

CANADA / JUDGMENT

Teal Cedar Products Ltd. v. Rainforest Flying Squad

2021 BCSC 1903

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 1903 Teal Cedar Products Ltd. v. Rainforest Flying Squad

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Teal Cedar Products Ltd. v. Rainforest Flying Squad,

2021 BCSC 1903

Date: 20210928

Docket: S211602

Registry: Vancouver

Between:

Teal Cedar Products Ltd.

Plaintiff

And

Unknown Persons Operating as the "Rainforest Flying Squad",

Robert Arbess (also known as Reuben Garbanzo), John Doe,

Jane Doe, and Persons Unknown

Defendants

And

British Columbia (Ministry of Forests, Lands,

Natural Resource Operations and Rural Development)

Third Party

Further Corrected Judgment: The text of the judgment was corrected on the cover page on 8 October 2021.

Corrected Judgment: The text of the judgment was corrected at paragraphs 27, 48 and 68 on 4 October 2021.

Before: The Honourable Mr. Justice Thompson

Reasons for Judgment re Application to Extend Injunction

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No other appearances

Place and Dates of Hearing:

Nanaimo, B.C.

September 14-17, 2021

Place and Date of Reasons for Judgment:

Vancouver, B.C.

September 28, 2021

- [1] Teal Cedar Products Ltd. ("Teal Cedar") is a logging company. In April 2021, this Court granted Teal Cedar's application for an injunction against interference with its logging of parts of the temperate rainforest on southern Vancouver Island, including the Fairy Creek watershed and surrounding area. This was a six-month interlocutory injunction, expiring on 26 September 2021. The injunction order authorizes the RCMP to arrest and remove persons contravening the injunction. To date, there have been over 1000 arrests.
- [2] Teal Cedar applies to extend the injunction for a further 12 months. The application is opposed by defendants and other protesters. The third party ("Ministry of Forests") takes no position. Similarly, the Attorney General of Canada, appearing for the RCMP, takes no position on Teal Cedar's application. The question for determination is whether Teal Cedar has established that it remains just and equitable to have this injunction in place. After balancing the relevant considerations, I exercise my discretion against extending the injunction. My reasons follow.

Background

- [3] Teal Cedar holds Tree Farm Licence 46 ("TFL 46"), a forest tenure on southern Vancouver Island. The licence area is nearly 60,000 hectares in size, and it contains stands of old growth. It overlaps with the traditional territories of the Pacheedaht First Nation and the Ditidaht First Nation. Teal Cedar has been granted permits to cut timber and to conduct road building activities within certain parts of TFL 46.
- [4] In August 2020, protesters unhappy with the prospect of old-growth logging blocked roads at various locations in and around TFL 46. In September 2020, the provincial government announced a deferral of old-growth logging in nine areas throughout the province, but TFL 46 is not one of them. Road blockages continued. Teal Cedar made a report to the RCMP in December 2020, but no steps were taken by police to remove the blockages or arrest those responsible. In February 2021, Teal Cedar commenced an action seeking, inter alia, injunctive relief and, as noted above, an interlocutory injunction order was made in April 2021. Justice Verhoeven's reasons for granting the injunction and for including a police enforcement clause in the order are indexed at *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 605.

- [5] After summarizing the test for injunctive relief, Verhoeven J. found a serious issue to be tried, that Teal Cedar would suffer irreparable harm if the relief sought was not granted, and that the balance of convenience favoured granting the order. My colleague acknowledged the reality that climate change poses a grave threat to the future of humanity (para. 74), but rejected the argument that the injunction could be refused because of the role that old growth rainforests play in mitigating the climate crisis (para. 49). He concluded that it was impossible for the Court to go along with the protesters' methods, and leave Teal Cedar with no remedy (paras. 51-53). Citing *Red Chris Development Company Ltd. v. Quock*, 2014 BCSC 2399 at para. 71, he reasoned that it is contrary to the public interest to allow these blockades to continue (para. 55).
- [6] The injunction prohibits the defendants and anyone having knowledge of the Court's order from interfering with use of the roads, or interfering with the company's road construction or timber harvesting activities in the "injunction area" -- a large tract of public land with defined boundaries in the interior of southern Vancouver Island. The boundaries of the "injunction area" are similar to the boundaries of TFL 46.
- [7] As I said at the outset, the injunction order authorizes the RCMP to arrest and remove persons contravening the order. After a planning period, the RCMP began their injunction-enforcement operation in mid-May 2021. A central component of this operation was to try to blockade the injunction area -- i.e., to try to seal off parts of TFL 46 to certain people and certain goods. The RCMP resolved to block public vehicle access, and instituted searches of pedestrians' backpacks as a condition of entry. For all that might be said in its favour as a potentially effective method of clearing the way for Teal Cedar's logging, this blockade strategy has problems associated with it. One problem is that s. 22.2(1) of the Forest and Range Practices Act, S.B.C. 2002, c. 69, provides that the roads in TFL 46, which are on public land, may be used by the public. Moreover, the injunction order, on its face, preserves public access to the roads in TFL 46.
- [8] The public use of these roads is subject to regulation, however. The default position in the legislation is that any person may use these roads (s. 22.2(1)). But, in certain defined circumstances, use of these roads may be restricted or closed: if use of the road would likely cause significant damage to the road, cause significant sediment delivery, or endanger property, public health or public safety (s. 22.2(2)(c)); or the presence on the road of a vehicle would likely cause damage to the road or environment or endanger life or property (s. 22.2(2)(d)). Following are the material parts of s. 22.2 of the Forest and Range Practices Act:

Non-industrial use of a road

22.2 (1) Subject to subsections (2) to (4) and to regulations respecting roads made under the Industrial Roads Act, a road that is

- (a) a forest service road, or

(b) constructed or maintained by the holder of a road permit or a woodlot licence
may be used by any person, other than a person referred to in section 22.1, without charge.

(2) The

(a) district manager, for a forest service road, or

(b) holder of a road permit or a woodlot licence, for a road under the permit or licence,
may take action under subsection (3) if

(c) use of the road under subsection (1) would likely

(i) cause significant damage to the road,

(ii) cause significant sediment delivery, or

(iii) endanger property, public health or public safety, or

(d) the presence on the road of a vehicle or animal would likely cause damage to the road or
environment or endanger life or property.

(3) In the circumstances described in subsection (2),

(a) the district manager, for a forest service road, may

(i) close the road or restrict its use, or

(ii) remove a vehicle or an animal from the road at the expense of the owner of the vehicle or
animal, and

(b) the holder of a road permit or a woodlot licence, for a road under the permit or licence,

(i) with the prior consent of the minister, may close the road or restrict its use, or

(ii) may remove a vehicle or an animal from the road at the expense of the owner of the vehicle
or animal.

