

**CITATION:** R.W. Tomlinson Limited v. Labourers’ International Union of North America,  
Local 527, 2024 ONSC 4039  
**COURT FILE NO.:** CV-22-89703  
**DATE:** 2024Jul30

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
R.W. TOMLINSON LIMITED, )  
TOMLINSON READY MIX, a division of ) David P. Taylor, for the plaintiffs  
R.W. TOMLINSON LIMITED, 2839034 )  
ONTARIO INC. c.o.b. as MATERIAL )  
SUPPLY AND LOGISTICS, TOMLINSON )  
ENVIRONMENTAL SERVICES LTD. )  
c.o.b. as INDUSTRIAL WASTE )  
DIVISION )  
Plaintiffs )  
)  
**– and –** )  
)  
LABOURERS’ INTERNATIONAL )  
UNION OF NORTH AMERICA, LOCAL ) Ernie Schirru and David Rosenfeld, for the  
527, LUIGI CARROZZI, SHAWN ) defendants  
McLAUGHLIN, CARLO TRUNZO, )  
ROBERT MARTINS and “JOHN DOE” )  
)  
Defendants )  
)  
) **HEARD at Ottawa:** April 18, 2024  
)

**CAREY J.**

**REASONS FOR DECISION**  
**(MOTIONS FOR SUMMARY JUDGMENT)**

[1] The parties disagree on the appropriate forum for the plaintiffs’ complaints about the alleged consequences of the defendants’ strike action. Each side have brought Summary Judgment motions requesting an order in favour of their forum of choice. Not unsurprisingly, the defendant John Doe is neither represented nor did he make an appearance. For reasons set out below I have concluded, on the arguments before me, that that the proper forum is the Labour Relations Board of Ontario (OLRB) - not the Superior Court.

[2] The plaintiff Tomlinson Ready Mix (Ready Mix) is a division of R.W. Tomlinson Limited along with other divisions. The parent company’s head office is located in Ottawa. At the time of

the allegations of damage contained in the plaintiffs' Statement of Claim, the defendant Liuna was engaged in picketing pursuant to a lawful strike following the rejection by the local's membership of a tentative agreement. The plaintiffs allege that as a result of the picket line holding up traffic in and out of the premises, a load of concrete went hard causing a financial loss to Ready Mix. The plaintiffs also allege unlawful picket line activity that necessitated the police being called for assistance.

### **Position of the Parties**

[3] The Tomlinson plaintiffs make several submissions in support of their position that this Court is the appropriate forum for resolution of these issues.

1. The plaintiffs argue that the legislative history of the *Ontario Labour Relations Act* (OLRA) supports their position that the court is the appropriate forum. They cite in support, legal precedent from British Columbia (B.C.)
2. A further argument that the plaintiffs submit is that the fact that police assistance was sought "jettisons the matter outside the catch frame of the collective agreement."
3. The plaintiffs allege "interference with private property" and refer to the picketers' actions as a "blockade".
4. The plaintiffs also rely on the fact that Ready Mix was not a party to the collective agreement that had recently expired.

[4] The LIUNA defendants respond that:

1. The plaintiffs are incorrect that the legislative history in Ontario is similar to B.C. and cite *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 in support of their position that the courts have no jurisdiction to regulate a lawful strike.
2. The collective agreement entered into by the parties subsequent to these events applied retroactively and requires arbitration of these issues (s.103 LRA). The defendants also note that the plaintiffs took no action in the courts until the negotiated collective agreement was coming to an end. The defendants say the lawsuit is entirely strategic.
3. The picketing was lawful and pursuant to a legal strike and in no way a blockade.
4. Ready Mix is a fully integrated entity within the Tomlinson group of companies employing the same offices and that the parent company could not rely on their technical separateness to prevent any picketing at their premises.

### **Analysis**

[5] I will address the issues point by point:

1. I can find no basis in current Ontario law for the plaintiffs' position that the "legislative history" supports their position that this court's jurisdiction ousts the clear jurisdiction of the OLRB over issues arising from labour disputes in this province. The precedents relied upon by the plaintiffs deal with injunctive relief only and none speak to the jurisdiction for strike related conduct.
2. The plaintiffs' cases do not address a situation where, as here, a collective agreement was negotiated that retroactively covered the time period in question. I can come to no other conclusion on the clear reading of the present collective agreement, but that it applies retroactively to the period of time when the defendants were legally striking and confers jurisdiction for resolving issues arising then to the OLRB.
3. The plaintiffs' position if it were the law, that the mere attendance of police in response to an employer's call "jettison's the LRB jurisdiction" could result in a flurry of calls to police by employers hoping to avoid arbitration. Not only could police time be wasted but public safety could be put at risk while police were tied up investigating groundless complaints against lawful picketers, this picketing was not a blockade. There were no charges laid by the police.

The jurisdictional position argued by the plaintiffs is one that is not supported by current law and one that would not be contrary to the public interest. Clearly if police find reasonable and probable grounds that a crime has been committed during a lawful strike, that is an entirely different matter.

The timing of the bringing of the lawsuit, so close to the end of the negotiated collective agreement is concerning. While there is a two year limitation period that applies to the plaintiffs' complaint, there seems to be no clear reason to have delayed the action other than a strategic one. The allegations clearly arise from a labour dispute and are appropriately dealt with by the specialist OLRB.

4. I similarly see nothing that supports the plaintiffs' position that Ready Mix's absence from the collective agreement should prevent a picket line around the company's head office. Once again, the plaintiffs' interpretation of the law could result in a severe limitation on lawful picketing. In any event, I am satisfied that the picketing was pursuant to a labour dispute and the issues arising from it within the OLRB's jurisdiction.

[6] Accordingly, the defendants' motion is allowed dismissing the plaintiffs' motion with costs to the defendants. The plaintiffs' motion is dismissed with costs to the defendants. If the parties are unable to agree to costs, they can provide their costs submission, limited to 3 double spaced pages each within 15 days of release of this decision.

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Honourable Mr. Justice Thomas J. Carey

**Released:** July 30, 2024

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**BETWEEN:**

R.W. TOMLINSON LIMITED, TOMLINSON READY  
MIX, a division of R.W. TOMLINSON LIMITED,  
2839034 ONTARIO INC. c.o.b. as MATERIAL  
SUPPLY AND LOGISTICS, TOMLINSON  
ENVIRONMENTAL SERVICES LTD. c.o.b. as  
INDUSTRIAL WASTE DIVISION

Plaintiffs

**– and –**

LABOURERS' INTERNATIONAL UNION OF  
NORTH AMERICA, LOCAL 527, LUIGI CARROZZI,  
SHAWN McLAUGHLIN, CARLO TRUNZO,  
ROBERT MARTINS and "JOHN DOE"

Defendants

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**REASONS FOR DECISION**

**(MOTIONS FOR SUMMARY JUDGMENT)**

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Carey J.

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