

CANADA / JUDGMENT

British Columbia (Legislative Assembly) v. John Doe

2020 BCSC 301

COURT

Supreme Court of British Columbia

DECIDED

13 February 2020

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2020 BCSC 301 British Columbia (Legislative Assembly) v. John Doe IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: British Columbia (Legislative Assembly) v. John Doe, 2020 BCSC 301 Date: 20200213 Docket: S200710 Registry: Victoria Between: The Honourable Darryl Plecas, M.L.A., in his capacity as Speaker of the Legislative Assembly of British Columbia Plaintiff And John Doe, Jane Doe and Other Unknown Persons Defendants Before: The Honourable Mr. Justice G.C. Weatherill Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: C. Considine, Q.C. P. Floyd No other appearances Place and Date of Hearing: Victoria, B.C. February 13, 2020 Place and Date of Judgment: Victoria, B.C. February 13, 2020

- [1] THE COURT: As judges sitting in this province, we try to understand, be sensitive to and accommodate, where possible, issues that are important to people, important to local communities and important to the province as a whole. We know that some of those issues feature larger in our province and communities than do others, but when members of our communities begin to take the law into their own hands and aggressively harass other members of the community, this court views such conduct with grave concern.
- [2] It seems that, recently, certain members of our community have decided that they need only obey our laws when they agree with them and that it is acceptable to disobey them when they disagree with them.
- [3] On February 6, 2020, at approximately noon, protesters began gathering on the front steps of the main Parliament Buildings in Victoria in support of five Wet'suwet'en hereditary chiefs who are opposed to construction of a natural gas pipeline through the Wet'suwet'en territory in northern British Columbia. Construction of that pipeline has been approved by all elected chiefs of the Wet'suwet'en First Nation and by the federal government.
- [4] These protesters blockaded the stairs leading to the main entrance of the Parliament Buildings, including using a cable barrier with a sign stating that public access was prohibited. The number of protesters grew over the next several days. The protesters placed a wood-burning fire pit on the stairs of the legislature building that was lit, as the protesters ascribed, as a "sacred fire". That fire contravened the City of Victoria's Fire Prevention Bylaw

Number 14-100. That fire burned continuously from February 6 to February 11. Some of the protesters brought and stored wood on the stairs and tended to the fire.

- [5] The protesters also created an encampment by erecting tents and wooden sleeping platforms on the steps of the legislature building and slept overnight, in contravention of Legislative Precinct Regulation, B.C. Reg. 274/2002. The protesters covered or blockaded close-circuit television cameras in the vicinity of the stairs of the building with red blankets. They also blocked or obstructed emergency exits from the Parliament Buildings, in breach of s. 32 of the Fire Services Act, R.S.B.C. 1996, c. 144. Some of the protesters wore balaclavas covering their faces and acted in aggressive and menacing manners towards members of the staff of the legislature. One staff member was pushed and spat upon by a protester. Another sustained a bloody nose in attempting to get past the protesters to enter the building. The protest delayed the opening of the next legislative sitting of our legislature in the Province of British Columbia.
- [6] Two days ago, at approximately 9 p.m. on the evening of February 11, 2020, the protesters began packing up their encampment and are now gone, leaving legislature staff to clean up the debris and other mess that was left behind.
- [7] Yesterday, an invitation appeared and was posted on social media platform Facebook. A copy of that invitation has been marked as Exhibit "C" to the affidavit of Gregory Nelson, the Acting Sergeant-at-Arms. That affidavit was sworn today, February 13, 2020. The Facebook posting is entitled "BC GOVT SHUTDOWN". It includes a coloured photograph of the legislative building. It contains what appears to be Twitter accounts, comprising a number sign, I guess it is called hashtag, #BCGOVTSHTUTDOWN, #WETSUWETENSOLIDARITY, #SHUTDOWNCANADA. The Facebook posting states as follows: This action will take place on the traditional lands of the . . . I am not going to pronounce it -- L-k-w-u-n-g-e-n, which I understand to be Victoria and its environs. In conversation with people from local nations we wish to relay the request that supporters "continue walking with good minds and hearts". It goes on to say: EVENT DETAILS: On Friday, February 14 . . . from 8AM till Noon, we invite one and all to join us in a shutdown of the BC Government. At the suggestion of Indigenous Youth, we call on settlers to help take responsibility for the colonial institutions causing violence against Wet'suwet'en land and people by picketing BC government buildings. We will especially be inviting BCGEU workers to turn their union's supportive statements for Wet'suwet'en into meaningful action.
- [8] It sets out that there will be two informational sessions, one yesterday from 4:30 to 6 o'clock p.m. at the Student Union Building at the University of Victoria, and another from 7 to 8:30 o'clock p.m. downtown Victoria at 546 Yates Street. It states further that: These [informational] . . . sessions are *not* mandatory but we will discuss the strategy, tactic, roles and goals of the action.

- [9] Readers of the Facebook posting are invited to sign up at a website that is given if they plan to participate so that anticipated numbers can be known. It refers to action sites and numbers needed and gives an email address to confirm attendance. It sets out meeting spots and times for February 14, beginning at 7 o'clock a.m. It talks about initiating pickets. And then it begins to provide context by detailing what had previously happened at the legislative building steps, describing it as "unprecedented mobilization of Indigenous Youth and settler supporters" that "the ceremonial procession of the Speech from the Throne was cancelled for the first time" and other self-congratulatory statements.
- [10] The applicant seeks a quia timet injunction enjoining any further impeding protests at the Legislature buildings and its environs.
- [11] The test for an interlocutory injunction is well-known and has been applied many times by this court. It is set out in the decision of the Supreme Court of Canada in *RJR-MacDonald v. Canada*, 1994 1 S.C.R. 311. The test is threefold:
- 1) that the applicant must show a serious question to be tried between the parties;
 - 2) that the applicant will suffer irreparable harm if the injunction is not granted; and
 - 3) that the balance of inconvenience lies in favour of the applicant.
- [12] There is no question that each of those three tests has been met in this case. However, as indicated, what is being sought before me this afternoon, is what is known as a quia timet injunction, the test for which was recently set out by this court in *526901 B.C. Ltd. v. Dairy Queen Canada Inc.*, 2018 BCSC 1092, at para. 71 is: For sure, the law permits a quia timet injunction to be granted when wrongful acts have not yet occurred but are imminent or have been threatened. To obtain such an injunction, an applicant must establish not only the three elements of the *RJR McDonald* test but also that there is a high degree of probability the alleged harm will in fact occur
- [13] I am satisfied that the evidence before me demonstrate a high degree of probability that protesters will attempt to blockade, disrupt, or otherwise shut down the British Columbia government tomorrow morning and, hence, in my view, the test for a quia timet injunction is met. There is a real and substantial probability that these protesters will attempt to shut down the government and will shut down the government in the absence of a quia timet injunction.
- [14] The application is granted. "G.C. Weatherill J."

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