

**WHITBY COURT FILE NO.: 55786/08**

**DATE: 2008/06/13**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

GENERAL MOTORS OF CANADA  
LIMITED

Plaintiff/Applicant

**- and -**

CANADIAN AUTO WORKERS UNION,  
LOCAL 222, CHRIS BUCKLEY, BARRY  
OTT, JIM NIMIGON, JENNIFER COWEY,  
and PAUL LEPINE

Defendants/Respondents

) J. MacDonald and N. Paris for the  
) Plaintiff/Applicant

) S. Dewart and T. Gleason for the  
) Defendants/Respondents

) **HEARD:** June 12, 2008

**RULING ON INJUNCTION MOTION**

**Salmers J.**

**Introduction**

[1] In early May of this year, General Motors of Canada (GM Canada) and its union, the Canadian Auto Workers Union (CAW), commenced early negotiations for a new collective agreement. A major concern of both the company and union was the demand for GM trucks and, in the union's case, continuation of truck production at the Oshawa truck assembly plant. The negotiations were successful. Concessions were made and the company and union agreed on wording that addressed the concerns. The parties came to an agreement on May 15, 2008 and the union ratified the new collective agreement on May 16, 2008.

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[2] On June 3, 2008, the Detroit head office of General Motors (GM Corp) announced four plant closures, including the 2009 closure of the Oshawa truck assembly plant. The CAW was incensed for many reasons, not the least of which was the loss of 2,600 jobs at the plant and the tremendous spin-off effect that loss will have on related and/or dependent businesses and all of the families involved. The CAW immediately began taking steps to address its concerns.

[3] The CAW's first step was taken on June 4, 2008 when they blockaded GM Canada's office headquarters in Oshawa. The blockade has continued since then and remained in place as of the date of this hearing. Since it started, the blockade has prevented almost all of the GM Canada's 900 head office employees from entering the building, their place of work.

[4] Additionally, on June 7, 2008, members of the CAW participated in a motorcade in the area of the Oshawa truck assembly plant. GM Canada alleged that the motorcade blocked supply gates, resulting in a 45 minute production stoppage at the truck plant and a car assembly plant.

[5] The blockade and the motorcade led to GM Canada bringing this action and motion. GM Canada has requested an interim injunction and other relief to end the blockade and prohibit future conduct that GM Canada submitted to be illegal.

### **The Legal Issues**

[6] During argument, counsel narrowed the legal issues. The remaining legal issues that must be decided are whether:

- a) GM Canada comes to court with clean hands;
- b) GM Canada will suffer irreparable harm; and
- c) the balance of convenience favours granting the injunction and/or other requested relief.

### *The "Clean Hands" Issue*

[7] A party who requests equitable relief should come to court with "clean hands." The oft-used maxim states, "he who comes to equity must come with clean hands." This means that the court may exercise its discretion not to grant an equitable remedy where the plaintiff has participated in a dishonest or fraudulent act, leading to the necessity of the remedy. As I.C.F. Spry states in *The Principles of Equitable Remedies*,

The discretionary considerations that are taken into account by courts with equitable jurisdiction include not only matters touching the nature of the right to be enforced and the general effects of the grant or refusal of relief, [...] but also matters that touch the propriety of the plaintiff, in view of his prior conduct, in approaching the court for the particular relief that he seeks.

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These later considerations are sometimes said to be personal to the plaintiff. So, for example, when the special intervention of the court is sought in the enforcement of contractual rights it is necessary to consider such matters as misrepresentation and non-disclosure, [...] and fraud and the need for clean hands.<sup>1</sup>

While a finding that the plaintiff does not come to court with clean hands carries some weight, it is not necessarily determinative of the final outcome. It may be possible for a plaintiff without clean hands to yet obtain equitable relief.<sup>2</sup>

[8] GM Canada requested equitable relief. The defendants submitted that GM Canada did not come to court with clean hands and, accordingly, the court should not exercise its discretion to grant the requested relief. GM Canada's conduct must be examined.

[9] Cheryl Ollila has been GM Canada's general director of labour relations since April 2007. She was one of GM Canada's lead negotiators during the May 2008 negotiations that led to the May 15, 2008 collective agreement. She testified that, during those negotiations, 1) she was in contact with GM Corp officials at the Detroit head office, 2) she and the other company negotiators spoke with the authority of GM Canada and GM Corp, and 3) there was considerable discussion about the allocation of vehicle production to Oshawa and she believed that was of paramount importance to the CAW.

