

CANADA / JUDGMENT

Canadian Pacific Railway Limited v. Doe

2020 BCSC 388

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Supreme Court of British Columbia

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2020 BCSC 388 Canadian Pacific Railway Limited v. Doe

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Canadian Pacific Railway Limited v. Doe,

2020 BCSC 388

Date: 20200224

Docket: S202120

Registry: Vancouver

Between:

Canadian Pacific Railway Limited

Plaintiff

And

John Doe, Jane Doe and Other Unknown Persons

Defendants

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff:

B. Gilbride

C.R. Phillips

O.L. Leung

Counsel for South Coast BC Transportation:

R.J. McDonell

Place and Date of Hearing:

Vancouver, B.C.

February 24, 2020

Place and Date of Judgment:

Vancouver, B.C.

February 24, 2020

- [1] THE COURT: This action was commenced this evening by the plaintiff, Canadian Pacific Railway Limited ("CP").
- [2] CP seeks an ex parte interlocutory injunction against various unnamed defendants given recent circumstances, which I will describe below. CP seeks to enjoin the defendants from trespassing upon, obstructing, or interfering with, CP's railway lines and other properties located throughout BC.
- [3] As I will describe below, this application follows from a number of other injunctions sought from and granted by this Court and indeed, by courts across Canada, arising from similar circumstances.

Factual Background

- [4] Anyone familiar with Canadian history is also familiar with CP and its rail operations across Canada. CP owns and operates rail lines across Canada, moving goods to and from the west and east coasts, between Vancouver and Montreal. In BC, and possibly other provinces, CP also operates various rail lines to points on the border with the United States of America.
- [5] Its main rail line across Canada, similar to what I understand to be operated by Canadian National Railway (CNR), is what is described as CP's "Main Line". The Main Line comprises approximately 14,000 miles of track running west to east, between Vancouver to Montreal.
- [6] CP's counsel describes that a "significant amount of CP's business (approximately 50%) is involved in rail traffic to and from the Port of Vancouver. Accordingly, its local activities in the Lower Mainland are clearly a very significant focus of CP's business operations.

- [7] CP operates its main rail yard near the Mary Hill Bypass in Port Coquitlam. CP's counsel also advises that approximately 40 trains a day pass along the Main Line through that rail yard, indicative that this location represents a significant transportation corridor with respect to CP's business operations to and from the Port of Vancouver. CP's bulk trains average 100 or more cars.
- [8] CP's Main Line is used for the transportation of various commodities, including grain, potash, oil, lumber, coal, sulphur, food, appliances, automobiles and others (some of which are considered dangerous commodities).
- [9] The Main Line is also used for the transportation of people. The South Coast British Columbia Transportation Authority, also known locally as "TransLink", operates a commuter rail service, known as the West Coast Express (WCE), on the Main Line between downtown Vancouver and Mission, BC.
- [10] TransLink's counsel appears on this application. He confirms that the WCE operation is an integral and significant part of the public transportation system operated by TransLink in the Lower Mainland. That operation transports approximately 10,000 people per day from downtown Vancouver to points east, ending in Mission.

Background to Protests

- [11] This background is now fairly well-known to the public.
- [12] Protests and blockades began to arise after issuance of the reasons for judgment of Justice Church on December 31, 2019: *Coastal GasLink Pipeline Ltd v. Huson*, 2019 BCSC 2264. Justice Church granted an interlocutory injunction to restrain members of the Wet'suwet'en First Nation from maintaining a blockade of forest service roads in the Houston, BC area. That case, as is well-known throughout BC, if not now Canada, involves a dispute between certain members of the Wet'suwet'en people and Coastal GasLink in respect of Coastal GasLink's construction of a pipeline through an area in BC where the Wet'suwet'en claim territorial rights.
- [13] On February 6, 2020, following the granting of Church J.'s order, the RCMP began enforcement measures under that order.
- [14] From that date forward, anyone with a passing knowledge of current affairs or who follows the media is now well aware that a series of blockades and protests were maintained at various locations across Canada, principally at or on many major transportation routes and facilities.