[9] The RCMP asked Teal Cedar to apply to the Ministry of Forests to erect security gates at six
places on various roads in TFL 46. It is clear from Chief Superintendent Attfield's evidence
that Teal Cedar was prompted to apply for these permits as part of the RCMP's blockade
strategy. The Ministry of Forests granted the permits. Each allows a security gate on a
particular location on roads within TFL 46; the permit letters are dated May 20, May 27, June
4, June 14, June [illegible], and June 23, 2021.

[10] Each of the Ministry of Forests permit letters says that the gate request was made "for the
purpose of protecting logging operations." Each of these letters cites s. 22.2(3)(b)(i) of the
Forest and Range Practices Act as the basis for granting permission. Whether "protecting
logging operations" amounts to fulfilment of a statutory condition for restricting the public's
road access is not before me.

- [11] In late May 2021, I was appointed the case management judge. I began hearing a steady stream of judicial interim release applications from persons arrested for alleged violations of the injunction order, although many arrestees were released by the police after signing an undertaking not to return to the injunction area. Others were subject to "catch and release"; i.e., they were arrested but not processed.
- [12] On 7 June 2021, the Pacheedaht, Ditidaht, and Huu-ay-aht First Nations gave notice to the provincial government to defer old-growth logging for two years in the Fairy Creek and Central Walbran watersheds, to allow the First Nations to prepare resource management plans. Two days later, the government responded by announcing this deferral. This did not end the protest activity in TFL 46, however; the protesters resolve to protect old growth forests both inside and outside TFL 46 that are included in this deferral.
- [13] By early July, hundreds of people had been arrested. Teal Cedar asked the Court to invite the British Columbia Prosecution Service (the "Prosecution Service") to review the evidence surrounding the actions of the alleged contemnors and assume conduct of contempt proceedings. I agreed to issue this invitation; my reasons are indexed at *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 1380. On 18 July 2021, the Prosecution Service accepted the invitation to assume, for the time being, carriage of all outstanding contempt matters and those arising out of anticipated future arrests for breaches of the injunction.
- [14] In the meantime, after issuing the invitation to the Prosecution Service, I heard applications by members of the public and a consortium of media organizations aggrieved by the RCMP's policy of restricting access to the injunction area by means of expansive exclusion zones, checkpoints, and searches. The media applicants also complained about the RCMP policy of shepherding their journalists while they were in these exclusion zones. One journalist who has reported on all manner of police events in Canada and elsewhere, in both rural and urban settings, including civil disobedience events, deposed that the level of police restriction on journalist movement in TFL 46 was familiar to him from his work in China where he was accompanied by police who decided what he was allowed to see. In every other democratic society this journalist has worked in, he has been allowed to do his job without police escorts and exclusion zones.
- [15] In ruling on the access applications (*Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 1554), I concluded that an important purpose of the injunction is to maintain public access to roads in the injunction area. The RCMP were blocking vehicle access to roads that serve as the main entry points to these public lands, and this was directly at odds with this purpose. I also held that the RCMP's expansive exclusion zones, and associated checkpoints and searches, were unlawful because it had not been established that these measures were reasonable and necessary to carry out their duties. And, I granted the media consortium's application for a variation of the injunction order to add a direction intended to control interference by police with the work of journalists.

[16] My written reasons regarding the RCMP access restrictions were released on 9 August 2021. By that time, Teal Cedar had begun to concentrate its TFL 46 logging activities in an area served by Granite Mainline, and on 13 August 2021, Teal Cedar was granted another permit for a security gate, this one to be placed near kilometre zero on Granite Mainline. The Ministry of Forests permission letter of 13 August 2021 reads, in material part, as follows:

In accordance with the Forest and Range Practices Act Section 22.2 (3)(b)(i), your request for a security gate on Granite Main at station 0+100 for the purpose of safety to protect road building and logging operations, to prevent vandalism to equipment, and to prevent members of the public damaging the road is hereby approved.

[17] Granite Mainline has many branch roads, but there is only one way in and one way out of the area it serves. Since 13 August 2021, public vehicle access has been cut off by the security gate authorized by the Ministry of Forests. Teal Cedar has private security guards stationed at this gate.

[18] The RCMP also switched its focus in early August to the Granite Mainline area, where there were a series of protester camps and roadblocks. The RCMP began clearing these camps, beginning with what the protesters' called HQ camp, located approximately 900 metres up Granite Mainline. Each time the RCMP moves its enforcement activity further up Granite Mainline, it establishes a new checkpoint which marks the boundary of the exclusion zone. Between 9 and 21 August, the RCMP advanced 6.5 km up Granite Mainline, while removing obstructions and making arrests on a near daily basis.

[19] The methods used by those obstructing the roads have become more extreme over time. Recently, many trenches have been dug into the road, some up to eight feet deep, in which persons are locked into devices known as "sleeping dragons." These trenches have appeared on important roads in TFL 46, including the Reid Mainline and the Granite Mainline. And, the devices which protesters attach themselves to in order to make it difficult to extract them are now sometimes encased in concrete, or covered in logs. One contraption even used an old stove. Tripods on roads with protesters perched on top have been an ongoing feature since the injunction order, but these tripods are now being built higher -- they were once about eight feet tall, but recently reach 30 foot heights.

[20] At my direction, the Prosecution Service was served with Teal Cedar's notice of application to extend the injunction. Because the Prosecution Service is taking no position on this application, it understandably did not file an application response or any affidavit material. However, when it came to the attention of Trevor Shaw, the Prosecution Service's director of criminal appeals and special prosecutions, that questions had arisen at the hearing about the RCMP's ability to address protest activity in the absence of an injunction, he wrote a letter that assists the Court. The letter is addressed to counsel for the Ministry of Forests, and reads:

We understand from you that a question has arisen in civil applications in this case about the RCMP's ability to address the protest activity in Fairy Creek in the absence of an injunction.

The BC Prosecution Service takes no position in any of the civil applications regarding the injunction before the Court. We are not privy to that litigation.

We provide the following information in the event our role and policies are raised in our absence. You can make use of it as you see fit, including conveying it to the parties and the Court.

