

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lantic Inc. v. Public and Private Workers  
Canada Local 8,  
2023 BCSC 2072*

Date: 20231106  
Docket: S237239  
Registry: Vancouver

Between:

**Lantic Inc.**

Plaintiff

And

**Public and Private Workers of Canada Local 8, Colin Lamb,  
Derek McCluskey, and Persons Unknown**

Defendants

Before: The Honourable Justice Branch

## Oral Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.  
November 2, 2023

Place and Date of Judgment:

Vancouver, B.C.  
November 6, 2023

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**I. INTRODUCTION**

[1] This is an application by the plaintiff (“Lantic”) for an interlocutory injunction against certain tortious activity alleged to have occurred in conjunction with picketing taking place at Lantic’s premises at 123 Rogers Street, Vancouver, BC (the “Premises”).

[2] For the reasons below, I am prepared to grant an injunction, but with a somewhat reduced scope from that sought by Lantic.

**II. BACKGROUND**

[3] The facts are largely undisputed. Rather, the core issue is whether the activities rise to the tortious level necessary to support the granting of an injunction. As such, the facts below are largely derived from Lantic’s Notice of Application.

**A. The Premises**

[4] Lantic operates a cane sugar refinery at the Premises.

[5] The defendant union (the “Union”) is a trade union certified as the exclusive bargaining agent for a group of Lantic employees defined as "all hourly and salaried employees at 123 Rogers Street, Vancouver, BC except the managerial, supervisory, and support staff." The individual defendants are employed by Lantic and are members of the Union. The individual defendant, Colin Lamb, was represented by the same counsel. The individual defendant, Derek McCluskey, did not participate in the hearing and has not yet appeared through counsel.

[6] Lantic's BC operations are located on the Premises, which consist of 18 parcels. Lantic is the registered owner in fee simple of the Premises. The Premises consist of various buildings, a loading/unloading zone for deliveries, and a road.

[7] As noted, the Premise’s civic address is on Rogers Street. Rogers Street runs north/south and comes to a dead-end at a point at the north end of the Premises. There is only one access point to Rogers Street, from Stewart Street. To access the Premises, one must turn north onto Rogers Street from Stewart Street and drive

about 30-40 feet on Rogers Street, crossing over an active railway track that intersects Rogers Street (the "Railway Track"). Then, one must make a left-hand turn from Rogers Street through a gate located on the Premises (the "South Gate"). To exit the Premises, one must drive through a different gate located slightly north of the South Gate (the "North Gate") and take a right turn onto Rogers Street toward Stewart Street.

[8] Both the South Gate and the North Gate are about 15 feet into the Premises on a driveway. Both driveways are bordered by the public sidewalk.

### **B. Labour Relations and Picketing**

[9] Lantic and the Union are parties to a collective agreement that expired on February 28, 2023. In May and June 2023, Lantic and the Union engaged in collective bargaining, but it was unsuccessful.

[10] On September 25, 2023, the Union served Lantic with 72 hours' notice of a legal strike. The strike commenced on September 28, 2023.

[11] Picketers began congregating near the Premises seven days a week, 24 hours a day. Notwithstanding the strike and the picketing, Lantic has attempted to operate its business, at least on a reduced basis. Various vehicles enter and exit the Premises in the regular course of this reduced business, including vehicles transporting non-unionized Lantic employees, vehicles transporting Lantic products, and contractor and service provider vehicles.

### **C. Trespass Allegations**

[12] On September 29, 2023, Lantic's employee, Janine Osborne, observed union members walking onto the South Gate's driveway. She contacted the Union's President, Adrian Soldera, requesting that he direct the picketers not to cross the property line onto the Premises. After resolving some confusion about the location of the property line, Mr. Soldera issued an instruction to the Union's strike captain to avoid further trespass.

[13] On October 5, 2022, the defendant, Colin Lamb, entered the Premises and drove along the road as it curved west. Mr. Lamb says that he did not appreciate that this portion of the Road was technically on the Premises.

[14] On October 6, 2023, the defendant, Derek McCluskey, walked onto the Premises temporarily and yelled at certain Lantic employees. Lantic then sent a letter to Mr. Soldera formally demanding that the Union direct its members to immediately cease and desist any and all trespassing on the Premises. Mr. Soldera again communicated the message not to trespass to the strike captains.

[15] Notwithstanding this further messaging, on October 10, 2023, two picketers entered the Premises and looked into the windows of Lantic's main office building for about six minutes.

#### **D. Blockading Allegations**

[16] Since the commencement of the strike, picketers have periodically blocked and obstructed vehicles from entering and exiting the Premises. Picketers have done so by either standing or walking slowly in front of the South Gate or across Rogers Street, or by using vehicles.

[17] The Picketers' actions have resulted in delays to Lantic workers entering or exiting the Premises of anywhere from 30 seconds to almost ten minutes. Their activities include the following:

- a) On September 29 and 30, 2023, picketers obstructed Lantic workers from entering or exiting the Premises. Ms. Osborne sent an email to Mr. Soldera requesting that he advise the picketers that it is unlawful to block access to the Premises.
- b) On October 2, 2023, picketers were again observed blocking, delaying and obstructing Lantic workers from entering or exiting the Premises. Again, Ms. Osborne sent a letter to Mr. Soldera formally demanding that the Union direct the picketers to cease and desist from such conduct.

