

# The Right to Picket Statement

The right to picket is part of our fundamental rights of expression and assembly in Canada.

Workers have the right to picket their employer's premises and the premises of its allies or related companies. Workers also enjoy the right to picket the premises of employers not directly involved in the dispute. Still, the right to picket is guided by the rules of civil law and criminal law.

The civil law recognizes that striking workers and unions may wish to communicate to the public about the issues in their labour dispute. The Supreme Court of Canada has recognized this rule and found that peaceful picketing is protected by our Charter of Rights unless the manner in which it is conducted is unlawful.



Unlawful conduct that could justify a limitation on picketing may include the commission of civil torts, or defamation. Picket signs should therefore communicate a message about the issues, not about personalities. Pamphlets should be factual and issue-oriented, not insulting or personal. Courts have recognized that picketing is bound to interfere with the normal operations of a business and that a labour dispute is not a "tea party". Picketers can communicate about their issues and can ask people to respect and support their strike.

If and when police officers are called to a picket line or demonstration, picketers should do their best to cooperate with their directions. However, communications with police should be conducted in an organized and disciplined way. A picket captain should be the union's spokesperson. It is often useful to be in contact with local police officials before a dispute occurs in order to build a fair and respectful relationship.

## Injunctions

Employers often apply for an injunction to limit or control picketing.

It is established in Canadian law that injunctions in a labour dispute should be issued sparingly, and as a last resort. Despite that, injunctions are often granted when there is an obstruction or interference with property. Generally, the civil law does not permit misconduct such as threatening damage or harm, blocking access to property for a long time, causing harm to property or people, or unreasonably interfering with the use of property. A Court will issue an injunction if a Court finds that without the injunction the employer will suffer serious and irreparable harm. The Court has to

balance the right of workers to engage in Charter-protected expression before granting an injunction.

In Ontario, additional requirements must be satisfied. An employer must show that the police have been called to a picket line and were unable to resolve the obstruction.

## Criminal Law

The criminal law of Canada also applies to the exercise of the right to picket.

Picketers may not engage in criminal conduct, such as assault or mischief (i.e. causing damage to property). Picketers may not damage property in any way. Picketers have a right to effectively communicate information on a picket line and can do this on public property if they do not obstruct ordinary traffic on such thoroughfares.

Most members assembled in a picket area should carry a sign. Every picket line should have a picket captain who in turn should be a spokesperson. As long as demonstrators exercise their fundamental right of assembly, and peacefully cooperate with the directions of police constables in attendance, no arrests should occur.

However, if an arrest is made, the person put in custody should make no statement of any kind, at any time, to the officer about what has happened. Reasonable information about personal identification should be provided. Apart from that one should remember that everything a person says to an officer, no matter how informal or offhand the remark may be, and even if the officer says the conversation is "off the record", may be quoted against the person in a trial later. Statements made in a police cruiser may be just as damaging as statements made in an office. One should cooperate reasonably with officers; but not by providing any statements about the events in question.



If a picketer is arrested, the officer has a discretion with respect to the time when and the conditions under which he/she will release that person from detention. For less serious offences, such as mischief (i.e. damaging or interfering with property – no one is injured) a person put under arrest may be released at the site or at the closest police office with a summons compelling them to appear in Court on a future date or by way of a kind of appearance notice.

Alternatively, a person may be kept in custody in a police station and released by an officer in charge by entering into a document called a recognizance under Section 498 of the Criminal Code of Canada. Finally, if a charge against a striker is particularly serious, he or she may be detained for up to 24 hours in custody. However, before the 24 hours have expired, the arrested person must be brought before a Justice of the Peace for a hearing with respect to their release from custody.

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