CANADA / JUDGMENT

Teal Cedar Products Ltd. v. Rainforest Flying Squad

2023 BCSC 1400

COURT
Supreme Court of British Columbia

DECIDED
23 June 2023

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2023 BCSC 1400 Teal Cedar Products Ltd. v. Rainforest Flying Squad

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Teal Cedar Products Ltd. v. Rainforest Flying Squad,

2023 BCSC 1400

Date: 20230623

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

Corrected Judgment: The text of the judgment was corrected at paragraph 18 on 21 August 2023.

Before: The Honourable Justice Thompson

Oral Reasons for Judgment re Jordan Quinn

Counsel for the Crown:

C. Peel

R. Watmough

Counsel for the Alleged Contemnor:

M. Nefstead

Place and Dates of Trial:

Nanaimo, B.C.

June 6 & 7, 2023

Place and Date of Judgment:

Nanaimo, B.C.

June 23, 2023

[1] THE COURT: Jordan Quinn is alleged to have committed criminal contempt of this Court's injunction order that prohibits interference with use of roads within a defined large area on southern Vancouver Island. On 16 July 2021, Mr. Quinn was atop a tripod formed by logs. He and this 12 to 14-foot-high contraption were blocking Reid Mainline, one of the roads in the injunction area. The RCMP brought him down and arrested him for contempt of court.

[2] The Crown is prosecuting this case and other contempt cases in this proceeding on the invitation of the Court: Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 1380. The Crown called the police officer who read a short script about the injunction to the accused. One of the arresting officers also gave evidence. The crux of the Crown's case is a series of three video recordings of the events of 16 July 2021, and a set of admissions filed as an exhibit. The evidence led by the Crown also includes a series of online news articles published between 1 April 2021 and 18 May 2021. These articles spoke of the old-growth-logging protests and blockades, and the injunction order of 1 April 2021 including its police enforcement terms. The articles published on 18 May 2021 referred to arrests of protestors at a blockade. Mr. Quinn elected not to call evidence.

[3] Mr. Quinn is not a defendant in this civil action, but the injunction provides that it applies to anyone with knowledge of the order. In any event, before a person may be found in contempt of an order, they must either be personally served with the order or have actual

knowledge of the order and its material terms. In Bhatnager v. Canada (Minister of Employment and Immigration), [1990] 2 S.C.R. 217 at 225, Justice Sopinka said: "On the cases, there can be no doubt that the common law has always required personal service or actual personal knowledge of a court order as a precondition to liability in contempt."

[4] Thus, personal service is sufficient to prove knowledge. If personal service has been effected, knowledge of the material terms of the order is imputed - provided, of course, the person served has the opportunity to read the order. The issue in this case is whether the Crown has established one of these two alternative preconditions to liability: either personal service or actual knowledge.

[5] In MacMillan Bloedel Ltd. v. Simpson, [1996] 2 S.C.R. 1048 at para. 36, the Supreme Court of Canada spoke of the notice-delivery methods used at the time of the civil disobedience in Clayoquot Sound:

It is fundamental that no state founded on the rule of law can permit members of the public to be detained and punished for violating an order of which they are ignorant. If members of the public are to be charged with obstruction of justice for having disobeyed an injunction, they must first be apprised of the existence and terms of the order and be given an opportunity to comply. That is precisely what was done in enforcing the injunctions here. Before a protestor was arrested, he or she was handed a copy of the order and its terms were read to him or her. The protestor was then asked to quit the blockade. Most complied. Only those who refused were arrested.

[6] The RCMP have taken a different approach at Fairy Creek than was the practice when enforcing the Clayoquot Sound injunctions. In the case at bar and like cases, the Court's order was not read aloud. Before arrest, the RCMP followed their practice of reading a brief script that refers to the injunction. In many cases, a copy of the order was not handed to or left with alleged contemnors.