- c) On October 4, 2023, a Lantic worker, Lisa Harry, was delayed in entering the Premises by about two minutes. She says that she was forced to bring her vehicle to a stop in the middle of the Railway Track. She could not go around the truck stopped in front of her due to the presence of Union member, Tom Cameron. Mr. Cameron alleges that he only wanted to speak to Ms. Harry in a friendly way about the fact that she had been speeding through the picketing area. He denies blocking her passage, although this is difficult to square with the picture taken of the incident.
- d) On October 13, 2023, a Lantic worker was delayed in entering the Premises by about five minutes because picketers were blocking the South Gate.
- e) On October 19, 2023, a Lantic worker was delayed in exiting the Premises by about seven minutes after a picketer stopped his car in the middle of Rogers Street and faked an automobile problem.
- f) On October 19, 2023, a Lantic worker's husband was delayed by about nine minutes near the Premises because picketers were blocking Rogers Street.
- g) On October 20, 2023, a Lantic worker was delayed in exiting the Premises by about seven minutes after a picketer stopped her car in the middle of Rogers Street.
- h) On October 27, 2023, Ms. Osborne received a voicemail from Levon Charter, a store manager at Save-On-Foods' Grandview location, stating that Save-on-Foods had an upcoming delivery to the Premises scheduled for November 2, 2023, but that he wanted to discuss safety concerns that he had with respect to his drivers trying to deliver to the Premises during the strike. Specifically, Mr. Charter expressed concerns about the Save-On-Foods delivery vans previously being "pounded on" and "shaken" by picketers when approaching the Premises and that the delivery drivers were being yelled at by picketers. He further stated that he was "very concerned" about sending his drivers to the Premises.

- i) On October 30, 2023, a picketer approached a vehicle, told the driver that Lantic was closed for business, and that nobody would load him. After a few minutes, the driver entered the Premises through the South Gate.
- j) At some point, picketers erected black poster board that blocks the view of Lantic's new security cameras towards the picketers' tents.

### **E. Intimidation Allegations**

[18] Since the commencement of the strike, the picketers have done the following:

- a) On October 6, 2023, an incident occurred in which Mr. McCluskey shouted at Ms. Osborne while she was working on the Premises. Mr. McCluskey shouted that Ms. Osborne was a "filthy fucking cunt" and a "fucking piece of shit", among other things. Ms. Osborne sent a letter to Mr. Soldera requesting that the Union direct its members to immediately cease and desist any threatening, harassing, or intimidating behaviour. Despite the cease and desist letter, the picketers' harassing and intimidating conduct continued.
- b) On October 13, 2023, the picketers approached a Lantic worker entering the Premises in a semi-truck, yelled "fuck you" and "fuck off" and called the driver a "scab".
- c) On October 16, 2023, a trucker, Drake Barker, was delivering goods away from the Premises when he noticed that he was being followed. He asked the other driver what was going on. Mr. Barker recognized the driver as a Lantic employee, but did not know his name. The driver told Mr. Barker that he was not happy that he was making deliveries for Lantic.
- d) On October 17, 2023, a third-party driver, Deep Taggar, noted that a picketer was following him in his truck. He pulled over and the following truck drove past him. Also on October 17, picketers closely surrounded the vehicle of a Lantic worker leaving the Premises and shouted "fuck you" and "you're scabbing." Finally, an X/Twitter account that appears to be connected to the

- picketers posted a video showing picketers yelling “fucking scab” at the driver while blaring a siren sound and taking photos and videos of the driver.
- e) On October 18, 2023, a picketer yelled at a female Lantic worker entering the Premises. The picketer yelled "you're hot", "I love you", and "can I get your number?". Also on October 18, a picketer yelled at a Lantic worker in Punjabi: "I will fuck your mother and all the women in your family. I will crush under my feet. You are a boot licker," among other things.
  - f) On October 19, 2023, picketers surrounded the vehicles of two Lantic workers leaving the Premises and shone flashing lights in their eyes.
  - g) On October 20, 2023, the X/Twitter account that appears to be connected with the picketers posted the picture of a truck that the writer alleges crossed the picket line under the control of someone named “Brody”.
  - h) On October 25, 2023, a security guard contracted by Lantic heard a picketer yelling at her in Punjabi. The translation of his catcalls included the following commentary: “You are very beautiful. Come, give us a little bit of smile...Where are my dimples? Please show. Come, show, show, please, I am asking for it.” Because she felt uncomfortable, she made a report to the Vancouver Police Department on October 26, 2023.
  - i) On October 26, 2023, Ms. Osborne reports that a Union member yelled at her “you’re disgusting” and made a “moo” sound.
  - j) That same day, Lanctic’s contracted security guard, Daniel Maharaj, heard picketers yell “scab” to drivers passing by the Premises.

**III. LEGAL PRINCIPLES AND ANALYSIS**

[19] Once again, the parties largely agree on the applicable legal principles; but they disagree on how those principles should apply to this dispute.

### A. The Test for Granting an Interlocutory Injunction

[20] The power of the courts in British Columbia to grant injunctive relief is set out in section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. Generally, an interlocutory injunction will be issued where:

- a) there is a serious question to be tried and the moving party's case is neither frivolous nor vexatious;
- b) the moving party will suffer irreparable harm if injunctive relief is not issued; and
- c) the balance of convenience favours the granting of the injunction in that the moving party is likely to suffer greater harm if the injunction is refused than the responding party will suffer if the injunction is granted: *RJR-MacDonald Inc v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117.

