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The Law of Injunctions: An Update

Injunctions To Restrain Public Interest Picketing

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INJUNCTIONS TO RESTRAIN PICKETING IN THE NON-LABOUR CONTEXT

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INTRODUCTION

What if one of your clients becomes the target of picketing? As will be seen below in this paper, when a business becomes the target of picketing, be it by consumers or by a political group, the consequences can be serious. Providing advice to a client faced with picketing can be difficult and requires consideration of the legal and non-legal options available to bring the client's life back to normal.

This paper will focus on the use of the injunction remedy by private litigants who are faced with consumer or political picketing either at their business premises or residence.

CAUSES OF ACTION

It is trite law, although apparently sometimes misunderstood,[1] that an interlocutory injunction is only a remedy, not a self-supporting cause of action. In order for a plaintiff to obtain an interlocutory injunction, there must be a *lis* between the parties deserving of a trial, i.e. an action in which a permanent injunction is claimed.[2]

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[1] See *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, 23 O.R. (3d) 766 at 778-779.

[2] See *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc., supra*, note 1,at 779 and also *Ash v. Lloyd's Corp.*, (1992) 9 O.R. (3d) 755 (C.A.) at 760. There are some minor exceptions to this rule. For example, a party may obtain an anti-suit injunction despite that it seeks no further order from the court granting the injunction. In this regard, see *Hudon v. Geos Language Corporation*, (1997) 34 O.R. (3d) 14 (Div. Ct.)

Accordingly, before moving for an interlocutory injunction against protesters or picketers, a careful analysis must be made of their conduct to determine whether the plaintiff has a cause of action in which a permanent injunction can be claimed at trial.

Outside of the labour context, injunctions have been sought against people protesting against abortion clinics,[3] logging operations,[4] real estate agents thought to be responsible for "gentrifying" a north London neighbourhood[5] and a Toronto fruit store selling grapes grown in California.[6]

The causes of action alleged in support of the above injunctions include nuisance, interference with economic relations, intimidation, defamation, inducing breach of contract and conspiracy to injure.[7] In most of the picketing cases, the court has had to face the issue of whether secondary picketing (a term borrowed from the labour

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[3] *Morgentaler v. Wiche*, [1989] O.J. No. 2582, (H.C.J.) *Attorney General of Ontario v. Dieleman et al.* (1994), 20 O.R. (3d) 229 (Gen. Div.), *Assad v. Cambridge Right to Life et al.* (1989), 69 O.R. (2d) 598 (H.C.J.), *Everywoman's Health Centre Society v. Bridges* (1990), 54 B.C.L.R. (2d) 273 (C.A.)

[4] *Daishowa Inc. v. Friends of the Lubicon et al.* (1996), 27 O.R. (3d) 215 (Div Ct.), rev'g *Daishowa Inc. v. Friends of the Lubicon,* [1995], O.J. No. 1536 (hereinafter, "*Daishowa I*"). See also the decision of the Honourable Mr. Justice MacPherson after the trial in *Daishowa* at 39 O.R. (3d) 620 (Gen. Div.) (hereinafter "*Daishowa II*") and *Greenpeace Canada and Valerie Langer v. MacMillan Bloedel Limited*, [1996] 2 S.C.R. 1048.

[5] *Hubbard v. Pitt*, [1975] 3 All E.R. 1 (C.A.)

[6] *Darrigo's Grape Juice Ltd. v. Masterson*, [1971] 3 O.R. 772

[7] a good summary of the elements of each of these causes of action can be found in Daishowa II, *supra* note 4 at 229 - 231 and in *Morgentaler v. Wiche, supra,* note 3

context) is *per se* illegal and therefore gives the party being picketed a cause of action.[8]

WHAT SPECIFIC ACTIVITIES CAN BE ENJOINED?

The easy cases

Some forms of conduct are easier to enjoin than others. When protesters are trespassing on private property or physically blocking the plaintiff from carrying out its business, the court will intervene to stop this activity.[9] Trespass is one area where the courts are strongly inclined to grant injunctive relief.[10] Physically blocking a place of business has been held to constitute a private nuisance entitling the business to an injunction[11]. Courts are also likely to enjoin protesters from carrying placards containing clearly defamatory statements.[12]

Further, although it is far from clear that the tort of invasion of privacy exists in the law of Ontario, courts appear willing to restrain even peaceful picketing (i.e. picketing that does not involve trespass or the blocking of a place of business)

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[8] The issue of the legality of secondary picketing outside the labour context is discussed in greater detail below.

