Strikes, Picketing and Injunctions in Quebec

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In the recent decision rendered by the Court of Appeal in the case of *Gaspé Copper Mines* v. *United Steelworkers of America*,[1] it is of interest to note the following topical comments by the Judges on labour relations in this Province.

Brossard, J.:

> Il est décevant d'être obligé de constater qu'à une époque et dans un pays qui se disent civilisés et où le recours à la conciliation est imposé comme devoir par un législateur anxieux d'assurer la solution pacifique des conflits d'intérêts, des hommes ayant assumé la lourde responsabilité de diriger et protéger les travailleurs cherchent encore à se faire droit à eux-mêmes, au mépris fondamental de la loi, par le recours à la violence et à la force brutale, par la violation volontaire et préméditée des ordres des tribunaux chargés d'appliquer la loi.

Taschereau, J.:

> Toutefois, le droit de grève ne confère aucun privilège particulier aux ouvriers. Ils demeurent, comme les autres citoyens, soumis aux mêmes lois et, comme ceux-ci, tenus de répondre de leurs délits devant des cours de juridiction civile et criminelle.
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> Malheureusement, trop de chefs syndicaux et de travailleurs méconnaissent ce principe de base et ont recours, pour atteindre leurs fins, aux menaces, à l'intimidation, à la violence, au sabotage ainsi qu'à d'autres délits de même nature contre la personne et les biens d'autrui.
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> Si les tribunaux toléraient de telles infractions, au mépris des principes les plus élémentaires de l'ordre et de la justice sociale, il s'ensuivrait que toute personne croyant avoir une juste réclamation contre une autre pourrait également tenter de se faire justice à elle-même et d'user des mêmes procédés. Ce serait dire que la loi de la jungle prévaudrait, que l'anarchie serait substituée à l'ordre et que la société toute entière vivrait sous un régime de terreur.
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> Pour remédier à ces dangers, la loi met à la disposition des tribunaux deux remèdes principaux dont l'un, l'injonction, qui a pour but de prévenir l'infraction, alors que l'autre, l'action en dommages-intérêts, a pour objet d'établir la responsabilité des défendeurs et de fixer une compensation adéquate pour les dommages résultant des infractions dont ils se sont rendus coupables.

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[1] As of yet unreported Judgment of the Quebec Court of Appeal No. 6587 (Que.) rendered 16 March 1967.

What make these statements of particular importance is that they were written at the very time that organized labour has launched a determined attack against the use of injunctions in labour disputes.

The main argument invoked against the use of injunctions appears to be that they are used — and granted — to interfere with the strikers' legal right to picket at the time of a strike.[2]

The purpose of this study is to examine the use of injunctions in Quebec in the light of the above criticism and to review the jurisprudence of our courts in this connection.

The real problem which presents itself is that labour appears to hold a different concept of the purpose of picketing and strikes than that recognized by law. Thus, when an injunction is granted to apply the law as it actually is, unions feel that they have been treated unjustly by the courts. The law as it has developed is that after a given time of negotiating, employees may withdraw their services from the employer and attempt peacefully to persuade their fellow workers to do the same. Further, they may picket for the purposes of informing the public of their complaint against the employer. Lastly, the law provides that no person shall cease to be an employee for the sole reason that he has ceased to work in consequence of a strike (The Labour Code 1964 R.S.Q. Ch. 141 s. 98).

Labour, however, has come to consider its right to strike and picket as something sacred. The mystique of the picket line has developed to such an extent that the strikers seem to believe that the picket line must be respected and that if anyone crosses it, he does so at his peril. Not only has the object of the picketing become to prevent any other employees from working, but also to prevent the employer from operating his enterprises at all and, to this end, to prevent any supplies from reaching the enterprise and any finished goods from leaving it. Some unions go further and believe that they are entitled to forbid all access to the property — even

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[2] In other jurisdictions the objection is also raised that injunctions are granted *ex parte* on affidavit evidence alone. In Quebec the interlocutory injunction is granted only after proof and hearing (of which due notice has been served in advance on the defendant). Article 753 of the Code of Civil Procedure does provide that "In case of urgency, a Judge may nevertheless grant it provisionally before it has been served, but for a period that will not exceed ten days". Within ten days the opposite party must be heard and can force plaintiff to make his proof. As a matter of fact, few provisional injunctions are granted for more than three or four days in view of the desirability of allowing the defendant to hear plaintiff's proof and present his defense.

by the owner or his representatives — until the strike is settled. Since these goals are not recognized by law, they can only be achieved by violence and intimidation. (In this connection one can only deplore the direction that has been given to many strikes by the professional "Strike Directors" — usually permanent employees of the unions who have not been involved in the negotiations and whose purpose is to direct the activities against the employer. In many cases it is these professionals who encourage the employees to believe that acts which would be illegal and criminal if done by the individual are legal when done by the collectivity and are sanctioned by the right to strike.[3])

If the law is not respected, the right to enjoin must exist, be exercised, and enforced. Injunctions are the only effective means of dealing with situations where a mob of picketers has taken the law into its own hands to forbid free access by the owner to his property. It is not the exercise of the right of picketing that leads to restraint by injunctions but the abuse of that right.