[21] In British Columbia, the *RJR-MacDonald* test is treated as two-pronged, with the issue of irreparable harm being subsumed into the balance of convenience discussion, although this distinction has little if any material effect: *British Columbia (Attorney General) v. Wale*, [1986] B.C.J. No. 1395 (B.C.C.A.), 1986 CanLII 171, aff'd [1991] 1 S.C.R. 62, 1991 CanLII 109 (S.C.C.)

### B. The Importance of the Right to Picket

[22] The context of this interlocutory injunction application is important. Specifically, when a trade union is lawfully picketing as a result of a strike, injunctions should be issued with the greatest caution so as not to interfere with the union's right to legal picketing: *Great Canadian Railtour Company Ltd. v. Teamsters Local Union No. 31*, 2011 BCSC 973 at para. 5, aff'd 2012 BCCA 238.

[23] The policy basis for this careful approach was explained by the Supreme Court of Canada in *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8 [*Pepsi-Cola*]:

[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.

[33] Free expression is particularly critical in the labour context. As Cory J. observed for the Court in *U.F.C.W., Local 1518 v. KMart Canada Ltd.*, 1999 CanLII 650 (SCC), [1999] 2 S.C.R. 1083, "[f]or employees, freedom of expression becomes not only an important but an essential component of labour relations" (para. 25). The values associated with free expression relate directly to one's work. A person's employment, and the conditions of their workplace, inform one's identity, emotional health, and sense of self-worth: ...

[34] ... Moreover, the imbalance between the employer's economic power and the relative vulnerability of the individual worker informs virtually all aspects of the employment relationship ... Free expression in the labour context thus plays a significant role in redressing or alleviating this imbalance. It is through free expression that employees are able to define and articulate their common interests and, in the event of a labour dispute, elicit the support of the general public in the furtherance of their cause: *KMart*, supra. As Cory J. noted in *KMart*, supra, at para. 46: "it is often the weight of public opinion which will determine the outcome of the dispute".

[24] In *Fletcher Challenge Canada Ltd. (McKenzie Pulp Division) v. C.E.P. Local, 1092*, [1998] 9 W.W.R. 144, 1998 CanLII 6528 (B.C.C.A), our Court of Appeal also explained this restrictive approach to injunction orders in the context of legal picketing:

[9] The parties are engaged in an economic struggle. The Union and its members have only two lawful weapons, the withdrawal of labour and picketing. Having exercised their right to picket peacefully, they should not have to operate with the sword of contempt over their heads. In my opinion, orders of this kind should be confined by the use of specific language to the very matter at issue and should avoid casting a broad net.

### C. Application of the Preliminary Injunction Merits Test to Picketing Disputes

[25] In *Pepsi-Cola*, the Supreme Court of Canada adopted a conduct-based approach to picketing injunction issues, whereby all picketing is allowed unless it involves tortious or criminal conduct:

[103] ... Picketing which breaches the criminal law or one of the specific torts like trespass, nuisance, intimidation, defamation or misrepresentation, will be impermissible, regardless of where it occurs. Specific torts known to the law will catch most of the situations which are liable to take place in a labour dispute. In particular, the breadth of the torts of nuisance and defamation should permit control of most coercive picketing. Known torts will also protect property interests. They will not allow for intimidation, they will protect free access to private premises and thereby protect the right to use one's property. Finally, rights arising out of contracts or business relationships also receive basic protection through the tort of inducing breach of contract.

[26] Although the matter is not completely free from controversy, Lantic accepted, for the purpose of this application, that the threshold under the first prong of the test requires it to establish a strong *prima facie* case: *Prince Rupert Grain Ltd. v. Grain Workers' Union, Local 333*, 2002 BCCA 641 at paras. 27-30; *Canada Post Corp. v. Union of Postal Communications Employees (PSAC)*, 2008 BCSC 1692 at paras. 15-17, *Cascade Aerospace Inc. v. Unifor (Local 114)*, 2014 BCSC 1461 [*Cascade Aerospace*] at para. 30.

[27] In *Great Canadian Railtour Company Ltd. v. Teamsters Local Union No. 31*, 2012 BCCA 238 [*Great Canadian Railtour*] at para. 52, the Court of Appeal affirmed that when a strong *prima facie* case of tortious conduct has been made out, it is open to the judge to enjoin not only that tort, but also related conduct, which although not tortious on its own, forms part of, or contributes to, the commission of that tort.

### D. Application of the Balance of Convenience Test to Illegal Picketing

[28] Like with the merits test, there are also unique features of the application of the balance of convenience test in the picketing context.

[29] In *Gateway Casinos & Entertainment Limited v. B.C. Government and Service Employees' Union*, 2018 BCSC 1490, the court explained that, in the context of trespass, the balance of convenience test need not be applied.

[30] Even beyond trespass, where unlawful picketing has been established to the requisite standard, courts are less concerned about the requirement to show irreparable harm: *SWA Vancouver Limited Partnership v. Unite Here, Local 40*, 2019 BCSC 1806 [*SWA Vancouver*] at paras. 44, 101. In *International Union v. Pacific Western Airlines Ltd.*, 1986 ABCA 38, the Alberta Court of Appeal stated:

[13] ... A great mass of precedent establishes that unlawful acts by picketers will be enjoined whether or not irreparable harm is established. Moreover, where it is shown that certain activities have led to the commission of the unlawful acts, those activities will be so controlled as to prevent further similar problems, while leaving each side in the dispute free to pursue legitimate goals by legitimate means...

