

Court File No.: CV-21-00656820-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

B E T W E E N:

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**JD NORMAN CANADA, ULC**

Defendants

---

**SUBMISSIONS OF UNIFOR LOCAL 195**

---

February 17, 2021

**DEWART GLEASON LLP**  
366 Adelaide Street West, Suite 102  
Toronto ON M5V 1R9

Sean Dewart LSO No.: 26708B

Email: [sdewart@dglp.ca](mailto:sdewart@dglp.ca)

Tim Gleason LSO No.: 43927A

Email: [tgleason@dglp.ca](mailto:tgleason@dglp.ca)

Telephone: 416-971-8000

Facsimile: 416-971-8001

Lawyers for Unifor Local 195

TO: DICKINSON WRIGHT LLP  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, ON M5L 1G4

John D. Leslie, LSO No.: 29956P  
Telephone: 416-646-3801  
Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)

Lisa S. Corne, LSO No.: 27974M  
Telephone: 416-646-4608  
Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)

Lawyers for the Applicants

TO: JD NORMAN CANADA, ULC  
6845 Hawthorne Drive  
Windsor, ON N8T 3B8  
Attention: President

TO: CIT FINANCIAL LTD.  
5035 South Service Road  
Burlington, ON L7R 4C8

TO: TOYOTA INDUSTRIES COMMERCIAL FINANCE CANADA, INC.  
401 The West Mall, Suite 630  
Toronto, ON M9C 5J5

Telephone: 416-621-5522  
Email: [info@toyotacf.ca](mailto:info@toyotacf.ca)

TO: BANK OF AMERICA, N.A.  
135 South Lasalle Street, Suite 925  
Chicago, IL 60603  
USA

TO: MCMILLAN LLP  
TD Canada Trust Tower, Suite 1700  
421 7th Avenue S.W.  
Calgary, AB T2P 4K9

Adam C. Maerov  
Telephone: 403-215-2752  
Email: adam.maerov@mcmillan.ca

Lawyers for JD Norman Canada, ULC

TO: NORTON ROSE FULBRIGHT CANADA LLP  
222 Bay Street, Suite 3000  
Toronto, ON M5K 1E7

Evan Cobb  
Telephone: 416-216-1929  
Email: evan.cobb@nortonrosefulbright.com

Lawyers for Bank of America

TO: DEPARTMENT OF JUSTICE  
The Exchange Tower  
130 King Street West  
Suite 3400, P.O. Box 36  
Toronto, ON M5X 1K6

Diane Winters  
Telephone: 416-973-3172  
Facsimile: 416-973-0810  
Email: diane.winters@justice.gc.ca

TO: MINISTRY OF FINANCE (ONTARIO)  
Legal Services Branch  
33 King Street West, 6th Floor  
Oshawa, ON L1H 8H5

Kevin J. O'Hara  
Telephone: 905-433-6934  
Facsimile: 905-436-4510  
Email: kevin.ohara@ontario.ca / unit@ontario.ca

TO: KSV RESTRUCTURING INC.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

David Sieradzki  
Telephone: 416-932-6030  
Email: dsieradzki@ksvadvisory.com

TO: OSLER, HOSKIN & HARCOURT LLP  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto, ON M5X 1B8

Marc Wasserman  
Telephone: 416-862-4908  
Email: mwasserman@osler.com

Lawyers for KSV Restructuring Inc.

## **I. OVERVIEW**

1. On February 12, 2021, Callidus Capital Corporation asked the Court to appoint a receiver, and to include in the order a term enjoining members of Unifor Local 195 from blocking access by the Receiver or any other person transporting any property from the debtor's premises.
2. The Court declined to grant the order because the applicant had not complied with s. 102 of the *Courts of Justice Act*.
3. The Court advised the applicant and the receiver that a proper motion for injunctive relief could be brought upon compliance with s. 102 of the *Courts of Justice Act*.
4. No party has complied with s. 102 of the *Courts of Justice Act*, and no injunctive relief may be granted. Instead, the receiver takes the position that the Court previously granted the relief that it refused to order.
5. An order enjoining Unifor members from picketing the debtor's premises cannot be made until the applicant or receiver complies with s. 102 of the *Courts of Justice Act*. The Court has previously provided this advice and direction, and this motion is unnecessary.