The injunction is an exceptional measure which should be issued only after serious proof has been made that the peaceful picketing is serving merely as a cloak for illegal (and often violent) acts. But in a Province that over the last few years has known much violence and even more illegality at the occasions of strikes it is submitted that to eliminate the injunction would merely return us to the law of the jungle referred to by Mr. Justice Taschereau.[4]

One example of what could happen if injunctions were abolished and of what does happen when the authorities fail to enforce the law will suffice.

A strike by the syndicates of the Confederation of National Trade Unions (C.S.N.) against five mills of the Dominion Textile Company Limited started in March and April 1966 at the different mills, and continued until August 30th, 1966. At the Magog Mill, where two thousand employees were on strike from the 13th of April, 1966, the supervisors and guards were expelled from the mill by the strikers on the 15th of April 1966 and from that date until the 30th of August not one representative of the Company was allowed

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[3] The following statement by Hyde, J. in the *Gaspé Copper case* (*Supra*, footnote 1) is particularly apt:

"The principal victims of this sorry situation are the workers themselves and their families who were led and encouraged by Appelants' representatives to believe that they could ignore the law to achieve their legitimate ends. They were entitled to more responsible leadership."

[4] In the *Gaspé Copper* case, see *supra*, footnote 1.

on to the property,[5] (in spite of injunctions and proceedings for contempt of court, all of which were successful). For those four and one half months the Company was powerless to protect its property, there was much damage to its machinery through lack of maintenance and there was no surveillance against fire which could have meant the complete destruction of the mill with the consequent loss of jobs.[6] What makes the case even more startling is that there was never any question that the Company would attempt any production during the strike — the strikers merely were determined to see that no one entered, and the police force at Magog (11 men) were powerless to enforce the injunction.

The reasoning behind this totally irresponsible act of the Syndicate is hard to follow although it was said that it was hoped that insurance companies would put pressure on the Company to settle.

If the above case was an isolated example of labour irresponsibility in Quebec it would in itself be serious, but similar cases involving violence and complete disregard for law are manifold,[7] to say nothing of the increased incidence of illegal strikes and/or "study sessions". At the time of writing, for instance, two employees have been stabbed and seriously wounded on a picket line in an illegal strike at Canadian Vickers Ltd.

This flagrant defiance of the law in the Province by some unions — and the failure of the authorities to enforce the law — leads to a more serious question for the lawyer, namely whether the rule of law exists at present in strike situations in view of the fact that in many cases the law can be broken with impugnity, the final settlement providing for a general amnesty. In some cases the governments have been party to these agreements.

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[5] It is interesting to note that on the same day or within a day or two the same tactic was invoked by the syndicates against the Company mills in Sherbrooke and Drummondville. In some of these after the first few weeks, the Insurance Company insuring the mills was able to persuade the syndicate to allow a guard in to the plant — but only if he was accompanied by a union member who had to be paid five dollars an hour ! At Magog even this was not allowed.

[6] At one Sherbrooke Mill a fire did break out amongst some of the supplies and the city firemen themselves had to negotiate before being allowed to enter. The damage was substantial.

[7] See for instance the acts reported in *Griffin Steel Foundries Ltd.* v. *Syndicat des Métallurgistes* [1959] C.S. 566, in *Gaspé Copper Mines* v. *United Steelworkers of Ameriea* [1965] C.S. 51, in *Seafarers International Union* v. *Upper Lakes Shipping Limited* [1964] B.R. 737, in *Acton Vale Silk Mills Ltd.* v. *Léveillé et al* (1940) 78 C.S. 19.

It is not surprising, therefore, in this context to find a Quebec judge reminding leaders of an international union of the late President Kennedy's statement of the rule of law.[8]

> The educated man knows that for one man to defy law or Court order he does not like, is to invite others to defy those which they do not like, leading to a breakdown of justice and order. He knows that every fellow man is entitled to be regarded with decency and treated with dignity. Any educated citizen who seeks to subvert the law, to suppress freedom, or to subject other human beings to acts that are less than human, degrades his heritage, ignores his learning and destroys his obligation. Certain other societies may respect the rule of force, we respect the rule of law.

To this Mr. Justice Lacourcière might have added Lincoln's dictum:[9] "There is no grievance that is a fit object of redress by mob law".

There follows a review of the Quebec jurisprudence of the use of injunctions in strike situations.

