A Hat Trick from the Court of Appeal: New Guidance on the Concept of an “Establishment” and Its Extension Beyond Its Physical Premises

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Under the supervision of

Zeïneb Mellouli

Partner, Lawyer

Marc Ouellet

Partner, Lawyer

Rosemarie Bhérer Bouffard

Senior Associate

On November 5, 2026, the Court of Appeal handed down three judgments in which it considered the concept of an “establishment” for the purposes of the anti-strikebreaking provisions of the *Labour Code*[1] and the scope of application of the *Act Respecting Labour Standards*[2] (“**ARLS**”). This trilogy is a reminder that, depending on the legislative framework at issue, the physical place where work is performed may be determinative in defining the scope of the employer’s establishment or in determining whether the employer in fact has such an establishment.

The Concept of an “Establishment” for the Purposes of the Anti-Strikebreaking Provisions of the *Labour Code*

In *Groupe CRH Canada inc.*[3] and *Brandt Tractor*[4], the Court of Appeal clarified that the concept of an “establishment” arising from the anti-strikebreaking provisions, which is not defined in the *Labour Code*, is not necessarily limited to the employer’s physical establishment whose address appears on the certification. The analysis must take into account, among other things, the actual organization and operation of the business, as well as the employees’ connection to the establishment in question.

This interpretation qualifies the definition of establishment that had prevailed since the *Journal de Québec*[5] and SPGQ[6] decisions, rendered by the Court of Appeal in 2011 and 2018 respectively,[7]

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which tied that concept to the specific place whose doors the employer has theoretically locked and where the employees in the bargaining unit on strike (or lock-out) usually perform their duties[8]. In light of the Court of Appeal's guidance, the establishment may, in some cases, be "deployed" beyond the employer's premises so as to extend to other locations, including an employee's home, where employees are working remotely or performing their duties on the road.

The *Groupe CRH* decision

After declaring a lock-out affecting the employees of two bargaining units at its Joliette establishment, Groupe CRH authorized a non-unionized employee, who held the position of operations analyst and was attached to that same establishment, to perform certain tasks normally carried out by employees who were locked out. Since the pandemic, this employee had been working from home through the virtual private network provided by the employer. The employer acknowledged that the employee was performing the duties of the locked-out employees, but argued that it had not contravened paragraph (g) of section 109.1 of the *Labour Code* because those duties had been performed at her home rather than at the physical Joliette establishment.

The Administrative Labour Tribunal ("**ALT**") rejected that argument, finding that the establishment was virtually "deployed" to the employee's home, that is, to the place where she was performing functions otherwise carried out by employees in the bargaining unit concerned, without her home thereby becoming an establishment of the employer. The evidence showed an undeniable connection between the employee and the employer's establishment, since she performed her duties as though she were physically present at the employer's premises, communicated with her co-workers at the establishment through technological tools and, but for those tools, would have had to report to the establishment in order to perform her duties. It was this approach, overturned by the Superior Court, that the Court of Appeal upheld in *Groupe CRH*.

The *Brandt Tractor* decision

Due to the nature of their duties, the road technicians covered by the bargaining unit usually worked at customers' premises, on construction sites, in public places or in the forest in the Saguenay region, rather than at the physical address of the Brandt Tractor branch identified in the certification. To perform their duties, they used trucks, equipment and tools belonging to the employer and were supplied with replacement parts by the Saguenay branch.

After a strike was declared at the Saguenay branch, the employer used two unionized employees from another branch and an independent contractor to perform the duties of the striking employees. The unionized employees used the trucks and equipment of the branch in question, while the independent contractor carried out his tasks based on assignments from the service manager of the Saguenay branch, using the uniform, truck, equipment and tools, technical support and replacement parts provided by the employer.

The Union maintained that this course of action was contrary to paragraphs (b) and (e) of section 109.1 of the *Labour Code*, which prohibit an employer from using, in the establishment where the strike or lock-out has been declared, the services of its employees working in another establishment or those of a contractor to discharge the duties of an employee who is a member of the bargaining unit on strike or locked out.

The ALT agreed with the Union and found that the establishment where the strike or lock-out has been declared included not only the building whose address is identified on the certification, but also the places where the striking road technicians usually perform their duties, insofar as those duties form part of the same work organization and fall under the same management unit. It concluded

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that, in the circumstances, the replacement workers used by the employer were undeniably attached to the Saguenay branch, all the more so because the road technicians had always been included in the bargaining unit, even though their duties were performed on the road, depending on the assignments they were given. However, the Superior Court found that decision unreasonable and allowed the application for judicial review, but the Court of Appeal reinstated the ALT's conclusions, thereby confirming this approach.

The Court of Appeal's conclusions

Read together, the Court of Appeal's conclusions in these decisions are to the effect that the concept of an "establishment" must be interpreted in a "contextual and dynamic" manner that takes into account different realities, including the way in which the employer's activities are carried out and remote work. It therefore cannot be limited to the physical address appearing on the certification.