1. The BCPS has attended to criminal contempt matters at the invitation of the Court.
2. The BCPS does not direct the police and the police decide independently from us how to conduct arrests and what charges if any to refer to us. Likewise, the police act independently from the BCPS in deciding how to enforce injunctions that involve them.
3. Our CIV1 policy (Civil Disobedience and Contempt of Related Court Orders) is publicly available and each case is considered on its merits. If there are any conclusions to be drawn about the BCPS charge approval process or its policies, they should be based on admissible evidence at hearing during which BCPS is given an opportunity to appear.
4. In this matter, as indicated to the Court on Monday, September 13 [at a judicial management conference], the BCPS has approved 101 criminal contempt charges to date. More are under consideration. In addition, there are three related Criminal Code charges approved to date.

I thank you for bringing this to our attention.

The Prosecution Service's CIV1 policy for civil disobedience cases forms part of the record, and I will quote passages from it later in these reasons.

Legal Framework

[21] The majority judgment of the Supreme Court of Canada in *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at paras. 22-23, affirmed well-established principles surrounding interlocutory injunctions. It is an equitable remedy, both flexible and drastic, and the decision whether or not to grant an injunction is a discretionary one. Justice Abella's judgment also referred with approval to the well-known test for whether the discretion should be exercised:

[25] *RJR -- MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, sets out a three-part test for determining whether a court should exercise its discretion to grant an interlocutory injunction: is there a serious issue to be tried; would the person applying for the injunction suffer irreparable harm if the injunction were not granted; and is the balance of convenience in favour of granting the interlocutory injunction or denying it. The fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case. This will necessarily be context-specific.

- [22] I conclude that the principles expressed by Justice Abella in the Google case apply to the question of whether an existing injunction ought to be extended. My attention was drawn to the Alberta Court of Appeal's reasons in *Dreco Energy Services Ltd. v. Wenzel*, 2008 ABCA 290 at para. 27. The Court held that the usual RJR -- MacDonald considerations apply on a motion to continue or set aside an interlocutory injunction, plus "additional factors as well, including delay, inequitable conduct, and policy considerations." I do not regard this as a different test, but a reflection of the reality that a consideration of all of the circumstances at the time of an application to extend will naturally include an examination of what has occurred since the injunction was first imposed. I will apply the usual analysis, but with the advantage of what I have learned from my vantage point as the case management judge, and with the advantage of an ample record and full submissions about the events of the past six months.
- [23] Justice Abella's reference in Google to the fundamental question as being one of justice and equity echoes what McLachlin J.A. (as she then was) said in *British Columbia (Attorney General) v. Wale* (1986), 9 B.C.L.R. (2d) 333 (C.A.) at 346, aff'd [1991] 1 S.C.R. 62. The exercise is not a slavish or inflexible application of a precise formula. Rather, the RJR -- MacDonald factors are, as Justice Voith (then of this Court) put it in *Cermaq Canada Ltd. v. Stewart*, 2017 BCSC 2526 [Cermaq] at para. 53, "a guide to coming to a just and equitable result." Justice Verhoeven referred to these principles in his judgment in this case, at para. 34 of his reasons.
- [24] In the same vein, but specific to the balance of convenience analysis, Lambert J.A. provided this guidance in *Canadian Broadcasting Corporation v. CKPG Television Ltd.* (1992), 64 B.C.L.R. (2d) 96 (C.A.) [CBC v. CKPG] at para. 25:
- [It is] not a process of considering each possible factor separately, and then doing a tally, nor is it a process that can be regarded as effectively discharged by the mechanical application of a formula or checklist of points. Rather, it is a process of assessing all of the relevant factors at one time and in one unified context and reaching a single overall conclusion about where the balance of convenience rests.
- [25] Justice Lambert also made it clear in *CBC v. CKPG*, at paras. 27-28, that the equitable and discretionary nature of an interlocutory injunction does not unleash a chambers judge to the extent that he or she may do whatever they wish:

The granting or refusal of an interim injunction is discretionary in this sense: that it involves an assessment of the balance of convenience and thus a reference to a number of factors which cannot be precisely weighed or measured, all assessed on the basis of incomplete or partial evidence which has probably not been tested by cross-examination. Because the decision is an interim one and because the evidence is necessarily incomplete, this Court is reluctant to interfere with the decision of the chambers judge who granted or refused to grant the injunction.

But the discretion of the chambers judge is not absolute. It must be guided by the established principles, flexible though they may be, and it must be based on the evidence.

[26] For reasons I will come to, there is no real issue in this case of the presence of the "serious question" and "irreparable harm" factors in the RJR -- MacDonald test. On the "balance of convenience" aspect, the first legal issue is to determine the limits of what may be considered. The short answer is that the scope is wide but not infinite.

[27] In RJR -- MacDonald, at 342, the Supreme Court of Canada concluded that the factors to be considered in the balance are "numerous and will vary in each individual case." On this point, excerpts from Lord Diplock's speech in *American Cyanamid v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) at 408-409, were quoted with approval:

It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to the. These will vary from case to case.

...

[T]here may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

This wide scope for bringing into account any factors affecting the balance of justice and convenience includes "any factors affecting the public interest": *CBC v. CKPG*, at para. 24. See also *British Columbia Hydro and Power Authority v. Boon*, 2016 BCSC 355 at para. 69; *Red Chris Development Company Ltd. v. Quock*, at paras. 75-77.

[28] It is apparent that the public interest is often an important consideration in coming to a just and equitable result, even in cases that do not directly involve public bodies. The aspect of the public interest that is most often considered (and is typically weighed heavily) in civil disobedience cases is the protection of the exercise of private rights from illegal obstruction. In *MacMillan Bloedel Ltd. v. Simpson* (1994), 96 B.C.L.R. (2d) 201 (C.A.) [Simpson BCCA] at 248, Justice Wood gave powerful expression to this public interest with a rhetorical question: "Can the courts stand by and watch helplessly when the private rights of the individual are overrun by the mob?" When imposing the injunction in the case at bar, Verhoeven J. quoted Cernaq, at para. 70: "What is not possible, what is simply not on the table, is for individuals to act unilaterally and unlawfully and to choose to forego any political or legal process to achieve their objects." For reasons that I will come to, I conclude that the weight to be assigned to this important public interest depends on whether the applicant has shown a remedial gap.

