

PICKETING

INTRODUCTION

One potential outcome of an industrial dispute is a strike or a lockout. Strikes and lockouts often result in employees picketing the employer's place of business. Division 14 empowers the Board to regulate picketing. Some forms of picketing may result in an application for a cease and desist order. See: [[Cease and Desist, Chapter 30\(c\)](#)]. This policy outlines the legislation and case law relevant to picketing regulation, including:

- legislation;
- primary versus secondary picketing;
- behaviour on the picket-line; and
- remedies.

LEGISLATION

Section 84(1) allows employees to picket their employer during a lawful strike or lockout.

84(1) Subject to subsection (2), during a strike or lockout that is permitted under this Act anyone may, at the striking or locked-out employees' place of employment and not elsewhere, in connection with any labour relations dispute or difference and without acts that are otherwise unlawful, peacefully engage in picketing to persuade or endeavour to persuade anyone not to

- (a) enter the employer's place of business, operations or employment.
- (b) deal in or handle the products of the employer, or
- (c) do business with the employer.

Section 84(2), (3) and (4) speak to the Board regulating picketing:

84(2) On the application of any person affected by the strike or lockout the Board may, in addition to and without restricting any other powers under this Act including the powers of the Board with respect to section 154.

- (a) determine whether any premises are the place of employment for the purposes of subsection (1), and
- (b) regulate persons and trade unions who act in respect of activities under subsection (1) and by order declare what number of person may act under that subsection, determine the location and time of that action and make any other declarations that the Board considers advisable.

(3) When the Board makes a determination or order under subsection (2) it shall consider the following:

- (a) the directness of the interest of the persons and trade unions acting under subsection (1),
- (b) violence or the likelihood of violence in connection with actions under subsection (1),
- (c) the desirability of restraining actions under subsection (1) so that the conflict, dispute or difference will not escalate, and
- (d) the right to peaceful free expression of opinion.

(4) Except in accordance with subsection (1) and any determination or order of the Board under subsection (2), no person shall in connection with a labour relations dispute or difference engage in picketing.

PRIMARY vs. SECONDARY PICKETING

In *Centennial Packers v. UCFW 373A et al.* [1990] Alta.L.R.B.R. 164, the Board determined the constituent elements of picketing included:

1. the physical presence of employees affected by a labour dispute or of other persons apparently present on their behalf;
2. their presence at or near the entrance to any premise directly or indirectly related to the dispute;
3. the communication or display of information concerning the labour dispute (although see Practice Note, p. 3 on Leafleting); and
4. an apparent purpose of attempting to persuade anyone not to support the employer because of the dispute.

The courts have traditionally distinguished between primary and secondary picketing:

- **primary picketing** takes place at an employer's place of business; while
- **secondary picketing** occurs at a place other than an employer's place of business.

Secondary picketing may entail conflict between picketers' freedom of expression and third parties' right to operate their business. Until recently, both the common law and the [Labour Relations Code](#) effectively prohibited secondary picketing. Two recent developments have changed things:

1. **Pepsi-Cola Canada:** In [Pepsi-Cola Canada Beverages v. RWDSU 588](#), [2002] 1 S.C.R. 156, the Supreme Court ruled that secondary picketing should be considered legal at common law absent tortious or criminal conduct. The Court left it open for governments to impose legislative limits on the rights of unions to picket.
2. **Brewers Distributor:** In *RWU 285 v. Brewers Distributor Ltd. et al.* [2000] Alta.L.R.B.R. 444 aff'd [2001] Alta.L.R.B.R. 31 (QB), the Alberta Board held that the restriction of picketing to the "striking or locked out employees' place of employment and not elsewhere" under Section 84(1) infringed Section 2(b) of the Charter in so far as it prohibited the picketing of a third party "ally" employer who had contracted to perform essentially all the work previously provided by employees involved in the labour dispute. This restriction on freedom of expression was not justified under Section 1 of the Charter.

