under the *Privacy Act*.

Tort of Public Disclosure of Private Fact

[162] The next cause of action pleaded by Ms. Moon is the alleged common law tort of public disclosure of private fact. In her decision indexed at 2024 BCSC 1560, Madam Justice Sukstorf dismissed the defendants' application to strike this claim, on the grounds that the case law on whether such a tort exists in British Columbia is mixed and therefore it is not "bound to fail": paras. 202–213.

[163] As Madam Justice Sukstorf noted, in its most recent comment on the matter, the Court of Appeal said the existence of a non-statutory privacy tort in British Columbia is "unsettled": *Insurance Corporation of British Columbia v. Ari*, 2023 BCCA 331 at para. 69, citing *Tucci v. Peoples Trust Company*, 2020 BCCA 246 at paras. 53–68.

[164] While Madam Justice Sukstorf had to determine whether the pleading was "plainly and obviously" doomed to fail, I am in the different position of having to determine whether such a tort is made out in a summary trial. This is obviously difficult to do in light of the assertion by the Court of Appeal that the issue remains unsettled.

[165] As Madam Justice Sukstorf discussed, when faced with the issue, this court has always determined that no common law tort of invasion of privacy exists, in light of the existence of the *Privacy Act*; see *Hung v. Gardiner*, 2002 BCSC, aff'd 2003 BCCA 257; *Bracken v. Vancouver Police Board*, 2006 BCSC 189; *Demcak v. Vo*, 2013 BCSC 899.

[166] Under the test set out in *Re Hansard Spruce Mills*, 1954 CanLII 253, [1954] 4 D.L.R. 590 (B.C.S.C), I should only go against these decisions if:

a) Subsequent decisions have affected the validity of the impugned judgment;

b) It is demonstrated that some binding authority in case law, or some relevant statute was not considered;

c) The judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

[167] Categories (b) and (c) in *Hansard Spruce Mills* do not apply, but arguably *Tucci* and *Ari* are “subsequent decisions” that have “affected”, albeit not overruled, the cases that would otherwise operate with horizontal *stare decisis* force on me. I must therefore consider the question from first principles, but while giving weight to the decisions of my fellow Supreme Court judges.

[168] I find that it is not appropriate to recognize a new common law tort relating to privacy.

[169] While I accept that it is possible for the courts to recognize a new nominate tort, it is obviously an extraordinary and *quasi*-legislative act for a court of law to take. It should be done with great caution and really only when there is a clear gap in the law that flies in the face of a strong societal consensus that the circumstances call for civil liability. Otherwise, the court would be taking on a legislative role that should be left to those accountable to the people. We would be doing this without hearing from interest groups that might be affected and without access to policy staff or legislative drafters. It is really not something we should do, except in the clearest of circumstances.

[170] In their partially dissenting judgment in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, Justices Brown and Rowe found in the jurisprudence “three clear rules” for when a new nominate tort should *not* be recognized:

a) Where there are alternative remedies;

b) Where the tort does not reflect and address a wrong visited by one person on another;

c) Where the change to the legal system would be indeterminate or substantial.

[171] While this statement is not found in a binding judgment of the Supreme Court of Canada, it has been adopted by lower courts in *ES v. Shillington*, 2021 ABQB 739 and *S.B. v. D.H.*, 2022 SKKB 216. In my view, these cautions just follow from the judicial role in the development of the common law, which is not to impose new laws on society, but to apply long-standing principles to new social and technological circumstances.

[172] While I accept that a nominate tort of public disclosure of private facts would reflect and address a wrong by one person on another, there already exist alternate remedies, in the form of the *Privacy Act* and *PIPA* and a new nominate tort, without the legislative limits of those statutory schemes, would inevitably work a change in the legal system that is both indeterminate (because it would require further case law to make determinate) and substantial (because the dimensions of “privacy” are of great importance to society and economy and the effect of civil liability for breaching it would affect many interests, including some, such as freedom of expression, that are constitutionally-protected).

