Case In Point

Appellate Court Finds Employer a Derivative Federal Undertaking, Overturns OLRB Decision

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A recent decision of the Ontario Divisional Court, *Ramkey v. Labourers International Union of North America et al*, has provided employers performing work in support of federally regulated undertakings welcome clarity with respect to their status.

The Court found that an employer (Ramkey) which provided construction technicians to work on telecommunications networks owned by telecommunications companies (a federally regulated undertaking) was a derivative federal undertaking and therefore subject to federal laws: its work had a "vital, essential or integral link to the operations of a federal undertaking."

The Ontario Labour Relations Board (Board) had concluded earlier that Ramkey was subject to the Ontario *Labour Relations Act, 1995*, and accordingly granted certification of the construction technicians pursuant to that legislation. The Board focused on characterizing the work done by Ramkey's employees as "construction" work, which it said presumptively fell under provincial jurisdiction.

On judicial review, the Divisional Court overturned the Board's decision. The Court followed the analytical approach taken by previous Supreme Court of Canada decisions and noted that under the *Constitution Act*, "labour relations" is generally an area that falls within provincial jurisdiction unless one of two exceptions exist: the operations are of a "type subject to federal jurisdiction" or the work done is "vital, essential or integral to a federal undertaking" in which case it would be considered within "derivative federal jurisdiction." It concluded that Ramkey's operations fell within the latter category, despite the fact it was provincially incorporated and owned independently, for the following reasons:

- the work done by Ramkey was almost exclusively for federally regulated telecommunications companies and thus there was a "core federal undertaking present"
- the work was "highly integrated" with the telecommunications companies and the telecommunications networks could not function without that work: "Each part is essential to the functioning of the network as, without these services, there would be no functioning network"
- Ramkey's work was "specific" to the telecommunications industry and not to the construction of infrastructure, as was determined by the Board
- the work was "simply an essential part of the operations process."

Given this tight integration, and the high volume of work done for federally regulated entities, the Divisional Court held that “Ramkey’s construction technicians are engaged derivatively in work that is vital, essential or integral to a federal undertaking and therefore should be federally regulated.”

The important takeaway here is that employers whose work may be characterized as “vital, essential or integral link to the operations of a federal undertaking” should carefully consider whether they are subject to federal rather than provincial labour and employment jurisdiction.

Hicks Morley’s Frank Cesario successfully argued the case before Divisional Court on behalf of Ramkey, which was also represented by co-counsel.