

October 4, 2002

They're Picketing My Property! What Can I do?

Where does a landlord stand when there are picketers on its property and the tenants are complaining? The answer involves the balancing of the right of a property owner to control its property and the fundamental rights and freedoms protected by section 2 of *The Canadian Charter of Rights and Freedoms*, which include freedom of expression and freedom of assembly. Recently, the Supreme Court of Canada, in *Local 558 v. Pepsi-Cola Canada*, confirmed the general trend of the courts, by holding that where landlords allow the public, by open invitation, to enter their premises at will, even though those premises are privately owned, then all peaceful picketing and leafleting is, *per se*, lawful.

The key word is "peaceful". Picketing is not peaceful where it involves criminal activity, such as creating a disturbance, intimidation, assault, or a civil wrong which includes *unreasonable* interference with public health, safety, or a private landlord's use or enjoyment of its property (for example, denying access to the property).

Peaceful picketing or leafleting extends not only to a primary location, being the premises of the employer directly involved with the dispute, but also to a secondary location, which is any other possible location of protest. For example, shopping mall or office tower common areas could become a secondary picketing site.

In a 1986 decision, a Toronto alderman, Jack Layton, was, during the course of a labour organizing drive,

leafleting Eaton's employees in a shopping centre, in a peaceful and friendly manner. Mr. Layton was asked to leave, refused to do so, and was charged with trespass. The court held that *Charter* section 2 protected the freedom to distribute leaflets, and since the accused's right of freedom of expression was violated, the *Trespass to Property Act* was without force or effect, to the extent that it permitted the *Charter* violation. It did not matter that the subject premises were privately owned and occupied. The owner had invited the public to enter the mall, and could not "set a condition on its invitation whereby the invitees enter the mall with money in hand, but must leave their *Charter* rights and freedoms outside the mall property".

Injunctions

What does this mean for the private landlord? Clearly, injunctions to limit picketing will be much more difficult to obtain. While the courts may not restrict the *locations* at which pickets might be set, they will restrict the *conduct* of picketers, where picketing is not peaceful. When deciding whether a specific picketing activity should be prohibited, the courts will consider that: (a) picketing plays a vital role in labour disputes and is not to be restricted lightly; (b) the goal of regulating picketing is not to prevent all inconvenience to the struck employer or to third parties - some inconvenience is justified; (c) picketing conduct must be considered within the context of each case, and analysis of it must balance the value of picketing against the harm done to the complaining party, and finally, (d) infractions by a few individuals will not justify the granting of an injunction that restricts the constitutional rights of the majority.



Practical Measures for Dealing with Labour Disruptions

When faced with a labour dispute at its premises the landlord should, as a first step, try to be co-operative. Establish a relationship with striking employees - send coffee, sandwiches, stop and listen to their complaints. Afterward, they may be more inclined to let suppliers,

employees or customers through the picket line with little or no hassle.

In case the picketing turns ugly, keep a record of everything that happens. Prior to issuing an injunction, a court will require proof of wrongful conduct, and of all efforts to obtain police assistance and the assistance of labour representatives.

Daoust Vukovich Baker-Sigal Banka LLP Welcomes a New Member to the Team!

Dawn Michaeloff Commercial Leasing

Dawn joins DVBB on October 15, 2002, bringing 15 years of extensive commercial leasing experience with her. Her most recent position was Vice President and Counsel of TD Investment Real Estate, the real estate arm of TD Bank. There, her practice encompassed a diverse office and retail portfolio combining the assets of TD Realty and Truscan Property Corporation, including mixed use developments, strip plazas and shopping centers.

Prior to joining TD, Dawn served as Senior Legal Counsel for The Cadillac Fairview Corporation Limited in Toronto from 1987 to 1997.



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