BRITISH COLUMBIA LABOUR RELATIONS BOARD

CERTAIN EMPLOYEES OF WOBURN HOLDINGS LTD. AND KEVINGTON BUILDING CORPORATION, A REGISTERED CORPORATE PARTNERSHIP CARRYING ON BUSINESS UNDER THE FIRM-NAME OF CHATEAU GRANVILLE (NOW KNOWN AS: CHATEAU GRANVILLE, INC.)

("Certain Employees")

-and-

UNITE HERE, LOCAL 40

(the "Union")

-and-

WOBURN HOLDINGS LTD. AND KEVINGTON BUILDING CORPORATION, A REGISTERED CORPORATE PARTNERSHIP CARRYING ON BUSINESS UNDER THE FIRM-NAME OF CHATEAU GRANVILLE (NOW KNOWN AS: CHATEAU GRANVILLE, INC.)

(the "Employer" or "Chateau Granville")

PANEL:	Brent Mullin, Chair Bruce R. Wilkins, Associate Chair, Adjudication Ken Saunders, Vice-Chair and Registrar
APPEARANCES:	Alan J. Hamilton, Q.C., for the Employer Michael J. Prokosh, for the Union Randal J. Kaardal, for Certain Employees
CASE NO.:	66539 and 66540
DATE OF DECISION:	March 24, 2014

DECISION OF THE BOARD

1 The Union applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of BCLRB No. B20/2014 (the "Original Decision"). The Original Decision found that the Union was not entitled to ask witnesses about the payment of legal fees to counsel for Certain Employees.

2 The Employer and Certain Employees oppose the Union's leave and reconsideration application.

3 We have reviewed and considered the submissions of the parties. Our decision and reasons will be expedited and brief as the reconsideration application and process is delaying the hearing before the original panel and the determination of the decertification and unfair labour practice cases before it.

4 An application under Section 141 must meet the Board's established test before leave for reconsideration will be granted. An applicant must establish a good, arguable case of sufficient merit that may succeed on one of the established grounds for reconsideration: *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 C.L.R.B.R. (2d) 44.

5 We find the Union's Section 141 application has presented a good, arguable case for reconsideration and leave is therefore granted.

6 Turning to the merits of the issues before us, we find as follows.

7 Firstly, we are not persuaded by the submissions of Certain Employees that the law in respect to solicitor-client privilege has changed such that the Board's approach to that issue in the Starbucks decisions *(Starbucks Coffee Company,* BCLRB No. B120/2002, *Starbucks Corp.,* BCLRB No. B123/2003, *Starbucks Corp.,* BCLRB No. B233/2003 (Leave for Reconsideration of BCLRB No. B123/2003) and *G.L. Harper Scrap Metal and Demolition Ltd.,* BCLRB No. B45/2004 *("G.L. Harper")* are incorrect and need to be revised. We find the Board's approach to solicitor-client privilege in those decisions is still correct and appropriate in the context of the Code.

8 The result of that can be stated in the following, summary manner. First, questions in the nature of the fourth question in *G.L. Harper* can be asked in respect to a subsection 6(1) allegation that an employer has improperly interfered with the union by offering to assist in one form or another with the payment of certain employees' legal fees. However, an evidentiary foundation must be established in order to ask questions in respect to the first three and fifth and sixth questions in *G.L. Harper*, which go directly to the arrangements between the certain employees and their counsel. There was no such evidentiary foundation in *G.L. Harper* and thus those questions were not allowed

to be asked. There was an evidentiary foundation in the *Starbucks* cases and thus the questions were allowed to be asked there.

9 In the present matter, the Union has restricted its proposed questions to the nature of the fourth question in *G.L. Harper*. It has also brought forward a subsection 6(1) application in that regard. As a result, we find that those questions can be asked of the witnesses in the case, including members of Certain Employees. These questions speak to an allegation that the Employer has engaged in interference under subsection 6(1), or improper interference under subsections 33(6)(a) and (b).

10 That disposes of the solicitor-client issue *per se* in respect to the Original Decision, which we have found to be incorrect in that regard.