[31] This Alberta decision was referred to with approval by the British Columbia Supreme Court in *T.N.T. Canada Inc. v. General Truck Drivers and Helpers Union, Local 31*, [1990] B.C.J. No. 2976 (S.C.), 1990 CanLII 1637. The court stated:

[9] One of the decisions relied upon for that statement [in *UAW*] is the British Columbia case, also in this Court, of *Attorney General of British Columbia v. Ellsay* 1959 CanLII 332 (BC SC), [1959], 19 D.L.R., (2d), 453. I have had the opportunity over the noon adjournment to read that decision, and while there is no specific mention of [irreparable] harm, I am satisfied that it is authority for the proposition cited in the Alberta case, namely, that no discussion of [irreparable] harm is necessary where third parties will be affected. In the *Ellsay* case it was the public. Here it may well be the purchasers of equipment from the Plaintiff or those contracting services to them.

...

[11] ... I have concluded that where the activity complained of is indisputably unlawful, indeed here it is conceded to be so, the task of the Court in determining the balancing of convenience is quite different than in those cases where there is merely a strong prima facie case. I accept the proposition advanced by the Plaintiff that in a situation such as this the proof of irreparable harm and the question of whether damages are an adequate remedy cease to be significant factors...

[32] More recently, in *Pacific Coast Terminals Co. Ltd. V. ILWU - Canada*, 2023 BCSC 1432, the court stated:

[19] Satisfaction of the second part of the test, whether irreparable harm will be suffered, is accomplished where a refusal to grant relief could so adversely affect the applicant's own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the results of the interlocutory application. However, the law with respect to irreparable harm does not require substantial evidence that the harm that is occurring is irreparable.

[20] Where illegal picketing activity has been established on a prima facie basis, the courts are less concerned about irreparable harm...

[21] I also rely on *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 605, at para. 39 where Justice Verhoeven notes:

[39] Interference with a business as a going concern is regarded as amounting to irreparable harm: *Interfor v. Kern*, 2000 BCSC 1141 [Kern], at para. 33.

[22] In this case, the evidence of harm is that access is required to maintain the company's assets and the assets of the clients that are being stored in the terminal. If the client's assets are damaged, there could be irreparable reputational damage suffered. As noted, the applicant is a port terminal. I am satisfied that impeding the ability of managers to access the terminal to maintain their assets and their client's assets satisfies, in these circumstances, the test for irreparable harm.

### E. Trespass

[33] Lantic argues that the Union's picketers have breached the *Trespass Act*, R.S.B.C. 2018, c. 3, s. 2. I agree that there have been a number of trespasses.

[34] The Union argued that an injunction is unnecessary as there have been no incidents since October 6, 2023. However, the evidence establishes that – notwithstanding that the picketers were directed by their own leadership not to enter the Premises – the trespasses did not stop completely. As such, I find that a promise by the Union to avoid trespass is insufficient to negate the effect of the evidence or the need for an injunction.

[35] Given that the trespasses have been relatively minor, the defendant Union also sought to rely on s. 66 of the *Labour Relations Code*, RSBC 1996, c. 244, which states:

No action or proceeding may be brought for

(a) petty trespass to land to which a member of the public ordinarily has access,

- (b) interference with contractual relations, or
- (c) interference with the trade, business or employment of another person resulting in a reduction in trade or business, impairment of business opportunity or other economic loss

arising out of strikes, lockouts or picketing permitted under this Code or attempts to persuade employees to join a trade union made at or near but outside entrances and exits to an employer's workplace.

[36] The Union argues that the trespasses complained of here qualify as petty trespass and should therefore not be treated as tortious. However, this statutory provision has been narrowly interpreted. In *RMH Teleservices v. BCGEU*, 2003 BCSC 278, the court stated:

[56] As I have already said, it seems to me that the legislature has dealt with the competing interests of the parties in s.66 to a limited extent. And in my opinion the law remains the same in any other circumstances. ... To the extent that union activities have been permitted on private property, that right has been granted by statute. And s.66 is an example where the owners' property rights have been infringed in circumstances where the property has been open to the public and is treated as if it were public property...

[58] ...The section does not suggest in any way that the employees/union can conduct union matters on private property. Nor does it suggest that the rights of the employee/union under the Code and the Charter are to be preferred over the property rights of the owner. In the limited circumstances where a member of the public ordinarily has access to private property, the employee/union may trespass on the property for union activities provided the trespass is petty, which I take to mean trivial or minor in nature.

[37] I agree with Lantic that the full definition in s. 66 prevents a finding that what happened here was simply petty trespass. Specifically, I find that the Premises are not land "to which a member of the public ordinarily has access." There are controls on entry into the port area in which the Premises are located. Further, the Premises do not include an operation to which the public would ordinarily have access.

[38] Given the legal principles outlined above, it is not necessary to apply the balance of convenience test to the trespass allegations.

[39] Accordingly, I agree that Lantic ought to be granted an order enjoining and restraining the defendants and any person acting under the Union's instructions from entering the Premises.

## F. Blockading

[40] In British Columbia, many courts have held that it is tortious for picketers to physically obstruct the lawful entry to and exit from employer premises, however brief: *Cascade Aerospace* at paras. 33-41; *SWA Vancouver* at paras. 20-27, 37, 43.

