

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *TELUS Communications Inc. v. Telecommunications Workers Union*,  
2026 BCCA 5

Date: 20260113  
Docket: CA50115

Between:

**TELUS Communications Inc.**

Appellant  
(Respondent)

And

**Telecommunications Workers Union,  
United Steelworkers Local Union 1944**

Respondent  
(Applicant)

Before: The Honourable Madam Justice DeWitt-Van Oosten  
The Honourable Justice Gomery  
The Honourable Justice Warren

On appeal from: An order of the Supreme Court of British Columbia, dated  
August 8, 2024 (*Telecommunications Workers Union v. TELUS  
Communications Inc.*, 2024 BCSC 1613, Vancouver Docket S245097).

Counsel for the Appellant: P.D. McLean

Counsel for the Respondent: R.C. Gordon, K.C.  
R. Ahluwalia

Place and Date of Hearing: Vancouver, British Columbia  
December 8, 2025

Place and Date of Judgment: Vancouver, British Columbia  
January 13, 2026

**Written Reasons by:**

The Honourable Madam Justice DeWitt-Van Oosten

**Concurred in by:**

The Honourable Justice Gomery  
The Honourable Justice Warren

**Summary:**

*This is an appeal from an interim injunction granted in the federal labour relations context. The primary issue on appeal is whether the British Columbia Supreme Court has jurisdiction to grant interim injunctive relief before the appointment of an arbitrator. HELD: Appeal dismissed. An arbitrator in the federal labour relations context is statutorily empowered to grant interim injunctive relief; however, the judge correctly held that until the arbitrator is in place and takes jurisdiction over the dispute, the Supreme Court has the inherent jurisdiction to grant the same type of relief. In doing so, the Court fills the remedial gap and ensures the availability of a forum to protect against irreparable harm.*

**Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:**

**Introduction**

[1] This appeal challenges an order granting an interim injunction against a federally regulated employer in the labour relations context. The injunction has since expired but legal questions arising from that proceeding will benefit from appellate consideration.

[2] On July 9, 2024, TELUS Communications Inc. (“TELUS”) notified the Telecommunications Workers Union, United Steelworkers Local Union 1944 (the “Union”) that it would consolidate certain call centres in four Canadian provinces and redistribute the work. Approximately 1,000 Union members were affected by the consolidations, almost all of whom worked remotely as customer experience agents. After the consolidations, the affected members would be required to work from the office three times per week. For 140 members, the consolidations required that they move from Barrie, Ontario to Montreal, Quebec.

[3] The members received written notification of the consolidations on July 10, 2024. TELUS gave them a choice: they could accept the job changes or take a voluntary severance package. They had to indicate their choice by August 9, 2024.

[4] On July 29, 2024, the Union filed two policy grievances under its collective agreement with TELUS, challenging the consolidations. The collective agreement provides for arbitration.

[5] On that same date, the Union also filed a notice of civil claim in the British Columbia Supreme Court seeking an interim injunction restraining TELUS from requiring affected members to indicate their election by August 9.

[6] The injunction application was heard on August 7, 2024. Judgment was released the next day. No arbitrator was yet in place. In its response to the request for injunctive relief, TELUS argued the Supreme Court should not grant an injunction because this was a matter within the exclusive authority of an arbitrator. The Union disagreed, submitting that until an arbitrator was in place, the Supreme Court had inherent authority to fill the remedial gap and prevent irreparable harm.

[7] The chambers judge agreed he had jurisdiction to grant injunctive relief in the circumstances. Applying *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117, he issued an interim injunction enjoining TELUS from requiring Union members to indicate their election by August 9, 2024. The injunction would expire two months after the appointment of an arbitrator, subject to written agreement between the parties or further court order.

[8] TELUS has appealed the injunction. I would dismiss the appeal.

### **Chambers Judgment**

[9] The decision to grant interim relief is indexed at 2024 BCSC 1613. It is not necessary to set out the surrounding circumstances as the appeal is focused on three discrete legal issues:

- a) Does a Supreme Court judge have jurisdiction to grant an interim injunction in the federal labour relations context before the appointment of an arbitrator?
- b) If an injunction is available, must it end the day an arbitrator is appointed?
- c) Is a judge obliged to require an undertaking as to damages?

[10] The judge answered the first of these questions in the affirmative and said no to the third. On the second issue, the judge limited the duration of the injunction to two months after the appointment of an arbitrator, with room for earlier termination.

