

Newsletters

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By John Mortimer

A shakedown of union members to pay intimidating fines for crossing picket lines during strikes is underway. From the TWU and Telus employees, to Retail Wholesale Union and Sobeys's employees, to PSAC and federal government employees, unions are flexing their financial and legal muscles by sending teams of lawyers and staffers to pursue defenceless union members. Their message: pay up or go to court.

In the latest issue of *Canadian HR Reporter*, [John Mortimer of LabourWatch](#) goes head-to-head with the [PSAC President Nycole Turmel](#) on the question of fining employees who chose to cross the picket line and work during labour disputes. Recent small claims court "wins" have emboldened unions to trumpet the idea that Canadian law actually supports the heavy-handed tactic of fining members. Mortimer says nothing could be further from the truth. [Click here](#) to read John Mortimer's column which was written with input from lawyers across Canada.

CAW President Buzz Hargrove declined the *Canadian HR Reporter* request to comment on fines because the CAW opposes fines for members who cross a picket line. Hargrove's position on fines is not shared by his labour colleagues who continue to fine their members and intimidate them to pay directly to avoid going to court.

The BC Teachers' Union (BCTF) strike is the most recent case of union discipline and financial penalties run amok. President Jinny Sims withdrew the union's attempt to claw back the money four teachers earned during last year's teacher's strike as a condition of having their membership reinstated to good standing. The four teachers chose not to partake in last year's illegal teacher's strike and were summarily declared by the BCTF local as members in bad standing. Sims backed her local's attack on a 33-year practicing teacher and her colleagues. It wasn't until the *Vancouver Province* broke the full front page story about the BCTF's heavy-handed tactics ([Union punishes law-abiding teachers](#)) that Sims reinstated the teachers' membership and retracted the demand to hand over the cash.

In Regina, the Retail, Wholesale and Department Store Union is cracking down on members who are crossing the picket line and reporting to work at a Sobeys's store. Some fines levied against members are in the thousands of dollars - up to the small claims court limit. The union says it is within its rights under the Trade Union Act to fine people who hurt the union by crossing picket lines.

It appears that statutory provisions in Saskatchewan's Labour Code may permit unions to fine members. Amendments to Saskatchewan's Labour Code - passed in the 1980's by Premier Grant Devine's Progressive Conservatives allows fines to the maximum of net earnings under certain circumstances. These Saskatchewan cases may raise some very interesting legal questions given that membership is essentially compulsory. Only employees who don't sign in a drive and never sign afterwards can stay out of the union's grasp for discipline.

An Ontario small claims court has ordered four members of the Public Service Alliance of Canada to pay thousands of dollars in fines to their union for not sufficiently picketing during its 2004 federal strike and for signing with the employer to work if their workplaces were opened up by management. This prompted PSAC to proclaim that its retribution is court-endorsed and announce its plans to prosecute another 200 members.

In Alberta, the Telecommunications Workers Union is issuing fines to members who worked during last year's Telus dispute. Thousands of union members crossed picket lines. Some fines are reported to be as high as \$10,000 - even though the union's own constitution says fines are "not to exceed \$1,000."

The Canadian LabourWatch Association is unaware of any Canadian court upholding a union fine for working during a strike where a union member has appeared in court with a lawyer. A review of jurisprudence shows fines assessed by trade unions are viewed by courts as penalties, not debts or damages.

So it's time to break the myth that these cases were "won," and encourage members to get legal counsel and go to court to protect their legal right to work without penalty. The law is clearly on the side of employees: union members don't have to pay fines or financial penalties for choosing to work. In Saskatchewan it may take statutory change to ensure an employee's right to report to work instead of to the picket line.