

**Date: 20070913**

**Dockets: A-192-05  
A-602-05**

**Citation: 2007 FCA 285**

**CORAM: LINDEN J.A.  
LÉTOURNEAU J.A.  
TRUDEL J.A.**

**A-192-05**

**BETWEEN:**

**TD CANADA TRUST**

**Applicant**

**and**

**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION  
(UNITED STEEL WORKERS)**

**Respondents**

**A-602-05**

**BETWEEN:**

**TD CANADA TRUST**

**Applicant**

**and**

**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION  
(UNITED STEEL WORKERS), CARINA BOUFFARD, ROBERTA ISRAELSON, RITA  
LARSEN, SANDI MERRYLEES, LAURA NEWMAN, AMY PRESEAU, SANDRA  
SCHMID and JOAN ZELINSKY**

**Respondents**

Heard at Toronto, Ontario, on September 11, 2007.  
Judgment delivered at Toronto, Ontario, on September 13, 2007.

**REASONS FOR JUDGMENT BY:**

**LINDEN J.A.**

**CONCURRED IN BY:**

**LÉTOURNEAU J.A.  
TRUDEL J.A.**

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(UNITED STEEL WORKERS), CARINA BOUFFARD, ROBERTA ISRAELSON, RITA  
LARSEN, SANDI MERRYLEES, LAURA NEWMAN, AMY PRESEAU, SANDRA  
SCHMID and JOAN ZELINSKY**

**Respondents**

## **REASONS FOR JUDGMENT**

### **LINDEN J.A.**

[1] This judicial review is about whether the Lively Seven, as the seven employees of the TD Canada Trust branch in Lively, Ontario are called, can avoid being situated in a bargaining unit, including approximately 111 employees of eight TD Canada Trust (TD) branches in the Sudbury, Ontario area, which was certified by the Canada Industrial Relations Board (the Board) and confirmed in a reconsideration hearing.

[2] Two issues of natural justice that were raised by counsel for TD and counsel for the seven employees deserve consideration. The first contention was that the investigation undertaken on behalf of the Board into allegations of intimidation and coercion by union representatives was insufficient and procedurally unfair, amounting to a failure to investigate. In my view, this ground cannot succeed.

[3] The intimidation allegations made by the employees complained about unannounced evening visits by union representatives to their homes. These visitors were persistent and sometimes stayed beyond their welcome. The investigator found this conduct not to be serious enough to amount to intimidation or coercion. While perhaps not as thorough an investigation as the applicants would have liked, the investigator did interview three of the seven complainants before reporting to the Board, partially in confidence, as is customary to protect the employees. None of the complainants alleged that they signed membership cards as a result of any intimidation, although the only one who did sign indicated that afterwards she was sorry she did so. There was no allegation of

violence or threats of violence. There was merely persistent, perhaps overly enthusiastic largely unsuccessful attempts at persuasion. The Board is entitled to considerable deference in procedural matters. (*Telus Communications v. Telecommunications Workers Union*, [2005] F.C.J. No. 1253) It is largely the master of its own procedure, which should not be examined under a microscope. There is no basis for finding any denial of natural justice on this ground.

[4] The other natural justice argument raised was that the Lively Seven were not accepted as intervenors in the original hearing, even though they had sought that status in writing, therefore being denied the right to be heard. Apparently, as a result of an error, their request was ignored. This oversight, however, was later remedied when they were granted intervenor status in the reconsideration hearing. The reconsideration panel received their submissions before rendering its decision to confirm the original decision. The reconsideration panel was composed of three different members and their decision, which referred to the applicants' material, comprised 35 pages. While it was argued that this was not sufficient to cure the failure, I am not persuaded of that. A reconsideration hearing is meant to be a serious review of the original decision and there is no indication that this was not such an exercise, giving full consideration to the applicants' material and submissions. This argument also fails.

[5] As for the decisions of the Board on the merits of the certification application and the reconsideration, the standard of review is that of patent unreasonableness. The pragmatic and functional approach leads to this conclusion, given the strong privative clause, the nature of the question, the expertise of the Board in the determining appropriate bargaining units and the

purposes of the Code. Employing that standard, I can see no error of fact or law on the record that would warrant our interference in these decisions.

[6] On the issue of the violation of article 2(d) of the Canadian Charter of Rights and Freedom, I am not convinced that there has been such interference with the freedom of association as to engage the Charter's protection. The Charter countenances limited interference with the right to associate and not to associate. (*Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211; *R v. Advance Cutting and Coring*, [2001] 3 S.C.R. 209; *Telemobile Co. v. Telecommunications Workers Union* (2004), 248 D.L.R. (4th) 25 (F.C.A.)) There is no requirement in this case to become a member of the union, nor even to pay dues. Actually, all but one of the complainants are not members of the union. Nor is there sufficient material to demonstrate any pressure for ideological conformity or compulsion on the individuals. Even though the union may be engaged in advocacy of certain causes with which the applicants may disagree, there is no evidence of any forced association of any individual of the seven with ideas or values to which he or she does not subscribe. Section one analysis is, thus, not necessary here.

[7] These judicial review applications will therefore be dismissed with costs payable to the union by TD. No costs will be awarded against the Lively Seven in all the circumstances of this case.

“A.M. Linden”

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J.A.

“ I agree

Gilles Létourneau”

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J.A.

“I agree

Johanne Trudel”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-192-05 and A-602-05

**(JUDICIAL REVIEW SECTION 28)**

**STYLE OF CAUSE:** TD CANADA TRUST A-192-05  
and Applicant  
UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION (UNITED STEEL WORKERS) Respondents

**BETWEEN:** A-602-05

TD CANADA TRUST Applicant  
and  
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING,  
ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS  
INTERNATIONAL UNION (UNITED STEEL WORKERS), CARINA  
BOUFFARD, ROBERTA ISRAELSON, RITA LARSEN, SANDI MERRYLEES,  
LAURA NEWMAN, AMY PRESEAU, SANDRA SCHMID and JOAN  
ZELINSKY Respondents

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 11, 2007

**REASONS FOR JUDGMENT:** LINDEN J.A

**CONCURRED IN BY:** LÉTOURNEAU J.A  
TRUDEL J.A

**DATED:** SEPTEMBER 13, 2007

**APPEARANCES: (Cont'd)**

Christopher Riggs  
Daniel Fogel

FOR THE APPLICANT

Paula Turtle  
Robert Champagne  
Lisa Poratto-Mason  
James Mason

FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

Hicks, Morely, Hamilton, Stewart, Storie LLP  
Toronto, Ontario

FOR THE APPLICANT

Mason, Poratto-Mason, Vrbanac LLP  
Sudbury, Ontario.  
Legal Services, United Steel Workers of America  
Toronto, Ontario.

FOR THE RESPONDENTS