[10] Examination of the May 15, 2008 agreement confirms Ms. Ollila's testimony that major issues during the negotiations were the allocation of both car and truck production to Oshawa and the challenges faced with respect to the market for GM trucks, including those produced in Oshawa. The agreement contains provisions that specifically address both car and truck production in Oshawa. The agreement is replete with references to difficulties faced by GM, how those challenges may be handled, and the possibility of changes to production commitments based on market demand. For purposes of this ruling, I find that the agreement contains the following two provisions which are of particular importance:

"As a result of market uncertainty in this segment, the Company advised the CAW that the market demand and dynamics associated with the full size truck market would be periodically reviewed with the National Union CAW."<sup>3</sup>

"In the event that market, financial and regulatory conditions necessitate business decisions that alter the plans noted above, the CAW National Union and the General Motors of Canada leadership will have advance discussion in conjunction with the anticipated business decision changes. In that regard, the parties will explore other

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<sup>1</sup> I.C.F. Spry, *The Principles of Equitable Remedies*, 6<sup>th</sup> ed. (Canada: Carswell Co, 2001 at 409.

<sup>2</sup> See I.C.F. Spry, *The Principles of Equitable Remedies*, 6<sup>th</sup> ed. (Canada: Carswell Co, 2001 at 5, Jeffrey Berryman *The Law of Equitable Remedies* (Toronto: Irwin Law, 2000) at chapter 11.

<sup>3</sup> May 15, 2008 agreement at 19.

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innovative alternatives in an effort to modify the planned decision or the employee impact associated therein.”<sup>4</sup>

[11] On the evidence, I find that the two provisions set out above were intended to become effective immediately. The two provisions were extremely important to the CAW because the provisions provided at least some comfort and assurance that it would have advance notice of any plant closures and the opportunity to have input and discussions to “explore other innovative alternatives in an effort to modify the planned decision or the employee impact associated therein.” However, after any such discussions, the ultimate decision-making power to close any plants remained with the employer.

[12] Ms. Ollila testified that she was not involved in the Oshawa truck plant closure decision. Ms. Ollila testified that she only became aware of the decision on June 1, 2008. Ms. Ollila’s evidence on these points was unchallenged and I accept it.

[13] GM Corp is one of the world’s largest corporations. Both it and GM Canada employ very qualified and sophisticated persons with expertise in financial and other business areas. Important business data, information, and knowledge would not escape these people. They would have observed or known of the truck market’s dire straits as such conditions were developing for some time before June 1, 2008. Further, in the absence of an emergency (and in my view there was insufficient evidence for me to find such an emergency in this case), the decision to close a large plant would not be lightly or quickly made. Knowing the dire straits of the truck market, for some time before June 1, 2008, these sophisticated business people would have considered the possibility that the Oshawa truck plant might have to be closed. Coupling that with the June 1, 2008 announcement, I find that for some time before that date, there were persons at GM Corp who knew that the Oshawa truck plant closure announcement was imminent.

[14] By advising CAW only one day before announcing the Oshawa truck plant closing, GM Canada breached the advance notice and discussion requirements of the May 15, 2008 agreement.

[15] Based on Ms. Ollila’s evidence and all of the provisions of the May 15, 2008 agreement, I find that, at all relevant times, both GM Canada and GM Corp were aware of the importance to the CAW of the continuation of production at the Oshawa truck plant and the advance notice and discussion provisions of the agreement.

[16] In all of these circumstances, I find that GM Corp engaged in almost deceitful business practice by allowing GM Canada’s lead negotiators to agree to the advance notice and discussion clauses in the May 15, 2008 agreement at a time when the truck business was in dire straits and when GM Corp should have been at least aware of the possibility that plants, possibly including the Oshawa truck plant, might have to be closed. The advance notice and discussion clauses were part of the package that caused the CAW to make concessions that led to the May 15, 2008 agreement. If any of the GM Canada negotiators knew the truck market information

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<sup>4</sup> *Ibid.* at 20.

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that was known by GM Corp, the deceit-like behaviour would be compounded. However, I do not find that any of the GM Canada negotiators had such knowledge. Without the advance notice and discussion provisions, it is impossible to know whether the parties would have come to an agreement or the eventual terms of the agreement.

[17] In the future, it may be difficult to expect the CAW to negotiate confidently and trustingly with GM Canada representatives.