## **II. FACTS**

6. The respondent operated a manufacturing plant in Windsor, Ontario.
7. Unifor Local 195 is a trade union, which represents approximately 70 workers at the plant in collective bargaining. Local 195 and the respondent are parties to a collective agreement. Under the collective agreement, the company is required to provide six months' notice in the event of a plant closure and the members have entitlements to eight weeks termination pay under the

*Employment Standards Act, 2000.*

8. On Friday, February 5, 2021, the debtor advised the members of Local 195 that the plant was closing. It had not provided notice as required by the collective agreement and has failed to confirm that it will honour its obligation to make severance and termination payments.

9. In response to the company's failure to comply with its obligations under the collective agreement and relevant statutes, the union erected pickets at two entrances of the plant at approximately 2:30 pm on Friday, February 5. As a result of the picket, finished material that is ready for shipment has not been permitted to leave the plant.

10. The picket continues to date. It has been entirely peaceful.

11. The applicant applied on short notice for the appointment of a receiver. Paragraph 4 of the Commercial List Users' Committee Model Order for the appointment of a receiver provides as follows:

THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

12. Paragraph 4 of the draft order proposed by the applicant provides as follows:

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees (***including such employees' representatives or bargaining agents***), agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each

being a “Person”) shall: (a) forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request; ***(b) not impede or delay access or egress by the Receiver to or from any Property; and (c) not impede or delay access or egress by the Receiver, or any other Person permitted such access or egress by the Receiver, to or from any of the Debtor’s owned or leased premises including, without limitation, by any Person transporting any Property to or from the Debtor’s owned or leased premises with the Receiver’s permission.*** [Emphasis added]

13. The Court declined to grant the additional terms in the receiver order because the applicant had failed to comply with s. 102 of the *Courts of Justice Act*. Instead, the Court granted the Commercial List Users' Committee Model Order, and advised the applicant and the receiver that they could move on a proper record, with proper notice, if they required an order enjoining the conduct of the Unifor members.

14. The receiver did not comply with s. 102 of the *Courts of Justice Act*. In particular, it delivered its motion materials after 6:00 pm on February 15, 2021, and sought the return of the motion less than two days later. Direct evidence concerning the effect of police assistance was not included in the moving materials.

15. The receiver has now taken the position that the order appointing the receiver included an order enjoining the conduct of the Unifor members.

### **III. ISSUES AND THE LAW**

16. There are three issues on this motion:

a. Did the Court enjoin the conduct of Unifor members in the order appointing the receiver?

b. Has the receiver met the requirements of s. 102 of the *Courts of Justice Act* on this

motion?

c. Has the receiver otherwise met the requirements for injunctive relief?

**A. The order of February 12, 2021**

17. The receiver in its report asserts:

the Union’s actions appear to be in breach of Paragraph 4 of the Receivership Order (which is unchanged from the “model order”), which requires parties to “...grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request”;<sup>1</sup>

18. This statement quotes selectively from the order and alters its effect by suggesting that “the parties” are ordered to “grant immediate and continuous access...”. The order does not so provide. Instead, it provides that persons *in possession or control of the debtor’s property* shall grant immediate and continuous access to that property.

19. Members of Unifor are not persons with possession or control of the debtor’s property.

20. The Court did not grant an order enjoining persons at large from picketing or delaying ingress or egress to the debtor’s property. In fact, the Court explicitly refused to do so.

21. It was open to the receiver to comply with s. 102 of the *Courts of Justice Act*, if it required such relief, but having failed to do so, as directed by the Court, it cannot now claim that the relief was previously ordered.

**B. Injunctive Relief**

**1. Injunctions in a labour dispute**

22. Section 102(1) of the *Courts of Justice Act* defines a "labour dispute" as follows:

---

<sup>1</sup> Receiver’s Report, p. 4, s. 5.0, ¶1(d)



"labour dispute" means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

23. It does not matter that the applicant or the receiver is not the employer. Section 102 applies "regardless of whether the disputants stand in the proximate relation of employer and employee."

24. In *General Motors Corp. v. BBI Enterprises Group Inc.*, the predecessor to Unifor represented employees of BBI, a former contractor of General Motors, that had shut down. A picket by BBI's employees was preventing General Motors from removing its equipment from BBI's premises, and General Motors sought injunctive relief. The Court held that the matter was a labour dispute within the meaning of s. 102, notwithstanding that it was not the employer that was seeking the relief.