[11] At the chambers hearing, TELUS argued the Supreme Court should (and effectively, can) only grant an interim injunction if the applicable labour arbitration process does not allow for that type of remedy. As noted, TELUS and the Union are governed by a collective agreement providing for arbitration. Section 60(1)(a.2) of the *Canada Labour Code*, R.S.C. 1985, c. L-2 applies to the arbitration process and empowers an appointed arbitrator to grant interim relief, including an injunction. Based on this authority, TELUS argued there was a remedial path allowing for the type of relief sought by the Union; consequently, the Supreme Court should not take jurisdiction.

[12] The judge disagreed, finding that TELUS' "tight timelines [for electing whether to accept the job changes or take severance] did not allow for the arbitral process to provide an adequate alternative remedy": at para. 44. Under the collective agreement, the Union has 30 days to file a policy grievance. Once a grievance has been filed, the collective agreement allows for up to 120 days before it becomes necessary for one of the parties to commence the arbitration process: at para. 46. These timelines can be expedited through co-operation, but the collective agreement does not mandate that either party do so. On the face of it, the collective agreement allows several months to pass between the filing of a grievance and the appointment of an arbitrator. During the interregnum, the Union must have an available remedial forum when needed.

[13] Specific to the question of damages, the judge accepted there was a "potential financial cost to TELUS from delay in implementing their desired [job] changes without the benefit of an undertaking from [the Union]". However, he understood that "such undertakings are not required in labour arbitrations in exchange for interim injunctions" and declined to make that order: at para. 55.

[14] The judge granted an injunction. However, appreciating the specialized labour expertise of arbitrators and the financial implications of an injunction for TELUS, the judge limited the duration of the order. Unless extended by consent or further court order, the injunction would terminate two months after the appointment of an arbitrator. The judge directed the parties to “reasonably cooperate in the expeditious commencement of the arbitration proceedings and selection of the arbitrator”: at paras. 59–61.

[15] An arbitrator was appointed four days after the injunction. The Union’s policy grievances were heard by the arbitrator in September 2024, he dismissed them on October 15, 2024, and he issued reasons for the dismissal on October 28, 2024. The injunction continued to run during that period, lapsing of its own accord once it reached the two-month end date. The arbitrator was not asked to replace the injunction or to determine whether injunctive relief was necessary during the arbitration. Nor did anyone return to the Supreme Court asking that the injunction be terminated early.

### **Discussion**

[16] As stated, the appeal raises three discrete issues: a) whether a Supreme Court judge has jurisdiction to grant an interim injunction in the federal labour relations context before the appointment of an arbitrator; b) if so, whether the injunction must end upon the appointment of an arbitrator; and c) when a judge grants injunctive relief, whether it requires an undertaking as to damages.

[17] I will address each of these issues in turn. Before that, I will consider a preliminary request by the Union that the appeal be dismissed as moot.

#### **Should the appeal be dismissed for mootness?**

[18] The injunction has lapsed, and the policy grievances have fully resolved. Relying on *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 1989 CanLII 123 and subsequent authorities, the Union says the appeal is moot and this Court should decline to hear it because an appellate decision on the jurisdictional

validity of the injunction will have no practical utility. Furthermore, the Union submits that in deciding the jurisdictional issue, the judge applied well-established legal principles and the appeal raises no new or important questions of broad interest. As such, there is no need for appellate guidance.

[19] TELUS accepts that the concrete dispute between the parties has resolved, and the case is therefore factually moot. However, it says this Court should nonetheless exercise its discretion under the second step of the *Borowski* analysis and hear the appeal. An adversarial context remains because of the parties' ongoing labour relations and collective bargaining relationship; both sides are prepared to fully argue the appeal; the jurisdictional question carries national importance for federally regulated employers; and there is no risk that in deciding the appeal, this Court will inappropriately stray into the legislative sphere.

[20] I am not persuaded we should decline to hear the appeal. I appreciate there are likely cases in which appeal courts have declined to proceed with an appeal in similar circumstances (see, for example, *Yukon Teachers' Association v. Yukon (Government)*, 2011 YKCA 4); however, dismissal for mootness is considered case-by-case and contextually informed.