[41] The Union relies on Justice Boyd's decision in *City of Vancouver v. Canadian Union of Public Employees, Local 15 et al* (August 30, 2007) Vancouver S075799 (B.C.S.C.) [*Canadian Union*] in which she stated:

[13] Thus, in all of the circumstances, I am loathe, as I say the court always will be, to step in and grant the extraordinary relief afforded by an injunction. I reject the notion that simply by virtue of these two incidents of obstruction having occurred it automatically follows that injunctive relief ought to be granted in order to preserve principles of public order and respect for the law.

[42] I note that this decision issued prior to the two more recent decisions cited above. It is somewhat difficult to square this earlier decision with the later decisions. I find that I should follow these well-reasoned later decisions, particularly given that Justice Boyd's decision was simply an unreported short oral decision apparently issued the same day that the matter was argued. Furthermore, as an evidentiary matter, the blockading in *Canadian Union* appears to have been more limited than the case here: see paras. 2-3 of *Canadian Union*.

[43] Similar concerns arise in relation to the Union's reliance on *Gateway Casinos & Entertainment Limited v. BCGEU*, 2018 BCSC 1700 [*Gateway Casinos*] at paras. 30-35. The decision lies somewhat outside the main run of the case law, and it was an oral decision issued shortly after the point was argued.

[44] In the case at bar, the evidence, including video recordings, demonstrates that the picketers have repeatedly blocked, obstructed, impeded, hindered, delayed, and slowed persons and vehicles entering, exiting or travelling to and from the Premises. A strong *prima facie* case has been established. Applying the more forgiving balance of convenience test applicable to picketing cases involving third parties, I am prepared to grant an injunction preventing such conduct in the future.

There are clearly third parties being affected here, including other companies' drivers.

[45] The Union argued that in the incident where the picketer faked car trouble in order to block the road, this was not true "blockading" because there was a train passing up ahead that would have prevented further passage in any event. There are two answers to this: (1) there was some evidence that the approaching vehicle could have taken another route that would have avoided the train crossing; and (2) I find that the mere fact that the picketers' blockade was one of two causes preventing further travel is not adequate to excuse the defendants from responsibility. In the context of a preliminary injunction application, it is more important to regulate the improper conduct than to engage in niceties regarding the chain of causation.

### **G. Intimidation**

[46] In *Pepsi-Cola* at para. 103, the court recognized that the tort of intimidation can constitute a wrongful action, which constitutes unlawful picketing.

[47] The tort of intimidation can include conduct that intimidates Lantic or intimidates others, to the injury of Lantic. Put differently, intimidation applies both in two party contexts, where the defendant intimidates a plaintiff to his injury, and three-party contexts, where the defendant intimidates a third party to injure the plaintiff: *Pepsi-Cola* at para. 113.

[48] If a person intimidates another person, through unlawful threats, into doing or obstructing them from doing something that they would otherwise have a right to do, they commit tortious intimidation: see *Circuit Graphics Ltd. v. Canadian Association of Industrial Mechanical and Allied Workers, Local 1*, [1981] B.C.J. No. 1956 [*Circuit Graphics*] at para. 9 and the authorities cited therein.

[49] In the context of an application for an interlocutory injunction, the plaintiff does not need to establish that any individual was, in fact, coerced as a result of the defendant's conduct: *Vancouver Museums and Planetarium Association v. Vancouver Municipal and Regional Employees' Union*, [1981] 27 B.C.L.R. 73

[*Vancouver Museums*] at para. 8, 1981 CanLII 424 (B.C.C.A.). In *Vancouver Museums*, the Court of Appeal found that using illegal means, like obstructing access to premises and causing disturbances, shouting, or insulting others and using obscene language, can be sufficient grounds to order an interlocutory injunction.

[50] In *Hertz Canada Ltd. v. Canadian Office and Professional Employees Union, Local 378*, 2010 BCSC 678 [*Hertz*], the plaintiff sought an order restraining the defendants from a number of activities, including using obscene and threatening language and obscene gestures towards Hertz personnel. Specifically, various persons, particularly female ones, were being subject to verbal abuse. The court accepted that the use of foul, sexual, and threatening language constituted the tort of intimidation.

[51] There was substantial discussion at the hearing regarding the legal effect of the use of the word “scab” by the picketers. In *Circuit Graphics*, the court stated:

[18] The members of the defendant union and Keighley who were picketing subjected the employees of the plaintiff who crossed the picket line to verbal abuse of the strongest kind. Expletives were used in conjunction with the word “scab”. In my opinion the word “scab” itself is a term of abuse and contempt. When the term is used as it was (based on the affidavit of Hamm) in combination with “fucking”, “gutless”, “company sucks” and “strike breakers” the language in my opinion is slanderous. This conduct is unlawful. ... In my respectful opinion there was evidence of an intention on the part of the picketers to compel the employees of the plaintiff to not work for the plaintiff and to thereby prevent the plaintiff from obtaining the services of those employees. There was thus an intention to harm the plaintiff by unlawful means consisting of the conduct which I have referred to.

[52] In *Great Canadian Railtour*, the Court of Appeal considered this issue:

[26] Mr. Joyce deposed that he was working at the North Vancouver station on the morning of July 2, 2011. When a bus carrying passengers arrived at the station at approximately 7:40 a.m., picketers moved aside to allow it to pass, forming a line on either side of the bus. Mr. Blackburn was one of those picketers. Mr. Joyce heard Mr. Blackburn shout, “This is a legal picket line. You’re a bunch of fucking scabs.” Mr. Blackburn continued to shout “scabs” as the bus drove past. As the passengers left the bus, Mr. Blackburn, who was 50 to 60 feet away from them, shouted “Scabs. Scabs. Goddamn scabs.”