To determine whether an employer is in breach of section 109.1 of the *Labour Code*, it is necessary to analyze the operational and organizational connection of the replacement workers to the establishment, as well as the places where the employees in the bargaining unit usually perform their work under the same "management unit."

The Court of Appeal also appears to recognize the following characteristics as indicators that replacement workers are working under the same "management unit":

> their work is carried out according to the "same organization and in the same places" as that of the establishment on strike or lock-out;
> they receive their assignments or instructions from a person in charge of the establishment, who also monitors the work;
> they are supplied by the establishment with replacement parts and serve that establishment's customers;
> they wear the company uniform and use computers or other essential tools provided by the company;
> they report to the establishment and use the trucks and equipment of that establishment to perform their duties;
> they have access to the technical support service or can borrow specialized tools offered by the establishment;
> they maintain an "undeniable connection" with the employer's physical establishment.

The Court of Appeal stated that, if the establishment were to be confined to a strictly geographical interpretation based on the address indicated on the certification, this could have the effect of hindering or denying the right of association of employees who perform their duties remotely or on the road. According to the Court, such an interpretation would allow the employer to continue its operations "as if nothing had happened," by having replacement workers perform the same work as employees on strike or lock-out, under the same organization, which would run counter to the purpose of the anti-strikebreaking provisions and compromise the balance of power between the parties.

The Territorial Scope of the *Act Respecting Labour Standards* in the Context of a Foreign Employer and Remote Work in Quebec

In Marchetta[9], discussed in greater detail in our bulletin *Foreign Employers and Remote Work in Quebec: the Court of Appeal Clarifies the Territorial Scope of the Act Respecting Labour Standards*, the Court of Appeal confirmed that the mere fact that an employee performs most of his or her work remotely from home in Quebec is not, in itself, sufficient to subject a foreign employer with no other connecting factors to the province to the ARLS.

Indeed, section 2 of the ARLS provides that the Act notablyapplies to an employee who performs work for "an employer whose residence, domicile, undertaking, head office or office is in Québec." For the ARLS to apply to an employer, there must be a real connection between the employer and Quebec, other than the hiring of an employee who resides there, including the carrying on of

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activities in Quebec (such as serving customers there), or the organized use of the employee's home to conduct the employer's business.

Key Takeaways from the Court of Appeal's Decisions

On the one hand, it follows from the *Groupe CRH* and *Brandt Tractor* decisions rendered under the *Labour Code* that, in anticipation of a labour dispute or during one, employers should not assume that the anti-strikebreaking provisions are inapplicable solely because the duties are performed remotely, at a customer's premises, on the road or from a place other than the physical establishment identified on the certification. In developing a contingency plan, it is therefore important to assess whether the contemplated arrangements include elements that could suggest an extension of the establishment on strike or on lock-out under the same management unit, in light of the criteria set out above.

On the other hand, in *Marchetta*, the Court of Appeal refused to hold that merely hiring an employee who works remotely and is domiciled in Quebec is sufficient to subject a foreign employer to the ARLS where that employer has no other connecting factors with Quebec showing that its residence, domicile, undertaking, head office or office is located there.

This difference in the interpretation of the terms used in the ARLS and the *Labour Code* is explained by the fact that the analysis concerns specific circumstances and is based on different legislative schemes pursuing distinct purposes. Consequently, these interpretations are not irreconcilable and, as the Court of Appeal notes, are not likely to lead to legal chaos[10].

It remains to be seen whether the Supreme Court of Canada will hear any of these cases. In any event, it will be interesting to follow how the case law develops in light of this new guidance, and to see whether the legislator will choose to intervene to expressly define the concept of an "establishment" in the *Labour Code*. Our Labour and Employment Law team remains available to answer your questions and assist you in assessing the practical implications of these decisions.

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1. CQLR, c. C-27.
2. CQLR, c. N-1.1.
3. *Unifor, section locale 177* c. *Groupe CRH Canada inc*., 2026 QCCA 1460 (hereinafter, "**Groupe CRH**").
4. *Syndicat national des employés de garage du Québec inc.* c. *Brandt Tractor Ltd.,* 2026 QCCA 1459 (hereinafter, "**Brandt Tractor**").
5. *Syndicat canadien de la fonction publique, section locale 1450* c. *Journal de Québec*, 2011 QCCA 1638 (hereinafter, "**Journal de Québec**").
6. *Syndicat des professionnelles et professionnels du gouvernement du Québec* c. *Procureure générale du Québec*, 2018 QCCA 2161 (Application for leave to appeal to the Supreme Court of Canada dismissed, May 9, 2019, n^{o} 38519) (hereinafter, "**SPGQ**").
7. Journal de Québec, para. 14.
8. SPGQ, para. 57.
9. *Marchetta* c. *Petros 724 inc*., 2026 QCCA 1461.
10. Groupe CRH, para. 102.

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