Injunctions in an Illegal Strike

There has been an interesting development in this Province in the judicial reasoning as to whether picketing, even if peaceful, should be enjoined if it occurs in support of an illegal strike. Whereas in the late 1950's it was generally accepted that peaceful picketing would not be enjoined, it has more recently been held that if the strike is illegal, the picketing becomes illegal also and should therefore be restrained.

The earlier jurisprudence began with the case of *Windsor Shoe and Slipper Company* v. *Union des Ouvriers de la Chaussure, Local 500* [10] which held:

> A judgment dismissing an application for an interlocutory injunction on the ground that the defendant Union had not committed any illegality or abuse in the manner of picketing, and finding that the plaintiff company failed to prove threats, intimidation or violence, should be maintained, if a *prima facie* case was not shown.
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> Whether a contract between the parties is legal or null and whether the strike was legal or illegal are questions to be decided on the merits of the case.

The decision which was most often cited was that rendered by Mr. Justice Montpetit in *Borek* v. *Amalgamated Meat Cutters and*

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[8] Cited by Mr. Justice Lacourcière in *Gaspé Copper Mines Limited* v. *United Steelworkers of America* [1965] C.S. 51 at 95.

[9] Address before the Young Men's Lyceum of Springfield, Illinois January 27th 1838.

[10] [1954] B.R. 266.

Butcher Workmen of North America[11] which, although issuing an injunction, held:

> In my opinion, and although there are very few instances in this province that I am aware of where 'peaceful picketing' took place without a strike (legal or illegal) being called or being in the process of being called, I still feel that, in law, one can exist and be resorted to without the other.

Both of the above cases were cited with approval by Mr. Justice Demers in *Jarry Automobile Limitée* v. *International Association of Machinists, Lodge 712, A.F. of L.*[12] and in *Louis Donolo Inc.* v. *The Building and Construction Trades Council of Montreal et al*[13] and by Mr. Justice Brossard in a comprehensive study in *Oberman et al* v. *Amalgamated Meat Cutters and Butcher Workmen of North America et al.*[14]

In this latter case, which unfortunately remains unreported, the petition for injunction was dismissed without costs but Mr. Justice Brossard added:

> Having regard to the foregoing, it would therefore, in the present instance, be premature to stop by interlocutory injunction all acts which might be interpreted as being acts of picketing on the ground of the illegality of the strike. In the present instance, the so-called strikers having not themselves been heard at the request of either party, it is neither possible nor would it be in the interest of justice to hold at the present stage that they actually went on strike with a view to obtaining better conditions of employment and did not, in fact, definitely abandon their employment. If they went on strike, then there is no reason to doubt that the essential purpose of the following picketing, was to force their employers, the Petitioners, to grant them better conditions of employment and the legality or illegality of the strike would then seriously affect the legality or illegality of the acts of picketing reproached. If they were not on strike but had definitely quit their employment, then the legality of the acts of picketing must be considered in the light of these acts alone.

Finally, in a 1958 decision, Mr. Justice Challies (as he then was) while issuing an injunction in the case of *Hyde Park Clothes Limited*

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[11] [1956] C.S. 333, Mr. Justice Montpetit in coming to his decision considers *Oakville Wood Specialties Ltd.* vs *Mustin* [1950] O.W.N. 735, where an injunction was issued to eliminate picketing during an illegal strike and *General Dry Batteries of Canada Ltd.* v. *Brigenshaw* (1951) 4 D.L.R. 414 and *Peerless Laundry and Cleaners Ltd.* v. *Laundry and Dry Cleaning Workers Union* (1952) 4 D.L.R. 475 which, while both issuing injunctions, stated that peaceful picketing was legal during an illegal strike. These last two Common law decisions are now of questionable value in view of the *Gagnon* v. *Foundation Maritime Ltd.* decision of the Supreme Court of Canada, *infra*, and the several decisions which have followed it.

[12] Unreported Judgment C.S. Montreal 400,574 rendered 15 October 1956.

[13] Unreported Judgment C.S. Montreal 428,736 rendered 9 October 1957.

[14] Unreported Judgment C.S. Montreal 388,146 rendered 7 March 1956.

v. *The Amalgamated Clothing Workers of America et al*[15] stated:

> The court should not by injunction intervene in a labour dispute in favour of either side unless it is absolutely necessary to do so.
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> Peaceful picketing is not illegal and cannot be restrained by way of injunction so long as it is exercised in a way not contrary to the Criminal Code, local by-laws or regulations, or any article of the Civil Code.
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> Peaceful picketing *per se* does not become illegal because it is in aid of an illegal strike.
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> In the present case the court considers that it should not decide whether or not the strike or strikes were illegal...

In 1961, however, the Supreme Court, on appeal from a judgment of the Supreme Court of New Brunswick, upheld an injunction restraining all picketing on the ground that the strike was illegal: *Gagnon et al* v. *Foundation Maritime Limited.*[16]

The facts of the case were that certain union organizers requested recognition of their unions from the plaintiff company. The company refused the request on the grounds that they were not certified by law. A picket line brought the operations to a halt and the company obtained an injunction to stop the picketing. The Supreme Court of Canada confirmed the decision.