[\*General Motors Corp. v. BBI Enterprises Group Inc.\*](#), 2009 CanLII 33532 (ONSC Commercial List) at ¶¶13-18

25. In *Queen's University v CUPE Local 229*, a university sought injunctive relief against a union picketing an employer other than the university operating on campus. The Court held that the fact that the university was not the employer was not determinative of whether the dispute was a labour dispute for the purposes of s. 102 of the *Courts of Justice Act*.

It is not necessary that a labour dispute be between the parties in an action. An act of one party in a labour dispute against a third party who is in some way related to the dispute, falls within the definition as set out in s. 102(1) of the *Courts of Justice Act*.

[\*Queen's University v. C.U.P.E., Local 229, 1994\*](#) CarswellOnt 536 at ¶¶25-27

26. Section 102 of the *Courts of Justice Act* sets out various requirements with respect to

injunctions restraining a person from an act in connection with a labour dispute. As set out below, the receiver has met none of these requirements, which the Court of Appeal has held are jurisdictional.

27. In this case, members of Local 195 are picketing the debtor's premises because the debtor employer has failed to comply with its collective agreement, which requires among other things that the employer provide six months' notice of a plant closure. The employer has also failed to confirm that it will honour its obligation to make severance and termination payments. It is indisputably a labour dispute.

## **2. The Importance of Picketing**

28. Freedom of expression is a fundamental constitutional value and is the foundation of a democratic society. The Supreme Court of Canada has repeatedly held that free expression is particularly critical in the context of labour relations. It plays a significant role in alleviating the imbalance between an employer's economic power and the relative vulnerability of individual workers. Picketing benefits not only the employees and unions involved in any particular labour dispute, but society as a whole.

*Pepsi-Cola Canada Beverages (West) Ltd v. R.W.D.S.U., Local 558*, [2002] 1 S.C.R. 156 at ¶¶32-35

29. In this context, picketing plays an essential role in labour disputes, and is a vital and constitutionally protected means of collective expression in modern labour relations. It is "beyond dispute" that picketing "represents a highly important and now constitutionally recognized form of expression in all contemporary labour disputes".

*B.C.G.E.U. v. British Columbia (Attorney General)*, (1988), 53 D.L.R. (4<sup>th</sup>) 1 (S.C.C.) at ¶27

And see:

[\*Pepsi-Cola Canada Beverages \(West\) Ltd v. R.W.D.S.U., Local 558\*](#), [2002] 1 S.C.R. 156 at ¶¶32-35

[\*Industrial Hardwood Products \(1996\) Ltd.\*](#), 2001, 52 O.R. (3d) 694 (C.A.), at ¶¶14 and 37

[\*Potash Corp. of Saskatchewan Mining Ltd. v. Todd\*](#), 1987 CanLII 4918 (Sask. C.A.) at ¶¶143, 145

30. As a constitutionally protected manifestation of freedom of expression, picketing "must be respected and promoted, not simply tolerated or restricted in deference to property rights, until the line of tortious or criminal activity is clearly crossed".

[\*Cancoil Thermal Corp. v. Abbott\*](#), 2004 CanLII 2565 (ON SC) at ¶10

31. Both the legislature and the courts have recognized that the regulation of picketing in a labour dispute must be done with "care, balance and sophistication". In addition to this Court's general caution in granting any injunctions, (an "extraordinary remedy" and a "blunt instrument of coercive authority"), the Legislature has enacted section 102 of the *Courts of Justice Act* to stipulate special requirements which must be met before an injunction may be granted in a labour dispute.

[\*Industrial Hardwood Products \(1996\) Ltd.\*](#), 2001, 52 O.R. (3d) 694 (C.A.), at ¶¶15-16, 38

### **3. Section 102 of the Courts of Justice Act**

32. The power to grant injunctive relief during a labour dispute is substantially restricted by section 102 of the *Courts of Justice Act*, which was originally enacted as s. 20 of the *Judicature Act*:

...this section has imposed stringent terms with respect to the issuance of injunctions in labour disputes on the Courts of this province. While the plaintiff no doubt will suffer damages in these circumstances, the legislature in its wisdom has seen fit to restrict the use of the injunction as a device to be used in such disputes

to circumstances which fall clearly within the terms of s. [102].