- [15] It is beyond dispute that the blockades erected at these transportation sites were intended to disrupt critical aspects of the transportation system of goods and people across Canada and which are essential to the proper functioning of the Canadian economy. Evidence before me includes a 2019 decision from the Canadian Transportation Agency stating that, in 2018, there was \$200 billion worth of traffic moving through the Port of Vancouver, roughly equal to 10% of Canada's GDP. Needless to say, CP's operations form a portion of that traffic.
- [16] I have been provided with the following history of the court proceedings and injunctions issued by this Court in February 2020 arising from the blockades and disruptions throughout BC:
- a) February 9 (Justice Tammen) - two orders re the Port of Vancouver (see *Vancouver Fraser Port Authority v. Doe*, 2020 BCSC 244). These injunctions restrained protesters from blocking access to the Port of Vancouver and its docks, which are the docks to which CP's Main Line lead and which are, as discussed above, critical to CP's business operations;
 - b) February 10 (Justice Branch) - re CNR's "BC North Line";
 - c) February 10 (Justice Gropper) - re CNR's "BC South Line";
 - d) February 13 (Justice G.C. Weatherill) - re BC Legislature in Victoria;
 - e) February 14 (Justice Mackenzie) - re BC Ferry terminals;
 - f) February 19 (Justice Wilson) - re TransLink's SkyTrain lines (namely the Expo, Millennium, Evergreen and Canada lines). This injunction did not include the operations of the WCE or the Sea Bus; and
 - g) February 21 (Branch J.) - to clarify that his order and the order of Gropper J. were to apply to CNR's North and South Lines throughout BC.
- [17] The last 3 injunctions were quia timet injunctions. The quia timet aspect of these previous injunctions is also important here. This is because the history of these blockades has shown that they are, to some degree, but not all, transitory, in the sense that they disrupt for a period of time and then the protestors leave. Then, they show up in another spot without any advance notice.
- [18] All of the BC injunctions referred to above contain police enforcement clauses as requested by the RCMP and other policing authorities.
- [19] In addition, I have been made aware that injunctions were issued in February 2020 by other Canadian courts in favour of CNR with respect to blockades across Canada:
- a) February 7 and 14 - injunction re CNR's rail line between Toronto and Montreal;
 - b) February 17 and 24 - province wide injunctions re CNR rail lines in Manitoba;

- c) February 19 - province wide injunction re CNR rail lines between Lloydminster, Alberta and the BC border; and
- d) February 19 and 20 - province wide injunction re CNR rail lines in Quebec.

The CP Blockades

- [20] The facts advanced in support of CP's application today relate to CP and its rail operations. Four separate incidents are involved, two of which occurred today.
- [21] The first incident occurred on February 13, 2020. Beginning at 2:30 p.m., a group of 20-30 protesters gathered at CP's rail yard in Port Coquitlam. This was not intended as a direct assault upon CP and its operations per se. The evidence supports that these protesters, consistent with many of the other blockades, were there for the purpose of standing "in solidarity" with the Wet'suwet'en hereditary chiefs who are currently waging a battle against the Coastal GasLink pipeline project.
- [22] These protesters were on CP's tracks and, in fact, some of them pitched a tent there and supplies were delivered to them. By reason of their presence on the tracks in an active switching yard, significant safety concerns arose. As a result, not surprisingly, the protestors caused delay to the movement of CP trains intended to operate on the Main Line. Fortunately, some of the trains were redirected through switches in the rail yard and made it through, albeit with some delay.
- [23] In addition, the thousands of people who would have travelled on the WCE trains that were scheduled to travel through CP's rail yard that afternoon of February 13 and the following morning on February 14 were unable to use that service, since the WCE trains were halted and cancelled. I accept that this would have caused significant disruption to the thousands of people who rely on that transportation service.
- [24] Members of CP's Police Service ("CP Police") advised these protestors that they were trespassing and asked them to leave. They did not. On February 14, 2020, at approximately 8:00 a.m., protestors eventually left. In that time frame, they caused significant delay, inconvenience and disruption.
- [25] The second incident took place on February 20, 2020. At approximately 9:50 a.m., a group of approximately six protesters began blocking CP's Main Line in the area between Kamloops and Chase, BC. Again, these protesters were on CP's tracks with chairs and a vehicle was parked nearby. CP's counsel advises that she understood that the blockade was erected at a crossing.
- [26] Again, the protesters asserted that they were there in solidarity with the Wet'suwet'en people and they displayed signs to that effect. They were asked to leave by CP Police, who also offered to find them an alternate location for their protest which did not block the Main Line. The protestors refused to move.