Mr. Justice Ritchie expressed his reasons in his notes at p. 438 of the case as follows:

> ...Although the picketing itself was, in my opinion, peaceful, it would be totally unrealistic to regard it as an exercise of any right of employees to peacefully inform other persons that they were on strike. There is no evidence that there was anything in the nature of a strike in progress before the placards were paraded and the picket line established. The purpose of picketing and parading of placards was not to inform other people that a strike existed but rather to create a situation which would result in a cessation of work, constituting a strike within the meaning of the Labour Relations Act,...

This decision appears to have settled the matter in the rest of Canada,[17] and the reasoning was applied in Quebec by Mr. Justice Lafleur in the case of *Sanguinet Automobile Limitée* v. *La Fraternité Canadienne des Cheminots et al*[18] in which he held that peaceful picketing should be enjoigned because it became illegal because of the illegal nature of the strike.

> La prohibition édictée par l'article 24, paragraphe 1, de la Loi des relations ouvrières, quant à toute grève et contre-grève, ne comporte aucune exception et doit, dans l'intérêt public, être appliquée rigoureusement.

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[15] Unreported Judgment C.S. Montreal 442,402 rendered 20 May 1958. See also *Noe Bourassa Ltée* v. *United Packinghouse Workers* [1961] C.S. 604 at 609.

[16] [1961] S.C.R. 435.

[17] See Carrothers, *Collective Bargaining Law in Canada* (Toronto, 1965) at pp. 428 and 470.

[18] [1964] C.S. 544.

> Aucune association, soit de salariés ou d'employeurs, ne peut, pour des motifs qu'elle estime justifiés, nécessaires ou même urgents, se faire justice en violant les dispositions impératives de la loi pour imposer par la force l'acceptation de certaines conditions litigieuses et le règlement de certains griefs entre un employeur et ses employés.
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> Un piquetage, même paisible, au soutien d'une grève illégale et exécutée contrairement aux dispositions de la loi, devient lui-même illégal, à moins d'être autorisé par la loi, et peut faire l'objet d'une injonction.
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> Il appartient au législateur de définir l'acte de piquetage et d'en déterminer l'usage et l'application; le tribunal n'est pas autorisé à suppléer au silence du législateur dans ce domaine.
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> L'injonction est la procédure appropriée pour faire cesser les actes dommageables et nuisibles que constituent le recours à la grève par une union de salariés avant même que ne soit commencée la négociation relative à une convention de travail,...

In support of his decision, Mr. Justice Lafleur cited the Ontario case of *Nipissing Hotels & Farenda Co. Ltd.* v. *Hotel and Restaurant Employees and Bartenders International Union (C.L.C., A.F. of L., C.I.O.)*[19] and the passage of Ritchie, J. in the *Foundation Maritime* case quoted above.

Following Mr. Justice Lafleur's decision, there have been numerous recent judgments eliminating picketing in illegal strikes. In *Vapor Heating Limited* v. *United Steelworkers of America et al,*[20] Mr. Justice Auclair after stating that:

> La raison principale invoquée par la requérante c'est que la grève à laquelle ont participé les intimés est illégale.

considered the facts of the case and accorded the injunction banning all picketing.

In the *Queen Elizabeth Hospital of Montreal* v. *Raoul Gagnon et al*[21] Lamarre, J. held that:

> Les ennuis déjà subis,... par un piquetage injustifié devant les premisses de la requérante, parce qu'il n'y a pas de grève légale, doivent être de nouveau évités et contrôlés.

Again in *Freight Aide Limited* v. *The Cartage and Miscellaneous Employees, local 931,*[22] Langlois, J. held:

> Des faits ci-dessus, le tribunal déduit que la grève était illégale et aussi, par conséquent, le guet.

See also the decisions of Pothier, J. in *Dominion Textile Company Limited* v. *Gaston Gagnon,*[23] and of Sabourin, J. and Deslauriers, J.

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[19] (1963) 36 D.L.R. (2nd) 81; (1963) 38 D.L.R. (2nd) 675.
[20] Unreported Judgment C.S. Montreal 709,636 rendered 19 April 1966. See 13 M.L.J. 181.
[21] Unreported Judgment C.S. Montreal 724,006 rendered 12 January 1967.
[22] Unreported Judgment C.S. Montreal 706,559 rendered 15 March 1966.
[23] Unreported Judgment C.S. Montreal 713,387 rendered 20 June 1966.

in *Imprimerie Montreal Offset Inc. - Montreal Offset Printing Inc.* v. *L'Union Typographique Jacques-Cartier, local 145.*[24]

While these recent decisions appeared to indicate a trend in the jurisprudence, the decision of Puddicombe, J. in *Arden Fur Corp.* v. *Montreal Fur Workers Union,*[25] has left the issue subject to some doubt. After holding that an injunction would not issue to stop peaceful picketing, he cites with approval the finding of the 1958 decision in *Hyde Park Clothes Limited* v. *Amalgamated Clothing Workers of America et al*[26] that peaceful picketing cannot be enjoined even if it is in support of an illegal strike. No mention, however, is made of either the *Foundation Maritime* or *Sanguinet Automobile* decisions or of the more recent jurisprudence.

