

CANADA / JUDGMENT

Teal Cedar Products Ltd. v. Rainforest Flying Squad

2022 BCSC 2344

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 2344 Teal Cedar Products Ltd. v. Rainforest Flying Squad IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2022 BCSC 2344 Date: 20221130 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 Before: The Honourable Justice Thompson Oral Reasons for Sentence - Hayden Mebs Counsel for the Crown: N. Melling M. Crisp A. Kaban L. Turner (A/S) Counsel for the Contemnor: E. Strain N. Pearson (A/S) Place and Dates of Hearing: Nanaimo, B.C. August 4, 2022 October 19, 2022 Place and Date of Judgment: Nanaimo, B.C. November 30, 2022

- [1] THE COURT: Hayden Mebs has admitted wilfully contravening a court order and doing so in a public way. The Crown and the contemnor agree that the appropriate sentence is 50 hours of community work service. The narrow issue on this sentencing is whether the work service should be imposed in the framework of a conditional discharge order. To this point I have sentenced approximately 120 persons for contempt of Justice Verhoeven's April 2021 order that, inter alia, prohibits blocking roads in a defined area on southern Vancouver Island roughly congruent with the boundaries of a forest tenure held by Teal Cedar. I have imposed a probation order on many with the sole substantive term being completion of community work service. This case is the first in which a contemnor has sought a discharge.
- [2] Mr. Mebs blocked a road in the injunction area on 5 June 2021, a few weeks after police enforcement of the injunction order began. He was prone on the road, with an arm secured into a hole with a "sleeping dragon" device wrapped in chicken wire. He was arrested and obstacle removal experts extracted him.
- [3] Mr. Mebs is a childcare worker and, for the past three years, has worked at Strathcona Park Lodge as an outdoor educator. In addition, for the past two fire seasons he has done the dangerous work of fighting forest fires as a crew leader. He has seen first hand the effects of climate change, and the damage done to ecosystems by short-sighted forest policies. He is

deeply discouraged by broken government promises on climate change and old-growth logging. He is described in the character reference letters as empathetic, thoughtful, principled, and hardworking.

- [4] The principles of sentencing for criminal contempt are referred to at length in the Crown's written submission. This written submission, which was made an exhibit at the hearing, refers to leading cases and well-established principles. These principles are not the subject of controversy on this sentencing. Denunciation and deterrence must be in the first rank of sentencing considerations so as to carry out the Court's responsibility to maintain the rule of law: *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCCA 156 at para. 57. This is especially so in cases of the serious threat to the rule of law presented by large-scale and deliberate defiance: *R. v. Bridges (No. 2)* (1989), 48 C.C.C. (3d) 545 at 549 (B.C.S.C.); *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCCA 26 at para. 70.
- [5] Of course, the overarching principle of proportionality must be observed when arriving at a penalty. I must consider the circumstances of the contempt and the circumstances of the contemnor. The Court's inherent jurisdiction in contempt matters allows for the imposition of a wide range of penalties. The Crown concedes that a discharge or the practical equivalent of "binding over" is an available disposition in a criminal contempt case, but submits that it would not be a fit sentence in this case having regard to the context of large-scale and organized defiance of Justice Verhoeven's order.
- [6] Counsel approached the question of whether a discharge ought to be granted to Mr. Mebs by using as guides s. 730 of the Criminal Code and *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450 (B.C.C.A.), the leading case on the Code's discharge provisions. The discharge must be in the best interests of the offender, and not be contrary to the public interest. In *Fallofield*, at 454-455, the Court observed that generally the first of these conditions "would presuppose that the entry of a conviction against him may have significant adverse repercussions." I am not satisfied that the finding of criminal contempt without an accompanying discharge "may have significant adverse repercussions" on Mr. Mebs.
- [7] First, as Justice Affleck observed in the course of declining to impose a discharge on a contemnor in *Trans Mountain Pipeline ULC v. Mivasair*, 2018 BCSC 1890 at para. 32, the main purpose of granting a discharge is to avoid potential consequences of a criminal record and a finding of criminal contempt does not result in a criminal record: The main purpose for granting a discharge, either conditional or absolute, is to avoid the offender having a criminal record. A record of conviction is not at issue in these proceedings. There is to be no record of conviction as contemplated by s. 570 of the Criminal Code of Canada and a record of these sentences is not to be entered into the database of the Canadian Police Information Centre. And see *MacMillan Bloedel Ltd. v. Simpson* (1994), 92 B.C.L.R. (2d) 1 (C.A.) at paras. 81-92.