...

[80] ... As Mr. Justice Legg, as he then was, stated in *Circuit Graphics Ltd. v. Canadian Assn. of Industrial Mechanical and Allied Workers, Local 1* (1981), 1981 CanLII 591 (BC SC), 31 B.C.L.R. 5 at 10 (S.C.), in labour-disputes “the word ‘scab’ itself is a term of abuse and contempt.” See also: *Hertz Canada Ltd. v. Canadian Office and Professional Employees Union, Local 378*, 2010 BCSC 678 at para. 6.

[81] I am not suggesting that the mere use of derogatory words on a picket line is sufficient to support an injunction. However, in the present case there can be no doubt that the word “scab” was used on both June 27 and July 1, 2011 (see para. 26 above) as a component of conduct aimed at threatening and intimidating Great Canadian’s employees and passengers. This is the only reasonable conclusion that arises from the totality of the objective evidence. ...

[53] The Union relies on the decision of the court in *Gateway Casinos*, where the court stated:

[39] ... a union member can be heard calling a casino patron a "scab" and referring to her conduct in crossing the picket line as "a crime." Obviously both comments are inaccurate, and the former is hurtful and demeaning. However, that type of commentary does not rise to the level of intimidation or harassment.

[54] I do not believe that my decision is controlled by the result in *Gateway Casinos* on this point for two reasons:

- a) Each case must turn on its own facts, and the context of the usage of the term in *Gateway* may well have been more benign; and
- b) It does not appear that the judge in *Gateway Casinos* was brought to the guidance on this point available from the Court of Appeal’s decision in *Great Canadian Raitour* or from the decision in *Circuit Graphics*.

[55] That said, I do not need to make a finding that merely using the word “scab” while picketing will always, in and of itself, constitute intimidation. In the present case, the tone and forcefulness of the term’s usage – accompanied by evidence of the body language and positioning of the picketers, put against the backdrop of various other aggressive, sometimes sexual, profanities – is sufficient to meet the required threshold for a preliminary injunction. The Union seeks to rely on the fact

that there were no written complaints to the Union's president between October 6, 2023 and the date the Application was served. However:

- a) The focus is on the Union's acts, not on the timeliness of the applicant's complaints; and
- b) There were further incidents that occurred after the Application was served.

[56] I find that this case bears substantial parallels to that in *Hertz*, where the court concluded as follows:

[6] The affidavits describe numerous examples of particularly vulgar, abusive and threatening actions on the part of Jeff Parker against Hertz employees, particularly female employees. Hertz says that Mr. Parker is a paid picketer and not a Hertz employee at either Location. Mr. Parker is described as about six feet tall and about 200 pounds. His yelling and abusive language towards female employees on April 19 and 20 apparently included phrases such as "stop, you fucking slaves"; "stop you fucking bitches"; "fucking scab"; "fucking slave"; and "filthy bitch". Ms. Vulgaris, a manager for Hertz, Ms. Safiq, an Area Manager for Hertz, and Ms. Lad, a payroll clerk for Hertz, were offended and intimidated by Mr. Parker.

...

[21] Ms. Mitchell, counsel for the plaintiff, cites numerous cases in support of the proposition that the use of foul, sexual, and threatening language has been found to constitute the tort of intimidation and to be threatening and inappropriate conduct on the picket line: for example, *Telus Communications Inc. v. Telecommunications Workers Union*, 2006 BCSC 16 aff'd 2007 BCCA 414; *Telus Communications Inc. v. Telecommunications Workers Union*, 2006 BCSC 24 aff'd 2007 BCCA 413, leave to appeal to S.C.C. ref'd, [2007] S.C.C.A. No. 522.

...

[29] It is not disputed that most of the conduct complained of by the Hertz employees, particularly the obscene, aggressive and intimidating behaviour of Mr. Parker, took place. I agree that such behaviour constitutes intimidation, harassment, and obstruction. That conduct is unlawful.

[57] In summary, on the question of intimidation, the evidence demonstrates that the picketers have shouted at, insulted, and caused disturbances to Lantic's excluded employees and third-party drivers, which constitutes a strong *prima facie* case of intimidation. I also find that the appropriate balance of convenience rests in favour of the granting of the injunction to restrain such conduct.

**H. Clean Hands**

[58] The Union sought to rely on the “clean hands” principle as a basis upon which the court should refuse to grant the equitable order requested. In *International Forest Products Ltd. v. Kern*, 2000 BCSC 888, the court set aside an earlier interlocutory injunction, in light of certain “vigilante actions” and “misrepresentations and lies” following those events by the applicant for the injunction: para. 71. Indeed, the court stated:

[71] ... In granting the request of the plaintiffs for interlocutory injunctive relief, the court imposes a trust on the plaintiffs that they will not abuse their rights and privileges and will safeguard the competing rights of others. Vigilante actions, misrepresentations and lies have followed the granting of the injunction. These actions have brought the process of the court into public debate and criticism.

...

[74] I have reluctantly concluded that the plaintiffs, on this application, are not before the court with clean hands. The injunction must be set aside in order to preserve the integrity of the court’s process...