- [29] When considering the wide-ranging submissions I have heard on the balance of convenience, I accept Lambert J.A.'s direction that a judge hearing an interlocutory application motion must act within the bounds of "established principles, flexible though they may be." Although the authorities direct me to consider the "public interest," the scope for doing so is not so wide that I may ignore fundamental constitutional principles that limit the powers of the judiciary.
- [30] In other words, the obligation to consider all of the circumstances means all of the circumstances within the bounds of established principles. In the first rank of these established principles is the foundational constitutional tenet that it is for the legislatures and governments to legislate and govern, not the courts. As Verhoeven J. observed at para. 50 of his reasons in this case, the protesters' real complaint is with the policy of the government of British Columbia.
- [31] Accordingly, I agree with Verhoeven J. that I cannot give effect to the submissions that I should weigh in the balance the fact that the protesters are moral and ethical citizens endeavouring to ward off impending destruction of a rare and irreplaceable ecosystem in the context of an existential environmental and climatological crisis.
- [32] I have referred to one important legally relevant public interest consideration: the importance to the rule of law of upholding private rights in the face of unlawful obstruction. In many cases, this may be the only public interest consideration, but that is not the situation in this case. One public interest to be considered is the public's prima facie right to access the roads in TFL 46. And, there is another important aspect of the public interest that has emerged in this case. It has been referred to in many civil disobedience cases in British Columbia, at least as far back as *Everywoman's Health Centre Society v. Bridges* (1990), 54 B.C.L.R. (2d) 273 (C.A.) at para. 34, when Southin J.A. raised the "grave question" of whether public order should be maintained by injunction or by enforcement of the relevant provisions of the Criminal Code.
- [33] Parliament has spoken in clear terms about damaging, destroying, or interfering with the use of property, and about blocking or obstructing roads for the purpose of compelling others to abstain from doing what they have a lawful right to do. Following are pertinent provisions of ss. 423 and 430 of the Criminal Code:
- 423 (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,
- (g) blocks or obstructs a highway.
- ...

430 (1) Every one commits mischief who wilfully

- (a) destroys or damages property;
- (b) renders property dangerous, useless, inoperative or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property;
or
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.

...

(4) Every one who commits mischief in relation to property ...

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
- (b) is guilty of an offence punishable on summary conviction.

[34] In *Simpson BCCA*, Wood J.A., writing in dissent, took notice of ss. 423 and 430 of the Criminal Code and said:

[155] Any person who is the victim of a crime in this country is entitled to expect that appropriate steps will be taken to investigate the offence and to bring appropriate proceedings against the offender. By virtue of our constitutional structure, such functions are and always have been the responsibility of the Executive branch of government, not the courts. It is the responsibility of the Attorney General as the chief law enforcement officer, and I speak here of the office holder not the individual, to see to it that the criminal law is enforced. The role of the courts in such matters is to provide an independent and impartial process by which any resulting allegations can be fairly tried and a just result obtained.

[156] It is only because the obligations of the office of Attorney General have not been discharged, in connection with mass public protests which are designed to interfere with the exercise of private rights, that in recent years the courts have been drawn into a role which they were never intended to perform, and for which they are ill-suited. The inherent jurisdiction of the Supreme Court to punish for contempt of court is essential to the preservation of the due administration of justice. It is and always has been a jurisdiction to be exercised sparingly and as a last resort. It was never intended to be used to preserve law and order on our streets, or in our forests, any more than equity was ever intended to be used as an instrument of crowd control.

[35] When the case went up to the Supreme Court of Canada, *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048 [Simpson SCC], one appellant argued that a judge hearing an interlocutory injunction application does not have inherent jurisdiction to make orders against members of the public in criminal law matters and, in any event, there was no need for an injunction in this case because the logging company's most obvious remedy was to prevail upon law enforcement officials to enforce the Criminal Code (paras. 16-17). The judgment of the Court was delivered by McLachlin J. (as she then was). She observed that the Attorney General of British Columbia "had a specific policy not to lay criminal charges against environmental groups engaging in civil disobedience, but to leave it to affected parties to seek injunctive relief" (para. 18). In these circumstances, the fact that blocking the roads can be characterized as criminal was held to not deprive the British Columbia Supreme Court of the right to grant an injunction against potential offenders (para. 21).

[36] At para. 34 of Simpson SCC, the Court quoted the words of Wood J.A. that it is "the responsibility of the Attorney General as the chief law enforcement officer to see to it that the criminal law is enforced" but carried on at para. 35, as follows:

Every citizen would endorse these words. Yet, as this case demonstrates, to state the obligation of the Attorney General is not to ensure that it will be discharged in such a way as to provide the required protection to citizens injured by the conduct of others. It is to fill this gap that the equitable remedy of injunctions -- injunctions which not only the parties but also all others must respect on peril of being found in contempt of court -- has developed.

[37] I conclude, therefore, that it is beyond question that Teal Cedar is not disentitled to an injunction by the fact that the road blockages and road destruction in the case at bar would appear to be criminal offences. There is recent support from the Supreme Court of Canada for this proposition, albeit in a very different sort of case. In *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 at para. 26, Justice Brown, writing for the Court, said:

I add this. It is implicit in the foregoing analysis that, in some circumstances, an interlocutory injunction may be sought and issued to enjoin allegedly criminal conduct. The delineation of those circumstances, however, I would not decide here.

[38] The fact that a chambers judge may grant an injunction restraining apparently criminal conduct is not to say that he or she is obliged to do so. All of the circumstances must be considered in the context-specific determination of whether to grant the order, including whether the enforcement gap that existed in the Simpson case is present in current circumstances.

[39] After Simpson SCC, the concerns expressed by Southin J.A. in the *Everywoman's Health Centre* case and by Wood J.A. in Simpson BCCA about the role of this Court in civil disobedience cases have continued to be considered in deciding whether to grant interlocutory injunctions. See, for example, *International Forest Products Limited v. Kern*, 2000 BCSC 888, per Vickers J.; *Slocan Forest Products Ltd. v. Doe*, 2000 BCSC 150, per McEwan J.; *International Forest Products Limited v. Kern*, 2000 BCSC 1141, per Pitfield J.;

Alliford Bay Logging (Nanaimo) Ltd. v. Mychajlowycz, 2001 BCSC 636, per Williamson J.; Central Kootenay (Regional District) v. Doe, 2003 BCSC 836, per McEwan J.; British Columbia (Attorney General) v. Sager, 2004 BCSC 720, per Quijano J.; Interior Health Authority v. Statham, 2005 BCSC 1243, per McEwan J.; Galena Contractors Ltd. v. Zarelli, 2014 BCSC 324 and 2014 BCSC 1256, per McEwan J.; Beaudoin v. British Columbia, 2021 BCSC 248, per Hinkson C.J.

[40] Since Simpson SCC, there have been some obiter expressions of opinion in our Court of Appeal on the subject of courts being manoeuvred to the front line of these civil disobedience events. In an appeal from sentence for criminal contempt, Interfor v. Simm, 2000 BCCA 500 [Simm] at paras. 19-25, Esson J.A. (as he then was) expressed support for the hands-off policy of the Attorney General that was in place at that time, and intimated that the controversy was settled by Simpson SCC. However, in an appeal from a contempt conviction in R. v. Clark, 2001 BCCA 706, Southin J.A. observed that the policy of the Attorney General concerning civil disobedience "puts the courts, and particularly the court below, into an invidious position" (para. 48).

