
CANADA / JUDGMENT

BC Transmission Corporation v. Lemoignan

2008 BCSC 1044

COURT

Supreme Court of British Columbia

DECIDED

10 July 2008

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2008 BCSC 1044 B.C. Transmission Corporation v. Lemoignan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

BC Transmission Corporation v. Lemoignan,

2008 BCSC 1044

Date: 20080710

Docket: S084047

Registry: Vancouver

Between:

British Columbia Transmission Corporation

and British Columbia Hydro and Power Authority

Plaintiffs

And

Lloyd Lemoignan, Sharon Lemoignan, Christina Ryan, Danny Duch,

Patricia Purchas, Gregory Fahlman and Marion Fahlman

Defendants

Before: The Honourable Mr. Justice Pitfield

Oral Reasons for Judgment

In Chambers

July 10, 2008

Counsel for the Plaintiffs:

G. Cowper, QC

S. Carpenter

M. Fancourt-Smith

The Defendants, In Person:

S. Lemoignan

C. Ryan

M. Fahlman

D. McBride

Counsel for Delta Police Department:

G.M. Vanstone

Place of Hearing:

Vancouver, B.C.

- [1] THE COURT: Ladies and gentlemen -- and I address this both to Ms. Ryan and Ms. McBride, as well as to those who are assembled here. I have said during the course of the morning that I am dealing with a situation where BC Hydro and its affiliate BC Transmission Corporation have obtained all the lawful authority they require in order to proceed with this construction project, which the mechanisms in place in this province, and indeed federally, have determined is appropriate and should proceed.
- [2] As I mentioned back in June, when many of you were not here and the injunction was originally granted, extensive representations were made to the BC Public Utilities Commission. Representations were made to the environmental assessment authorities. There are provisions for dealing with the decisions of each and dissatisfaction or concerns with the decisions of each.
- [3] An appeal process was initiated in the Court of Appeal. The Court of Appeal heard the objections of some of the residents at the time to the processes and the approvals that have been either undertaken or granted. Those remedies were all exhausted. The citizens of the community have been afforded the full opportunity to participate in the process by which decisions are made on these big issues -- call them megaprojects if you will -- where, by their very nature, a segment of the population is affected. It is part of what happens living in a community that is as populous and indeed as diverse both geographically, ecologically, and topographically, as is the Lower Mainland.

- [4] You may disagree with the result that has been obtained, but I am faced with the situation where the lawful authorities have been complied with and the processes have been authorized. I do not know whether any of you have driven by any of the other projects that are underway in the province, but you often see signs which say "Please slow down, my mommy works here" and it is a couple of little kiddies hanging on to their mother who happens to be the flagger at the construction site. Equally can be said of "please remember that my kiddies live here", and that is something of which BC Hydro as it engages in a project like this has to be respectful.
- [5] I indicated earlier that I am not at all one who is happy about the fact that the court is put in the position where in respect of these projects, or indeed any kinds of disputes like this, we are required to be legislator by virtue of granting an injunction, prosecutor by saying go out and enforce it; and then indeed judge by saying if you do not comply with the order I granted I am also going to judge the extent of your wrongdoing and the punishment which should be appropriate in the circumstances.
- [6] I said to the people who were here in early June, and I repeat again, that the Criminal Code makes specific provision for the fact that in the event somebody with knowledge of an order granted by this court which has not been appealed, and which has in no way been set aside or interfered with, chooses to disobey it, then that person is liable to be charged with an indictable offence, and the indictable offence is punishable by incarceration. There is no reason in the world why I should not apply the same approach to that law which the police have chosen not to employ if, as, and when I am required to deal with the contempt application that may result from anybody acting in contravention of any injunction I grant.
- [7] I do conclude that in the circumstances my principal concern has to be the safety of the public and the safety of the workers. It is only a matter of time before one of these incidents, whether by a hole that subsides as a result of children playing in it, or somebody who gets run down by virtue of standing on a sidewalk as a vehicle tries to make its way by or as somebody tries to gain access to or leave a vehicle that is parked on the construction site, or indeed injury is sustained by either residents or workers as a result of a power line falling down because bolts have been cut, or whatever other damage has been done, that somebody is going to be seriously hurt.
- [8] In those circumstances it will not do any of us in this room any good to gather again for any other purpose except to say that we are very sorry it happened. I am not about to countenance that possibility.
- [9] It follows that I am going to grant the order.
- [10] I implore you as I did last time and as I will do again, to accept the fact that we live in a community where lawful processes have been put in place, they have been resorted to, they have been used, and appropriate -- or at least orders have been made whether or not you consider them to be appropriate.