[21] Applying the second step of the *Borowski* analysis to this case, I am satisfied an adversarial context continues to exist between the parties: *Borowski* at 358–359. They have appeared before us fully prepared to argue the issues raised by TELUS. The grievance timelines under their collective agreement allow for a months-long period between the filing of a grievance and the appointment of an arbitrator. In that context, the existence and scope of the Supreme Court's jurisdiction to involve itself in their disputes may rise again. No one has suggested these timelines are anomalous; as such, there may be other collective agreements that are similarly structured and would benefit from this Court's jurisdictional analysis. The factual scenario raised here (a pre-appointment remedial gap) is not addressed in *Brotherhood of Maintenance of Way Employees Canadian Pacific System*

*Federation v. Canadian Pacific Limited*, [1996] 2 S.C.R. 495, 1996 CanLII 215 [Canadian Pacific], the decision the Union says is dispositive of TELUS' complaint.

[22] Finally, resolving the legal issues raised in the appeal is consistent with this Court's adjudicative role and does not risk us straying into the legislative sphere. In *International Brotherhood of Electrical Workers, Local Union 2085 et al. v. Winnipeg Builders' Exchange et al.*, [1967] S.C.R. 628, 1967 CanLII 116, the Supreme Court of Canada addressed the validity of an injunction that prohibited certain strike action even though the strike had ended. Answering the legal question in that case did not take the Court outside its proper role: at 637.

[23] I would not accede to the Union's request.

**Did the Supreme Court have jurisdiction to enjoin?**

[24] The parties agree that in the federal labour relations context, superior courts retain a residual discretionary power to grant interlocutory relief where an adequate alternative remedy is not available. This power emanates from the courts' inherent jurisdiction and in British Columbia, it finds form in the *Law and Equity Act*, R.S.B.C. 1996, c. 253:

- 39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.
- (2) An order made under subsection (1) may be made either unconditionally or on terms and conditions the court thinks just.

...

[Emphasis added.]

[25] The Supreme Court of Canada affirmed the existence of a residual discretionary power in *Canadian Pacific*:

5 The governing principle on this issue is that notwithstanding the existence of a comprehensive code for settling labour disputes, where "no adequate alternative remedy exists" the courts retain a residual discretionary power to grant interlocutory relief such as injunctions, a power which flows from the inherent jurisdiction of the courts over interlocutory matters: *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union*,

*Local 219*, 1986 CanLII 71 (SCC), [1986] 1 S.C.R. 704, at p. 727. The "residual discretionary jurisdiction in courts of inherent jurisdiction to grant relief not available under the statutory arbitration scheme" was most recently affirmed by this Court in *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC), [1995] 2 S.C.R. 929, at paras. 41, 54, 57 and 67, and *New Brunswick v. O'Leary*, 1995 CanLII 109 (SCC), [1995] 2 S.C.R. 967, at para. 3.

[Emphasis added.]

[26] Although the parties agree on the existence of this power, they disagree on whether the power was available in the circumstances of this case.

[27] TELUS argues that because s. 60(1)(a.2) of the *Canada Labour Code* authorizes an arbitrator to make any interim order they "[consider] appropriate", including an order for injunctive relief, there is no remedial gap and the judge had no jurisdiction to step in. Section 60(1)(a.2) was not in existence when *Canadian Pacific* was decided by the Supreme Court of Canada and TELUS says that provision has filled the statutory void justifying court-based interlocutory relief in that case.

[28] In support of its position, TELUS points to *P.S.A.C., Local Y022 v. Whitehorse (City)*, 2000 YTSC 20 [*P.S.A.C.*], a case decided after the enactment of s. 60(1)(a.2) in which a bargaining agent applied for injunctive relief in support of one or more outstanding grievances. A superior court judge denied the application, concluding that s. 60(1)(a.2) "enlarged" the jurisdiction of arbitrators under the *Canada Labour Code*. As injunctive relief is now "provided by the statute", "[t]here is no longer any gap": at para. 12.

[29] The Union says there was a gap in this case, notwithstanding s. 60(1)(a.2), because when it applied for an interim injunction, no arbitrator had been appointed. Consequently, there was no one in place with the authority to invoke the statutory power and the only forum the Union could access to prevent irreparable harm to members affected by the anticipated job changes was the Supreme Court. On a combined reading of s. 3 and s. 60(1)(a.2) of the *Canada Labour Code*, the "arbitrator" with authority to make "interim orders" is the "arbitrator selected by the parties to a collective agreement or appointed by the Minister ..." (emphasis added).

From this, I infer that the selection or ministerial appointment process must complete before s. 60(1)(a.2) is available.