*Toronto Sun Publishing Corp. v. Millwrights Local 2309*, [1979] O.J. No. 226 (H.C.), at ¶12

33. The statute was enacted to prevent the courts from becoming readily involved in labour disputes.

The obvious intent of the Legislature in enacting the present s. 20 of the *Judicature Act* was to restrict severely the use of the injunction, and especially the interim or interlocutory injunction, as a weapon or as a remedy in a labour dispute.

*Board of Education for the City of Windsor v. Ontario Secondary School Teachers' Federation* (1974), 7 O.R. (2d) 26 (H.C.J.), at ¶16

34. The statute imposes stringent requirements that must be met before seeking injunctive relief, including:

- a. no motion may be brought without two full days' notice to persons affected by the order sought (s. 102(2), (6) and (7));
- b. the plaintiff must establish that reasonable efforts to obtain police assistance have been made and have failed (s. 102(3)); and
- c. affidavit evidence must be restricted to statements of facts within the direct knowledge of the deponent (s. 102(4)).

35. The court may in limited circumstances make an interim order without two full days' notice, but affidavit evidence is not admissible on such a motion. Rather, the receiver must prove, by oral evidence, all of the material facts necessary for injunctive relief, and must prove that proper notice was not possible (s. 102(8)).

36. The receiver in the case at bar meets none of these criteria.

#### 4. Notice

37. Section 102(2) of the Act provides that no injunction may be granted without notice. Section 102(6) provides that "at least two days' notice of a motion for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the responding party and to any other person affected thereby but not named in the notice of motion".

38. These requirements are statutory, and not discretionary. Unlike the *Rules of Civil Procedure*, the Court cannot relieve against these requirements.

There is no jurisdiction under the Rules of Civil Procedure to abridge the notice period stipulated in s. 102(6) of the Act. Rule 3.02(1) relates only to abridging "any time prescribed by these rules or an order". The s. 102(6) notice requirement is prescribed by statute, not by a rule. Rule 3.02(1) has no more application to that notice requirement than it would to a limitation period prescribed by statute. Section 102 of the Act sets out a complete code for notice of injunction motions in labour disputes. This cannot be varied by the simple exercise of judicial discretion or by the application of general Rules of Civil Procedure.

[\*Universal Showcase Ltd. v. U.S.W.A.\*](#), [2001] O.J. No. 2570 (S.C.J.) at ¶3

39. The requirement of "at least two days' notice" in a statute means two clear days, and indicates a legislative intention to ensure that the respondent has a fair opportunity to obtain responding evidence and test evidence by cross-examination.

[\*Universal Showcase Ltd. v. U.S.W.A.\*](#), [2001] O.J. No. 2570 (S.C.J.) at 5

*Ashton v. Powers* (1921), 67 D.L.R. 222 (Ont. C.A.)

*Graystone Properties Ltd. v. Smith* (1982), 41 O.R. (2d) 555

*Ng-Evans v. Gray*, [1992] O.J. No. 1758

*Revenue Properties Co. v. Patterson*, [1993] O.J. No. 1732

40. There is no suggestion that the receiver provided two days' notice of this motion to Unifor or any of its members. Indeed, the receiver's motion does not put Unifor on notice of a motion for injunctive relief, because it purports to have already obtained such an order.

## 5. Police assistance

41. The receiver has not filed adequate evidence that it has made reasonable attempts to obtain police assistance. The failure to prove that it has done so is fatal to the relief sought against members of Local 195.

42. Section 102(3) of the Act provides as follows:

In a motion or proceeding for an injunction to restrain a person from an act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry or exit from the premises in question or breach of the peace have been unsuccessful.

43. A determination of the degree of success of police activity, as required by section 102(3), must flow from a review of all the evidence regarding strike activity, and not on any single isolated incident.

*Nedco v. Nichols*, [1972] 3 O.R. 944 (H.C) at ¶27

*A. Figliomeni & Sons Ltd. v. Darnell*, [1986] O.J. No. 2041, at ¶11

44. In a case involving alleged obstruction, and not property damage or personal injury, the Court will consider the degree of obstruction, its duration and how many days it has gone on. The first failure of the police to respond to a request for help will not lead to a conclusion that police assistance has failed. Rather, section 102(3) must be interpreted in light of the vital role picketing plays in labour disputes. Absent questions of property damage or personal injury, a robust society can accommodate some inconvenience as a corollary of the right to picket in a labour dispute before the court will conclude that police assistance has failed, and that it has jurisdiction to intervene with injunctive relief.