[9] *Greenpeace Canada, supra,* note 4 and *Morgentaler v. Wiche, supra,* note 3

[10] see Robert J. Sharpe, *Injunctions and Specific Performance*, 2nd edition, (Toronto: Canada Law Book, 1992) at paragraph 4.590.

[11] *Morgentaler v. Wiche, supra*, note 3, *Poole v. Ragen* (1958) O.W.N. 77 at 77 (H.C.J.) and *Culp and Hart v. The Township of East York* [1956] O.R. 983 at 990 (H.C.J.) aff'd [1957] O.W.N. 515 (C.A.)

[12] *Daishowa I, supra*, note 4

carried out at a person's residence. In the *Dieleman* case,[13] Mr. Justice Adams restrained all picketing within a 500 foot radius of the residences of doctors performing abortions. The injunction was granted on the basis that such picketing constitutes a private nuisance given that privacy is an integral component of reasonable residential use[14]. In the trial decision in *Daishowa*, Mr. Justice MacPherson refers to *Dieleman* in ruling that picketing cannot intrude into legitimate privacy interests and that "picketers cannot bring the public expression of their views to the private residences of those on the other side".[15]

As will be seen below, the courts have been less inclined to find that peaceful picketing outside business premises constitiutes a nuisance.

Can peaceful picketing be enjoined?

The cases offer no clear definition of "peaceful picketing". In *Daishowa*, Mr. Justice MacPherson commends the manner of the protest as a "model of how such activities should be conducted in a democratic society".[16] In this case, the number of protesters was small, there was no violence or destruction of property, the picketing was carried out on public property, the protesters conveyed their message in a courteous fashion, and they did not attempt to impede access to the store being

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[13] *Dieleman, supra*, note 3

[14] *Dieleman, supra,* note3 at 325-328.

[15] *Daishowa II, supra,* note 4 at 649.

[16] *Daishowa II, supra,* note 4 at 649.

picketed. In *Hubbard v. Pitt*, Lord Denning, in dissent, refused to grant an injunction restraining a protest outside a real estate agent's office on the basis that:

> No crowds collected. No queues were formed. No obstruction caused. No noises. No smells. No breaches of the peace ... There was no obstruction, no violence, no intimidation, no molestation ... nothing except a group of six or seven people standing about with placards and leaflets outside the plaintiff's premises all quite orderly and well behaved.[17]

It is well established in the labour context that "secondary picketing", i.e. the peaceful picketing of a party with whom the picketers have no direct business, is illegal *per se*.[18] In the leading case of *Hersees v. Goldstein,* [19] the Ontario Court of Appeal ruled that a company has a right to "lawfully engage in its business of retailing merchandise to the public"[20] and that even assuming that a right to picket exists in the law of Ontario, such right must give way to the company's right to trade.[21]

The courts have wrestled with the issue of whether peaceful picketing is illegal *per se* outside the labour context, but a trend appears to be emerging. In *Daishowa*, both the Divisional Court at the interlocutory injunction stage and the trial judge held that the rule in *Hersees* is confined to labour cases and that to obtain an

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[17] *Hubbard v. Pitt, supra,* note 5 at 7 and 9.

[18] *Hersees of Woodstock v. Goldstein* (1963) 2 O.R.. 81 (C.A.) and *Retail, Wholesale and Department Store Union v. Dolphin Delivery* [1986] 2 S.C.R. 573.

[19] *Hersees, supra,* note 18

[20] *Hersees, supra,* note 18 at p. 86

[21] *Hersees, supra,* note 18 at p. 86

injunction restraining picketing, a plaintiff must establish the commission of tortious or otherwise unlawful conduct.[22]

Although it is clear that the *Charter* does not apply in litigation between private parties[23], and that defendants cannot assert that an injunction will infringe their freedom of expression, the Supreme Court of Canada has described picketing as a "right to express public dissent" and has stated that in deciding whether to enjoin protesters, the court should seek to "protect the legitimate exercise of lawful private rights while preserving maximum scope for the lawful exercise of the right of expression and protest".[24] In *Daishowa*, Mr. Justice MacPherson takes up this theme, stating that "the common law should not erect barriers to expression by consumers where the purpose and effect of the expression is to persuade the listener to use his or her economic power to challenge a corporation's position on an important economic and public policy issue."[25]

The law thus seems to be moving toward the recognition of a form of "right to protest". It is this right which is at the root of the reluctance, or even refusal, to extend the ruling in *Hersees* to the non-labour context. Accordingly, despite a few

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[22] *Daishowa I, supra,* note 4 at p. 223-228 and *Daishowa II, supra*, note 4 a p. 638-648.