- [8] Second, it is not an admitted fact and I cannot conclude on the record before me that the finding of criminal contempt would cause interference with Mr. Mebs' ability to cross the border to fight fires or for any other reason. Particularly in the light of Affleck J.'s observations about the absence of a criminal record, it is theorizing in the absence of evidentiary support - in other words, bare speculation - to suggest that Mr. Mebs' employment or other endeavours involving travel might be affected.
- [9] Mr. Mebs is without a criminal record and is a person of good character, and I accept that specific deterrence is not necessary. The absence of a demonstrated possibility of significant adverse repercussions weakens the case for a discharge but that may not end the analysis: I bear in mind the Court of Appeal's use of the word "generally" when addressing this issue in Fallofield. Further, while I am not satisfied that it is in Mr. Mebs' interest to grant a discharge because of the combination of the absence of a criminal record resulting from his admission of criminal contempt and the absence of adverse repercussions, it is advisable that I consider the public interest in case I am wrong in this conclusion.
- [10] The public interest encompasses considerations such as the nature and seriousness of the conduct, the necessity for general and specific deterrence, rule of law considerations, and public confidence in the administration of justice. In Fallofield at 455, the Court cautioned that the public interest in deterring others must be given due weight but "does not preclude the judicious use of the discharge provisions." In the Trans Mountain case referred to a moment ago, Justice Affleck said this at para. 33: Apart from that consideration, in my view it is not in the public interest that Ms. McLean be granted a conditional discharge when the requirements of general deterrence, and denunciation of illegal conduct, play such a large role in these proceedings. In *Health Care Corp. of St. John's v. Newfoundland and Labrador Assn. of Public and Private Employees*, [2000] N.J. No. 358, Chief Justice Greene of the Newfoundland Supreme Court Trial Division wrote at para. 62 "I do not believe it to be in the public interest to grant a discharge where the purpose of imposing a penalty is to promote observance of the court's orders, by acting as a deterrent, especially in situations where previous cases imposing a lenient sentence do not appear to have had the requisite deterrent effect". Also see *Trans Mountain Pipeline ULC v. Mivasair*, 2020 BCSC 1512 at paras. 158-159, wherein Justice Fitzpatrick dismissed the notion of a discharge as an unduly timid response.
- [11] I appreciate that Mr. Mebs's situation is not one where others had been previously sentenced in this proceeding at the time he committed his act of public defiance of Justice Verhoeven's order. Nevertheless, I think a discharge would dilute the necessary messages of denunciation and deterrence in what was, by the time Mr. Mebs blocked the logging road, a large-scale and organized campaign of action contrary to the injunction order.
- [12] Like the others that I have sentenced in this proceeding, the Crown acknowledges Mr. Mebs is of good character and that he acted for altruistic purposes. And like most others, Mr. Mebs steps forward without complaint to accept the consequences of his civil disobedience. His motivation for seeking a discharge is not to avoid punishment but to avoid a potential complication of being unable to respond to a call to fight fires outside of Canada. I expressed

my views on the interrelationship between altruistically motivated non-violent disobedience and moral culpability when sentencing Jonaven Moore for his wilful and public contravention of Verhoeven J.'s order: *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCSC 659 at paras. 9-12. An altruistic motive is in no sense a legal excuse or defence. However, the requirement to assess the degree of an offender's moral culpability to achieve proportionality surely makes room for considering whether the illegal conduct was motivated by selfish reasons or whether it was undertaken so as to try to help others. How much weight an altruistic motive carries in a particular sentencing case is another issue, but in my respectful opinion it would be contrary to well-established sentencing principles to dismiss as irrelevant the fact that an offender acted out of concern for other people or other species.

- [13] When assessing Mr. Mebs' moral culpability, I take into account that he was motivated to protect an endangered ecosystem and to do his part to mitigate the climate change disaster that is beginning to unfold. And, I have done so when sentencing the many others who have shared these altruistic motivations. In my estimation, a probation order with a requirement for 50 hours of community work service recognizes the need to deter and denounce while at the same time acknowledges a degree of mitigated moral culpability.
- [14] Mr. Mebs, I cannot accede to Ms. Strain's able submission in favour of a discharge for the reasons I have given, but I do wish to express to you my admiration for your community spirit including your dangerous firefighting work and I wish you the best of luck.
- [DISCUSSION OF TERMS OF PROBATION ORDER] "Thompson J."

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