The police response to requests for assistance will not always be immediate given

their other policing responsibilities. The first failure of the police to respond instantaneously to a request for help does not necessitate the conclusion that police assistance has failed and that therefore the court can be resorted to. Absent questions of property damage or personal injury, a robust society can accommodate some inconvenience as a corollary of the right to picket in a labour dispute before the court will conclude that police assistance has failed, and that it has jurisdiction to intervene with injunctive relief.

*Industrial Hardwood Products (1996) Ltd.*, 2001, 52 O.R. (3d) 694 (C.A.), at ¶¶14-17, 21-23

*Cancoil Thermal Corp. v. Abbott*, 2004 CanLII 2565 (ON SC)

*Jayden Inc. v. Pointon*, [1986] O.J. No. 1512 (S.C.O.) at ¶¶29-32

45. The report of the receiver asserts that police assistance was requested once, and that the receiver is not aware of has “not had any indication that the Windsor Police and/or the Sherriff will be able to assist the Receiver absent a further order of this Court.” This falls far short of the necessary context required for the Court to assess the effectiveness of police assistance.

46. Section 102 of the *Courts of Justice Act* constitutes a complete code governing the granting of injunctive relief in the context of a labour dispute. The requirements of section 102, including subsection (3), are jurisdictional in nature; if they have not been met, an order to restrain activity in connect with a labour dispute cannot issue. The legislation is "mandatory" and compliance with its provisions is required "however inconvenient they may be".

*Texpack v. Rowley* (1972), 2 O.R. 93 (C.A.)

*Industrial Hardwood Products (1996) Ltd.*, 2001, 52 O.R. (3d) 694 (C.A.) at ¶17

## 6. Inadequate evidence

47. The motion record does not contain direct evidence concerning the effectiveness of police assistance. No evidence is adduced about the attendances of police, what they were asked to do, what their response was, and to whom such statements were made.

48. Section 102(4) of the *Courts of Justice Act* requires that a motion for injunctive relief in a labour dispute must be supported by direct evidence. The purpose of this provision is to safeguard employees' freedom of expression.

It has been long recognized that an injunction in the context of a labour dispute may have significant impact on the employees' freedom of expression. As a safeguard to that freedom, injunctions can only be made on the basis of first-hand information being provided to the court. Clearly, the legislature believed it to be important that the court rely only on what persons deposed they had personally seen, heard or otherwise perceived. In fact, the legislature went even further and provided that such a deponent be subject to cross-examination in order to test the veracity of his or her information. Were I to allow the introduction of Mr. Neault's affidavit in its entirety, I would not only be allowing for the introduction of evidence of which he has no personal knowledge, I would be robbing the Union of its right to challenge the veracity of the information because it has no right to cross-examine the authors of the incident reports, the very sources of the information being related by the deponent.

[\*Vale Inco Ltd. v. U.S.W., Local 6500\*](#), 2010 ONSC 1774 at ¶11

49. Compliance with this provision is mandatory. An injunction will not be granted in the absence of direct evidence.

Even though the injunction in this case was cautiously framed in very narrow terms, s. [102] of the *Courts of Justice Act* contains stringent procedural safeguards before an injunction can issue in a labour dispute. In our view, there was no admissible evidence upon which to conclude that David Butt or the other two named appellants were involved in incidents of obstruction or interference with access to and from the property of the respondent and the injunction should not have issued against them.

[\*683481 Ontario Limited v. Beattie\*](#), 1990 CarswellOnt 1632 (ONCA)

[\*Nedco v. Nichols\*](#), [1972] 3 O.R. 944 (H.C) at ¶5

*Jayden Inc. v. Pointon*, [1986] O.J. No. 1512 (H.C.), at ¶21

### C. Test for Injunctive Relief

50. On a motion for injunctive relief, the moving party must establish three elements: (1) a serious issue to be tried; (2) that it will suffer irreparable harm if an injunction is not granted; and



(3) that the balance of convenience favours granting the order.

[RJR-MacDonald Inc. v. Canada \(Attorney General\)](#) at ¶40

51. Because the receiver has not fashioned this proceeding as a motion for an injunction, it has not led evidence on irreparable harm or the balance of convenience. An injunction cannot issue on the record before the Court.

