

CANADA / JUDGMENT

Teal Cedar Products Ltd. v. Rainforest Flying Squad

2023 BCSC 563

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 563 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 563

Date: 20230412

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

Reasons for Judgment re Adjournment

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M. Silongan

Place and Dates of Hearing:

Nanaimo, B.C.

March 28-29, 2023

Place and Date of Judgment with Reasons to Follow:

Nanaimo, B.C.

March 29, 2023

Place and Date of Reasons for Judgment:

Vancouver, B.C.

April 12, 2023

- [1] The Crown applied to adjourn ten contempt trials scheduled on the 27 March 2023 assize. I refused the adjournment applications because I concluded that the interests of justice do not favour the further postponement of these trials. I indicated that reasons would follow and these are those reasons.
- [2] In April 2021, Justice Verhoeven pronounced an injunction order that prohibits interference with use of roads and interference with the plaintiff's logging operations within a defined area on southern Vancouver Island. The order has police enforcement terms, and the RCMP began its enforcement operation on 18 May 2021. Many hundreds of arrests were made, almost all of which were in mid-2021.
- [3] I was appointed case management judge in late May 2021. In July 2021, the BC Prosecution Service accepted the Court's invitation to review the circumstances surrounding the contempt arrests and assess whether prosecutions for criminal contempt should be pursued. The Court's reasons for issuing this invitation are indexed at *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 1380.
- [4] After reviewing the individual cases, the Crown has undertaken the prosecution of more than 400 contempt cases. Just over half of these cases have concluded. The remaining cases are on track to be tried on assizes between now and June 2023.
- [5] Each of the ten cases that are the subject of this adjournment application and the majority of the remainder cases have three things in common: (1) the allegation is interference with use of a road in the injunction area; (2) the RCMP read a short-form script to the alleged contemnor which contained information about the injunction, instead of reading the court order or providing the alleged contemnor with a copy of the order; and (3) the Crown relies on the content of this short-form script to prove that the alleged contemnor had knowledge of the material terms of the injunction when they were blocking the road.
- [6] The Crown's adjournment application results from the acquittal of Ryan Henderson. The sole issue on this recent trial was whether the Crown had proved that the accused had actual knowledge of the material terms when interfering with use of the logging road. Defence counsel argued that the contents of this short-form script did not transmit knowledge of the material terms of the order. I agreed that the script was inadequate and rejected the Crown's alternative argument that the accused was wilfully blind: *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2023 BCSC 201. These reasons were delivered on 8 February 2023. In the weeks since, I granted several Crown applications to adjourn contempt trials to allow the Crown an opportunity to digest the Henderson reasons and chart a course on those cases and many others that might be affected.
- [7] At the hearing of adjournment applications for the 27 March 2023 assize, the Crown advised that it intends to apply to the Supreme Court of Canada for leave to appeal the Henderson acquittal, pursuant to ss. 35 and 40 of the Supreme Court Act, R.S.C. 1985, c. S-26. (The

Crown submitted that the Court of Appeal does not have jurisdiction to hear an appeal from acquittal on a common law allegation of contempt of court; this submission appears sound and the alleged contemnors do not quarrel with it.) No leave application had yet been filed, but the 60-day deadline for filing the application and all materials necessary for the application was fast approaching. The Crown indicated that it would ask the Supreme Court of Canada that its contemplated leave application be expedited; the Crown estimates that it will take four to six months for the Court to rule on its leave application. In the meantime, the Crown proposes that these ten cases be placed on an October 2023 fix-date list by which time they expect that their leave application will be decided. In other words, the Crown applied to adjourn these trials to a future indeterminate trial date.

- [8] In support of the submission that the leave application to the Supreme Court of Canada is likely to be decided within six months, the Crown pointed to a leave application filed in this proceeding in relation to my imposition of a publication ban on Crown disclosure materials in possession of two journalists. My reasons in that case were released on 21 June 2022 and are indexed at *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCSC 1039. The journalists sought leave to appeal to the Supreme Court of Canada. Their application was filed on 20 September 2022 and perfected on 13 October 2022. I was told at the hearing that the Supreme Court of Canada had announced it would issue the leave determination on 30 March 2023. (And, the decision denying leave to appeal was in fact released on that date amongst a batch of 40 leave determinations; leave to appeal was granted in three cases, and refused in the other 37.)
- [9] It follows from the Crown's request to postpone these trials and put the cases on an October 2023 fix date list that if leave to appeal is granted, the Crown would either resist fixing new trial dates at that October appearance or would suggest that dates be fixed for a time after the Supreme Court of Canada might be expected to have heard and decided *Henderson*. In the course of Crown counsel's able submissions, I was urged not to speculate about the likelihood of leave to appeal being granted or speculate about when *Henderson* might be decided if leave to appeal is granted.
- [10] However, when an application is made to adjourn any trial, the extent of expected delay if an adjournment is granted is a relevant and often decisive consideration. In fact, the lesson to be drawn from *R. v. Jordan*, 2016 SCC 27, *R. v. Cody*, 2017 SCC 31, and *R. v. Thanabalasingham*, 2020 SCC 18, is unmistakable: presiders hearing adjournment applications and weighing the interests of justice ought to pay close attention to delays occasioned by adjournments. Accordingly, I think it is necessary to assess - albeit in a rough and ready way - not only the relative likelihood that the proposed adjournments would be productive or useful (i.e., in this case the relative likelihood of leave being granted and the appeal being allowed), but to consider the amount of delay that is likely to attend the proposed adjournments.