[41] In Alliford Bay Logging, Justice Williamson described as "compelling" a submission that it is wrong to resort to injunctions in circumstances when the simple course is for the police to act to protect the plaintiff's rights by telling protesters that they will face criminal charges if they do not stop impeding the way, and by arresting those who do not stand aside (para. 4). The judge reviewed a trilogy of cases in this Court delivered in the summer of 2000 -- the decisions of Vickers, McEwan, and Pitfield JJ. referred to above -- and expressed agreement with what he characterized as their "trenchant criticism of the relevant policies of law enforcement authorities" (para. 8).

[42] Williamson J. referred to the passage in Simpson SCC about using an injunction to fill an enforcement gap, and said this at paras. 14 and 26-27:

I read this as suggesting that if there is a gap, that is, if the Attorney General does not ensure that the obligation to uphold the law is fulfilled, assuming other requirements are met the injunction should issue. But I take it as well that the converse would be true. If there were no gap presumably the injunction would be unnecessary and would not issue.

...

[T]here can be no doubt this court has jurisdiction to intervene by way of injunction when those responsible for the enforcement of the criminal law decline to act in the face of criminal conduct. The court's responsibility to uphold the law can brook of no other result. But I also conclude, as have other judges, that this course should only be followed in the last resort. The risks attendant upon the converting of a dispute between the citizen and the logging company or the citizen and the government into a dispute between the citizen and the court are serious indeed. It would benefit no citizen and indeed no institution, be it a corporate body or a government, if the legitimacy and the effectiveness of the court were compromised.

In the midst of his reasons for judgment, the judge undertook a detailed rebuttal of Esson J.A.'s obiter dicta in the Simm case.

- [43] Having been in the midst of the case at bar for some months, I respectfully agree with Williamson J. and other judges who have remarked on the dangers of depreciation of the legitimacy and effectiveness of the Court when a dispute between citizens on one side and the government and a logging company on the other is converted into a dispute between citizens and the Court.
- [44] I think this reputational concern about the Court's legitimacy and effectiveness being compromised by being pressed to the front line of this dispute fits into the legal framework as a public interest to be weighed, with all other relevant circumstances, when deciding whether an injunction is just and equitable. As I understand the method of analysis, there are no trump cards when taking account of all relevant circumstances -- this applies to the strong public interest in maintaining the Court's reputation, and even to the important public interest in standing against interference with private rights by unilateral and unlawful actions. The presence of either of these considerations does not necessarily end the analysis.
- [45] I suggest the outcome of balancing these countervailing public interest considerations can depend in significant measure on whether the applicant has shown that an enforcement gap exists. Where a gap exists, judges have tended to place a great deal of weight on the need to stand against those using unlawful actions to interfere with lawful interests and thus avoid leaving the applicant without a remedy. This is so, even as they recognize that the Court is being put in a difficult position. On the other hand, if an enforcement gap has not been established, then some of the strength of this argument dissolves.

Analysis: Is it Just and Equitable to Extend the Injunction?

- [46] The first two of the usual RJR -- MacDonald considerations are clearly established. I conclude without hesitation that there is a serious question to be tried and there will be irreparable harm if the injunction is not extended.
- [47] The phrase "serious question to be tried" is an awkward fit with this type of case because the injunction applicant rarely proceeds to a trial. It might be said that it is nonsensical to speak of a serious question to be tried in a case where a trial will not occur. However, the fact that a plaintiff could choose to pursue their case to trial was held to be sufficient in Simpson SCC, at para. 32. I agree with Verhoeven J.'s finding that there is a serious question to be tried (para. 36), and the ongoing obstruction of the past six months has only strengthened this conclusion.
- [48] Those opposed to the extension of this injunction argue that Teal Cedar has not established "irreparable harm." These arguments are without merit. Irreparable harm is not a question of magnitude. I accept the submission that it will be difficult if not impossible to recover damages for the economic harm done by the continuing interference with Teal Cedar's

licenced and permitted activities. This likely incurable harm is "irreparable": RJR -- MacDonald, at 341. I reject the argument that Teal Cedar is required to show that its status as a "going concern" is threatened in order to establish irreparable harm, and that without evidence of impending insolvency any harm is not irreparable. This submission is plainly at odds with the authorities. Interference with an ongoing business may amount to irreparable harm: *Tlowitsis Nation v. Macmillan Bloedel Ltd.* (1990), 53 B.C.L.R. (2d) 69 (C.A.) at 78. In the course of preparing my reasons, Saunders J.A. released her judgment dismissing an application for leave to appeal Verhoeven J.'s order: *Teal Cedar Products Ltd. v. Mashari*, 2021 BCCA 353. Justice Saunders rejects the notion that impending insolvency is required to satisfy the irreparable harm requirement.

- [49] I turn to the balance of convenience. Teal Cedar argues that the balance of convenience exercise is a foregone conclusion. It submits that this is a case like *Cermaq*, in which the judge concluded that there were no competing equities (para. 60). Teal Cedar's argument is captured in this passage from *Slocan Forest Products Ltd. v. Valhalla Wilderness Society*, [1998] B.C.J. 1255 at para. 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.

- [50] In his reasons for granting Teal Cedar's injunction application in April, Verhoeven J. plainly -- and in my respectful opinion, correctly -- placed considerable emphasis on the illegal interference with Teal Cedar's lawful rights, and the rule-of-law implications of allowing the illegal behaviour to continue. Standing behind lawful rights in these circumstances promotes the rule of law and is undoubtedly in the public interest, as the judge observed (paras. 55, 75).

- [51] I infer that Verhoeven J. concluded that there was an enforcement gap; he said that refusing the application would leave Teal Cedar with no remedy (para. 51). The behaviour of those blocking the road in the period leading up to Teal Cedar's application may not have risen to the level required to make criminal charges a real prospect at that time. In those circumstances, I understand why an injunction was necessary to avoid leaving Teal Cedar without a remedy.

- [52] Justice Verhoeven referred to communication between an RCMP lawyer and Teal Cedar's counsel (para. 68). This email is in the application record; it included reference to a selection of offences in the Criminal Code that may apply in circumstances where protests are not "peaceful, lawful and safe." The list includes ss. 423(1)(g) and 430(1), quoted earlier in these reasons.