- [27] The number of protesters on CP's track on February 20 ranged from 5-14 people that day. They had firewood delivered to them throughout the day and there is evidence that a fire was built in the area on or near the rail tracks. That circumstance alone also increased the safety concerns in respect of what hazards that fire might pose to people and also, the integrity of the track itself.
- [28] Around 9:00 p.m. on February 20, CP entered into a "truce agreement" with the protesters, a document that was brokered by Chief Judy Wilson of the Neskonlith First Nation. Some of the protesters participating in this blockade appeared to be from the Neskonlith First Nation, which I understand to be the reason for Chief Wilson's involvement.
- [29] Arising from that truce, the protesters agreed to move off CP's track for a 96 hour period. They then did so and allowed CP's trains to travel along the Main Line. That "truce agreement" was set to expire on February 24, 2020 at 9:00 p.m. I will return to this particular blockade later.
- [30] The third and fourth incidents both occurred today, February 24, 2020.
- [31] At approximately 3:30 p.m., a group of approximately 15 protesters began occupying and blockading CP's Main Line near 225th Street and the Haney Bypass in Maple Ridge, BC. Again, communications from the protesters indicated support for the Wet'suwet'en people. Also, there were references in their materials to "Shut Down Canada" and "Land Back", which I accept were entirely indicative of the intention of these persons.
- [32] By this time, what was also being added to the mix was the removal by the Ontario Provincial Police (OPP) in Belleville, Ontario of certain protesters who were blockading CNR's rail line in that area. As news reports indicate, the OPP moved in this morning to remove that blockade and some people were arrested. That circumstance appears to have added to the reasons for the protesters amassing this afternoon at 3:30 p.m. in the Maple Ridge section of the CP's Main Line. The evidence indicates that these protesters were indicating their continuing support of the Wet'suwet'en people and now, support for the Belleville protesters and arrestees.
- [33] CP's counsel advises that CP Police at this new blockade recognized some of these protesters as also having been present at the first CP Main Line blockade on February 13, 2020, at CP's rail yard in Port Coquitlam. One member of this group was asked if she was aware that she was trespassing and she said "yes".
- [34] These protesters left CP's Main Line in Maple Ridge at approximately 7:00 p.m., such that they were present there for approximately three-and-a-half hours. Even so, consistent with the two previous CP blockades, this was sufficient to significantly disrupt rail service along CP's Main Line, causing the backup of trains and the delay of the transportation of the goods to and from the Port of Vancouver. Also, as with the February 13 blockade, this disruption resulted in all five eastbound WCE trains being cancelled this afternoon.

- [35] The fourth and final incident arose just before this hearing. The circumstances have been set out in CP's counsel's submissions, which I accept for the purpose of this application. Those facts are to be confirmed in an affidavit to be filed tomorrow by CP's counsel.
- [36] At approximately 8:30 p.m. today, the blockade of CP's Main Line in the Chase area was re-established by approximately 15 protesters. I understand that again, they are occupying CP's Main Line by their presence on the tracks, just as they or perhaps others did four days ago, on February 20, 2020.