[59] The Union relies on two issues:

- a) Alleged speeding through the picketing area by management employees; and
- b) The engagement in unfair labour practices during the course of the Union’s strike by hiring an impermissible replacement worker.

[60] I find that neither issue is sufficient to undermine the basis for the injunction:

- a) The alleged speeding is disputed, was isolated in any event, and there is no evidence that it was done in bad faith: *Sun-Rype Products Ltd. v. Teamsters Local Union No. 213* November 13, 2007 S077594 (B.C.S.C.) at paras. 10-11; and
- b) The replacement worker problem was resolved by a Consent Order shortly after it was identified.

#### IV. FORM OF ORDER

[61] Although Lantic has established a basis for an injunction on several grounds, I find that the scope of the injunction requested is overbroad in four respects. Following the direction in *Pepsi-Cola* at para. 107, I find that some “tailoring” is required to focus “narrowly on the illegal activity at issue”, and avoid overbreadth.

[62] First, Lantic requests an injunction against following or pursuing Lantic’s employees and others. As summarized above, the evidence in relation to improper following is both isolated and thin. I find it is insufficient to support the requested term.

[63] Second, Lantic seeks to restrict recording activities in relation to the picketing. Again, there is little evidence that this conduct has caused any particular difficulty, and Lantic does not allege that it is illegal *per se*. Furthermore, there may be legitimate reasons for the defendants to engage in recording, like protecting themselves from inaccurate accusations or establishing improper conduct by Lantic. Granting this order would unduly interfere with the Union’s right to strike, based on the present evidence.

[64] Third, Lantic seeks to restrict the use of the defendant’s employees’ names on social media. There is little evidence of this having been a material concern to date, and there may, once again, be legitimate reasons for the defendants to engage in such publication.

[65] Fourth, Lantic indicated that they were concerned about the black poster board that had been put up on public property that blocked the view of their security cameras. It was difficult to determine which term of Lantic’s proposed order would prevent that activity, but I nonetheless decline to expressly enjoin such conduct. I would have assumed that the better avenue to manage this issue would be communication with whichever government authority is responsible for the public space upon which the poster board has been erected to determine whether the poster is legally placed.

[66] That leaves Lantic with a proper basis for an injunction on the following terms:

The defendants, by themselves and, as applicable, their members, agents, employees, or any person acting under their instruction, and anyone having knowledge of this Order, and anyone attending at or near Lantic's premises located at 123 Rogers Street, Vancouver, British Columbia and having knowledge of this Order, with legal descriptions as set out in Schedule A (the "Premises"), are, until judgment is rendered in this action or further court order, enjoined and restrained from:

- a. entering, picketing, or engaging in any activity on the Premises without Lantic's written express consent;
- b. physically blocking, obstructing, impeding, hindering, delaying, or slowing, partially or completely, by any means, the movement of persons or vehicles at or near the entrances, exits, driveways, or public roadways to and from the Premises without Lantic's written, express consent;
- c. intimidating, threatening, coercing, harassing, interfering with, or any attempt thereof, in any manner whatsoever, including by using obscenities directed at persons who are not members of the Union and seek to enter or exit, or have entered or exited, the Premises, including by vehicle, or persons who are not members of the Union and provide, or work in connection with the provision of, goods or services to or for Lantic; and
- d. causing, authorizing, aiding, ordering, recommending, inciting, assisting, or encouraging, in any manner whatsoever, directly or indirectly, any person to commit the acts set out in Orders (a) to (c), or any of them.

"The Honourable Mr. Justice Branch"

**SCHEDULE A: PREMISES' LEGAL DESCRIPTIONS**

1. PID 015-585-697

Legal Description: LOT 1 BLOCK 47 DISTRICT LOT 181, PLAN 196

2. PID 015-585-701

Legal Description: LOT 2 BLOCK 47 DISTRICT LOT 181 PLAN 196

3. PID 015-585-719

Legal Description: LOT 3 BLOCK 47 DISTRICT LOT 181 PLAN 196

4. PID 015-585-751

Legal Description: BLOCK X (REFERENCE PLAN 1599) DISTRICT LOT 181  
GROUP 1 NEW WESTMINSTER DISTRICT

5. PID 015-648-834

Legal Description: LOT Y (REFERENCE PLAN 1600) BLOCK K DISTRICT  
LOT 182 GROUP 1 NEW WESTMINSTER DISTRICT

6. PID 015-684-229

Legal Description: THAT PART OF LOT 1 LYING NORTH OF THE  
CANADIAN PACIFIC RAILWAY RIGHT OF WAY AS SHOWN ON  
REFERENCE PLAN 1601 OF LOT 2 BLOCK K DISTRICT LOT 182 PLAN 176

7. PID 015-684-253

Legal Description: THAT PART OF LOT 2 LYING NORTH OF THE CANADIAN  
PACIFIC RAILWAY RIGHT OF WAY AS SHOWN ON REFERENCE PLAN  
1601 OF LOT 2 BLOCK K DISTRICT LOT 182 PLAN 176

8. PID 015-684-261

Legal Description: THAT PART OF LOT 3 LYING NORTH OF THE CANADIAN PACIFIC RAILWAY RIGHT OF WAY AS SHOWN ON REFERENCE PLAN 1601 OF LOT 2 BLOCK K DISTRICT LOT 182 PLAN 176