[23] *Dolphin Delivery*, supra, note 18

[24] *Greenpeace v. MacMillan Bloedel, supra*, note 4 at p. 1056 and see also the dissent of Lord Denning in *Hubbard v. Pitt, supra,* note 5 at p. 9.

[25] *Daishowa II, supra,* note 4 at p. 649.

cases to the contrary,[26] it appears that a plaintiff is not entitled to an injunction restraining a peaceful protest unrelated to a labour dispute.

As an aside, in *Daishowa*, the Divisional Court enjoined the protesters not on the basis that picketing is illegal *per se,* but because the plaintiff had presented a prima facie case that the protesters had committed the torts of inducing breach of contract and misrepresentation.[27] At trial, the court refused to grant a permanent injunction on the basis that the plaintiff had not established the commission of any economic torts.[28]

Does watching and besetting constitute a nuisance?

Section 423 of the Criminal Code provides as follows:

> (1) Every one who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he has a lawful right to do, or to do anything that he has a lawful right to abstain from doing, ...
>
> (f) besets or watches the dwelling-house or place where that person resides, works, carries on business or happens to be,
>
> is guilty of an offence punishable on summary conviction.
>
> (2) A person who attends at or near or approaches a dwelling house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

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[26] In *Assad v. Cambridge Right to Life, supra*, note 3, the court applied the rule in Hersees to enjoin picketing by anti-abortion protesters in front of a medical office.

[27] *Daishowa I, supra*, note 4 at p. 231-232.

[28] *Daishowa II, supra*, note 4 at p. 650-654.

In *Morgentaler v. Wiche*, one of the bases upon which the court enjoined picketing outside a Toronto abortion clinic was that the protesters were watching and besetting the premises. The court cited an Ontario case[29] which cited the 1899 British case of *Lyons & Son v. Wilkin* [30] for the proposition that "to watch or beset a man's house is a nuisance unless justified". This decision suggests that watching and besetting constitutes the tort of nuisance.

However, in a case decided shortly after *Lyons v. Wilkin*,[31], the English Court of Appeal specifically ruled that watching and besetting does not constitute a tort. Further, in *Williams v. Aristocratic Restaurants*[32], the Supreme Court of Canada held that the picketing in question did not constitute a nuisance.

The better view, especially since the decisions in *Greenpeace* and *Daishowa* regarding the "right to express dissent", is that watching and besetting does not constitute a private nuisance and cannot be a basis for restraining peaceful picketing.

Picket-free zone

In most of the cases, rather than completely restraining the defendants from picketing, the court prevents them from doing so within a particular radius of the plaintiff's premises. This type of injunction was granted in the *Dieleman* case as

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[29] *Poole v. Ragen, supra,* note 11.
[30] *Lyons & Son v. Wilkin,* [1899] Ch. 255
[31] *Ward, Lock & Co. v. Operative Printers*, (1906) 22 TLR 327.
[32] *Williams v. Aristocratic Restaurants,*[1951] S.C.R. 762.

well as in *Morgentaler v. Wiche*. The result is a "picket free zone" which strikes a balance between the protesters' right to express dissent and the plaintiff's right to engage in business.

Public nuisance

Public nuisance has been broadly defined as an "unreasonable and substantial interference with the rights of all members of the community or the members of a class which come within the sphere or neighbourhood of its operation"[33] The Attorney General may seek an injunction restraining both the flouting of its laws and a public nuisance.[34] There is even some suggestion in the case law that the Attorney General can obtain such an injunction without showing irreparable harm.[35]

A separate question is whether a private litigant has standing to enjoin a public nuisance. The courts have held that a private litigant can indeed enjoin a public nuisance if he or she can demonstrate that the nuisance causes him or her special or particular damage i.e. where the damage suffered is different from that suffered by other members of the community.[36]

EVIDENCE TO PRESENT TO THE COURT

Since the entitlement to an injunction depends so heavily upon the exact conduct of the defendants, and given the higher degree of proof required to restrain picketing

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[33] *Stein v. Gonzales* (1984), 14 D.L.R. (4th) 263 at 265.
[34] *Dieleman, supra,* note 3 at p. 267-270.
[35] *Re Attorney General and Bear Island Foundation* (1989) 70 O.R. (2d) 758 at 761.
[36] *Stein v. Gonzales, supra,* note 32 at p. 266-267.