11 In terms of what could be referred to as the relevancy determination in paragraph 21 of the Original Decision, we find as follows. Firstly, as just noted, the proposed questions are relevant to a subsection 6(1) allegation. Secondly, the questions may be relevant to the subsection 33(6) issues if the evidence speaks to an effect on the employees under subsection (a) or an effect on the representation vote under subsection (b). As well, if it is found that there has been improper interference by the Employer in one of these forms, that in general may speak to or colour the other evidence in the case in respect to the making of the findings of fact necessary regarding the other alleged instances of improper interference or unfair labour practices.

12 As a result, we find this portion of the Original Decision is also incorrect and must be overturned.

13 The Employer submitted that we should dismiss the Union's Section 141 application on the basis of the Board's approach to applications to reconsider interlocutory rulings in *4020 Investments (Dufferin Care Centre)*, BCLRB No. B283/2003 (Leave for Reconsideration of Letter Decision dated June 4, 2003) ("*Dufferin Care*"). That approach is summarized as follows in paragraphs 8-11 of *Dufferin Care:*

> Leave will rarely be granted where a party seeks to reconsider a preliminary, procedural, evidentiary, or other "interlocutory" determination by a panel. The types of exceptional circumstances where a reconsideration panel may intervene are when the ruling raises a serious matter of jurisdiction or could result in irreparable harm. The usual course is to require the proceeding to continue to conclusion: *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 CLRBR (2d) 44, 93 CLLC ¶16,043.
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> The policy basis for the Board's refusal to review interlocutory rulings except in exceptional circumstances are referenced in *Wynn Corboy et al*., BCLRB No. B195/2000 (Leave for Reconsideration of BCLRB No. B150/2000) at para. 9:

> … There are sound policy reasons for the Board's refusal to review interlocutory decisions, primary among them the fact that the review may be rendered moot or academic by the original panel's ultimate disposition of the matter before it: *Rashinder "Sandy" Manhas*, BCLRB No. B127/97 (Leave for Reconsideration of Letter dated March 12, 1997). There is considerable potential for scarce Board resources to be expended in adjudicating issues which later turn out to be unnecessary to decide: *University of British Columbia*, BCLRB No. B85/2000 (Leave for Reconsideration of BCLRB No. B446/99).
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> Routine review of interlocutory rulings could lead to a proliferation of proceedings and increased delay, which would be inconsistent with the "orderly, constructive and expeditious settlement of disputes" as required under Section 2(e) of the Code.
>
> Parties should generally wait until a final decision has been rendered before applying for reconsideration. Review of rulings before a final decision has been rendered should only be undertaken if the rulings raise a serious matter of jurisdiction, will result in irreparable harm, or present other exceptional circumstances requiring a reconsideration panel to intervene.

14 The policy approach in *Dufferin Care* is compelling and we strongly endorse it. We have, nonetheless, decided to exercise our discretion and not follow it in the present matter because of the somewhat unique nature of the issues and the circumstances of the case. In that context, we have decided to render an expedited decision, rather than not address the issues.

15 However, our decision should in no way be interpreted as the Board departing from its policy approach in *Dufferin Care.* As well, our decision should not be taken as an invitation for a leave and reconsideration application every time an original panel makes a solicitor-client privilege ruling. Instead, as a general rule the policy approach in *Dufferin Care* should be followed.

16 The corollary of that in our view is that original panels should be reluctant to succumb to the urging of the parties that the panel should stop proceedings and render a formal decision in respect to an interlocutory ruling. Instead, as a general rule and practice, the panel should make its ruling and proceed. That is consistent with the duty of the Board to promote "conditions favourable to the orderly, constructive and expeditious settlement of disputes" in subsection 2(e) of the Code and the policy of the Board in *Dufferin Care*.

17 In light of the above, leave and reconsideration are granted and the Original Decision is overturned. In view of this result, it is unnecessary to decide the Union's stay application in Case No. 66540.

LABOUR RELATIONS BOARD

"BRENT MULLIN"

BRENT MULLIN
CHAIR

"BRUCE. WILKINS"

BRUCE R. WILKINS
ASSOCIATE CHAIR, ADJUDICATION

"KEN SAUNDERS"

KEN SAUNDERS
VICE-CHAIR AND REGISTRAR