[30] From the Union's perspective, the fact that the *Canada Labour Code* expressly empowers arbitrators to grant interim relief did not preclude judicial intervention. The broader principle affirmed in *Canadian Pacific* remained applicable: "no adequate alternative remedy exist[ed]" at the time of the Union's application, and with that contextual reality, it was entitled to look to a superior court for interim relief: *Canadian Pacific* at para. 5, citing *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704 at 727, 1986 CanLII 71 [St. Anne]. In its factum, the Union argues there is "no principled or substantive distinction between the jurisdictional gap in this case and the one in *Canadian Pacific*".

[31] Whether the Supreme Court has jurisdiction to grant interlocutory relief before an arbitrator is in place raises a question of law. Consequently, a correctness standard of review applies: *Westfair Foods Ltd. v. Saanich (District of)* (1997), 49 B.C.L.R. (3d) 299 at para. 19, 1997 CanLII 3686 (C.A.); *Bruce v. Cohon*, 2017 BCCA 186 at para. 75, internal references omitted.

[32] I agree with the judge that because the collective agreement at issue here allows for delay between the filing of a grievance and the appointment of an arbitrator, there is a remedial gap within the meaning of *Canadian Pacific* and the Supreme Court had jurisdiction to grant interim relief exercising its residual discretionary power. The plain fact is that until an arbitrator was in place, there was no tribunal in existence and available to the Union under the collective agreement or the statutory scheme that could grant the relief sought. As found by the judge, the Union's affected members were facing the prospect of irreparable harm, and a forum was necessary to address that issue. With this practical reality, I do not find *P.S.A.C.* (cited by TELUS) persuasive. It is unclear whether an arbitrator was in place at the time the bargaining agent in *P.S.A.C.* filed its application for interim relief; in any event, that decision is not binding on this Court.

[33] TELUS is correct to point out that s. 60(1)(a.2) of the *Canada Labour Code* filled the specific void identified in *Canadian Pacific*, namely, a factual scenario in which neither the collective agreement nor the “machinery provided under the *Canada Labour Code*” offered a jurisdictional path to secure the postponement of intended job changes: at para. 6. However, it is also the case that *Canadian Pacific* stands for a broader proposition. It holds that where there is a “possibility” events will produce a difficulty not foreseen by the collective agreement and the statutory scheme that govern a labour relations relationship:

8 ... It is important ... that there be a tribunal capable of resolving the matter, if a legal, rather than extra-legal, solution is to be found. It is precisely for this reason that the common law developed the notion of courts of inherent jurisdiction. If the rule of law is not to be reduced to a patchwork, sometime thing, there must be a body to which disputants may turn where statutes and statutory schemes offer no relief.

[Emphasis added.]

[34] In this case, the only “tribunal capable of resolving the matter” of irreparable harm at the time of the injunction application was the Supreme Court.

[35] I reject TELUS’ submission that recognizing a residual discretionary power in the Supreme Court before the appointment of an arbitrator will do “violence” to the labour relations scheme (citing *St. Anne* at 721). As affirmed in *Canadian Pacific*, “deference to labour tribunals and exclusivity of jurisdiction to an arbitrator are not inconsistent with a residual jurisdiction in the courts to grant relief unavailable under the statutory labour scheme”: at para. 7.

[36] In *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, the Supreme Court of Canada emphasized that “statutory tribunals require jurisdictional space ... to do their jobs”. At the same time, the Court recognized that “courts of course retain residual jurisdiction to hear matters not conferred on other bodies”: at para. 73, citing *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14 at para. 26. When the Union applied for an injunction, there was no “other bod[y]” that could grant the relief sought. The arbitration process, as it stood at the time of the application, was unable to address the Union’s immediate need.

**Must an injunction end upon the appointment of an arbitrator?**

[37] In its written submissions, TELUS contends that “[w]hen statutory tribunals are established, courts should give way to this special grant of jurisdiction so as not to undermine the benefits intended by the legislature” (citing *Northern Regional Health Authority* at para. 73). Consequently, it submits the judge erred in setting an expiry date of two months past the appointment of an arbitrator. TELUS says doing so amounted to an “unwarranted interference in the integrity and autonomy of the arbitration process”.

[38] I agree it would have been preferable for the judge to craft the injunction in a way that avoided the possibility of overlapping interim relief or inconsistent decisions between the Supreme Court and the appointed arbitrator on the appropriateness of an injunction. He could have done so by ordering that the injunction automatically terminate once an arbitrator was appointed and assumed jurisdiction over the parties’ dispute in accordance with the terms of the collective agreement and within the meaning of the statutory scheme.