It is submitted, with respect, that if the purpose of the picketing is to support a strike which is illegal, then the picketing itself becomes illegal even if peaceful, and should be restrained by injunction. It seems illogical to pretend that although the employees do not have the right to strike, they do have the right to picket to support the strike that they are not supposed to be on. It follows, therefore, that the court even on the hearing of the interlocutory injunction should decide the legality of the strike if this is submitted in proof for decision.

The reason that our courts are taking a more severe view of picketing in illegal strikes is perhaps due to the changed purpose of picketing, the increased incidence of illegal strikes, and the application of what has been referred to in Ontario as "The Rule"[27] — that the picket line shall be respected by other workers. When the changed purpose and the rule are applied to an illegal strike situation, it seems obvious that the picketing itself has become enjoinable.

Mr. Justice Brossard foresaw the problem and the consequences, in 1956, when he wrote:[28]

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[24] Unreported Judgment C.S. Montreal 634,831 rendered 26 February 1964 and 25 March 1964.

[25] [1966] C.S. 417.

[26] *Supra,* see footnote 15.

[27] *Hersees of Woodstock Ltd.* v. *Goldstein* (1963) 38 D.L.R. (2nd) 449, Aylesworth J. at 453.

[28] In *Oberman* v. *Amalgamated Meat Cutters and Butchers Workers,* Unreported Judgment C.S. Montreal 388,146 rendered 7 March 1956. See also the Ontario cases of *Smith Brothers Construction* v. *Jones* [1955] 4 D.L.R. 255, McLennan J. at 264 and *Hersees of Woodstock Ltd.* v. *Goldstein* (1963) 38 D.L.R. (2nd) 449, Aylesworth J. at 453 and the study by Innis Christie on *Inducing Breach of Contract* Vol. 13 McGill Law Journal 101 at pp. 144 ff.

> The reference to the present general tendency of labour organizations to instruct their members to refrain from crossing a picket line raises however an interesting question. Should the tendency become, in the future, a policy invariably followed by all organized labour, then it could become possible to argue that the acts of picketing are no longer done for the purpose of legally communicating information, but for the very purpose of preventing an enterprise from carrying on its operations; should it become so, organized labour would itself render illegal any form of picketing unless the legislator intervenes.

One last consideration on illegal strikes; it has recently become the practice for certain unions in Quebec to disguise an illegal strike by calling their members to attend "study sessions" during working hours, in the hope, presumably, that the public or the courts will be confused as to the true nature of the situation. These unions argue that these "study sessions" are not strikes but are provided for in section 98 of the Labour Code which provides in part.

> Nothing in this code shall prevent an interruption of work that is not a strike or a lock-out.

It goes without saying that a change of name does not change the nature of the act, and it is submitted that the so-called "study sessions" are clearly covered by the definition of "strike" in the Labour Code [Section 1(h)].

> Strike: — the concerted cessation of work by a group of employees.

Such was the finding of the Court in a decision rendered by Mr. Justice Lamarre in *The Queen Elizabeth Hospital* v. *Gagnon and the National Syndicate of Queen Elizabeth Hospital Employees (C.N.T.U.)*[29] in which he declared that the study session amounted to an illegal strike and issued an injunction, enjoining the respondents from:

(a) Holding, organizing, instigating or participating in any "study session" or meetings during working hours of the employees, or other forms of illegal strike;

(b) Encouraging, inviting, or authorizing any employees of the Hospital to attend or participate in any illegal strike, including meetings and/or "study sessions" during the working hours of these employees;

(c) Picketing, watching and besetting the premises of the Hospital, at 2100 Marlowe Street in Montreal;

(d) Forbidding the free access to the Hospital;

(e) Preventing in any way the normal Hospital operations or interfering with the normal work of the Hospital employees.

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[29] Unreported Judgment C.S. Montreal 724,006 rendered 12 January 1967.