[53] The RCMP lawyer acknowledged that these provisions are available to police. However, he pointed to the Crown's charge approval process, and referred to the Crown's policy in civil disobedience cases mentioned earlier in these reasons:

Past practice has shown that Provincial Crown Counsel often do not approve criminal charges arising from protests and civil disobedience -- see the AGBC policy CIV 1 . This is a disincentive for police to rely on the Criminal Code for enforcement in protests and civil disobedience.

[54] Whereas there may have been reason for pessimism about the Crown approving charges in April, the methods of those impeding Teal Cedar have escalated to the point where serious property damage has been done and risk of serious personal injury has emerged. The digging of multiple deep trenches in the roads in TFL 46, and building a series of tripods up to 30 feet high are good examples of the escalation in illegality. And, all parties to this application agree that interactions between police and protesters are becoming more intense.

[55] The Prosecution Service's CIV1 policy bears an effective date of 1 March 2018. The relevant portion reads as follows:

All charge assessment decisions relating to acts of civil disobedience and decisions to prosecute contempt of related court orders should immediately be brought to the attention of a Regional Crown Counsel who should consult with the Director of Criminal Appeals and Special Prosecutions, about the appropriate action to be taken. Charge assessment should take place as soon as possible once all the relevant information is available.

Use of Charges under the Criminal Code

Acts of civil disobedience, including conduct involving public demonstrations, may come into conflict with the law and obstruct or interfere with the rights of others. The use of criminal sanctions in these situations may not always be in the public interest. Factors that favour prosecution may include:

- the conduct involves violence resulting in physical harm or assaults with a reasonable apprehension of physical harm
- serious property damage has been caused, or there is property damage with a reasonable apprehension that serious property damage will be caused
- persistent less serious offending is significantly disruption public access to, or enjoyment of, lawful public activities
- as assault on a peace officer has occurred
- the circumstances are such that the public interest clearly requires a prosecution, for instance, where the safety of emergency personnel, police or other persons is jeopardized.

When Crown Counsel are consulted, they should encourage the police to exercise discretion in selecting an appropriate response for each case based on its unique facts, while ensuring that the general public is not unduly inconvenienced.

- [56] It is apparent that the policy has changed in at least one material respect since 2000, when it was quoted by Justice McEwan in the Slocan Forest Products case, at para. 124. At that time, the policy on civil disobedience said: "The use of criminal sanctions in these situations is generally not appropriate." The present policy appears to make more room for using the laws promulgated by Parliament: "The use of criminal sanctions in these situations may not always be in the public interest."
- [57] Recall that Mr. Shaw, who would be consulted in the charge approval process in these circumstances of civil disobedience, asserted in the midst of this hearing that CIV1 is the policy to be applied and that each case referred by police is considered on its merits. The current policy seems clear enough: while the use of the criminal law may not always be in the public interest in civil disobedience cases, where serious property damage has been caused, or if persistent less serious offending is significantly disrupting public access, or if police safety is jeopardized (as the RCMP assert is the case presently), then such factors favour prosecution.
- [58] Whether in the absence of an injunction the Criminal Code will be enforced is a matter for the police and those responsible for their direction. And, whether any charges recommended by police are approved is a matter for the Crown. However, in order to make a finding about whether there is currently an enforcement gap, it is necessary for me to assess the relative likelihood of these criminal enforcement measures being pursued based on current circumstances. On reading Mr. Shaw's letter and the current version of the Prosecution Service's policy in civil disobedience cases, and on reviewing the substantial body of evidence showing the escalation of illegal activity and tension in TFL 46, and on taking notice of pertinent provisions in the Criminal Code, I am not persuaded that there is currently an enforcement gap. In making this finding, I draw no conclusions about the application of the policy beyond its clearly stated words, and the unqualified communication from the Prosecution Service that each case is considered on its merits.
- [59] It was suggested in argument that the police might not forward charges for approval without assurances from the Prosecution Service that charges would be approved. I cannot accept this submission. The police know what the Criminal Code says. They know what the Prosecution Service policy is. They are witnessing behaviour that by the clear terms of this policy would favour a decision to prosecute. And, they have the letter from Mr. Shaw of the Prosecution Service indicating that the policy will be applied if the Crown is called on to exercise its charge-approval discretion. Attentive to the role of the Prosecution Service, Mr. Shaw is not offering assurances beyond a commitment to follow its policy. With respect, the police (and in my opinion, this Court) would, if they sought further assurances, be stepping out of line.

- [60] In the current circumstances, I am not persuaded that there is an enforcement gap. This dilutes somewhat the rule of law concern posed by illegal interference with Teal Cedar's lawful activities. However, there remains a risk that the criminal law will not be employed or will not effectively address the illegal behaviour that continues to plague Teal Cedar. Therefore, when balancing convenience, some weight must be attached to this aspect of the public interest.
- [61] Adding to the case for an extension of the injunction is the fact that the economic impact of the continuing illegal activity on Teal Cedar is not only irreparable but significant, and this adds considerable heft to the case for an injunction. The injunction has not allowed Teal Cedar to resume normal operations in TFL 46, but it has not been wholly ineffective: on occasion the company has been able to conduct some of its logging activities.
- [62] There is likely some economic impact on others, too, including Teal Cedar's contractors, and the Pacheedaht and Ditidaht First Nations. The evidence does not disclose how much the First Nations' stumpage revenue-share amounts to. (Teal Cedar complied with my direction to serve the Pacheedaht First Nation and Ditidaht First Nation by serving their elected chiefs, but neither filed an application response.)
- [63] I also take into account the public interest consideration that public access to the roads in TFL 46 might be obstructed if an injunction is not in place. Of course, some of the weight that might otherwise attach to this factor is affected by the RCMP's approach to enforcement which has substantially impaired public road access. In fact, it is conceivable that public road access will be enhanced with no injunction in place.
- [64] Taken together, I accord significant weight to these considerations that favour extending the injunction. However, I do not agree with Teal Cedar that there are no competing equities. There may have been nothing of substance to balance in April 2021 when Verhoeven J. granted the injunction, but that has changed over the past six months. In fact, I have concluded that the context has changed to the extent that the considerations that continue to favour an injunction are now outweighed by a combination of countervailing public interest considerations.
- [65] Before discussing these relevant countervailing considerations, I pause to underscore a point I made earlier. While a powerful case might be made for the protection of what remains of British Columbia's old growth temperate rainforests, and this issue is of considerable public interest and importance, the evidence marshaled to support this argument cannot be considered. With due respect for the forceful submissions I received to the contrary, I conclude that to take account of this type of public interest would amount to contempt of constitutional constraints on judicial powers. To borrow a phrase from Justice Voith's judgment in Cermaq, such considerations are "not on the table."
- [66] I return to legally relevant public interests. In the absence of a demonstrated enforcement gap, the strong public interest in keeping the Court away from the front line of this dispute comes into sharp focus. Consider the current circumstance facing the Court: having been

drawn into the fray, the RCMP, fully supported by Teal Cedar, submit that the Court should get in deeper by surging more authority to the police, such as greater search powers and expansive exclusion zones. In fact, citing operational considerations and safety concerns, the position of the commander of the RCMP's enforcement operation is that without these additional powers, "the RCMP will have to reevaluate its ability to continue to conduct enforcement operations."

