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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

PUROLATOR INC.,	)	Lynda K. Troup
	)	Hannah C. Taylor
plaintiff,	)	for the plaintiff
	)	
- and -	)	
	)	
JOHN DOE, JANE DOE and OTHER UNKNOWN PERSONS,	)	Stephen J. Moreau
	)	Ryan D. White
	)	for the defendants
defendants.	)	
	)	Judgment Pronounced:
	)	December 9, 2024
	)	Judgment Delivered:
	)	December 18, 2024

REMPEL J.

BACKGROUND

[1] This is a motion, by the plaintiff, Purolator Inc. ("Purolator"), for an Order granting an interim and interlocutory injunction enjoining the defendants from engaging in secondary picketing at its premises located at 1935 Sargent Avenue in Winnipeg, Manitoba, close to the airport. The business operations of Purolator at that location consist of two separate buildings and vehicle depots on opposite

sides of 1935 Sargent Avenue. In these reasons I will refer to Purolator's business premises on 1935 Sargent Avenue as the "Facility".

[2] Purolator operates across Canada as an integrated freight, package and logistics provider. The Facility includes both a pick-up and delivery facility and a customer retail operation located in the front roadside portion of the Facility. The Facility is Purolator's main operating centre in Winnipeg. The Facility services Purolator customers which expect Purolator to offer just-in-time delivery of goods, including everything from retail goods, medical equipment, auto parts and consumer goods.

[3] The statement of claim names John Doe, Jane Doe and Other Unknown Persons as defendants in this action, but it become clear by the time the motion seeking the injunction was argued before me on an emergency basis on Saturday December 7, 2024, that the defendants are members of the Canadian Union of Postal Workers ("CUPW"). Members of CUPW commenced a legal strike action against their employer Canada Post on November 15, 2024. The strike is national in scope.

[4] On Friday December 6, 2024, at about 9:00 a.m. approximately 100 CUPW members left the picket lines at Canada Post's Winnipeg mail processing plant located at 1870 Wellington Avenue, in Winnipeg, Manitoba, and took a short walk to the Facility to set up what they described as an information picket for customers and drivers of Purolator vehicles seeking ingress to and egress from the four access points of the Facility. The secondary picket organized by the CUPW members ended at about 11:30 a.m.

[5] The evidence of Dave Lambert, one of the CUPW organizers in attendance at the Facility, indicated that CUPW members were standing on the sidewalk separating the Purolator parking area from Sargent Avenue and they stopped several Purolator delivery vehicles, for the purpose of handing out pamphlets about CUPW's strike action against Canada Post and offering drivers information about the issues in dispute between CUPW and Canada Post.

[6] The maximum time any Purolator vehicle was prevented from entering or leaving the Facility was less than five minutes, with the exception of one vehicle which the picketers believed to be driving in a manner dangerous to them and this particular driver was held for about 15 minutes for the purposes of reporting the driver to Purolator management. Dave Lambert's affidavit affirmed December 6, 2024 (the "Lambert affidavit") indicated that every effort was made by the CUPW picketers to allow Purolator customers with children in their vehicles to pass through the picket line without delay. Purolator employees who indicated they were leaving the Facility because their shifts had ended or their vehicles were empty, were also allowed to exit the Facility without delay.

[7] The Lambert affidavit also indicates that apart from the Purolator driver who was held for 15 minutes he "*did not observe any incidents of violence, threats, or any other kinds of physical or verbal aggression at anytime during the picketing activity*". That evidence is not contradicted.

[8] The Lambert affidavit also confirms that police were not called to the scene and that the picketers were lawfully expressing their message about the labour dispute and the views of CUPW members that Purolator was being used by Canada

Post to undermine the strike. The evidence of Mr. Lambert as to the events of Friday, December 6, 2024, at the Facility was not effectively challenged and I accept it as accurate.

[9] Mr. Lambert did not deny that CUPW members had posted on social media the day prior to the secondary picket that CUPW members would be attending at the Facility to stop Purolator vehicles in order to send a message. The affidavit of Victor Xavier, Operations Manager of Purolator, affirmed December 6, 2024 filed on behalf of the plaintiff contained the concluding sentences of an anonymous online social media post that read:

> … Your mission is to send a strong message to the purolator company [*sic*] aka Canada post that our work is our work not purolators! [*sic*] You will be halting the trucks leaving purolator [*sic*] - Remember it's not the teamsters it's the companies!