(as discussed below), it is crucial to present the court with a very clear picture of the defendants' conduct. The plaintiff should keep careful and detailed notes of the day, time and place of the picketing, the number of picketers involved in each protest, any slogans chanted by the protesters, and the text of any placards carried, all of which should be included in the affidavit material in support of the motion.

Photographs of the protesters should be taken from several angles so that the court has a clear idea of the exact type of conduct involved. A video of one or more of the protests is better still.

WHO CAN BE SUED?

Often, the identity of some or all of the protesters is not known. Can a plaintiff obtain an injunction against unidentified parties? This issue was raised before the Supreme Court in *Greenpeace Canada and Valerie Langer v. MacMillan Bloedel Limited* ("*Greenpeace*")[37].

The *Greenpeace* case arose out of protests against MacMillan Bloedel's logging operations in the Clayoquot Sound region of British Columbia. MacMillan Bloedel obtained an *ex parte* injunction in September, 1991, enjoining "all persons having notice" of the order from impeding its logging operations in the area. The *ex parte* injunction was subsequently amplified, refined and extended by various court orders during the period from September, 1991, through to July, 1993. MacMillan Bloedel

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[37] *Greenpeace Canada, supra*, note 4.

brought its action, and obtained the injunction (which restrained the blocking of access to its logging operation site) against certain named defendants as well as against "John Doe, Jane Doe and Persons Unknown".[38]

The defendants appealed from the injunction order on the basis that: (i) members of the public not named in a civil action could only be enjoined at the suit of the Attorney General; (ii) the court did not have the power to grant an injunction in a civil action binding non-parties or the general public; and (iii) the court could not gain such jurisdiction simply because the plaintiff used the terms "John Doe, Jane Doe or Persons Unknown" in the title of proceeding.

The Supreme Court of Canada resolved the issues as follows:

(a) the mere fact that the defendants' conduct could be characterized as criminal did not deprive MacMillan Bloedel (whose private rights were affected) from seeking relief in the civil courts.[39] Where criminal conduct affects property rights, the person so affected may obtain an injunction prohibiting the conduct;[40]

(b) non-parties (i.e. members of the general public not specifically named in the action) who violate injunctions may be found in contempt of court;[41]

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[38] For a thorough analysis of the John Doe injunction, see Julie E. Lawn, "*The John Doe Injunction in Mass Protest Cases*", University of Toronto Faculty of Law Review, (1998), 56 (1) U.T. Fac. L. Rev. 101 and also C. Ward, "*The Contemptuous Mr. Doe*", (1993) 3 Journal of Environment Law and Practice 344.

[39] *Greenpeace, supra,* note 4 at p. 1059.

[40] *Greenpeace, supra,* note 4 at p. 1059.

[41] *Greenpeace, supra,* note 4 at p. 1060.

(c) in order for a member of the public to be bound by a court order in a private action in which he or she is not expressly named, the court order should specifically apprise them of that fact;[42]

(d) if members of the public are to be charged with obstruction of justice for having disobeyed an injunction, they must first be apprised of the existence and terms of the order and the sanction they face for disobeying the order, and must be given an opportunity to comply with the order;[43] and

(e) the use of the terms "John Doe", "Jane Doe" and "Persons Unknown" is surplusage. Any person not a party to an action remains bound to respect an order made in the action on pain of being found in contempt of court.[44]

The decision in *Greenpeace* leaves open the question as to whether a plaintiff can obtain injunctive relief against unidentified members of the public by naming only John Doe, Jane Doe and Persons Unknown. However, based upon the reasoning in the case, a strong argument can be made that such relief could be obtained provided that the order granted specifically addresses the duty of non-parties to respect it, and that members of the public are made aware of the terms of the order and are given an opportunity to comply with it.