Legal Strikes

Quebec courts have frequently made reference to the common law tort of nuisance as the justification for granting injunctions in labour disputes, although, presumably, in civil law terms the injunction was being issued to prevent an offense under Article 1053 of the Civil Code. Since, however, the law of injunction in Quebec comes from the common law[30] it is not unusual to see judgments of other Canadian provinces cited in our jurisprudence and inevitably certain common law concepts introduced. Thus in the case of *Union Nationale des Employés de Vickers* v. *Canadian Vickers Limited*,[31] Mr. Justice Hyde cites with approval Mr. Justice Kerwin's holding in *Williams* v. *Aristocratic Restaurants Ltd.*[32] that watching or besetting if carried on in a manner to create a nuisance is at common law wrongful and without legal authority; that picketing is a form of watching and besetting; and that it is a question of fact to be decided in each case whether it amounts to a nuisance. Mr. Justice Hyde goes on to say that these statements are equally applicable in Quebec.[33]

The circumstances under which injunctions have been issued are legion, but, in general, the courts have based their decision on the necessity of the injunction either because grave and irreparable damage was being caused[34] or because the acts committed were clearly illegal and should be restrained.[35] In most cases, of course, the combination of the two grounds will be invoked.

The objection that the injunction should not issue because the plaintiff has other recourses has been considered and disposed of by the courts. In particular it has been held on several occasions that, although the facts alleged by plaintiff may entitle him to

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[30] Rap. Com. Ch. XXXVIII. See also *Wills* v. *Central Railway Company of Canada* (1915) 24 K.B. 102 (PC), Lord Moulton at 106-107.

[31] [1958] B.R. 470 at 476. See also *International Ladies Garment Workers Union* v. *Rother* (1923) 34 B.R. 69 at 72; *Aird & Son Ltd.* v. *Local 500, International Union of Shoe & Leather Workers* [1948] 3 D.L.R. 114; and *Tricot Somerset Inc.* v. *Le Syndicat Catholique du Tricot Somerset Inc.* [1954] R.L. n.s. 93.

[32] [1951] S.C.R. 762 at 780.

[33] In *Drysdale* v. *Dugas* (1897) 22 S.C.R. 20, Strong C.J. states at p. 23 that "Mr. Justice Jetté in his judgment in *Crawford* v. *The Protestant Hospital* (M.L.R. 5 C.S. 70) observes that the English and French law on the subject of nuisance are exactly alike". It is submitted that this is at best an oversimplification of Mr. Justice Jetté's decision.

[34] See for instance, *Sauvé Frères Limitée* v. *Amalgamated Clothing Workers of America et Autres* [1959] C.S. 341 and *Noe Bourassa Limitée* v. *United Packinghouse Workers of America* [1961] C.S. 604.

[35] See *infra*.

recourses before the Criminal Courts, this does not prevent him from obtaining an injunction from the Civil Courts. This was held by Mr. Justice Greenshields in *International Ladies Garment Workers* v. *Rother*[36] and has been followed in *Society Brand Clothes* v. *Amalgamated Clothing Workers of America*[37] and *Foundation Company of Canada et al* v. *The Building and Construction Trades Council of Hull.*[38] The same has been held[39] for recourses provided under the Labour Relations Act (1941 R.S.Q. ch. 162A — now replaced by The Labour Code 1964 R.S.Q. ch. 141). Finally, the objection that plaintiff has a recourse in damages which he did not take with his petition for injunction has also been rejected.[40]

It now remains to consider what acts our courts have considered legal and what other ones they have enjoined and held to be illegal. It is to be remembered that the main criticism against tribunals in issuing injunctions is that they interfere with strikers' rights.

In the case of legal strikes peaceful picketing should not be enjoined unless picketing becomes merely a front or instrument to cloak other activities so that together they may have a harmful effect.[41]

Quebec jurisprudence has given the following definitions and illustrations of peaceful picketing, and the rights it confers:

In *Shane* v. *Lupovich,*[42] Mr. Justice Archambault (sitting *ad hoc*) states:

> L'existence légale des unions ouvrières, des conventions collectives, le droit de grève, sont maintenant reconnus par la loi. Ce n'est plus un crime de surveiller ou d'épier un établissement industriel (watch and beset) dans le but de donner ou d'obtenir des informations, de soliciter et de tâcher de persuader paisiblement des ouvriers à se joindre à une union ouvrière et même de tenter de convaincre les ouvriers sans menace ni violence qu'il est de leur intérêt de cesser de travailler pour certains patrons.

In the same case, Mr. Justice Barclay[43] writes:

> But under our law... employees have the right to strike...; they have the right peaceably to counsel and urge other workers to go on strike or

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[36] (1923) 34 B.R. 69 at 77.

[37] (1930) 48 B.R. 14 Mr. Justice Bond at 30.

[38] [1961] C.S. 21.

[39] *L'Association des Employés du bas façonné de St-Hyacinthe Inc.* v. *Gotham Hosiery Company of Canada Ltd.* [1959] R.P. 52.

[40] See *National Electrical Contracting Co. Limited* v. *Le Syndicat National de la Construction Hauterive* [1965] R.P. 18 and *Griffin Steel Foundries Ltd.* v. *Syndicat des Métallurgistes Inc.* [1959] C.S. 566.

