

Seeking an injunction can be a complex process at the best of times. However, it can be even more challenging when the injunction is being sought against “Persons Unknown,” as is often the case with groups of protestors. Canada Goose Retail Limited found itself in this situation in a recent case (*Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303).

Among other things, this case has clarified the requirements for an applicant in the interim period between commencing proceedings and the final injunction being granted. The case has also helpfully clarified who can be included in the definition of Persons Unknown in the final injunction.

### Facts

Canada Goose Retail is part of an international retail clothing company that sells coats containing animal fur and down. The claimant opened its store at 244 Regent Street, London, in November 2017. Perhaps not surprisingly, since opening the store, it has been a site for many animal rights activists who have protested against the claimant’s use of animal fur and down in its products.

In order to tackle this ongoing issue, Canada Goose Retail commenced proceedings against Persons Unknown on 29 November 2017, seeking an injunction against the protestors. On the same day, they made an application for an interim injunction against the protestors.

In the application, the Persons Unknown were defined as:

“Persons unknown who are protesting against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at Canada Goose, 244 Regent Street, London, W1B 3BR.”

At summary judgment, the application for a final injunction was refused. This case relates to the appeal of the decision to refuse the injunction.

### Decision

#### Interim Injunction

The Court of Appeal set out the following procedural guidelines applicable to interim injunctions brought against Persons Unknown in the case of protestors, which are summarised as follows:

- The Persons Unknown on the claim form and application for interim injunction are the people who have not yet been identified but are capable of being identified and capable of being served with proceedings. If they subsequently become known, they must be joined as individual defendants to the proceedings. This may require alternative service of the claim form. This criteria allows for people who, in the future, will join the protest and fall within the description of Persons Unknown, i.e. “Newcomers,” to be included in the definition of Persons Unknown.
- In the definition of Persons Unknown, there must be reference to their conduct that is alleged to be unlawful.
- The injunction will only be granted if there is a sufficiently real and imminent risk of a harmful act being committed by the protestors.
- The prohibited acts, listed in the interim injunction, must correspond to the threatened harmful act. This may be lawful conduct, but only if there is no other proportionate means of protecting the claimant’s rights.
- The terms of the interim injunction will need to be sufficiently clear and precise. It must be clear what the protestors must not do. This means that words such as “nuisance” or “harassment” should not be used.
- The injunction must have clear temporal and geographical limits.

In this case, the definition of Persons Unknown was found to be “impermissibly wide,” as it was capable of applying to a person who has never been at the store and has no intention of ever going. In addition, some of the specified prohibited acts were not unlawful and not proportionate to protecting the claimant’s rights, e.g. intentional filming or photographing the claimant’s staff.

As a side point, the injunction was also defective in failing to provide a reasonable method of alternative service that was likely to bring the order to the attention of the Persons Unknown.

## Final Injunction

The final injunction against Persons Unknown was held to be correctly refused in the summary judgment.

The Court of Appeal found that a final injunction cannot be granted, in cases of protestors, against Persons Unknown who are not parties at the date of the final order. This means that a final injunction can be against Persons Unknown who are identifiable as having committed the relevant unlawful acts prior to the date of the final order, and those who have been served the order. However, a final injunction cannot be against Newcomers (unlike an interim injunction) who have not, by that time, committed the prohibited act.

The Court of Appeal explained that allowing Newcomers to be included in a final injunction would constitute an unacceptable attempt to permanently control ongoing and future public demonstrations.

## Service of Claim Form

As an aside, the Court of Appeal stressed the importance of service of a claim form on the protestors, whether existing Persons Unknown or Newcomers, to ensure that justice is done in cases such as this. Claimants must do what is necessary, including obtaining an order for alternative service, to ensure such service is carried out properly.

## Practical Significance

This decision is a helpful reminder for those who intend to bring injunctions against protestors whose identity is not fully known, or known at all. The decision has set out a clear set of guidelines on how to obtain interim injunctions in respect of Persons Unknown, and the limitation of scope of any such injunction.

The case also highlights that the onus is on the claimant to be proactive in determining the identity, or proper definition and scope of the relevant protestors, by the time of the final injunction, as well as to carry out full and effective service of the claim form on all possible defendants.

Should you require any assistance in respect of protestors, injunctive or possession proceedings against Persons Unknown, or otherwise, please do not hesitate to contact our Real Estate Litigation team.

## Contacts

### **Bethany Reid**

Senior Associate

T +44 113 284 7037

E [bethany.reid@squirepb.com](mailto:bethany.reid@squirepb.com)

### **Chloe Arnold**

Associate

T +44 113 284 7022

E [chloe.arnold@squirepb.com](mailto:chloe.arnold@squirepb.com)