[173] In my view, it would be irresponsible of me to try to craft a cause of action for the protection of privacy without either political debate or expert assistance. I also find that the balance created by the interaction of s. 1 of the *Privacy Act* (providing for damages without proof of injury for “wilful” violations of privacy) and s. 57 of *PIPA* (allowing strict liability for breaches of the *Act* if shown to create “actual harm”) is well thought out and has democratic legitimacy.

[174] I am therefore not prepared to follow Ms. Moon's invitation to create a new tort. If that is to occur, it should either be by the Court of Appeal or by the Legislature.

Tort of Negligence

[175] The next cause of action alleged by Ms. Moon is negligence.

[176] I agree with Ms. Moon that the Local owed her a duty of care to protect her personal information from use or disclosure that could cause her damage or injury. I adopt the analysis of Madam Justice Sukstorf in this regard.

[177] However, I disagree that the disclosure of the Audit Report, even including the unnecessary details of financial transactions, breached the relevant standard of care.

[178] The Local asked for, and received, legal advice about whether it could disclose those transactions consistent with *PIPA*. At the time, there does not appear to have been any decisions from the Privacy Commissioner right on point. And the advice they received was that they could release all the transactions on the Local's business credit card to the membership.

[179] In *Fullowka*, mining inspectors working for the government of the Northwest Territories were given the legal advice that they had no jurisdiction to address dangers arising from an industrial dispute. This meant they did not take action during the course of a bitter strike in 1992 at the Giant Mine near Yellowknife, in which the company employed replacement workers despite violence between the strikers, company security and replacement workers. Ultimately, a striker set an explosion that caused the deaths of several replacement workers. Their families sued, among others, the territorial government for the lack of action by the mining inspectors responsible for mine safety.

[180] The Supreme Court of Canada found that the legal advice about jurisdiction was wrong and that the territorial government owed a duty of care to the deceased

miners. However, at para. 89, the Court held that the territorial government met the standard of care by "refraining from taking action that they believed, on good faith and on the basis of reputable, professional legal advice, to be unlawful." To hold otherwise would mean the government would have to do what it believed, on the best advice available to it, to be unlawful or else face liability in damages.

[181] I recognize that *Fullowka* does not mean that it is always a defence to negligence to obtain legal advice ahead of time. But in my view, the Local was in an analogous situation to a government trying to determine whether one of two courses is dictated by its policy priorities and legal constraints. To be sure, the Local did not receive the advice that failing to disclose the transactions would be *unlawful*. But the Executive Board felt itself to be under some kind of obligation to inform the membership about what had happened. They could have deleted the specific transactions, and in retrospect they clearly should have, but the advice they received was that this was unnecessary.

[182] I find that they were therefore not negligent to release all the details in the Report, even though that turned out to be incorrect in retrospect.

[183] With respect to the leak to the membership in January 2019, even if it could be attributed to the Local's negligence in securing the draft of the Report, it did not cause any damage because the information contained was essentially the same as in the final version of the Report. The leak to the online news source cannot be attributed to the Local, since it really could have come from anyone within the membership.

[184] Therefore the elements of negligence are not made out.

Tort of Lawful Act Conspiracy

[185] Ms. Moon also pleads civil conspiracy. Unlike her other causes of action, this one is brought specifically against the named, individual, defendants, not the Local. The acts said to be a conspiracy must therefore have been a concerted act of all or some of them.

[186] As explained by Estey J. in *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, 1983 CanLII 23 (SCC), [1983] 1 S.C.R. 452 at p. 471, there are two variants of civil conspiracy if more than one person combines to cause the plaintiff damage:

> a) whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff (“lawful act conspiracy”); or,
>
> b) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result (“unlawful act conspiracy”).

[187] In both cases, actual damage must result from the act taken in combination by the defendants.