One of the affidavits filed on behalf of CUPW indicated that some Purolator drivers are members of the Teamsters Union.

[10] According to CUPW the intended message contained in the social media post was about the offering of information to Purolator customers and drivers about the nature of the strike and in particular that Canada Post holds a 91 per cent interest as a shareholder in Purolator. CUPW perceives Purolator as a subsidiary controlled by Canada Post and that Purolator is earning profits from the delivery of parcels and packages that would otherwise have been sent via Canada Post, but for the strike.

POSITION OF PUROLATOR

[11] Purolator argues that the activities of the secondary picket amounted to a blockade of the Facility which operates on a 24/7 basis and moves up to 50,000 packages and parcels on any given day. Further, Purolator argues the secondary picketing was intended to cause financial harm to Purolator which CUPW members perceive to be supporting Canada Post during the strike. The CUPW members in question are not Purolator employees and Purolator is not a party to the labour dispute between Canada Post and CUPW. Due to all of these facts and the fact that CUPW is not engaged in a labour dispute with Purolator, it is argued that Purolator is entitled to an order enjoining the unlawful and obstructive conduct of the CUPW members at the Facility.

[12] Based on the two-and-one-half hours of secondary picketing on that Friday as described in the affidavits, Purolator argues that the conduct of CUPW is:

> … causing significant disruption to Purolator's operations in Winnipeg. The defendants' actions are also having significant impacts on a broad array of Purolator customers in the Winnipeg area, including on medical facilities receiving deliveries of equipment to hospitals. The defendants' actions have also had a significant adverse impact, both economic and otherwise, on Purolator's business at a significant time of year.

POSITION OF CUPW

[13] In the main CUPW argues that picketing as part of a lawful strike action is a constitutionally protected activity and in Manitoba it is protected by the provisions of ***The Court of King's Bench Act***, C.C.S.M. c. C280 (the "***Act***"). Further, secondary picketing is also an equally protected ***Charter*** right provided it does

not involve tortious or criminal conduct. CUPW also argues that Purolator cannot clear the high legal threshold to obtain an injunction on the facts before me.

GOVERNING RULES AND LEGAL PRINCIPLES

THE COURT OF KING'S BENCH ACT OF MANITOBA

[14] The ***Act*** in ss. 55(1)-(2) empowers this court to grant a restrictive or mandatory interlocutory injunction where it appears to the judge to be just or convenient to do so. An injunction may include such terms as are considered just.

[15] In Manitoba a request to enjoin lawful strike action must be viewed through the lens of the ***Act*** and the Constitution. At ss. 57(1), (2), and (4), the ***Act*** provides:

> 57(1) Subject to subsection (3), the court shall not grant an injunction that restrains a person from exercising the right to freedom of speech.
>
> (2) For the purposes of this section, the communication by a person on a public thoroughfare of information by true statements, either orally or through printed material or through any other means, is an exercise of the right to freedom of speech.
>
> . . .
>
> (4) In this section, "public thoroughfare" includes a walk, driveway, roadway, square and parking area provided outdoors at the site of and in conjunction with a business or undertaking and to which the public is usually admitted without fee or charge and whether or not the walk, driveway, roadway, square or parking area is owned by the person carrying on the business or undertaking or is publicly owned.

THE *ACT*, S. 57

[16] It is not disputed that s. 57 of the ***Act*** prevents a court from granting an injunction against reasonable and lawful picketing in a public thoroughfare. The free speech protections afforded by s. 57 are, however, not absolute. Courts must

decide whether conduct is a "*permissible exercise of the right of freedom of speech*". Picketing that is violent or otherwise unlawful is not protected by s. 57. (See ***Gemala Industries Ltd. et al. v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) Local 3001 et al.***, 1993 CanLII 14935 (MB KB), 87 Man.R. (2d) 126, at para. 34; ***Hudson Bay Mining & Smelting Co., Limited v. Dumas et al.***, 2014 MBCA 6, at para. 46 ("***Hudson Bay Mining***").)