THRESHOLD OF PROOF

In *RJR MacDonald Inc. v. Canada (Attorney General),*[45] the Supreme Court of Canada makes it clear that *American Cyanamid Co. v. Ethicon Ltd.*[46] articulates the

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[42] *Greenpeace, supra,* note 4 at p. 1064-1065, *Bartle & Gibson Co. v. Retail, Wholesale and Department Store Union, Local 580,* [1971] 2 W.W.R 449, *International Longshoremen's Association, Local 273 v. Maritime Employers' Association,* [1979] 1 S.C.R. 120 at 144

[43] *Greenpeace, supra,* note 4 at p. 1067

[44] *Greenpeace, supra,* note 4 at p. 1069

[45] *RJR MacDonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311

burden of proof on the plaintiff at the interlocutory stage. In *Cyanamid*, the House of Lords ruled that a plaintiff need only show a serious question to be tried; i.e. that its case is not frivolous or vexatious. This is a relatively low threshold.

However, in the subsequent decision in *N.W.L. Ltd. v. Woods,*[47] the House of Lords carved out certain exceptions to the "serious question to be tried" threshold. One such exception arises where the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action. According to *N.W.L. Ltd.*, in such a case the plaintiff will be required to show not only that its action is not frivolous or vexatious, but that it has a strong *prima facie* case. In *RJR MacDonald*, the court specifically adopted the strong *prima facie* case exception set out in *N.W.L. Ltd.* and, in fact, specifically stated that cases in which the applicant seeks to restrain picketing may well fall within the exception. In *Dieleman,*[48] the court applied the more onerous "strong *prima facie* case" test on the basis that picketing was involved and because the defendants' constitutional rights would be affected by the injunction.[49]

Accordingly, when a plaintiff seeks to restrain picketing, it will be required to meet this higher threshold test.

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[46] *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.)

[47] 1 W.L.R. 1294 (H.L.)

[48] *Dieleman et al., supra,* note 3 at p. 277

[49] In *Dieleman*, the Attorney General was seeking the injunction. Accordingly, the case was not one involving private litigants as in *Dolphin Delivery* and the *Charter* was held to apply.

IRREPARABLE HARM

In the *RJR MacDonald* case, the Supreme Court defined irreparable harm as follows:

> "irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.[50]

Can an injunction be obtained without showing irreparable harm?

The first question to be asked is whether a plaintiff who establishes a *prima facie* case is entitled to an injunction without showing irreparable harm. In the very interesting but not often cited case of *Bank of Montreal v. James Main Holdings Ltd.*, [51] the Ontario Divisional Court held that where a plaintiff establishes a *clear* breach of a negative covenant by the defendant, an injunction restraining such breach will issue without a showing of irreparable harm. If a plaintiff is entitled to an injunction without showing irreparable harm in the above circumstance, why should a plaintiff not be entitled to the same if he or she can show that the defendant has *clearly* committed a tort? Since a plaintiff seeking to enjoin picketing must show a strong *prima facie* case , he or she can argue that the evidence establishes the clear commission of a tort. The plaintiff can attempt the same argument if, either because the plaintiff adduces photographic and video evidence, or because the defendants file no responding material, there are no facts in dispute.

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[50] *RJR Macdonald Inc. v. The Attorney General of Canada, supra*, note 45 at 341.

[51] *Bank of Montreal v. James Main Holdings Ltd.* (1982) 28 C.P.C. 157. (Div. Ct.).

Types of irreparable harm that can be demonstrated in picketing cases

In the *Daishowa* case, Mr. Justice MacPherson remarked upon the astonishing success the picketers had in convincing the plaintiff's customers to cease purchasing its products. This illustrates that a company can suffer substantial monetary damages as a result of being picketed, a fact which is relevant for two reasons. First, the cases state that a person or company is irreparably harmed where the protesters' conduct threatens to put the plaintiff out of business or puts the plaintiff's livelihood at stake.[52] Second, irreparable harm may be found where the evidence indicates that the defendants do not have the means to pay a damage award made at trial.[53]

BALANCE OF CONVENIENCE

There is no clear direction in the caselaw as to what elements the court will consider when considering the balance of convenience, although the court will be inclined to preserve the status quo existing before the conduct complained of. In picketing cases, the balance of convenience will, it is submitted, usually favour the plaintiff given that the plaintiff's business is adversely affected and the protesters can always express their views at another, albeit it possibly less desirable, location.