[18] On June 6, 2008, GM Corp executives, GM Canada executives, and CAW representatives met in Detroit. The meeting changed little, if anything. GM did not alter its decision to close the Oshawa truck assembly plant. It was clear at that meeting and, on the evidence, remains clear at this time that General Motors has no intention to have any discussions that might alter the Oshawa truck plant closure decision. Contrary to the submission of GM Canada's counsel, I do not find that the June 6 meeting or anything else yet proposed by GM Canada purges, remedies, or excuses in any way the almost deceitful behaviour referred to above.

[19] Considering all of the evidence, including but not restricted to the deceit-like behaviour that induced CAW concessions and the almost immediate breach, without apology, of a newly-signed collective agreement, I find without hesitation that GM Canada does not come to court with clean hands.

[20] The CAW relied on two British Columbia Supreme Court cases as authority for the CAW position that because GM Canada does not come to court with clean hands, it should not be granted the equitable relief that it seeks.<sup>5</sup> Those decisions are very persuasive, but not binding, on me. However, as will become hopefully clearer when I am discussing the issue of irreparable harm, there are very significant ramifications to allowing the blockade to continue and to allow actions such as the motorcade. For these reasons, I will not outright dismiss the request for equitable relief simply because GM Canada does not come to court with clean hands. Instead, GM Canada's lack of clean hands will be a factor that I will consider when determining the balance of convenience and the appropriateness of exercising my discretion to grant the requested equitable relief.

### *Irreparable Harm*

[21] Since the blockade began on June 4, 2008, almost none of GM Canada's 900 employees have been allowed to enter the company's Oshawa head office. The CAW has allowed only payroll, urgent maintenance, and a few other office workers past the blockade to enter the building. The majority of the office workers have worked as much as they can from their homes, on their laptop computers, and at other locations.

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<sup>5</sup> *Canadian Pacific Railway v. United Transportation Union, Local 144* (1970), 14 D.L.R. (3d) 497 (B.C.S.C) and *Hiram Walker & Sons Ltd. v. Distillery, Rectifying, Wine and Allied Workers' International Union of America, Local Union No. 202*, [1974] B.C.J. No. 663 (B.C.S.C.).

[22] But for an endeavour as large as GM Canada, I am satisfied that it will be very difficult, near impossible, for the vast majority of its workers to continue working from home, or on their laptops, or at off-site locations without the company suffering significant business problems. Daniel O'Neill, director of vehicle marketing for GM Canada, filed an affidavit in which he set out the problems caused by the blockade and, to a lesser extent, by the motorcade, which are causing or will cause irreparable harm to GM Canada.<sup>6</sup> Having considered that affidavit together with the other evidence and findings, I am satisfied that GM Canada will suffer irreparable harm, probably permanent loss of business and jobs, if an injunction is not granted.

[23] Chris Buckley, president of CAW Local 222, testified that the CAW would allow other office workers through the blockade to carry on the work that was necessary to prevent legal, computer, supplier payment, marketing, sales, and international affiliate order problems. However, GM Canada is a huge operation and the blockade causes it many other problems. To address all of the problems caused by the blockade would necessitate allowing a tremendous number of people through the blockade. Based on the extremely small number of persons who, to date, have been allowed through the blockade, and the intensity of bad feelings between GM Canada and the CAW, I am not satisfied that enough people would be allowed through the blockade to address the problems and prevent irreparable harm.

[24] For, these reasons, I find that if the blockade continues in its present form, GM Canada will suffer irreparable harm.

#### *The Balance of Convenience*

[25] GM Canada requested an injunction and must satisfy the court that it will suffer greater harm if an injunction is not granted than will be suffered by the CAW if an injunction is ordered.<sup>7</sup>

[26] If an injunction is granted, the CAW will lose a very strong bargaining tool that creates economic pressure on GM Canada and generates a large amount of media attention about CAW's plight. However, I am not satisfied that, ultimately, the dismissal of GM Canada's injunction application would likely change the final outcome of this dispute between GM Canada and the CAW. At best, CAW can only force GM Canada to rescind the Oshawa truck plant closure decision and enter into sincere discussions as discussed above. In the end, following those discussions, it still remains that GM Canada alone will decide whether the plant will be closed and the jobs will be lost in any event. For those reasons, I am not satisfied that the irreparable harm caused to CAW by granting an injunction, namely the loss of 2,600 jobs, would be resolved if GM Canada's application were dismissed.

[27] An injunction also causes harm to the CAW and its members by restricting their *Charter* right of freedom of expression. That right is fundamental and cannot be treated lightly. However, a properly crafted injunction can attempt to balance that right against other harm suffered by the parties.

