

Statement

The right to picket

The right to picket is part of our fundamental rights of expression and assembly in Canada.

Workers enjoy the right to picket their struck employer's premises and the premises of its allies or related companies (i.e. primary picketing). Workers also enjoy the right to picket the premises of employers not directly involved in the dispute, (i.e. secondary picketing), unless the secondary picketing can be shown to be wrongful or unjustified (more on that below). Still, the right to picket is not unfettered. It is governed both by rules of civil law and criminal law.

The civil law recognizes that striking workers and unions may wish to communicate their grievances and issues or other messages to persons attending at or near the employer's premises. The Supreme Court of Canada has recognized this rule and found that peaceful picketing is protected by our Charter of Rights unless the manner in which it is conducted is unlawful. What does unlawful mean in this context?

It means we cannot commit the civil tort or wrong of defamation. Our picket signs must communicate a message about the issues, not about personalities. Our pamphlets must be factual and issue oriented not insulting or personal. It also means we cannot commit the tort of a civil "nuisance"; in other words we can not prevent someone from entering property they have a legal right to enter.

We cannot force or oblige someone (ie. a supplier, other employees, customers) to not do business with an employer by, for example, shutting off their access to the employer's premises. We can communicate our issues and ask that all persons respect and support our strike.

If and when police officers are called to our picket line or demonstration area we should do our best to cooperate with their directions. However, communications with police should be conducted in an organized disciplined way.

A picket captain should be the union's spokesperson. And, it is wise to be in contact with local police officials **before** a dispute occurs in order to build a fair and respectful (from both sides) relationship.

INJUNCTIONS

Even if problems arise at a picket area, an employer in Ontario still has to meet certain tests before it may successfully apply for an injunction in Court to limit or stop our picketing.

According to Section 102 of the *Court of Justice Act of Ontario*, an employer should not be granted an injunction if it can be shown that when the police have been called to a picketing site the officers were able to forthwith establish control over the situation. This means that any danger of damage to property or people was eliminated; interference with lawful entry or exit from the employer's premises was effectively removed and there was no further danger of a breach of the peace.

However, that does not mean workers have the legal right to blockade an employer's premises as long as police officers are not present. Courts will find that a consistent and continued shut down of an employer's premises is unlawful and will be stopped or "enjoined" by an injunction.

The civil law in other provinces of Canada is different than the law in Ontario, in that there is no comparable provision to section 102 of the *Court of Justice Act*. While this is not the place to engage in a detailed examination of the specific rules in each province, suffice it to say that generally the civil law does not permit misconduct such as threatening damage or harm, blocking access to property for a prolonged time, causing harm to property or people, unreasonably interfering with the use of property. When there is a record of several acts of this nature at a picket line, a Court will listen attentively to an employer request for an injunction. And a Court will issue an injunction if a Court finds that without the injunction the employer will suffer serious and irreparable harm.

The criminal law of Canada also applies to the exercise of the right to picket.

Picketers may not engage in criminal conduct, such as assault or mischief (i.e. causing damage to property). Picketers may not damage property in any way; it is best not to touch the cars/vehicles that pass through the picket line. Picketers may not block a person's entry into premises – if entry is blocked for an undue period of time the police may charge anyone blocking access with the offence of interfering with the use of property. Picketers may picket on public property or public thoroughfares providing they do not obstruct ordinary traffic on such thoroughfares.

Most members assembled in a picket area should carry a sign. Every picket line should have a picket captain who in turn should be a spokesperson. As long as demonstrators exercise their fundamental right of assembly peacefully and cooperate with the directions of police constables in attendance, no arrests should occur.

However, if an arrest is made, the person put in custody should make no statement of any kind, at any time, to the officer about what has happened. Reasonable information about personal identification should be provided. Apart from that one should remember that **everything** a

person says to an officer, no matter how informal or offhand the remark may be, and even if the officer says the conversation is “off the record”, may be quoted against the person in a trial later. Statements made in a police cruiser may be just as damaging as statements made in an office. One should cooperate reasonably with officers; but not by providing any statements about the events in question.

If a picketer is arrested, the officer has a discretion with respect to the time when and the conditions under which he/she will release that person from detention. For less serious offences, such as mischief (i.e. damaging or interfering with property – no one is injured) a person put under arrest may be released at the site or at the closest police office with a summons compelling them to appear in Court on a future date or by way of a kind of appearance notice.

Alternatively, a person may be kept in custody in a police station and released by an officer in charge by entering into a document called a recognizance under Section 498 of the *Criminal Code of Canada*. Finally, if a charge against a striker is particularly serious, he or she may be detained for up to 24 hours in custody. However, before the 24 hours have expired, the arrested person must be brought before a Justice of the Peace for a hearing with respect to their release from custody.