[7] In the case at bar, Staff Sergeant Charney read this script. Additionally, however, he placed a copy of the injunction order underneath the tripod - I will return to the words spoken by S/Sgt. Charney and Mr. Quinn later in these reasons. Mr. Quinn did not descend from his perch. The process of removing him from the tripod began approximately one hour and 20 minutes later. The removal and arrest took 20 minutes. The police then complied with s. 10 of the Charter, and transported Mr. Quinn by vehicle to a mobile command post for processing.

[8] Unlike a prosecution for an infringement of the Criminal Code, there is no presumption that the accused in a contempt-of-court-order case knows the law they are alleged to have breached. By one means or another, it must be proved beyond reasonable doubt that an alleged contemnor was apprised of the existence and terms of the order. The RCMP's decision to use their short-form script rather than reading aloud the material terms of the injunction order has led to litigation of the knowledge issue in this proceeding, including in three somewhat similar cases. These are indexed at 2022 BCSC 515 [Kane], 2023 BCSC 201

[Henderson], and 2023 BCSC 904 [McKinty-Desautels]. The outcome in these three cases turned on their facts and the arguments advanced in relation to those facts.

[9] In Kane, the accused was lying on a road in the injunction area with an arm in a section of plastic tube inserted into the ground. The standard form script was read by an RCMP officer before arrest. The order was not served. The accused took the point that in order to prove knowledge it was necessary to either provide a copy of the order or to read aloud its material terms. I rejected this argument, and concluded that a plain language announcement was a permissible method of establishing notice.

[10] In Henderson, the alleged contemnor was on top of a tripod blocking a road in the injunction area, and an RCMP officer read the short-form script before arrest and removal. Again, a copy of the injunction order was not served. The accused's argument in Henderson focused on the words in the RCMP script, and I accepted the submission that the words of the script were insufficient to prove knowledge of material terms of the injunction.

[11] In McKinty-Desautels, the alleged contemnor attached himself to a log spanning the width of a road in the injunction area. A copy of the injunction was placed before him, and this action was followed immediately by a reading of the RCMP short-form script, which was in turn followed immediately by his arrest. I accepted the Crown's contention that notice may be proved by personal service of an injunction order, but Mr. McKinty-Desautels was not given any opportunity to read the order and comply with it. I held that the process of (1) apprising an alleged contemnor of the existence and terms of the court order, and (2) giving them an opportunity to comply, must be meaningful and cannot be reduced to a pro forma exercise.

[12] Returning to the case at bar, I conclude that before Mr. Quinn was removed and arrested he was served with a copy of the order with ample opportunity to read and digest its contents, and comply with its terms. The script that was read to Mr. Quinn by an RCMP officer referred to the injunction order. Mr. Quinn was atop the tripod and out of reach, so the RCMP officer placed a copy of the injunction order underneath the tripod, and said: "Here's your copy of your injunction right there." I have no doubt that Mr. Quinn knew that a copy of the injunction order was being left with him. I reject any suggestion that Mr. Quinn might not have appreciated that the document was a copy of the injunction order or might not have noticed it.

[13] The material sequence of facts began with S/Sgt. Charney reading the RCMP script to Mr. Quinn:

There is a civil injunction order in place issued by the Honourable Mr. Justice Verhoeven of the British Columbia Supreme Court. Be informed by you blockading this roadway and preventing Teal Cedar and their contractors from conducting their operations, you are in breach of that injunction order. I ask you step aside and remove the blockade, or you'll be arrested for civil contempt of court. By not stepping aside, I confirm you understand your jeopardy. Are you willing to come down?

[14] Mr. Quinn responded in French, asking, "In French, please?" S/Sgt. Charney testified that he has no comprehension of French, and that he did not understand what Mr. Quinn was saying. S/Sgt. Charney said, "Okay, sounds good, thank you; you were speaking quite well, English, before." At that time, S/Sgt. Charney placed a copy of the injunction order beneath the tripod and said, "Here's your copy of your injunction right there." Mr. Quinn, in French, then said: "Again, in French please, sir," and seconds later, "I can't hear the version in my mother tongue? No?" An off-camera person responded: "You were speaking English before, so . . ." Mr. Quinn then said, in French, "Can I hear the injunction in French please, sir?"