[17] Free speech falling within the meaning of s. 57(2) of the ***Act*** is presumed to be permissible unless proven otherwise and unless limitation is justified. When considering the permissible limits of the right of freedom of speech, all relevant factors must be considered, including the following as set out in ***Hudson Bay Mining***, at para. 49:

> [49] …
>
> (i) The conflicting values at issue. … [including the] [c]onflicting interests of private parties such as protection of property, contractual relationships and other economic interests …;
>
> (ii) The objective(s) of the communicator;
>
> (iii) The nature and truthfulness of the information being communicated;
>
> (iv) The means employed by the communicator in expressing his or her message; and
>
> (v) Whether the action(s) of the communicator are criminal or otherwise illegal. In the situation where conduct accompanying the communication is a tort, the tort's nature in relation to the exercise of the right of freedom of speech must be examined.
>
> [citations omitted]

[18] In ***Channel Seven Television Ltd. v. National Association of Broadcast Employees & Technicians AFL-CIO-CLC***, 1971 CanLII 968 (MB CA), 21 D.L.R. (3d) 424 ("***Channel Seven***"), Freedman C.J.M. reviewed the freedom of speech provisions in the ***Act*** as it then was, which are substantially similar to the current provisions as to freedom of speech. Secondary picketing was also at issue in that litigation. ***Channel Seven*** teaches that:

- Free speech is a prized right in a free society but it is not an absolute right (at p. 431);
- Courts must balance the right of free speech of striking employees when it conflicts with the freedom of trade and contract of an employer (at p. 431);
- The free speech provisions in the ***Act*** flow from a "*clear declaration of legislative policy*" forbidding injunctions that restrain true statements made in a public thoroughfare in the context of picketing during a lawful strike (at p. 431);
- Picketers acting "*reasonably, lawfully, and peacefully*" are not obligated to limit their picketing "*in the vicinity of the employer's premises*." Binding lawful picketing strictly to the employer's premises would make the free speech provisions in the ***Act*** "*utterly pointless*" (at p. 432);
- In examining the argument as to attempting to induce breaches of contract the Court of Appeal noted that "*In seeking to answer that question one must avoid the snare of thinking that whatever is in any*

respect wrongful is automatically prohibited and that an injunction against it should issue" (at p. 435); and

- "*Picketing is necessarily calculated to cause harm*" (at p. 437):

> … Secondary picketing, even though carried on in furtherance of a union's legitimate interests in a labour dispute, may well cause harm to innocent third parties. The plight of those who, through no fault of their own, and without a labour dispute with their own employees, suddenly find themselves the victims of secondary action by a union is one that justly commands sympathy. But we have here a conflict between rights - the right of labour to protect and advance it cause, and the right of those affected by labour's action to freedom of trade and of contract.

THE *CHARTER*

[19] ***Saskatchewan Federation of Labour v. Saskatchewan***, 2015 SCC 4, teaches that the right of employees to strike is protected under s. 2(d) of the ***Charter***:

> [24] I agree with the trial judge. Along with their right to associate, speak through a bargaining representative of their choice, and bargain collectively with their employer through that representative, the right of employees to strike is vital to protecting the meaningful process of collective bargaining within s. 2(d). As the trial judge observed, without the right to strike, "a constitutionalized right to bargain collectively is meaningless".

[20] The constitutionally protected right to peaceful picketing includes the right to maintain a physical presence in order to convey information about a labour dispute to gain support from other workers, clients of the struck employer, and the general public and to assert social and economic pressure on the employer and, by extension, its suppliers, clients and the public at large.

(See ***U.F.C.W., Local 1518 v. KMart Canada Ltd.***, 1999 CanLII 650 (SCC), [1999] 2 S.C.R. 1083, at paras. 39-40.)