- [67] Ramping up enforcement powers is one available option, bearing in mind as I must the accompanying impact on civil liberties. In the Central Kootenay case, McEwan J. called the process of making a civil claim and moving for a civil injunction "the adaptation of the mechanics of a civil claim for the purpose of legislating, by way of injunction, a form of ad hoc criminal law" (para. 7). This sums up what I am now invited to do by Teal Cedar and the RCMP: to spend more of the Court's reputational capital by putting together an order that will keep at bay protesters who might (or might not) be inclined to breach the injunction.
- [68] Another available choice is to get the Court out from the middle of this dispute, and let the government and police do what they will with the tools at their disposal -- patrolling the roads and other lawful preventive policing measures, mobilization of the criminal law, and use of provincial laws such as the Forest and Range Practices Act. And, if the available means of ensuring that rights lawfully bestowed by the Legislature can be exercised are not adequate, there are legislative options. See *International Forest Products Limited v. Kern*, 2000 BCSC 1141, at para. 59.
- [69] Further public interest considerations arise out of the manner of enforcement of Verhoeven J.'s order. I conclude that the Court's reputation has been depreciated by the manner in which the order has been enforced.
- [70] Justice Verhoeven granted Teal Cedar's request for a police enforcement clause, and for good reason. It was apparent that the power to arrest and remove persons breaching the order would be necessary. In fact, I think that granting the injunction without an enforcement order would have been an arid exercise.
- [71] I am sure that the police officers in TFL 46 are frustrated. It has been a hot summer and they have spent it in a stand off with persistent and committed protesters. I doubt that autumn rains will improve the mood. I have been given a large amount of affidavit and video evidence that bears on many aspects of the behaviour of the protesters, the police, and Teal Cedar. The affidavits and submissions occasionally descended into hyperbole. I accept the submission that I should be careful about drawing firm conclusions about particular events and confrontations.
- [72] I cannot, however, accept the submission of the Attorney General of Canada that I should await the outcome of police complaint procedures -- which could take years -- before making any findings. Similarly, on the other side, I cannot await the outcome of proceedings that have been taken against alleged contemnors before coming to grips with the facts. It is in the nature of interlocutory injunction proceedings that the evidence is imperfectly formed:

as Lambert J.A. recognized in the excerpt from *CBC v. CKPG* that I referred to earlier, the judge needs to make an assessment of the balance of convenience on the basis of necessarily incomplete evidence that has not been tested by cross-examination.

- [73] The body of evidence, incomplete and untested as it is, does allow me to draw some relevant conclusions. There have been countless interactions between police and protesters. Most of these have been respectful, and nearly all to this point have been non-violent. This is consistent with what I have come to know during many bail applications by even the most militant of the protesters. They are respectful, intelligent, and peaceable by nature. They are good citizens in the important sense that they care intensely about the common good. The videos and other evidence show them to be disciplined and patient adherents to standards of non-violent disobedience. There have only been occasional lapses from that standard.
- [74] Those opposed to the injunction are critical of the level of force used by the police, and of the means by which persons are extracted from trenches or devices. When making arrests of people who are not fully cooperative, a reasonable level of force is necessary to effect an arrest and removal. On the totality of the evidence, I find that the police have generally used reasonable force to effect arrests and control crowds, and reasonable means to remove protesters from trenches and devices. The extractions entail some risk to those in the trenches or devices, and to the extraction teams, but it is notable that there is no evidence of serious injury after so many extractions.
- [75] Some of the videos do show disquieting lapses in reasonable crowd control. One series of images shows a police officer repeatedly pulling COVID masks off protesters' faces while pepper spray was about to be employed. Another shows a police officer grabbing a guitar from a protester and flinging it to the ground, where another officer stomped on it and kicked what was left of it to the side of the road. There is some force to the argument that occasional police excess is to be expected in the circumstances of a case like this. As one counsel put it, the execution of arrests and removals "was never going to be pretty." The problem, of course, is that these incidents of excess are widely broadcast, and they are seen as the methods by which this Court's order is being enforced.
- [76] There are many RCMP press releases in evidence. The police provide a near daily update, invariably entitled in bold font: "Update #__ on police enforcement of injunction order in Fairy Creek Watershed." And the press releases usually begin with the words, "Police enforcement of the BC Supreme Court injunction order in the Fair Creek Watershed area continued today . . ." The Court's reputation is affected by the means of enforcement of this order, a fact reinforced by the constant police messaging that their actions are undertaken to enforce this Court's order.
- [77] That said, isolated instances of widely broadcast misconduct by front-line police officers when enforcing the Court's order are not enough to meaningfully tip the scales. There are, however, further concerns about police actions taken in the name of the enforcement of this Court's order.

- [78] The RCMP's expansive interpretation of Verhoeven J.'s order and the blockade methods used by the RCMP as part of their enforcement operation were the subject of my earlier ruling and reasons explaining why the expansive exclusion zones and checkpoints are unlawful; I considered the infringements of civil liberties to be unjustified, substantial, and serious. It goes without saying that unlawful measures imposed by those given authority to enforce the Court's order does no credit to the rule of law or the Court's reputation, especially when those measures trench on civil liberties in a substantial way. The evidence before me indicates that the RCMP have now stopped searching pedestrians, but they continue to enforce exclusion zones that are more expansive than the law permits. Moreover, the media's right of access continues to be improperly constrained. One prominent example of the difficulties journalists continue to face is the CBC camera crew that was made to hike seven kilometres in and seven kilometres out, with their heavy equipment, to an area where RCMP enforcement activity was occurring on 26 August 2021.
- [79] There are other command decisions made by the RCMP that impact adversely on the Court's reputation. The front-line RCMP members have been ordered to remove any individual identification, and these orders have been followed. Moreover, the decision was made against enforcing an RCMP directive to its members not to wear "thin blue line" patches on their uniforms. The evidence establishes that the result of this combination of decisions is that the enforcement of this Court's order has in recent months been done by police officers without identifying names or numbers on their uniforms, and by some police officers wearing "thin blue line" patches in contravention of RCMP policy. The justifications for the orders to remove identification and for not enforcing the directive against wearing "thin blue line" patches are not persuasive.
- [80] Putting aside a visceral reaction against seeing Canadian police officers in a position of anonymity from the perspective of their fellow citizens, there are good reasons for insisting on police being precisely identifiable at least by regimental number. Anyone, especially if congregated in a group -- even police officers -- might be tempted to stray from propriety if there is an increased chance that they might not be accountable for their actions. Moreover, the RCMP say that anyone who is concerned about the manner in which they have been treated by police is free to pursue their complaints through appropriate channels. Needless to say, the complaint process is made more difficult when the police officer involved is not readily identifiable. A citizen may well decide not to complain if they do not know the identity of the police officer they want to complain about. The directive to remove name and number identification from uniforms was made because of concerns that police officers or their families might be harassed on social media. The same theoretical concern exists for every police officer on the street -- and for every lawyer or judge that appears in court on this case or any other. The same goes for nearly everyone else that is granted authority. We identify ourselves. Accountability requires it.