Impact of Blockades

- [37] CP's counsel has outlined the impact of the blockades. I accept her submissions without hesitation.
- [38] The rail transportation system is time sensitive. Time is money. There are significant consequences, including financial consequences, arising from any delay in the system. Clearly, any delay can impact CP in terms of its ability to meet its contractual commitments to its customers. The failure to allow the WCE trains to run properly on the Main Line exposes CP to financial penalties. CP's customers inevitably suffer harm from any delay or disruption in the transportation of goods. The general public also suffers, particularly from the cancellation of a major commuting service.
- [39] I also conclude that that the past and ongoing disruption poses significant reputational risk and harm to CP and the parties with whom it contracts in relation to loss of business and perhaps permanent loss of business. If there is delay and the prospect of further delay on CP's Main Line, customers will seek out other more reliable means of transporting their goods.
- [40] In addition, there are safety concerns. These people move onto active rail lines and sometimes in active rail yards. They pop up without any notice. It is unclear exactly how notice of these activities is relayed back to CP. It appears to rather happenstance, perhaps through media, perhaps through monitoring of the system, perhaps through the general public advising of issues on the tracks. In any event, someone simply moving onto rail tracks when there are active trains running is undeniably a safety concern to not only those persons but also the trains and the people on the trains in the sense of possible affects to the tracks and the ability of the trains to remain on the tracks. Other people in the area near the tracks, including CP personnel, media and the general public, could also face risks.
- [41] I have already mentioned the fires that were built on CP's Main Line in Chase that caused its own safety risks. There is also evidence that these protestors are locating vehicles and equipment near the railway tracks, again causing significant risk.

[42] There is also risk to persons simply arising from the back-up of trains. The trains are being halted in what one might term a "congo line" while they wait for the tracks to be cleared so that they can get through. One need only, perhaps, go so far as remembering the horrendous consequences of the 2013 rail disaster in Lac-Mégantic, Quebec in terms of the risk of freight trains being halted or stalled on tracks. Similar concerns arise here.

Applicable Law

[43] The legal test for an injunction is well developed in BC. In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, the Court stated that there are three questions to be answered:

- a) Is there a serious question to be tried?
- b) Would the applicant suffer irreparable harm? and
- c) What is the balance of convenience?

[44] In *British Columbia (Attorney General) v. Wale* (1986) 9 B.C.L.R. (2d) 333 at 348 (B.C.C.A.), affirmed [1991] 1 S.C.R. 62, the court endorsed a collapsing of the second and third aspects of the test such that irreparable harm is considered as an aspect of the balance of convenience.

Is There a Serious Question to be Tried?

[45] As CP's counsel has noted, meeting this aspect of the test is a fairly low bar. The applicant need only show that the claim is neither vexatious nor frivolous: *RJR-MacDonald Inc.* at 337; and, *Coastal GasLink* at para. 163.

[46] CP alleges four causes of action in its notice of civil claim:

- a) trespass on CP's lands;
- b) private nuisance, arising from the interference with CP's use and enjoyment of its lands, which interference is substantial and unreasonable: *Husby Forest Products Ltd. v. Jane Doe*, 2018 BCSC 676 at para. 39; *Red Chris Development Company Ltd. v. Quock*, 2014 BCSC 2399 at para. 51; *Coastal GasLink* at para. 167;
- c) public nuisance, arising from unreasonable interference with trade and commerce in BC, increased congestion, traffic safety concerns and personal safety concerns, all said to be a "public right"; and
- d) civil conspiracy, arising from either the defendants' agreement with each other to act unlawfully with the predominant purpose of causing injury to CP or the defendants acting unlawfully toward CP knowing that injury is likely to result and does occur: *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at paras. 74 and 80. The unlawful conduct alleged by CP are the torts of trespass, private/public nuisance, mischief under s. 430(1) of the Criminal Code, R.S.C. 1985, c. C-46 and breaches of ss. 26.1 and 26.2 of the

Railway Safety Act, R.S.C. 1985, c. 32.