[41] Mr. Justice Batshaw in *Noe Bourassa* v. *United Packinghouse Workers of America et al* [1961] C.S. 604 at 611.

[42] [1942] B.R. 523 at 530.

[43] *Ibid,* at 529.

> join a union; they may watch and beset for the purpose of obtaining information; peaceful picketing is not prohibited so long as it does not constitute a common law nuisance...

In *Borek* v. *Amalgamated Meat Cutters*[44] at page 337:

> From the above provisions, it appears very plainly that "watching" and "besetting" an establishment... "for the purpose of obtaining or communicating information"... is not prohibited by the Criminal Code and does not constitute an offence under the said Code.
>
> As mentioned by Tremeear, the words "besets or watches" in section 501, par. (f) (which is substantially the same as art. 366, par. (f), above quoted) are not defined in the Code, but they refer to the conduct commonly called "picketing", and although that term is not used in the Code, it is generally regarded as synonymous. The word "picketing" is defined in the Encyclopaedia Britannica, quoted by Rivard J. in Int. Ladies Garment Workers Union v. Rother, as "a term used to describe a practice resorted to by workmen engaged in a trade dispute, of placing one or more men near the works of the employees with whom the dispute is pending with the object of drawing off his hands or acquiring information useful for the purposes of the dispute".

The Courts, however, not having an actual text of law to interpret, have been more concerned with the legality or illegality of the actual acts committed in any given case, which were defended as picketing, than with the actual practice itself. It is therefore not surprising that we have more illustrations in our jurisprudence on what acts should be enjoined and are not to be qualified as peaceful picketing than we have positive studies of the right to picket.

In the first place, it goes without saying that acts of violence and intimidation are illegal and will lead to an injunction if the judge is of the opinon that the picketing is a cover for them.[45]

While violence or intimidation have in most cases accompanied them, the following acts have also been held to be illegal by our courts.

(1) Preventing the operations of a company or scheming to do so.[46]

Seafarers International Union of Canada v. *Upper Lakes Shipping Limited:*[47]

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[44] [1956] C.S. 333, see footnote at p. 337. Note, however, the comment by Carrothers *op. cit.* at p. 442.

[45] See the cases referred to in footnote 7 as examples.

[46] See also *Acton Vale Silk Mills* v. *Léveillé et al* (1940) 78 C.S. 19; *Noranda Mines Limited v. The United Steelworkers of America* [1954] C.S. 27 and the notes of Mr. Justice Brossard in *United Steelworkers of America v. Gaspé Copper Mines Limited,* unreported judgment of Quebec Court of Appeal No. 6587 (Que.) rendered 16 March 1967.

[47] [1964] B.R. 737 at 740.

> However peaceful the picketing may have seemed, he had reason to believe that it was a vital part of a scheme to prevent by illegal means the carrying on of respondent's business, and events seem to have proved him right. Appellants may have legitimate grievances against respondent, but for these they are seeking redress before the courts. If, in addition, they desire to publicize their grievances, they had better adopt some means other than picketing, which seems in this case liable to lead to breaches of the peace and to interfere with the economie life of the whole community. The appeal should be dismissed.

(2) Preventing other workers from working or entering their place of work.[48]

The Foundation Company of Canada Ltd. et al v. *The Building and Construction Trades Council of Hull:*[49]

> If employees have been frightened away from their work by means of threats, intimidation and other deterrent and coercive measures, the mere subsistance of a picket line, even without additional threats, would serve as a constant reminder of past punishment and miseries and of possible present and probable future retaliation, and a diluted injunction forbidding only such illegal abuses of the right to picket would be totally ineffective. In such circumstances picketing should be prohibited in its entirety.

In this connection the practice of certain unions of establishing a "Pass System" has also been considered by our courts. Under the system the union determines who they will allow to cross the picket lines and issue passes to them. By implication and in fact any other person is not allowed to enter. The use of the system simplifies proof of illegal acts and has led to injunctions in the cases of *Dominion Textile Company Limited* v. *Le Syndicat Catholique des Ouvriers du Textile de Magog Inc. (C.N.T.U.)*[50] and *Union Nationale des Employés de Vickers* v. *Canadian Vickers Limited.*[51]

(3) Massing of large number of pickets.[52]

Lupovich v. *Shane:*[53]

> Individual workers and representatives of Unions are entitled, during a strike or at other times, to establish "pickets" in reasonable numbers, in the neighbourhood of an establishment with respect to which there is an industrial dispute, for the purpose of obtaining or communicating information; but if the number of the pickets exceed what is reasonably necessary

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[48] See also *International Garment Workers v. Rother* (1923) 34 K.B. 69; *Tricot Somerset Inc. v. Le Syndicat Catholique du Tricot Somerset Inc.* [1954] R.L. n.s. 93.

