



Appeal court grants injunction against non-violent picketing

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What is the role of courts in regulating picketing activity during a labour dispute? While it used to be the case that courts were quick to grant injunctions against some forms of picketing activity, the modern approach in Ontario is to limit the use of injunctions to cases where the police are unable to provide the necessary assistance.

The statutory expression of this policy is found in subsection 102(3) of the *Courts of Justice Act*, which provides that a court is not to grant an injunction in a labour dispute until it is “satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry or exit from the premises in question or breach of the peace have been unsuccessful.”

In *Industrial Hardwood Products (1996) Ltd. v. International Wood and Allied Workers of Canada, Local 2693* (January 10, 2001), the Ontario Court of Appeal considered the application of this provision to an interesting factual circumstance. The case concerned a 1999 strike where the employer had hired replacement workers whom it transported to and from work in company vans.

LOW PRIORITY FOR POLICE

The union organized picket lines to obstruct the entry and exit of these vans. Although the picketers dispersed peacefully when the police arrived to escort the vans through the lines, their actions caused delays of up to an hour at a time. The company had requested that the police be present at the plant in advance at the beginning and end of the work day to clear the entrance. However, the police could not provide this degree of assistance, and indicated that because of finite resources, calls from the plant were given a low priority.

In November 1999, the company unsuccessfully sought an injunction against the union’s picketing. It fared better in February 2000, however, persuading the court to enjoin the union from barring access to the plant. The order also prohibited all picketing at the plant except for the purpose of communicating information, for a maximum of five minutes, and by a maximum of four picketers at each plant entrance. The union appealed.

Before the Court of Appeal, the union argued that the pre-condition set up by subsection 102(3) for granting an injunction had not been met – the police responded to the company’s calls on each occasion, and upon arrival were able to provide entry to and exit from the plant. The Court did not agree. It held that the provisions should not be interpreted so as to bar the granting of an injunction in



a situation where “day after day a company could have access to its premises blocked until whenever the police arrive”.

COURT OF APPEAL: INJUNCTION GRANTED

The Court then further considered the interpretation of subsection 102(3). In the Court’s view, the provision did contemplate that the employer could experience some inconvenience before the conditions for granting an injunction were met:

“The first failure of the police to respond instantaneously to a request for help does not necessitate the conclusion that police assistance has failed and that therefore the court can be resorted to. Absent questions of property damage or personal injury, a robust society can accommodate some inconvenience as a corollary of the right to picket in a labour dispute before the court will conclude that police assistance has failed.”

To be successful in seeking an injunction, the employer must show that it had made reasonable efforts to obtain police assistance and that those efforts had not resulted in an acceptable degree of control over the risks of property damage, personal injury or obstruction of lawful access to the premises. In this case, where the issue was that of obstruction of lawful access, the relevant considerations included the degree of the obstruction, its duration on each occasion and the number of days it had gone on.

The Court then applied this approach to the specific facts of this case. The picket lines had been manned by a significant number of workers for almost three months. Although the picketing was non-violent, it resulted in delays of up to an hour at the beginning and end of each work day, “considerably longer than reasonably necessary for the picketers to effectively communicate their position to the occupants of the vans”. The company had tried to secure police assistance in advance, but without success.

In light of the foregoing factors, the Court stated that the company’s efforts to obtain police assistance had not produced an acceptable degree of control of the situation. Accordingly, it held that the injunction could be granted.

In Our View

The Court did overrule one part of the lower court’s decision – the restriction of the number of picketers to four. Noting that picketing is a “vital and constitutionally sanctioned means of collective expression in modern labour relations”, the Court stated that an injunction should go no further than necessary to prevent a recurrence of the demonstrated harm. As the problem here had not been the number of picketers, but the delay in the arrival of the police, the Court held that this aspect of the injunction unreasonably limited the strikers’ right of expression.



**EMOND
HARNDEN**
LABOUR & EMPLOYMENT LAW
DROIT DU TRAVAIL ET DE L'EMPLOI

This case is an important statement of the requirements for granting injunctions against picketing during lawful strikes. It clarifies that, while peaceful picketing enjoys some degree of judicial protection and the employer must be prepared to endure some inconvenience, where picketing constitutes a significant obstruction in access to a company's premises, the employer may obtain relief from the courts. (For more information on the judicial attitude towards picketing, see "[Supreme Court rules secondary picketing is legal unless wrongful conduct is involved](#)" on our Publications page.)

For further information, please contact [Andrew Tremayne](#) at (613) 563-7660, Extension 236 or [J.D. Sharp](#) at (613) 563-7660, Extension 233.