[11] As an "apex court," the Supreme Court of Canada's principal mission is not error correction. It does hear some appeals "as of right," but most of its workload is consideration of applications for leave to appeal, and hearing and determining the relatively few cases that clear the leave hurdle. The leave criteria are established by s. 40(1) of the Supreme Court Act:

40 (1) Subject to subsection (3), an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court.

[12] Like many courts, the Supreme Court of Canada issues annual reports with statistics that help explain the Court's workings and workload. The Court's 2022 Year in Review is in evidence on these adjournment applications. In each of the past ten years, the very low ratio of successful leave to appeal applications to leave applications considered makes the point that the granting of leave is the exception rather than the rule. In 2022, the Court decided 438 leave applications, and allowed leave in 30 cases - this very low-percentage ratio continues a longstanding trend. In fact, leave to appeal has been granted in less than ten percent of cases in each of the last five years.

[13] It would be presumptuous to delve deeply into whether the Crown is likely to be granted leave to appeal this Court's decision in Henderson. I will only state the obvious from the reasons for judgment: the result in Henderson flowed from the application of principles laid down by the Supreme Court of Canada in its jurisprudence on criminal contempt and wilful blindness to the particular facts of the case, i.e. the words chosen by the RCMP to transmit knowledge of the injunction order. With deference, I suggest that the likelihood of the Supreme Court of Canada being persuaded that the case meets the s. 40(1) leave criteria is, at best, no greater than is indicated by the statistical averages over the past decade, i.e. less than ten percent.

[14] If the Crown happens to be granted leave to appeal, the evidence suggests that it will likely be a further year or so before the appeal will be heard and decided. In 2022, the average period between filing an application for leave to appeal and the Supreme Court of Canada releasing judgment on the appeal proper was 16.5 months, and this, too, continues a longstanding trend - in the last five years, this timeline has varied in a fairly narrow range from a low of 15.2 months in 2021 to a high of 17.4 months in 2020.

- [15] This Court is asked to postpone the trial of these contempt charges arising out of 2021 events in order to allow the Crown to attempt to secure leave to appeal, and, if successful, then attempt to persuade the Supreme Court of Canada to overturn Henderson. It is only if both hurdles are cleared - likely in the latter half of 2024 - that these ten cases would return to viability. Bearing in mind the logistics that I am well aware of as case management judge, these cases would likely come on for trial in very late 2024 or, more likely, in 2025, if the Crown succeeds on its contemplated appeal.
- [16] When deciding adjournment applications, the parties agree that the trial judge's discretion should be exercised "in the light of the realities of each case and consistent with the interests of justice": *R. v. J.C.G.* (2004), 189 C.C.C. (3d) 1 (Que. C.A.). These prosecutions for criminal contempt are in substance and purpose ongoing criminal proceedings, albeit occurring under the rubric of a civil action. See *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901 at 942; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at 879; *R. v. Brassington*, 2018 SCC 37 at paras. 18-22. Accordingly, although criminal contempt is a common law offence, alleged contemnors have been afforded the same criminal law protections the law provides to persons charged under the Criminal Code.
- [17] "In Canadian criminal law, the concept of the 'interests of justice' has come to be understood as encompassing the interests of the accused, the interests of the Crown, broad-based societal concerns and the integrity of the criminal process": *R. v. Cowan*, 2021 SCC 45 at para. 63. In *R. v. Abbey*, 2013 ONCA 206 at para. 29, Watt J.A. described the phrase "interests of justice" as a "legal chameleon that takes its meaning from its surroundings." The phrase "signals the existence of a judicial discretion to be exercised on a case-by-case basis": *R. v. Bernardo* (1997), 121 C.C.C. (3d) 123 (Ont. C.A.) at para. 16.
- [18] I agree with the Crown that broad-based societal concerns must be accorded significant weight in balancing the interests of justice on these adjournment applications. One important societal concern is common to the prosecution of any offence, whether under statute or at common law: the state's interest in seeing that people who are alleged to have committed offences are brought to trial and, if convicted, punished appropriately (*R. v. Askov*, [1990] 2 S.C.R. 1199 at 1219-1220; *R. v. Grant*, 2009 SCC 32 at para. 79). This interest weighs in favour of adjournment in each of the ten cases.
- [19] A second societal concern that favours adjournment of each case arises from the special nature of the alleged offences. The accused are alleged to have taken part in organized public defiance of a court order, and the essential purpose of criminal contempt proceedings is to support and vindicate the rule of law: *TG Industries Ltd. v. Williams*, 2001 NSCA 105 at para. 14; *Poje v. Attorney General for British Columbia*, [1953] 1 S.C.R. 516 at 527; *United Nurses*, at 931-932. While the sentences typically meted out for criminal contempt in this proceeding and others do not approach the sentences consequent on conviction for the most serious offences in the Criminal Code, it is beyond question that criminal contempt harms a society founded on the rule of law.