- [47] I am more than satisfied that CP has established a serious question to be tried with respect to all of these causes of action, particularly the trespass. The indisputable fact is that these lands, including the Main Line, are owned by CP. These protestors are inarguably trespassing on CP's lands.
- [48] Private nuisance arises where there is interference with the use or enjoyment of a private citizen's property. Clearly, unlawful blockading of a lawful business, such as is being conducted by CP on its property, is interference with its lands, with respect to both its rail service and the WCE operations: *Canadian National Railway Co. v. United Truckers Association of British Columbia*, 2014 BCSC 487 at para. 16. CP's evidence provides strong support for the contention that there has been interruption or interference with CP's use or enjoyment of the Main Line by these protestors in the areas in BC that I have already mentioned, which is substantial and unreasonable by objective standards.
- [49] Public nuisance arises is where there is interference with a large number of the public. I am more than satisfied that a serious question to be tried has been made out with respect to that allegation. The evidence on this application clearly supports that these blockades were intended to and have, in fact, interfered with the transportation of goods and commodities and the public in BC by blocking CP's rail shipments and the WCE. It has increased congestion on the Main Line and likely other commuting services that the WCE customers would have to take. There are traffic safety concerns. In addition, there are personal safety concerns for people on the tracks, others nearby and the public generally.
- [50] The final cause of action is civil conspiracy. There is clearly a serious question to be tried with respect to the protesters engaging in unlawful conduct by reason of their trespass, private/public nuisance, mischief under the Criminal Code and breaches of the Railway Safety Act.
- [51] CP alleges that the defendants' conduct has been directed toward it and that these people expected their actions to result in and, in fact, they did result in injury to CP. I consider that these allegations are amply supported by the type of activities, namely the blockading of CP's active rail lines by these persons. The evidence before me also strongly supports that the protestors intentions were, as one sign read, "Shut Canada Down", and that they intended to "shut down" CP as part of that overall effort.
- [52] The protestors' intentions are inarguably toward causing disruption to CP, its contribution to the Canadian economy and to the Canadian public generally who are directly and indirectly affected by these blockades. The blockades have undoubtedly had that effect.

Irreparable Harm?

- [53] I am also satisfied also that irreparable harm has been established.

- [54] With respect to the trespass allegation, there is authority that this tort does not require that such irreparable harm be established: *British Columbia Hydro and Power Authority v. Boon*, 2016 BCSC 355 at para. 59. Even so, the evidence does support that the defendants' unlawful presence on CP's lands is causing serious damages to CP and others.
- [55] Interference with property rights or a business is usually considered to be irreparable harm: *A.J.B. Investments Ltd. v. Elphinstone Logging Focus*, 2016 BCSC 734 at para. 31; and, *Marine Harvest Canada Inc. v. Morton*, 2018 BCSC 1302 at para. 163. Conduct that also causes a safety risk can also establish irreparable harm: *Marine Harvest* at para. 164.
- [56] There is no evidence on this application that would assist in assessing the ability, if any, of CP to collect damages from any of these protesters who are causing these disruptions, assuming they can be identified before they leave CP's lands after causing the intended disruption.
- [57] I am satisfied that these protestors have caused interference with CP's ongoing business. I am also satisfied that, as a result, CP has established irreparable harm, not only in terms of immediate economic loss or loss of revenue, but also more ephemeral harm with respect to safety risks, reputational damage, loss of good will and other harms that CP may experience by reason of these activities.

Balance of Convenience?