[11] As I mentioned, if you have disputes with the way in which anything is being done and you think that anything that is being done by anyone amounts to a contravention of the law, then your remedy is with the Delta Municipal Police. Tell them that the sites are being contaminated or that other problems have been encountered that relate to or should result in law enforcement, and rely upon the police force which is there to protect all of its citizens, whether they are individual or corporate, from wrongdoing or harm. My job in this case has to be to protect both the citizens and the workers who are engaged in this project.

[12] UNIDENTIFIED SPEAKER: And the children.

[13] THE COURT: I think children are citizens. They were yesterday, and I think they will be today and tomorrow.

[14] So the result is going to be that the order that is sought will be granted with an amendment to paragraph 3 of the draft, which will read then as follows:

Until the trial of this action, the defendants or any person having notice of the order are enjoined and prohibited from in any way obstructing, interrupting, and interfering with access to construction and associated work of every nature and kind whatsoever relating to the Vancouver Island Transmission Reinforcement Project by the plaintiffs or their employees, agents and contractors.

[15] I do ask you, which is all I can do, to respect the order. I hope that you understand that I have acted within my lawful authority. I understand the nature of these community processes. I understand the nature of the community's concerns. I also understand the interests of the broader community which is to be benefitted by or assisted by the completion of this project.

[16] You can quarrel with the result, but it is not your role to interfere with that which has lawfully been done. I can only tell you that the consequences are those set forth in the order, which is that the police will now do what they were not previously willing to do, and that is to arrest anybody who acts in contravention of the order.

[17] I will ask or require that BC Hydro file an undertaking in respect of this extended order which will then apply to any and all aspects of the construction project and the extent of the undertaking will be that they will provide reasonable notice and record in a log the notices that they have posted in respect of access to be affected by the construction project from time to time.

[18] Mr. Cowper, is that

[19] MR. COWPER: I think that is sufficient, My Lord. I take it though that we should repeat the undertaking that was granted for the first order as well.

[20] THE COURT: Repeat the undertaking that was granted at the first order which deals with the restoration of property and those other things and include this additional paragraph.

- [21] MR. COWPER: Yes, I will add that paragraph. I was also going to ask that the approval of the order by the defendants be dispensed with as was the case with the last order, and I will send them the form of the order; but not counsel having been retained, I suggest that we have an order that approval of the form of order be dispensed with.
- [22] THE COURT: Ms. Ryan, Ms. McBride and others, as I think I mentioned the last time, the practice in our court is that when an order has been obtained it is usually sent to both sides to approve as to form. You are not being asked to agree with the contents, you are merely saying this is what the judge ordered, this is properly set forth. In the circumstances of this case I think it is appropriate to proceed as I did the last time, which is that Mr. Cowper and his colleagues will prepare the order, I will review it to ensure that it conforms to the terms I have set forth. It will then be entered and Mr. Cowper will be obliged to deliver a copy to each of the named defendants at their residence address.
- [23] I do not think that there is anything else required except that I do wish to say to everybody who is here that I appreciate the respect with which you have accorded the process. I know that feelings run deep on this, but they probably run deep on every side. Please understand that the order is now effective, even though it has not been entered, and if there is any contravention of it by any of you or anybody else who gains knowledge of it, the appropriate consequences will follow.
- [24] Thank you. If there is nothing else, we will adjourn.
- [25] MS. McBRIDE: Your Honour, just before we go, can we have an order from BCTC, please, to at least when they are videotaping us that they make themselves - you know, so that we know that they are there? Because the surreptitious spying on us and the community is wrong. Following us - it has nothing to do with their project - they follow us around time.
- [26] THE COURT: Ms. McBride, this is one of the reasons why I do not like to become involved in this. If somebody is stalking somebody, be it you stalking somebody or Mr. Manchuck stalking you, then that is an offence under the Criminal Code for which the police have responsibility. When we are drawn into this debate, the very kind of problem that you are raising is that which results. I am expected to enforce a whole raft of laws for which I have no responsibility and quite frankly in which I have not much interest. The interest has to be this project which has been lawfully authorized and to ensure that nobody, including children, are injured or hurt in the process, and that the project proceeds to completion.
- [27] The other ancillary issues are for you to take up with the police, whether it be concerns about stalking or other offences under the Criminal Code, contamination of sites or anything of that nature.

"Mr. Justice Pitfield"

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