[21] ***R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.***, 2002 SCC 8 (CanLII), [2002] 1 S.C.R. 156 ("***Pepsi-Cola***"), teaches that picketing is an essential component of the right to bargain collectively and the right to freedom of expression is protected under s. 2(b) of the ***Charter***. Both primary and secondary picketing are constitutionally protected forms of expression, at para. 32:

> 32 Picketing, however defined, always involves expressive action. As such, it engages one of the highest constitutional values: freedom of expression, enshrined in s. 2(b) of the Charter. This Court's jurisprudence establishes that both primary and secondary picketing are forms of expression, even when associated with tortious acts: *Dolphin Delivery, supra*. The Court, moreover, has repeatedly reaffirmed the importance of freedom of expression. It is the foundation of a democratic society (see *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2; *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697; *R. v. Butler*, 1992 CanLII 124 (SCC), [1992] 1 S.C.R. 452). The core values which free expression promotes include self-fulfilment, participation in social and political decision making, and the communal exchange of ideas. Free speech protects human dignity and the right to think and reflect freely on one's circumstances and condition. It allows a person to speak not only for the sake of expression itself, but also to advocate change, attempting to persuade others in the hope of improving one's life and perhaps the wider social, political, and economic environment.

[22] In ***Pepsi-Cola***, the Supreme Court affirmed that secondary picketing was not illegal *per se*; rather, it was appropriate only for courts to permit injunctions to enjoin secondary picketing if it involved tortious or criminal conduct – described as the "*wrongful action approach*". The Supreme Court adopted the wrongful action approach to secondary picketing, holding that this approach recognized that secondary picketing was lawful where there was no tortious or criminal conduct.

It held that the third party initiating the injunction proceedings should only be permitted to do so if it is subjected to a tort or crime and "*not where it has merely been the target of peaceful secondary picketing*" (at para. 111). It noted that when the conduct in question is non-tortious, it is not assumed that more is required to protect third parties.

[23] The Supreme Court of Canada in ***Pepsi-Cola*** went on to hold that the best approach to the problem of "*regulating*" secondary picketing is the one that best conforms to the ***Charter*** mandated methodology of permitting secondary picketing except if it involves a tortious or criminal action, at para. 77:

> 77 Picketing which breaches the criminal law or one of the specific torts like trespass, nuisance, intimidation, defamation or representation, will be impermissible, regardless of where it occurs.

[24] The ***Pepsi-Cola*** decision also acknowledges that detriments may be suffered by a third party due to a labour dispute, but such detriments would only warrant the intervention of the common law if there is "*economic fallout*". It went on to note that "*some economic harm*" to third parties is anticipated by the labour relations system, and as a "*necessary cost of resolving industrial conflict*" (at para. 45).

THE LEGAL TEST FOR INJUNCTIONS

[25] The test for an interlocutory injunction was articulated by the Supreme Court of Canada in ***RJR-MacDonald Inc. v. Canada (Attorney General)***, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 ("***RJR-MacDonald***"), as a balancing of three factors. The moving party must prove:

a) There is a serious issue to be tried;

b) It will suffer irreparable harm or harm not compensable by an award of damages, if the injunction is not granted; and

c) The balance of convenience favours the plaintiff, in the sense that the harm to the plaintiff if the injunction is not granted must exceed the harm to the defendant if the injunction is granted.

(See ***RJR-Macdonald***, at pp. 332-33.)

[26] The three factors in ***RJR-MacDonald*** are not standalone requirements that must be overcome individually. Depending on the circumstances, strength in one of the factors can compensate for weakness in another. (See ***Hudson Bay Mining***, at para. 82.)

[27] In Koehen J.'s Endorsement dated December 6, 2024 (the "Ontario Endorsement"), Koehnen J. held that Purolator satisfied the ***RJR-MacDonald*** test in a case involving secondary picketing by CUPW members at a Purolator facility in Scarborough, Ontario. (See ***Purolator Inc. v. John Doe et al.***, 2024 ONSC 6696, at paras. 18-20.)

STRONG *PRIMA FACIE* CASE

[28] Purolator acknowledges that as to the first part of the test, it must meet a higher standard than "*a serious issue to be tried*" and the burden it must discharge is elevated to the "*strong prima facie case*" standard. This is due to the simple fact that courts have acknowledged as a practical matter that a picketing injunction amounts to a final order enjoining a constitutionally protected right and the key

facts are not in dispute (Ontario Endorsement, at para. 38). The evidence of the moving party must therefore be able to withstand scrutiny under the strong *prima facie* case standard (***RJR-MacDonald***, at p. 337).