- [20] A third significant societal concern is the delay that would be occasioned by an adjournment. While I agree with counsel that it is important not to treat these adjournment applications as s. 11(b) Charter motions, it is common ground that in a series of s. 11(b) cases the Supreme Court of Canada has provided important guidance to trial judges hearing adjournment applications. An accused is entitled to trial within a reasonable time, but trial delays also harm societal interests including the integrity of the legal process. Writing for the Jordan majority, Moldaver J.A. endorsed the Court's earlier pronouncements on this subject:
- [25] Last but certainly not least, timely trials are important to maintaining overall public confidence in the administration of justice. As McLachlin J. (as she then was) put it in *Morin*, "delays are of consequence not only to the accused, but may affect the public interest in the prompt and fair administration of justice" (p. 810). Crime is of serious concern to all members of the community. Unreasonable delay leaves the innocent in limbo and the guilty unpunished, thereby offending the community's sense of justice (see *Askov*, at p. 1220). Failure "to deal fairly, quickly and efficiently with criminal trials inevitably leads to the community's frustration with the judicial system and eventually to a feeling of contempt for court procedures" (p. 1221).
- [26] Extended delays undermine public confidence in the system. And public confidence is essential to the survival of the system itself, as "a fair and balanced criminal justice system simply cannot exist without the support of the community" (*Askov*, at p. 1221).
- [21] In *Cody*, the Court reiterated the Jordan instruction that a proactive approach to preventing delay is required - "[i]t is 'not enough to pick up the pieces once the delay has transpired'" (para. 36); even where a proposed adjournment would be deductible as defence delay (and the Crown adjournment applications in the case at bar would not be deductible), a judge may deny applications where they would result in "unacceptably long delay" (para. 37). In *Thanabalasingham*, the Court again emphasized the special proactive role that trial judges must embrace for curtailing unnecessary delay (para. 9).
- [22] I conclude that the proposal to adjourn these trials to wait and see if the Crown gets leave and in due course succeeds in overturning the Henderson ruling, such that, if these events come to pass, there would emerge a prospect of the trials of these alleged contemnors, likely in the latter part of 2024 or in 2025, would cause harm to the integrity of the legal process described repeatedly in recent years by the Supreme Court of Canada. This societal interest weighs heavily against adjourning each of the trials.
- [23] In short, then, the broad societal interests affected by the proposed adjournments are multi-dimensional and countervailing. On balance, I concluded that the examination of broad societal interests weighs against the proposed adjournment in each case.

