



# What's New in HR Law

## Temporary Injunction Awarded for Unlawful Picketing in Windsor

September 26, 2023 | By Clifton Yiu

In a [recent decision](#), the Court granted an employer's request for an injunction against a union engaging in unlawful picketing activity during a strike. The Court found, *inter alia*, that the union's unlawful picketing activity, including but not limited to unreasonably obstructing the employer's access to its property, created a risk of irreparable harm for the employer, and for the general public, unless an injunction was granted.

### Background Facts

Windsor Salt is a business operating in Windsor, Ontario, that is engaged in the business of salt-mining and production of salt for commercial and household use. Windsor Salt owns and operates a salt mine (the "Mine"), at which rock salt is mined and stored in silos or made into commercial products, and at an evaporation plant ("Evap Plant") that produces food-grade products, such as table salt, that cannot be produced at the Mine.

Unifor and its Local 1959 and its Local 240 (the "Union"), represents approximately 250 employees employed by Windsor Salt at the Mine and Evap Plant (the "Represented Employees").

The Represented Employees commenced a strike and began picketing at the Mine and Evap Plant on or about February 17, 2023. As part of their picketing activities, the Represented Employees delayed vehicles, including passenger vans containing other Windsor Salt employees and transport trucks carrying Windsor Salt's products, from entering or exiting the Mine and Evap Plant. Vehicles were often delayed

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for multiple hours or, in some instances, were completely denied entry to or exit from Windsor Salt's property.

Windsor Salt commenced an action and brought a motion seeking an injunction against the Represented Employees and the Union, asserting that the Represented Employees' picketing activity caused irreparable harm to Windsor Salt, including but not limited to posing safety risks to Windsor Salt employees and threatening Windsor Salt's capability to continue its business.

### **The Court Awards an Interim, and subsequently an Interlocutory, Injunction**

Windsor Salt's motion was heard before the Windsor Courthouse on February 27, 2023. For an injunction to be awarded, the Court must be satisfied that Windsor Salt made reasonable efforts to obtain police assistance to address their concerns, and that the following three-part test for injunctions has been met:

1. that there was a "serious question to be tried"
2. that Windsor Salt will suffer irreparable harm if the injunction is not granted; and
3. that the balance of convenience favours granting the injunction.

The Court held that Windsor Salt made sufficient efforts to obtain police assistance. Windsor Salt had called for police assistance on numerous occasions. However, the police did not always respond to Windsor Salt's call for assistance. While police were, on occasion, able to attend at the Mine and Evap Plant, they provided little or no effective assistance to address the ongoing delays caused by the Represented Employees.

The Court further held that the three-part test to award an injunction had been satisfied. The "serious question to be tried" threshold was met as Windsor Salt had a legitimate claim against the Represented Employees and was not seeking an injunction on a frivolous or vexatious basis.

Windsor Salt further persuaded the Court that irreparable harm could occur if the injunction was not granted. The Court received undisputed evidence that the Represented Employees were, in many cases, completely denying Windsor Salt's attempts to enter or exit the premises, which has been held in other cases as constituting irreparable harm. Additionally, the Court heard, and accepted, significant evidence regarding potential irreparable harm, including:

- the inability for Windsor Salt to repair a fire suppression system at the Evap Plant, thereby increasing the risk and magnitude of harm that could arise from any potential fire;
- Windsor Salt's inability to conduct daily inspections of high-pressure pipe lines carrying salt brine to the Evap Plant from distant salt caverns that not only threatened Windsor Salt's business, but also the public interest of individuals who lived in or around the areas which could be affected if the pipe lines were to leak and/or fail;
- a risk of flooding at the Mine, potentially destroying the viability of Windsor Salt's mining business and/or causing contamination to the nearby Detroit River (with potential international ramifications) if the flooding was not contained; and
- emergency responders were, at least on one occasion, completely denied entry and created unnecessary risks to health and safety to those in need of emergency medical attention.

Based on the significant potential for irreparable harm, the Court determined that the balance of convenience favoured granting the injunction. Denying Windsor Salt's injunction could have led to dire consequences and resulted in substantial inconvenience for both Windsor Salt and members of the public.

In contrast, granting the injunction would not cause any meaningful inconvenience to the Represented Employees, who could continue their constitutionally protected rights to picket in a lawful manner.

Based in the foregoing, the Court granted an interim injunction for four (4) days limiting the Represented Employees' ability to, *inter alia*, delay vehicles from accessing or exiting Windsor Salt's property to a maximum of fifteen (15) minutes.

Following the interim injunction, Windsor Salt and the Union agreed to extend the injunction until a further order of the Court, the end of the Represented Employees' strike, or the trial of the action is concluded, whichever occurred first.

Windsor Salt was represented by Filion lawyers Brian MacDonald and Laura Freitag at the injunction hearings, with the assistance of Clifton Yiu and Micah Fysh.

## Check the Box

Labour injunctions for unlawful picketing, or other strike activity, are generally difficult to attain and requires employers to gather and present a substantial amount evidence on an expedited basis. Employers in similar situations must be cognizant of the high burden to be awarded an injunction and prepare a proper procedure in advance in event the need for an injunction arises. Employers ought to, at a minimum, have a team to assist with coordinating and navigating the legal procedures necessary to attain the injunction. Additionally, assistance from security professionals with experience in strike management can provide significant benefits in documenting and preparing the evidence required to support the injunction.

## Need More Information?

For more information or assistance with employment litigation or injunctions, contact Clifton Yiu at [cyiu@filion.on.ca](mailto:cyiu@filion.on.ca) or your regular lawyer at the firm.



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