These rulings mean there is no common law barrier to peaceful picketing. Alberta has, however, enacted legislative limits to secondary picketing as outlined in Section 84(1). The Board may need to review the facts of each secondary-picketing case to ensure the application of the law does not violate individuals' *Charter* rights as it did in the *Brewers Distributor Ltd.* case (above).

BEHAVIOUR ON THE PICKET LINE

Picketing frequently entails employees displaying placards or handing out information outside of their place of employment. This activity is often peaceful and orderly. Frequently, however, employers request the Board intervene and direct the cessation of particular picketing behaviour. This commonly includes:

- picketing on private property;
- verbal and/or physical harassment of people entering or exiting the business;
- unduly delaying or obstructing traffic flow in or out of a site;
- vandalism or other criminal actions; and
- inciting employees not on strike to respect the picket line and therefore themselves engage in an illegal strike.

These applications normally come in the form of a cease and desist application. See: [[Cease and Desist, Chapter 30\(c\)](#)]. The applications are processed on an expedited basis—often with only four hours of notice to the parties. Unions may complain about employers engaging in dispute-related misconduct contrary to section 154 of the [Code](#). See: [[Dispute-Related Misconduct, Chapter 30\(d\)](#)].

Some picket-line behaviour may be criminal (e.g., vandalism, assault). These matters are handled by the police through complaints filed by the affected or concerned party. The Board does not become involved in these sorts of matters.

REMEDIES

When the Board finds that there has been a violation of the [Code](#) during picketing, it normally issues a directive. The Board does not, however, adopt a “bright-line” approach whereby any violation yields further restrictions. Section 84(2) gives the Board the power to:

1. restrict picketing that is perfectly lawful and does not involve “acts that are otherwise unlawful”; and
2. respond to picketing that does involve unlawful acts by something less than a total prohibition on picketing so long as the illegal acts cease.

This requires the Board examine whether a violation occurred, and determines what remedy is required and appropriate. Picketing directives must reflect the circumstances at hand. In *GCIU 34-M v. Southam* [2000] Alta.L.R.B.R 256, the Board noted:

The Board takes a cautious approach in restricting picketing activities. Of course where there is no violation of the Code, the Board will not restrict lawful picketing. For minor breaches, if a remedy is granted at all it may be sufficient to merely issue a statement setting out the requirement to engage in peaceful picketing. From there, the remedies granted should be viewed on a spectrum that takes into account considerations such as the severity of the breach and the number of times breaches occur. The more severe the breach, the more restrictive the directive. Similarly, if a party continues to engage in unlawful picketing, the Board may issue more restrictive directives even if the violations are minor in nature. Simply put, the higher the degree of violence or the greater the breach of peaceful picketing, the more restrictive the directive. Additionally, the greater the number of breaches, the more restrictive the directives.

The Board's "cautious" approach as outlined in *Southam, supra*, must be read in light of the comments by the Court of Queen's Bench in *PCL Industrial Construction Inc. (Re)* [2001] Alta. L.R.B.R. 474 where the Court stated the Board has no jurisdiction to regulate (as opposed to prohibit) unlawful picketing. As stated by the Court, "[O]nce the Board finds picketing has caused an unlawful strike, they are obliged to require that such unlawful acts cease."

A directive may regulate:

- the location(s) of the picketing;
- the hours of picketing;
- the maximum number of picketers at any spot;
- the manner in which picketers may conduct the picketing; and
- any other direction the Board considers necessary to balance the competing rights involved.

The Board retains its discretion under Section 18(6) to file with the Court should a directive be violated. See: [*Enforcement of Directives, Chapter 35(a)*]. Section 18(6) applies only after a hearing to show a violation of a Board order.

Similarly, Section 88(2) gives the Board discretion to file with the Court in the case of a violation of Sections 84-87. Section 88(2) only applies to picketing and illegal strike or lockout provisions. In these instances, the Board can file its order with the Court immediately on finding a violation of the [Code](#). The Board does not have to wait for a further violation of its directive.