[188] In the late 19th and early 20th century, civil conspiracy, like the other economic torts, was routinely used against strikes, which of course are always intended to hurt an employer’s business. This was objected to, especially in the case of “lawful act” conspiracy, since regular business competition, which has never been considered tortious, was distinguished from the attempt by workers to obtain a better arrangement, even through legal means. Possibly in response to this criticism, the courts in the course of the 20th century narrowed the ambit of both branches of the tort.

[189] In the case of “lawful act” conspiracy, the “object” of the act must be the harm to the plaintiff, for its own sake, not the legitimate interest, including self-interest, of the defendants: *Crofter Hand Woven Harris Tweed Co. v. Veitch*, [1942] A.C. 435 (H.L.).

[190] In my view, there is no basis for a claim of lawful act civil conspiracy. The Executive Board in January 2019 struggled with releasing the Report, including with the optics of “retaliation” and concern about litigation from Ms. Moon and ultimately

decided to do so based on legal advice as a way of promoting transparency. There is no evidence that the Board was motivated by anything other than wanting to be transparent.

[191] Even if the Board were motivated by political opposition to Ms. Moon's re-election, it is not tortious to try to accomplish this by lawful means. *Crofter* explains why the motivation that would make otherwise lawful things tortious has to be interpreted very narrowly.

[192] Unlawful act conspiracy cannot apply to the release of the Report, as such, because that has been found by the Privacy Commissioner to be lawful. The release of the unredacted details of transactions turns out to have been unlawful, but I find that this did not, in itself, cause Ms. Moon damage. It did not cause her to lose the election and none of her evidence of psychological harm is specific to those transactions.

Is there "Actual Harm" Within the Meaning of s. 57 of *PIPA*?

[193] Finally, I must consider Ms. Moon's action under s. 57(1) of *PIPA*, which states as follows:

> If the commissioner has made an order under this Act against an organization and the order has become final as a result of there being no further right of appeal, an individual affected by the order has a cause of action against the organization for damages for actual harm that the individual has suffered as a result of the breach by the organization of obligations under this Act.

[194] Ms. Moon meets the pre-requisite for s. 57 of *PIPA*. The question is whether she has shown "actual harm" as a result of the breaches the Privacy Commissioner found.

[195] There is little case law on what the term "actual harm" means.

[196] This is an issue of statutory interpretation and should thus be decided with reference to the text, its context, and its purpose.

[197] In my view, a crucial part of the context is the fact that s. 1 of the *Privacy Act* provides for a statutory cause of action that is "actionable without proof of harm". On the one hand, the *Privacy Act* requires that the claimant show "wilfulness" while liability under *PIPA* can follow directly on a finding of the Privacy Commissioner that *PIPA* has been violated, regardless of state of mind. On the other hand, the *Privacy Act* permits exemplary damages and damages for intangible harms, while s. 57 of *PIPA* requires "actual harm". In my view, this is a coherent regime that works together. It makes sense that a higher standard for state of mind should correspond to a wider ambit for damages. Organizations should not face civil liability for intangible harms, unless they have acted intentionally or recklessly. On the other hand, if they cause tangible harm, such as, but not limited to, financial loss, then they should have to compensate for anything that can be attributed to a breach of the regulatory scheme.

[198] For this interlocking scheme to work, the standard for "actual harm" must be a high one. Loss of a job would certainly count, but I have found that Ms. Moon's loss in the November 2019 election cannot be attributed to the Local's violations of *PIPA*. In my view, Ms. Moon's psychological distress, although real, is not clearly attributable to the *PIPA* violations and, in any event, is not sufficient to meet the standard of "actual harm", although it would be the basis for damages under the *Privacy Act* had I found wilful misconduct. Since I did not, the Local is not liable under either statute.

Conclusion and Order

[199] I therefore dismiss the action against all the defendants, except John Doe.

[200] Costs can be spoken to after the break.

"J. G. Morley, J."
The Honourable Justice Morley