[39] However, crafting the terms of an injunction involves discretion and I would not find that standing alone, the two-month expiry date justifies appellate intervention. It is readily apparent the judge was alive to the interim nature of the remedy he granted, recognized that once an arbitrator was in place, the latter was the decision maker with “domain” over injunctive relief and TELUS could raise the issue with the arbitrator, and he included terms allowing for an amendment or earlier termination of the injunction by written agreement or a further court order: at paras. 55–60. This flexibility provided for the amelioration of prejudice at TELUS’ behest.

[40] Finally, TELUS submits that even if the superior courts carry a residual discretionary power to grant relief before the appointment of an arbitrator, the courts should not exercise that power in cases where the inability to access an arbitrator arises from timelines negotiated under the collective agreement. TELUS contends that in those circumstances, the parties have finalized their collective agreement

with the understanding (and thereby acceptance) that their agreed-upon process eliminates the possibility of interim relief until an appointment occurs.

[41] I do not find this proposition tenable. In its practical effect, it would mean that the only way to ensure the availability of interim relief to prevent irreparable harm pre-appointment would be to negotiate a collective agreement that provides for the automatic appointment of an arbitrator on the same day a grievance is filed. The unworkability of that scenario is self-evident.

**Was an undertaking as to damages required?**

[42] That brings me to the third issue on appeal.

[43] TELUS submits that once the judge decided in favour of an injunction, he should have required an undertaking as to damages. In advancing this position, TELUS points to *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2020 BCCA 120, in which this Court recognized the “longstanding practice” of requiring that an applicant for injunctive relief undertake as to damages to “address the fact that while an injunction may cause harm to the defendant, no cause of action arises from compliance with a court order”: at paras. 64–65, 99–100.

[44] Consistent with the position it took in the Court below, TELUS accepts that undertakings are discretionary and not typically required by labour relations arbitrators when they grant interim relief. However, it says this does not mean a judge should assume undertakings are prohibited. TELUS contends that something other than the typical approach is justified when injunctive relief is sought from a superior court, rather than an arbitrator, because a court is unable to remedy losses sustained by the enjoined party in the event the grievance fails on the merits. TELUS argues the judge erred in principle in declining to require an undertaking. Rather than consider himself bound by the general approach in arbitration proceedings, he should have asked whether the different forum made a difference.

[45] In response, the Union says that whether a judge requires an undertaking is highly discretionary. Indeed, R. 10-4 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, pleaded by the Union, recognizes the discretionary nature of this order. The Union argues it is apparent from the judge's reasons read as a whole that he understood the fact that requiring an undertaking is discretionary, turned his mind to relevant informing factors (including the potential for financial prejudice to TELUS), and decided he could sufficiently ameliorate that prejudice by limiting the injunction to two months and allowing for its termination before then by consent, by further court order, or by TELUS raising the issue before the arbitrator. If TELUS chose the latter route and failed to persuade the arbitrator an injunction was unnecessary, it could revisit the question of an undertaking. The judge also directed that the parties "reasonably cooperate in the expeditious commencement of the arbitration proceedings and selection of the arbitrator": at paras. 56–61. The Union says the judge did not err in his exercise of discretion and TELUS has not established a principled basis for appellate intervention with this aspect of the judgment.

[46] The judge's discretionary decision to not require an undertaking attracts a deferential standard of review and cannot be overturned in the absence of TELUS establishing a material error of law or principle, or a palpable and overriding error of fact: *Interfor Corporation v. Mackenzie Sawmill Ltd.*, 2022 BCCA 228 at para. 26.

[47] In my view, TELUS has not met this burden. The fact that another judge may have exercised their discretion differently does not mean this judge erred. On a functional and contextual review of the reasons for judgment, I am satisfied the judge did not misdirect himself on the law surrounding undertakings, misapprehend the record, fail to consider relevant factors, or wrongly emphasize one factor over another. Instead, as I interpret his reasons, he simply concluded that given the short duration of the interim injunction, the ability of TELUS to challenge the need for an injunction once before the arbitrator, and his direction that the proceedings be expedited, the usual approach taken to undertakings in the labour relations realm

(a relevant consideration) was also appropriate here. This was an individualized assessment and TELUS has not displaced the deferential standard of review.

**Disposition**

[48] For these reasons, I would dismiss the appeal.

“The Honourable Madam Justice DeWitt-Van Oosten”

I AGREE:

“The Honourable Justice Gomery”

I AGREE:

“The Honourable Justice Warren”