[29] I agree with Purolator's argument that Purolator is not the employer here and it is entitled to be protected from tortious and criminal conduct as a third party. Despite the fact that Canada Post is a majority shareholder in Purolator, it cannot be placed in the same box as an employer. The Ontario Endorsement agreed with this assessment, as Purolator and Canada Post are distinct legal entities, operating in unrelated facilities and they have entirely separate legal rights and obligations. This includes Purolator's obligation to its own employees who are under a different labour agreement than the employees of Canada Post.

[30] Purolator argues on the facts before me that two-and-one-half hours of secondary picketing over the course of one day has resulted in delays and inconvenience. I am not satisfied that the evidence of delay and inconvenience as proven meets the strong *prima facie* case standard. The ***Act*** and the ***Charter*** demand that persons living in a free and democratic society have to endure a certain degree of inconvenience and even frustration while their fellow Canadians engage in their constitutionally protected right of free speech in the context of a labour dispute. (See ***Harrison v. Carswell***, 1975 CanLII 160 SCC, [1976] 2 S.C.R. 200.)

[31] As to the extent of what degree of inconvenience must be endured, I agree with the Ontario Endorsement, at para. 44, that third parties that are subjected to secondary picketing are entitled to expect a lesser degree of inconvenience than

employers who are being struck. The Ontario Endorsement makes reference to the ***Pepsi-Cola*** decision that confirms that third parties are to be protected from undue suffering, but not insulated entirely from the repercussions of a labour conflict. In ***Pepsi-Cola*** the Supreme Court of Canada was careful to note that secondary picketing cannot cross the line from being informational picketing into tortious or criminal conduct and that third parties can expect their contractual rights and free access to their business premises will be protected by the court (Ontario Endorsement, at para. 46).

[32] It bears noting that the Ontario Endorsement involved picketing that had much more of a dramatic impact on the business operations of Purolator than the facts before me. The Ontario Endorsement mentions that in one day (November 29, 2024) Purolator vehicles were blocked between 15 and 30 minutes. That kind of delay for a facility that has 78 vehicles leaving the business premises on a daily basis would result in a total delay of over 19 hours. Many of the vehicles in the Ontario fact situation were not even allowed to exit the facility at all on the day in question.

[33] That kind of evidence clearly crosses the threshold of what an informational secondary picketing should reasonably entail and becomes in effect a blockade of a third parties business premises, which the law does not protect. But to repeat, the delays described in the Ontario Endorsement are not similar to what has been described on the facts before me. Purolator's affidavit evidence states "*several trucks and personal vehicles*" were being delayed. None of the photos provided

by Purolator on the day in question show more than three Purolator vehicles in a que attempting to exit the Facility.

[34] It is surprising to me that Purolator, which describes itself as a leader in delivery and logistics, could not offer further or better particulars as to exactly how many vehicles were delayed and for how long. It should have access to these kinds of details with a tap on one of their computer monitors. I prefer the evidence of CUPW that apart from one vehicle being held for 15 minutes, the maximum amount of the delay facing any particular vehicle over the two-and-one-half hour period was four minutes. This is consistent with informational third-party picketing.

[35] The facts before me do not suggest a tortious conspiracy to undermine the business model of Purolator. Apart from one driver being held for 15 minutes due to a perceived traffic violation, which clearly is not part of an informational secondary picket and some picketers standing in the parking lot of Purolator, adjacent to the sidewalk, there is no evidence of tortious conduct. It can hardly be described as undue suffering.

[36] The words of Chief Justice Freedman from the ***Channel Seven*** case are worth repeating in my view. I have to avoid the snare of equating some degree of minor tortious conduct against a third party in a secondary picket as justification to shut down free speech protected by the ***Act*** and the ***Charter***. This is not a case of a complete blockade of business operations, which was the case in ***Hudson Bay Mining***.

[37] I am satisfied that delays of up to four minutes per vehicle over the course of two-and-one-half hours in one business day does not amount to a strong *prima facie* case. Apart from the one unacceptable 15 minute delay, the evidence before me is consistent with lawful communication about a labour dispute that must be tolerated in a free and democratic society.