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<sup>6</sup> O'Neill Affidavit, applicant's Motion Record, at 14 – 16, paras. 34 – 38.

<sup>7</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311

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[28] If an injunction is not granted, GM Canada will suffer irreparable harm as discussed above, probably including permanent loss of business and jobs. Although this is not strictly a *Charter* case, in this case I believe that it is incumbent on the court to consider more than just the harm to parties. Over 15,000 people are employed by GM Canada in Oshawa. Additionally, there are many businesses whose owners and their families are dependent for their livelihood on continuation of business with GM Canada. If no injunction is granted, the irreparable harm suffered by those people would be tremendous.

[29] As discussed earlier, GM Canada does not come to court with clean hands which is a factor that lessens the weight to be given to GM Canada's claim when considering the balance of convenience. A party should not be rewarded for improper conduct. To do so, would send a message to others that if you are powerful or important enough, you can act in an improper manner, cause a myriad of problems, and still rely on the court to protect your interests. As described above, GM Corp has acted in such a manner and its Canadian operation, GM Canada, now seeks relief from problems caused by that improper conduct of GM Corp.

[30] After considering all of the factors discussed above, I am satisfied that the balance of convenience favours the granting of an injunction. But, the injunction should be in a form that allows the CAW to continue to be able to exercise its *Charter* right of freedom of expression. Further, so that GM Canada is not rewarded for GM Corp's improper conduct, the injunction should be of a form that allows the union to impose some, but not crippling or irreparable, financial pressure on the employer.

[31] During argument of the motion, CAW counsel submitted that the CAW wanted the ruling to be "all or nothing." With respect, the onus was on GM Canada, as the moving party, to satisfy me as to what relief should be granted. For the reasons set out above, I am not satisfied that GM Canada is entitled to the relief claimed without modification.

### Summary

[32] It was not disputed that this matter arises out of a labour dispute as defined in section 102(1) of the *Courts of Justice Act*. Notwithstanding reasonable efforts of GM Canada, on the evidence, including efforts to engage the assistance of Sergeant Grimley, a duty sergeant, and by letters to and from Police Chief Ewles, I am satisfied as specified by s. 102(3) of the *Courts of Justice Act* that the police have not provided assistance, protection, or taken action to allow safe egress and ingress to GM Canada's head office premises.

[33] The parties conceded that this is a serious issue. As set above, GM Canada has satisfied me that it will suffer irreparable harm if an injunction is not granted and that the balance of convenience favours the granting of an injunction, albeit not wholly in the form requested by GM Canada.

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[34] For these reasons, an order shall go as follows:

1) Effective 7:00 a.m. on June 16, 2008, the defendants, their members, their agents, servants, representatives or substitutes, and anyone acting under their instructions, and anyone hearing or having knowledge of this Order are prohibited and restrained:

a) from watching, besetting, or picketing, or attempting to do so, on the premises of GM Canada at 1908 Colonel Sam Drive, Oshawa (the Premises). Informational picketing may take place on public property adjacent to the Premises on the following conditions:

- i) not on the roadway or curbs of Colonel Sam Drive;
- ii) no more than 20 picketers at any time;
- iii) picketers shall not be on the sidewalks or within ten feet of sidewalks along Colonel Sam Drive at any time; and
- iv) only once every five minutes, a single picketer may walk across the entrances and exits to the Premises that run across public property provided that the picketer does so walking continuously and completes crossing the entrance or exit within one minute.

b) except as may occur in conjunction with the informational picketing allowed above, from preventing or attempting to prevent or delay any person, vehicle, or thing from entering the Premises;

c) from threatening or intimidating any persons entering or exiting the Premises; and

d) from ordering, aiding, abetting, counseling, procuring or encouraging, in any manner whatsoever, directly or indirectly, any person or persons to do anything contrary to this order.

2) Orders providing for service and for sheriff and police assistance as requested in paragraphs 5,6, 7, and 4 respectively of the Notice of Motion.

3) The balance of the relief requested in the Notice of Motion and the issue of costs are adjourned to Thursday, June 18, 2008, at 10:00 a.m. in Whitby.

[35] Order to go accordingly.



Salmers J.

Released: June 13, 2008

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**B E T W E E N:**

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**Plaintiff/Applicant**

**- and -**

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**RULING ON INJUNCTION MOTION**

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**Salmers J.**

**Released: June 13, 2008**