- [58] The balance of convenience is also clearly weighted in favour of the granting of the injunction sought by CP.
- [59] CP is running a legal rail business. The people in these blockaders are clearly acting illegally by trespassing on CP's lands.
- [60] I accept CP's counsel's submissions that, as against the rights of CP, there is absolutely nothing to balance on the side of the blockaders. This Court's adoption in *Cermaq Canada Ltd. v. Stewart*, 2017 BCSC 2526 of Justice Meiklem's comment in *Slocan Forest Products* (cited below) is apt:
- [61] In *Slocan Forest Products Ltd. v. Valhalla Wilderness Society*, [1998] B.C.J. 1255, the Court addressed the illegal blockade of a logging road. Meiklem J. said:

22 The balancing of convenience that was under consideration on July 16, 1997 and is reviewed on this application, is not one between the plaintiff as one lawful resource user and Mr. Anderson as another lawful resource user in conflict, such as it would have been if Mr. Anderson brought an application to enjoin the plaintiff from road construction or logging, which would clearly make relevant the likelihood of harm to the watershed he relies on. Nor was it an appropriate forum to review the wisdom of issuing permits to log 17 cut-blocks or construct roads on hydrologically unstable terrain in crucial watersheds. It was a balancing of convenience between a plaintiff with the legal right to construct, use and maintain a public road, use a forest road and harvest timber on one hand, and a crowd of persons who resorted to illegal use of a blockade to

impede that legal right, on the other.

23 The virtue of this cause and the objective correctness of their values and their assessment of potential harm from the road construction and logging are all completely irrelevant because the rule of law in our democracy requires that rights are established and adjudicated by due process, not by force. Once it was established that user rights had been granted after due process by properly authorized administrative officials, there is indeed nothing that can be placed on the balance on the side of the blockade.

- [61] I agree with CP's counsel's submissions that the actions of these protestors are "manifestly unlawful". CP is entitled to operate its rail lines without illegal interference. Indeed, that operation is an important aspect of the normal and essential functioning of the Canadian economy. These protestors are engaged in illegal and unsafe activity on CP's property. It is beyond doubt that these protestors know that they are not allowed to be on the tracks. They have ignored clear requests by CP Police that they leave and protest elsewhere in a legal manner. They know they are trespassing and causing disruption; indeed, causing disruption is their clear intention.
- [62] I have no difficulty concluding that the protestors know that what they are doing is illegal. They simply are prepared to disregard and ignore the significant and negative consequences to CP and other people who are affected.
- [63] It is more than apparent that the defendants have succeeded in gaining the attention of the Canadian public with respect to their cause. What they have also succeeded in doing, perhaps not as quickly as others might have hoped, is gaining the attention of Canadian courts and police forces around the country in terms of the need to address this unlawful activity and address it quickly.
- [64] These protestors appear to be championing the cause of the Wet'suwet'en hereditary chiefs in respect of their claim to Aboriginal rights in the area where the Coastal GasLink pipeline is to be built. In that regard, I need only refer to Church J.'s denunciation of such conduct by these Aboriginal people in Coastal GasLink at para. 157-159. In that respect, Church J. referenced comments in *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 where the Court found similar conduct to be an abuse of process:
- [42] In my opinion, the Behns' acts amount to an abuse of process. The Behns clearly objected to the validity of the Authorizations on the grounds that the Authorizations infringed their treaty rights and that the Crown had breached its duty to consult. On the face of the record, whereas they now claim to have standing to raise these issues, the Behns did not seek to resolve the issue of standing, nor did they contest the validity of the Authorizations by legal means when they were issued. They did not raise their concerns with Moulton after the Authorizations were issued. Instead, without any warning, they set up a camp that blocked access to the logging sites assigned to Moulton. By doing so, the Behns put Moulton in the position of having either to go to court or to forgo harvesting timber pursuant to the Authorizations it had received after having incurred substantial costs to start its operations.

To allow the Behns to raise their defence based on treaty rights and on a breach of the duty to consult at this point would be tantamount to condoning self-help remedies and would bring the administration of justice into disrepute. It would also amount to a repudiation of the duty of mutual good faith that animates the discharge of the Crown's constitutional duty to consult First Nations. The doctrine of abuse of process applies, and the appellants cannot raise a breach of their treaty rights and of the duty to consult as a defence.