- [81] In the course of the hearing, I was told by counsel for the Attorney General of Canada that patches with regimental numbers are in the hands of some units and are on order for others. There is, however, no indication in the evidence that the RCMP members who are enforcing the injunction will be ordered to wear the numbers, and if the experience of the "thin blue line" patches (which I will presently address in some detail) is anything to go by, it cannot be confidently asserted that any such order would be followed or enforced.
- [82] "Thin blue line" patches evidently carry different meanings for different people. One police officer of Indigenous ancestry deposed that the patch is akin to a mourning ribbon, honouring the memory of police officers that have died in service. It is certainly the case, however, that the "thin blue line" patches deeply offend some citizens. The protesters are a cross-section of our multi-cultural society, including many Indigenous people. I have the affidavit evidence of Whaletail, who also uses the name Pally Smith. She is the niece of William Jones, a Pacheedaht elder who is a respondent on this application. She deposed that she and other Indigenous people see the "thin blue line" patch as symbolic of the history of RCMP involvement in enforcing policies that brought about the genocide of Indigenous peoples. She explains that the wearing of the patch by RCMP members is very hurtful. She says that this has been explained many times to the RCMP enforcing the Court's order, to no avail.
- [83] It might be argued that this is "just a patch, just a symbol." But we all know the impact that symbols can have. The RCMP has used their full dress uniform (scarlet tunic, felt hat, Sam Browne belt, etc.) to powerful effect for many years. This uniform, instantly recognized around the world, symbolizes the predominantly honourable history of a police force dedicated to the service of this country and its citizens. I am certain that RCMP commanders know that these "thin blue line" patches are seen as provocative and insensitive by some of the citizens they serve.
- [84] The Corps Sergeant Major of the RCMP oversees dress and deportment. In October 2020, he directed that this symbol "is not an approved symbol and is not to be worn on our uniform or displayed on other equipment." The National Police Federation, the RCMP members' union, takes the view that the "thin blue line" represents the "important and often dangerous role police officers play in providing a barrier between social order and chaos." In response to the Corps Sergeant Major's direction, the union encouraged its members to continue to wear the patch, and said that it would defend any member who faces disciplinary action.
- [85] The current RCMP policy in British Columbia is that there "would be no position taken on ordering the removal of the patch." Chief Superintendent Brewer deposed that he has briefed members involved in the enforcement of the Court order on the positions of the RCMP and the union, and in the absence of an order or direction from his commanding officer, he has not ordered members on this Fairy Creek assignment to remove the "thin blue line" patch.

- [86] I addressed the "thin blue line" issue informally at a judicial management conference. I suggested that the RCMP might consider asking their members to remove the patch in these circumstances where they are enforcing a court order. The response to my suggestion came in the RCMP's written argument: matters relating to RCMP attire are for the Commissioner of the RCMP, and the "thin blue line" patch is a labour relations matter in which this Court should not become involved. Of course, I have no jurisdiction or inclination to make orders about RCMP attire or otherwise become involved in its labour relations. But the RCMP has made a choice not to enforce their direction against the wearing of a symbol that it knows is divisive. It must realize that in circumstances where RCMP members are enforcing the Court's order, the wearing of this symbol reflects on the Court. I intend to do no more than to consider the effect of this regrettable RCMP decision on the Court's reputation, which is a relevant public interest consideration on this application.
- [87] In the balance, I attach weight to the combination of the prospect of significant harm to Teal Cedar and others, and accompanying damage to the rule of law, if the injunction is not extended. I acknowledge the risk that the police may not seek Criminal Code charges or the Crown may exercise its discretion against charge approval. However, having regard to recent escalation of tension and obstructive behaviour, I think there is every chance that criminal law remedies will be employed.
- [88] On the other hand, methods of enforcement of the Court's order have led to serious and substantial infringement of civil liberties, including impairment of the freedom of the press to a marked degree. And, enforcement has been carried out by police officers rendered anonymous to the protesters, many of those police officers wearing "thin blue line" badges. All of this has been done in the name of enforcing this Court's order, adding to the already substantial risk to the Court's reputation whenever an injunction pulls the Court into this type of dispute between citizens and the government.
- [89] In the current circumstances, I am not persuaded that the balance of convenience favours extending the injunction. The factors weighing in favour of extension do not outweigh the public interest in protecting the Court from the risk of further depreciation of its reputation. It is not just and equitable in all the circumstances of the case to make the order sought. I exercise my discretion by declining to extend the injunction. The interim extension order that I made at the close of the hearing on 17 September 2020 shall expire at 4:00 p.m. today, 28 September 2021.

Other Applications

- [90] These reasons address Teal Cedar's application for an extension of the injunction. There are, however, three other applications before the Court. At a management conference I directed that these four motions be heard together because the evidence and argument on each application bears directly on the others. Two of these other applications seek variations of the injunction order, and are rendered moot by the failure of the extension application: the Attorney General of Canada's application to vary the order such that the RCMP are able to

exercise greater access control and search powers; and the application by Ms. Strain's clients seeking numerous variations to the order.

- [91] The remaining application is by members of the public affected by RCMP access control measures; they seek a declaration that the RCMP measures have not complied with the Court's public access ruling, and a finding of contempt against the RCMP. In the course of these reasons on the extension application, I have touched on the question of whether the RCMP have brought their operation into line with my ruling against their expansive exclusion zone policy. I decline to make any declarations in this regard -- it would be unlikely to serve any present purpose, given the outcome of the extension application. The contempt aspect of this application was adjourned before the hearing, at my request. It may well be that the outcome of the extension application will cause the contempt application to fall away. If not, I direct that no steps be taken to reset the application until a further management conference is held.

"Thompson J."

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