52. In circumstances not dissimilar to those alleged (but not proven) by the receiver in this case, this Court has held that the disruption of work of almost 1,000 GM employees caused harm, but it does not follow that it was irreparable, and it could not outweigh the significant interests of protesting employees:

A mature, robust, and stable democracy should be able to withstand some short-term challenges to civility and the right to use a public road, in certain circumstances. The livelihoods of the autoworkers in Oshawa, and the welfare of their families and community, are at stake in the decisions of the plaintiff. It cannot be said that any harm associated with the protests of the union leadership outweighs the expression of protest between January 23rd and 25th, 2019.

[General Motors of Canada Company v. Unifor Canada](#), 2019 ONSC 2627 at ¶26

53. Irreparable harm is harm that cannot be quantified in monetary terms.

[RJR-MacDonald Inc. v. Canada \(Attorney General\)](#), at ¶59

54. In this case, the receiver has asserted that the harm is quantified at \$500,000.00. It is clearly not irreparable.

55. Given the failure of the receiver to adduce evidence of irreparable harm, it is equally difficult for it to establish that the balance of convenience favours an injunction. While it may be apparent that it would be convenient for the receiver to have the members of Local 195 enjoined

from continuing their labour dispute and associated picketing, that interest must be weighed against the substantial interests of employees whose livelihoods are at stake.

**IV. ORDER SOUGHT**

56. Unifor Local 195 asks the Court to give the same advice and directions that it gave to the applicant on February 12, 2021: if an order is sought enjoining any act in connection with a labour dispute, it must comply with s. 102 of the *Courts of Justice Act*.

57. The Receiver or any other party may apply for an injunction under s. 102 on proper notice and with admissible evidence, but in the absence of compliance, there is no jurisdiction to make such an order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



---

Sean Dewart  
Tim Gleason  
Dewart Gleason LLP

**SCHEDULE “A”****AUTHORITIES**

---

1. *General Motors Corp. v. BBI Enterprises Group Inc.*, 2009 CarswellOnt 3798
2. *Queen’s University v. C.U.P.E., Local 229*, 1994 CarswellOnt 536
3. *Toronto Sun Publishing Corp. v. Millwrights Local 2309*, [1979] O.J. No. 226 (H.C.)
4. *Board of Education for the City of Windsor v. Ontario Secondary School Teachers’ Federation*, (1974) 7 O.R. (2d) 26 (H.C.J.)
5. *Universal Showcase Ltd. v. U.S.W.A.*, 2001CarswellOnt 2254
6. *Ashton v. Powers* (1921), 67 D.L.R. 222 (Ont. C.A.)
7. *Graystone Properties Ltd. v. Smith*, (1982), 41 O.R. (2d) 555 (Ont. H.C.)
8. *Ng-Evans v. Gray*, [1992] O.J. No. 1758 (Ont. Gen. Div.)
9. *Revenue Properties Co. v. Patterson*, [1993] O.J. No. 1732 (Ont. Gen. Div.)
10. *Nedco Ltd. v. Nichols*, [1973] 3 O.R. 944 (Ont. H.C.)
11. *A. Figliomeni & Sons Ltd. v. Darnell*, [1986] O.J. No. 2041 (Ont. Dist. Ct.)
12. *Industrial Hardwood Products (1996) Ltd.*, (2001), 52 O.R. (3d) 694 (C.A.)
13. *Cancoil Thermal Corp. v. Abbott* [2004] O.J. No. 3016 (S.C.J.)
14. *Jayden Inc. v. Pointon*, [1986] O.J. No. 1512 (S.C.O.)