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[52] *Wiche v. Morgentaler, supra,* note 3 at p. 49, see also Robert J. Sharpe, *Injunctions and Specific Performance,* 2nd edition, (Toronto: Canada Law Book, 1992) at paragraph 2.410.

[53] *Hubbard v. Pitt, supra,* note 5 at p. 15 and *RJR MacDonald Inc., supra,* note 45 at p. 341.

TACTICAL CONSIDERATIONS

> Unjust laws exist: shall we be content to obey them ...
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> Henry David Thoreau, Civil Disobedience, 1849
>
> ... an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.
>
> Martin Luther King Jr., Why we Can't Wait, 1964

Litigation against protesters and picketers has a characteristic not usually found elsewhere. Far from seeking to resist the granting of the injunction, the protesters true goal may well be to have the injunction issued against them so that they can promptly disobey it! Civil disobedience allows the protesters to gain greater media attention. News reports and television footage of protesters being hauled off to jail go a long way to publicize a cause.

Before commencing injunction proceedings against protesters, careful consideration should therefore be given to whether such proceedings will play directly into the protesters' hands by escalating the dispute. A good example of how proceedings can fuel the dispute and turn into a public relations nightmare, is an English case known as the "McLibel"[54] trial.

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[54] The formal name of the case is *McDonalds Corporation v. Steel and Morris*, see http://www.mcspotlight.org/case/trial/verdict

The McLibel trial roots go back to the 1980s, when a group of protesters published a leaflet containing a number of serious allegations against McDonald's and its business practices.[55] In 1990, McDonald's served libel notices on five members of the group alleging that a number of the statements in the leaflet were defamatory. McDonald's offered to drop the matter if it received an apology from the five and an undertaking to stop publishing the leaflet. Two of the five refused McDonald's offer. McDonald's commenced an action against the two. The trial started in June, 1994 and lasted 314 days over a three year period. Judgment was rendered in June, 1997. Although the trial judge found that some of the statements in the leaflet were defamatory, he ruled that others were justified[56]. The trial judge awarded McDonald's damages of 60,000 pounds against the two judgment-proof defendants who had defended themselves throughout the proceedings.

The two defendants appealed from the judgment. The appeal was heard over 22 days commencing in January, 1999. In the course of its decision, the Court of Appeal overturned one of the trial judge's findings in favour of McDonald's and reduced the damages awarded to 40,000 pounds.

It is estimated that McDonald's spent 10,000,000 pounds on legal fees![57]

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[55] The accusations in the leaflet were to the effect that McDonalds exploited children with advertising, promoted an unhealthy diet which causes heart disease, exploited their staff, was responsible for destroying the rainforest, and mistreated animals.

[56] His Honour found that: (i) McDonald's food was high in fat, salt and animal products, low in fiber; (ii) people who eat McDonald's food several times a week face a very real risk of heart disease; (iii) McDonald's advertisements have incorrectly stated that its food has a positive nutritional benefit; (iv) McDonald's advertising and marketing is in large part directed at children with a view to them pressuring or pestering their parents to take them to McDonald's; (v) McDonald's was culpably responsible for cruelly treating hens, chickens, and pigs: (vi) McDonald's pays its workers low wages thereby helping to depress wages for food workers in Britain; and (vii) some of McDonald's employment practices are most unfair to young employees.

[57] See McLibel Trial Makes Firm 3,000,000 lbs The Lawyer, June 24, 1997

After the trial decision was released, one of the defendants told the press that he considered the decision to be a victory because:

> McDonald's brought the case to silence criticism. The leaflets are circulating in ever greater numbers ... No force, no court on this planet can stop me or millions of others from expressing our opinions.[58]

By any measure, the McLibel Trial was a public relations nightmare for McDonald's. Not only did the defendants succeed in proving some of their allegations, but McDonald's failed in its main objective, which was to stop protesters from criticizing its food and business practices.

Because of the very real risk that proceedings against protesters can turn into a sequel to the McLibel Trial, all options other than litigation should be rigorously pursued. These include mediation, negotiation, discussion with the protesters, and , if possible, attempting to shift the protesters' focus onto other parties.[59]

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[58] Chicago Tribune, June 20, 1997, article by Ray Moseley.

[59] For example, in a native land claims case (where a private party has been given rights over disputed territory), the focus could be shifted to the government's failure to recognize and properly settle the claims. With a bit of luck, the protesters might decamp and focus the protest on the government.