- [65] These protestors' actions are not elevated beyond those of the Wet'suwet'en litigants to avoid the conclusion that their actions are similarly an abuse of process if they disagree with the process by which the pipeline was approved.
- [66] Clearly, these blockades are an assault on the rule of law and the democratic institutions in our country that the Canadian public relies upon in terms of promoting the safe and orderly conduct of our lives, both personal and business, in Canada. It is clear to me that these protesters simply have no regard whatsoever to the harms they have caused and continue to cause to their fellow citizens.
- [67] Such actions are not acceptable in our Canadian society, to the point of bringing the administration of justice into disrepute by acting illegally and essentially attempting to hold the Canadian public and our Canadian economy hostage to their cause or causes. These actions are even more egregious in the sense that it is not these protesters who are "in the fight", so to speak; they are simply being "supportive" of the cause of others (namely, the Wet'suwet'en) although that is unclear as to whether in fact other causes are at play.
- [68] I conclude that the balance of convenience strongly favours the granting of the injunction.

The Injunction Granted

- [69] I grant the injunction sought by CP in its notice of application.
- [70] The injunction will restrain illegal activities at the various locations that I have already mentioned (i.e. CP's Port Coquitlam rail yard, the Main Line at Chase, BC and the Main Line near the Haney Bypass) and also, all illegal activities directed at any aspect of CP's property, including its rail lines, yards, rights of way and stations, throughout BC (defined in the order as "CP Property"). To clarify that matter, CP's BC rail lines are shown on a map which is to be attached as Schedule A to the order. This will provide clarity for the protesters and the public and importantly, the police who are expected to enforce the order, if necessary.
- [71] The order will specifically refer to restraining any activity that physically interferes with or counsels other to physically interfere with the movement of trains on CP's rail lines or its business operations on CP Property.
- [72] Such a province-wide injunction is consistent with what has been ordered by Branch and Gropper JJ. with respect to CNR's BC rail lines and also, by the courts in Ontario and Manitoba in respect of CNR's rail lines in those provinces.

- [73] In my view, it is also necessary that the order provide clarity in terms of where these protesters are not to be located. Paragraph 1 of the order refers to CP's rail lines, yards, rights of way and stations, as part of CP Property, as marked on Schedule A. With respect to the CP Property, which are CP's "rights of way", I have also now added wording to the order that will clarify that CP's rail lines and adjacent rights of way are defined as 50 feet on either side of the tracks, measured from the center of the track. This buffer zone is intended to allow the safe travel of CP trains on the tracks to avoid the delay and risks discussed above. Hopefully, this will provide clarity for the persons who are targeted by this injunction as to the "no go" area for the protestors, so that they are fully aware that consequences will follow from any excursion into that restricted area.
- [74] I also grant an order restraining people from constructing, placing or maintaining structures, tents, shelters, objects, and other things on CP Property. The order will provide that CP's employees or agents are authorized to remove and dispose of any structures that might be left on CP Property should these persons abandon their blockade. This is obviously necessary for safety purposes before any resumption of rail service.
- [75] Paragraphs 5-8 of the order will include police enforcement clauses. Those provisions will authorize any police authority in BC to arrest and remove any person, assuming the police have reasonable and probable grounds to believe that these persons have or are contravening any provision of the order. As is typically the case, these provisions will afford the police with a certain level of discretion with respect to the timing and manner of enforcement of the order. Having said that, I would state at this time that I hope and expect that the police will be expeditious and move as quickly as possible to enforce the order, so as to maintain this important rail line and maintain order in our Canadian society and respect for our justice system.
- [76] The order will confirm that, as is important with respect to these injunctions, nothing in this order is intended to prohibit or limit the defendants' right to lawfully assemble on lands outside of CP Property in order to demonstrate, protest or express themselves in any manner and in a peaceful and safe manner. Such rights of assembly and expression are protected Charter rights that are not intended to be limited by the terms of this order.
- [77] Finally, the order will provide that the defendants or any interested party may apply to set aside the order on 48 hours' notice. In that event, I will seize myself of any such application although, if I am not available to deal with it, the parties may contact Supreme Court Scheduling to appear before another judge.

"Fitzpatrick J."

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