[15] From the time when the copy of the order was left under the tripod at 10:58 a.m., to when Mr. Quinn was removed by the RCMP at 12:41 p.m., the video evidence indicates and I find that the injunction order remained under the tripod where it had been placed by S/Sgt. Charney. And, Mr. Quinn chose to stay on top of the tripod rather than climbing down and reading the order.

[16] Mr. Quinn had placed himself 12 to 14 feet off the ground and it was not possible for the order to be handed to him. He argues that the police might have employed various measures to attempt to put the order in his hands, such as trying to throw the order, attaching the papers to a long stick, or carrying them to him using the bucket from an available excavator. However, this is not a hindsight examination of what more the RCMP could have done to acquaint the alleged contemnor with the material terms of the order. The correct question to be answered is whether, on the basis of the proven circumstances, Mr. Quinn was either personally served with the order (with sufficient opportunity to read it and comply with its terms), or had actual knowledge of the terms of the order.

[17] I conclude the RCMP officer did what was required to effect personal service in these circumstances where Mr. Quinn had intentionally put himself out of reach: S/Sgt. Charney clearly identified the document as a copy of the injunction order, and I find that he placed it as near to Mr. Quinn as practicable. Personal service is achieved when a document is handed to the person, or otherwise left with them. See Thomson v. Pheney (1832), 1 Dowl. 441; Hope v. Hope (1854), 4 De G.M. & G. 328 at 342; 43 E.R. 534; Re Avery, [1952] O.R. 192 (C.A.); Barner v. Barner (1952), 7 W.W.R. (N.S.) 331 at 332 (B.C.S.C.); Orazio v. Ciulla (1966), 57 W.W.R. 641 (B.C.S.C.); McIlvenna v. Viebig, 2013 BCCA 411 at para. 42. In Re Avery, at 199, Hogg J.A. said: "Personal service has been said to be service made by delivering the process into the defendant's hands or by seeing him and bringing the process to his notice."

[18] Rule 4-3(2)(a) of the Supreme Court Civil Rules reflects this line of authority that stretches back nearly two centuries; it provides that personal service of a document on an individual is effected by leaving a copy of the document with him or her.

[19] I find that the injunction order was left with Mr. Quinn and brought to his notice in circumstances where he had ample opportunity before his arrest to climb down from the tripod, read it, and comply with it. He may have chosen not to do so because he either did not care what the order said, or because he thought it unlikely that he would be permitted to remount the tripod if he came down. Regardless, the service of the injunction, accompanied by the opportunity to read the order and comply with it, distinguishes this case from both Henderson and McKinty-Desautels.

[20] This might be a different case if Mr. Quinn had dismounted the tripod in order to read the order and was prevented from doing so or not given an opportunity to comply after reading the order. However, I am not required to deal with these hypothetical circumstances.

[21] It might also be a different case if the evidence provided any support for the conclusion that Mr. Quinn was less than fluent in English. However, it is perfectly clear from his various interactions with police officers after his removal from the tripod, captured on the video-recordings, that Mr. Quinn has a complete command of the English language. In these circumstances there is no reason to believe that he failed to understand S/Sgt. Charney's words when the order was placed at the foot of the tripod, or that Mr. Quinn would be unable to understand the order had he chosen to dismount the tripod and read it. To the contrary, I am satisfied beyond reasonable doubt that Mr. Quinn had the ability to understand the order had he chosen to take the opportunity to read it.

[22] All elements of criminal contempt have been admitted or proved, and I find Mr. Quinn guilty.

"Thompson J."

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Prepared on 27 October 2026 · Esheria