15. *Westin Harbour Castle Hotel v. Textile Processors* [1996] O.J. No. 2614
16. *Lamwood Products (1990) Limited v. Diotte et al.*, August 11, 1999, unreported (S.C.J.)
17. *Texpack v. Rowley* (1972), 2 O.R. 93 (C.A.)
18. *Vale Inco Ltd. v. U.S.W., Local 6500*, 2010 ONSC 1774
19. *683481 Ontario Limited v. Beattie*, [1990] O.J. No. 1876 (C.A.)
20. *Pepsi-Cola Canada Beverages (West) Ltd v. R.W.D.S.U., Local 558*, (2002), 208 D.L.R. (4<sup>th</sup>) 385 (S.C.C.)
21. *B.C.G.E.U. v. British Columbia (Attorney General)*, (1988), 53 D.L.R. (4<sup>th</sup>) 1 (S.C.C.)
22. *Potash Corp. of Saskatchewan Mining Ltd. v. Todd*, [1987] S.J. No. 10 (Sask. C.A.)
23. *Retail Wholesale & Department Store Union v. Dolphin Delivery*, (1986), 33 D.L.R. (4<sup>th</sup>) 174 (S.C.C.)
24. *RJR — MacDonald Inc. v. Canada (Attorney General)*, 1994 SCC 117
25. *Trailmobile Canada Ltd. v. Merrill et al.*, [1983] O.J. No. 1123
26. *General Motors of Canada Company v. Unifor Canada*, 2019 ONSC 2627
27. *Toromont CAT v. I.U.O.E., Local 904*, 2008 CarswellNfld 37
28. *Canadian National Railway v. John Doe*, 2013 ONSC 115, CarswellOnt 155

**SCHEDULE “B”**  
**RELEVANT STATUTES**

---

*Courts of Justice Act*

**102 (1)** In this section,  
“labour dispute” means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. R.S.O. 1990, c. C.43, s. 102 (1).

**Notice**

(2) Subject to subsection (8), no injunction to restrain a person from an act in connection with a labour dispute shall be granted without notice. R.S.O. 1990, c. C.43, s. 102 (2).

**Steps before injunction proceeding**

(3) In a motion or proceeding for an injunction to restrain a person from an act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry or exit from the premises in question or breach of the peace have been unsuccessful. R.S.O. 1990, c. C.43, s. 102 (3).

**Evidence**

(4) Subject to subsection (8), affidavit evidence in support of a motion for an injunction to restrain a person from an act in connection with a labour dispute shall be confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, and payment of the proper attendance money, require the attendance of the deponent to be cross-examined at the hearing. R.S.O. 1990, c. C.43, s. 102 (4).

**Interim injunction**

(5) An interim injunction to restrain a person from an act in connection with a labour dispute may be granted for a period of not longer than four days. R.S.O. 1990, c. C.43, s. 102 (5).

**Notice**

(6) Subject to subsection (8), at least two days notice of a motion for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the responding party and to any other person affected thereby but not named in the notice of motion. R.S.O. 1990, c. C.43, s. 102 (6).

**Same**

(7) Notice required by subsection (6) to persons other than the responding party may be given,  
(a) where such persons are members of a labour organization, by personal service on an officer or agent of the labour organization; and

(b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected, and service and posting under this subsection shall be deemed to be sufficient notice to all such persons. R.S.O. 1990, c. C.43, s. 102 (7).

**Interim injunction without notice**

(8) Where notice as required by subsection (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction;
- (b) notice as required by subsection (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service;
- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 94 of the *Labour Relations Act, 1995* to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purpose of clauses (a), (b) and (c) is established by oral evidence. R.S.O. 1990, c. C.43 s. 102 (8); 2017, c. 2, Sched. 2, s. 19.

**Misrepresentation as contempt of court**

(9) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly, in a proceeding for an injunction under this section, constitutes a contempt of court. R.S.O. 1990, c. C.43, s. 102 (9).

**Appeal**

(10) An appeal from an order under this section lies to the Court of Appeal without leave. R.S.O. 1990, c. C.43, s. 102 (10).

**CALIDUS CAPITAL  
CORPORATION**

- and -

**JD NORMAN CANADA, ULC**

Respondent

Applicant

19

Court File No: CV-21-00656820-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

Proceeding commenced at TORONTO

**FACTUM OF UNIFOR LOCAL 195**

**DEWART GLEASON LLP**

366 Adelaide Street West, Suite 102  
Toronto ON M5V 1R9

Sean Dewart LSO No.: 26708B

Email: [sdewart@dglp.ca](mailto:sdewart@dglp.ca)

Tim Gleason LSO No.: 43927A

Email: [tgleason@dglp.ca](mailto:tgleason@dglp.ca)

Adrienne Lei LSO No.: 58975R

Email: [alei@dglp.ca](mailto:alei@dglp.ca)

Telephone: 416-971-8000

Facsimile: 416-971-8001

Lawyers for Unifor Local 195