[49] [1961] C.S. 21.

[50] Unreported Judgment C.S. St. François 31,520. Judgment rendered April 25, 1966.

[51] [1950] B.R. 570. See also Carrothers *op cit.* at p. 434.

[52] See also *International Garment Workers Union v. Rother* (1923) 34 B.R. 69 and *Union Nationale des Employés de Vickers v. Canadian Vickers Limited* [1958] B.R. 470, Mr. Justice Montgomery at 472.

[53] [1944] 3 D.L.R. 193 at 203 (Superior Court).

in the circumstances, the number itself may be considered as constituting a threat or intimidation.

(4) Trespassing on private property.

Noranda Mines Limited v. *The United Steelworkers of America*:[54]

L'art. 501 par. (g) C. Cr., permet à un ouvrier qui se trouve sur les lieux de son travail ou près de cet endroit, alors qu'il a cessé de travailler, de se justifier si sa présence a pour objet d'obtenir ou de communiquer des renseignements, mais ne lui donne pas le droit d'empiéter sur le terrain d'autrui, contre le gré ou sans le consentement de celui-ci.

(5) Secondary boycotting.

In *Verdun Printing and Publishing Inc.* v. *Union Internationale des Clicheurs*,[55] Mr. Justice Deslauriers held:

Dans l'exercice du droit de grève, reconnu par les lois de notre pays, une certaine espèce de boycottage (primary boycott) peut être légale pour promouvoir les intérêts d'un groupe, comme l'entente parmi certains membres d'une union de cesser de faire affaires avec une personne contre qui une action concertée est dirigée. Il n'est pas permis cependant de recourir à des machinations dans le but de nuire à une personne en forçant d'autres personnes à lui nuire aussi (secondary boycott).

This decision was cited with approval in both *Noe Bourassa* v. *United Packinghouse Workers of America et al*[56] and *Sauvé Frères Limitée* v. *Amalgamated Clothing Workers*.[57]

In a more recent decision of *Canuk Lines Limited* v. *Seafarers International Union of Canada and Others*,[58] Mr. Justice Lafleur goes further than the previous cases. While agreeing that a secondary boycott (and for that matter a symphatic strike) was illegal, he decides that intimidation, coercion or threats of injury are essential elements of a boycott and by so doing suggests that any form of boycott is unlawful. Since any strike will contain elements of a primary boycott, it is submitted that his statements must be read in the context of secondary boycott.

Conclusions

In Quebec there has been frequent recourses to injunctions at the time of strikes. There has also been a long history of violence and disorder associated with strikes. Both facts are cause for concern. But to restrict injunctions without protecting against the disorder would be unrealistic. When any group takes the law into its own hands, our courts will be called on to intervene.

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[54] [1954] C.S. 27.
[55] [1957] C.S. 204.
[56] [1961] C.S. 604.
[57] [1959] C.S. 341.
[58] [1966] C.S. 543.

It is suggested by some that these situations should be removed from consideration by the civil courts and given to a special labour tribunal. The implication is that our Judges are not trained in labour law and therefore are out of their depth in these labour disputes. This is just not so. There is no great mystery to the law governing strikes and picketing and it certainly does not take an expert in labour law to appreciate when a group of people are resorting to violence or intimidation. Our Judges are called upon to resolve far more complex problems than these in other fields of law. Frankly, whether it be a Judge of the Superior Court, or of the Criminal Court or of a Labour Court, the result would still be that an order would issue to prevent illegal acts from being committed under the guise of peaceful picketing. Surely, neither the legislator, nor the courts, are going to license a group to commit acts which are illegal to an individual.

Professor Christie in his excellent study on *Inducing Breach of Contract in Trade Disputes*[59] suggests that what is needed in the area of picketing is legislation that provides for the issue of injunctions only in specific fact situations, but that these situations must be spelled out to leave scope for effective peaceful picketing. With respect, it is submitted that the solution must go much deeper.

What does "effective peaceful picketing" mean? Do we really need picketing at all? If the purpose of picketing is only to inform the public, then in today's era of mass communication far more effective ways are available, and picketing has become obsolete. There is far more intimidation than information coming from today's picket line. Most labour leaders will admit openly that this is the purpose of the line. It is a warning to all that cross it of reprisals either social, economic or physical.

There is a strong case to be made for preventing new employees from replacing the strikers during the strike. If a moderate view suggests that what the picketer is really doing is protecting his own job, and that the economic battle between the employer and the union becomes one sided when the striker can be replaced, then the legislator should prohibit such hiring during a strike. Having done so, could he not also ban the practice of picketing which has led to so much disorder?

The ground rules of a strike should be reconsidered by the legislator and then made very clear in law. This done, is it too much to hope that the law will be respected?

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[59] (1967) 13 McGill L. J. 101 at p. 151.