IRREPARABLE HARM

[38] To obtain an injunction, a moving party must show it will suffer irreparable harm if the order is not granted. Irreparable harm means harm that cannot be quantified in monetary terms or remedied through the payment of damages. If the harm can be compensated by damages, it is not irreparable.

[39] The irreparable harm test was well articulated in the Ontario Endorsement, at paras. 59-62:

> [59] In support of its position CUPW cites Justice Gray's statement in *Sobey's v. UFCW* to the effect that:
>
> > [I]n the context of a lawful strike, it is not enough to say that the employer has the right to access its property and thus must be granted an injunction to prohibit any delay in accessing the property. To take that approach, as some courts have done, would inadequately take account of the dynamics of a strike.34
>
> [60] That is an entirely fair observation. However it was made in the context of restrictions on an employer's rights to access property during a strike, not in the context of a third party being denied use of its property.
>
> [61] It is well-established in law that where protesters engage in tortious or criminal actions, damages are not an adequate remedy. The remedy for intentional, unlawful conduct ought to be an order to cease and desist, not a lengthy action for damages. Courts have also regularly found that blocking entry or exit to an owner's property constitutes irreparable harm to the owner.

> [62]Given that Purolator has demonstrated that continued activity of the sort that occurred on Friday November 29 would lead to delays of 19.5 hours each day which, as a practical matter, would prevent the majority of its trucks from leaving the Facility each day, I am satisfied that Purolator has demonstrated that it will suffer irreparable harm if the injunction is not granted.

[40] Merely raising the spectre of some degree of delay over a two-and-one-half hour period on one day cannot lead to conclusion that irreparable harm must follow.

[41] Purolator alleges, without providing any supporting documentation, that its good will and reputation have suffered and that its business may suffer some potential future harm. I agree with the position advanced by CUPW that such unsupported and speculative assertions do not meet the evidentiary standard of irreparable harm. Alleging possible future harm (a *quia timet* injunction) calls for courts to be cautious. Evidence of "*proof of imminent danger*" and "*proof that the apprehended damage will, if it comes, be very substantial*" is frequently mentioned in the *quia timet* jurisprudence. (See ***Canadian Civil Liberties Association v. Toronto Police Service***, 2010 ONSC 3525, at para. 86.)

[42] In ***Effem Foods Ltd. v. H.J. Heinz Co. of Canada***, 1997 F.C.J. No. 926, 72 A.C.W.S. (3d) 931, Rothstein J. (as he then was) articulates the burden on moving parties in an injunction application as to irreparable harm as follows:

> 7 Sophisticated participants in the market place such as these litigants should be able to provide the Court with an indication of loss based upon historical experience and a mathematical or statistical analysis of the circumstances demonstrating that the loss is not reasonably calculable which would give the Court some degree of confidence that the kind of loss being alleged would indeed occur and cannot be calculated. …

[43] On the facts before me Purolator cannot satisfy the irreparable harm test.

BALANCE OF CONVENIENCE

[44] If I grant the Order as Purolator has requested, the picketers will be prevented from engaging in non-violent informational picketing, which is a ***Charter***-protected right. This is not a case as described in the Ontario Endorsement, where picketers were being enjoined from the total blockage of egress from the Scarborough facility, which they had no legal right to do in the first place.

[45] On the other hand, the employees and customers of Purolator will be deprived of a 100 per cent delay free access to or egress from the Facility on a 24/7 basis. The balance of convenience favours CUPW.

[46] To be clear, I am not condoning an across-the-board four-minute stoppage limit per vehicle for informational picketing at the Facility on a 24/7 basis for the duration of this strike and my reasons should not be interpreted in such a way. My reasons pertain to the stoppage of an undetermined number of vehicles over a two-and-one-half hour period on one particular business day last week.

[47] I am alive to the fact that this labour dispute is a fluid situation and CUPW may conclude that an expansion of the scope or nature of its secondary picketing at the Facility will serve the best interests of its members. If the efforts of CUPW escalate to what is in effect a blockage or blockade of its business activities at the Facility, counsel for Purolator will be able to proceed with a fresh motion seeking an injunction and I will seize myself of any future motions in this matter.

CONCLUSION

[48] For all of these reasons the motion sought by Purolator and filed on December 6, 2024, is dismissed.

_____J.