9. PID 015-684-270

Legal Description: THAT PART OF LOT 4 LYING NORTH OF THE CANADIAN PACIFIC RAILWAY RIGHT OF WAY AS SHOWN ON REFERENCE PLAN 1601 OF LOT 2 BLOCK K DISTRICT LOT 182 PLAN 176

10. PID 015-684-750

Legal Description: LOT 1 (REFERENCE PLAN 1601) OF LOT 1 BLOCK K DISTRICT LOT 182 PLAN 176

11. PID 015-684-776

Legal Description: LOT 2 (REFERENCE PLAN 1601) OF LOT 1 BLOCK K DISTRICT LOT 182 PLAN 176

12. PID 015-684-784

Legal Description: LOT 3 (REFERENCE PLAN 1601) OF LOT 1 BLOCK K DISTRICT LOT 182 PLAN 176

13. PID 015-684-814

Legal Description: LOT 4 (REFERENCE PLAN 1601) OF LOT 1 BLOCK K DISTRICT LOT 182 PLAN 176

14. PID 015-684-849

Legal Description: THAT PART OF LOT 5 IN REFERENCE PLAN 1601 OF LOT 1 BLOCK K DISTRICT LOT 182 PLAN 176

15.PID 016-011-031

Legal Description: BEGINNING AT THE POINT OF INTERSECTION OF THE WEST SIDE OF BOUNDARY AVENUE WITH THE HIGH WATER MARK OF THE SOUTHERLY SIDE OF BURRARD INLET, THENCE NORTH ALONG THE SAID SIDE OF BOUNDARY AVENUE, PRODUCED, 1380 FEET, THENCE WEST 253 FEET, 11/2 INCHES; THENCE SOUTH 1650 FEET MORE OR LESS, TO THE NORTH WESTERLY CORNER OF THE SUGAR REFINERY PROPERTY IN BLOCK 47, DISTRICT LOT 181, THENCE NORTH EASTERLY ALONG THE SAID HIGH WATER MARK TO THE PLACE OF BEGINNING, AS SHOWN COLOURED RED ON THE PLAN ATTACHED TO 582561 PARCEL BOOK 12/895 AND MARKED AS LOT A ON SAID PLAN GROUP 1 NEW WESTMINSTER DISTRICT

16.PID 016-011-261

Legal Description: THAT PARCEL OF FORESHORE ABUTTING ON WHAT WAS FORMERLY KNOWN AS BOUNDARY AVENUE DISTRICT LOT 181 WHICH MAY BE MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST SIDE OF BOUNDARY AVENUE WITH THE HIGH WATER MARK AT THE SOUTHERLY SIDE OF BURRARD INLET; THENCE ALONG THE SAID SIDE OF BOUNDARY AVENUE PRODUCED 1380 FEET, THENCE EAST 66 FEET, THENCE SOUTH 1380 FEET MORE OR LESS, TO THE INTERSECTION OF THE EAST SIDE OF BOUNDARY AVENUE WITH THE AFORESAID HIGH WATER MARK; THENCE WESTERLY ALONG THE SAID HIGH WATER MARK TO THE PLACE OF BEGINNING, THE WHOLE COMPRISING AN AREA OF 91,080 SQUARE FEET MORE OR GROUP 1 NEW WESTMINSTER DISTRICT LESS MARKED BON THE PLAN ATTACHED TO 582561, PARCEL BOOK 12/895

17.PID 016-011-791

Legal Description: BEGINNING AT THE POINT OF INTERSECTION OF THE EAST BOUNDARY OF BOUNDARY AVENUE WITH THE HIGH WATER MARK OF THE SOUTHERLY SHORE OF BURRARD INLET, THENCE NORTH ALONG THE SAID BOUNDARY OF BOUNDARY AVENUE PRODUCED 1380 FEET; THENCE EAST 160 FEET 10 1/2 INCHES, THENCE SOUTH 1380 FEET MORE OR LESS TO THE NORTH WEST CORNER OF LOT 4 BLOCK 1 SUBDIVISION K DISTRICT LOT 182, THENCE WESTERLY ALONG THE SAID HIGH WATER MARK, 160 FEET 10 1/2 INCHES MORE OR LESS TO THE PLACE OF BEGINNING AS SHOWN COLOURED RED ON THE PLAN ATTACHED TO 582561 PARCEL BOOK 12/895 AND MARKED AS LOT CON SAID PLAN GROUP 1 NEW WESTMINSTER DISTRICT

18.PID 016-012-038

Legal Description: BEGINNING AT THE POINT OF INTERSECTION OF EAST BOUNDARY OF SUBDIVISION K DISTRICT LOT 182 WITH THE HIGH WATER MARK OF THE SOUTHERLY SHORE OF BURRARD INLET, THENCE NORTH 1580 FEET, THENCE WEST 136 FEET 8 INCHES, THENCE SOUTH 1580 FEET, MORE OR LESS TO THE NORTH WEST CORNER OF LOT 4 BLOCK 1 SUBDIVISION K, THENCE EASTERLY ALONG THE SAID HIGH WATER MARK 136 FEET 8 INCHES MORE OR LESS TO THE PLACE OF BEGINNING AS SHOWN COLOURED RED ON THE PLAN ATTACHED TO 582561 PARCEL BOOK 12/895 AND MARKED AS LOT DON SAID PLAN, GROUP 1 NEW WESTMINSTER DISTRICT EXCEPT THE EAST 66 FEET OF LOT D