- [24] It is evident that counsel conducted careful research to try to locate helpful authorities. Although many of the cases cited were before Jordan, all were informative albeit distinguishable on their facts. *R. v. B.R.B.*, 2002 BCCA 340, is an example of an adjournment being refused and the Court applying the law "as it now stands" in circumstances where other cases with the same issue were before the Supreme Court of Canada and scheduled to be heard eight months later.
- [25] The Crown cited a series of cases in which an appellate court was engaged on the same issue as a trial or summary conviction appeal judge, and the trial or appeal was adjourned. In some of these cases, the higher court had already heard the case and reserved judgment (e.g., *R. v. C.T.P.*, 2023 BCSC 416). In others, a leave application determination or the hearing of the appeal was imminent (e.g., *Bessette v. British Columbia (Attorney General)*, 2018 BCCA 59; *Columbia College Society v. British Columbia (Attorney General)*, 2021 BCSC 1916; and *R. v. Kruk*, 2023 BCSC 221). These cases are manifestly stronger adjournment candidates compared to the instant cases where the Crown's application for leave to appeal had not yet been filed.
- [26] *R. v. Bolton*, [2001] O.J. No. 2816 (S.C.J.), is one of the pre-Jordan cases cited by the Crown. The accused applied to stay a possession of child pornography charge on the basis that his right to be tried within a reasonable time had been infringed. The Crown had sought and been granted five adjournments during an 11-month period to await the outcome of the Supreme Court of Canada's decision in *R. v. Sharpe*, 2001 SCC 2, which ruled on the constitutionality of the charging provision in the Criminal Code. The first of these adjournments was granted on 7 February 2000; the matter ultimately was scheduled for trial on 28 May 2001 (para. 12). The Supreme Court of Canada pronounced in favour of the constitutionality of the legislation, reversing the two-to-one result in the British Columbia Court of Appeal. (Because there was a dissent in the Court of Appeal, the Crown acquired an appeal as of right: s. 691(2)(a) Criminal Code.) If the Supreme Court of Canada's decision had favoured Mr. Bolton, the Crown would have withdrawn the charge against him (para. 22).
- [27] In the course of pronouncing on the reasonableness of waiting for the Supreme Court of Canada decision in *Sharpe*, Justice Kruzick said:
- [28] Generally speaking, awaiting a decision of a higher Court on a similar issue may not be appropriate and for the most part should be discouraged. The facts of each case must be considered with care. In the case before me, I find the delay, although long, was not unreasonable as it served the best interests of the administration of justice. There must be a balance struck between the finality of proceedings and the determination of cases on a just application of clear legal definitions. Each situation must be resolved in its own context.
- [29] Where an accused seeks the benefit of the application of a decision, which has gone in his favour, it is reasonable to await the final appeal of that decision. This is particularly so, where there is a precise legal issue of national significance before the Appellate Court. I considered *R. v. Wigman* (1987), 33 C.C.C. (3d) 97 where the S.C.C. addressed this balancing

of interests approach. See also *R. v. Baker*, [1994] N.S.J. No. 135 (N.S.C.A.), *R. v. [Devereaux]*, [1994] N.B.J. No. 517 (N.B.Q.B.), and *R. v. [V.P.S.]* (1999), 140 C.C.C. (3d) 204 (B.C.S.C.); [2001] B.C.J. No. 930 (B.C.S.C.). In this case, Mr. Bolton clearly did not seek the adjournment but I find it was also in his interest to await the decision in *Sharpe*, which in the end is of benefit to him.

- [28] Before reviewing some of these decisions cited in para. 29 of Bolton, I make the rather obvious point that I am not conducting a hindsight analysis of the reasonableness of an adjournment. It may well be that either granting or refusing an adjournment of the cases at bar would be within the bounds of reason and thus properly within my discretion.
- [29] In *R. v. V.P.S.*, 2001 BCSC 619, Justice Bauman (as he then was), heard a summary conviction appeal from conviction for possession of child pornography, and reserved judgment. Coincidentally, the V.P.S. case was heard the same day as Justice Shaw was sitting on *R. v. Sharpe*; Shaw J. also reserved judgment, and subsequently released reasons declaring the charging section to be unconstitutional. The Crown appealed.
- [30] The parties in the V.P.S. case amended the notice of appeal by consent to add a further ground based on Shaw J.'s holding in *Sharpe*. The V.P.S. appeal was then adjourned to await the Court of Appeal's decision. A majority of a division of the Court of Appeal upheld Shaw J.'s declaration: *R. v. Sharpe* (1999), 69 B.C.L.R. (3d) 234 (C.A.). The parties in V.P.S. then appeared before Bauman J., who declined the appellant's request that the Court give effect to the Court of Appeal's decision, and further adjourned the appeal: *R. v. V.P.S.* (1999), 140 C.C.C. (3d) 204 (B.C.S.C.).
- [31] When Bauman J. decided to further adjourn the summary conviction appeal, the Crown had filed an appeal from the Court of Appeal's decision in *Sharpe* and the hearing of the appeal in the Supreme Court of Canada was three months away (para. 11). The judge asked counsel to research the issue of adjournment of criminal proceedings pending the outcome of an appeal in a companion case, but counsel "were unable to uncover much in the way of helpful jurisprudence" (para. 14). However, the judge reviewed the *Wigman*, *Baker*, and *Devereaux* cases:
- [22] Moving from a consideration of the issue in a Charter context, I have reviewed the New Brunswick Court of Queen's Bench decision in *R. v. Devereaux* (1994), 155 N.B.R. (2d) 142.
- [23] There, both counsel in a criminal proceeding agreed that the accused had not been given a proper s. 10(b) warning. This concession was based on a then binding decision which was under appeal to the Supreme Court of Canada. The trial judge adjourned the trial, that is, his decision at the conclusion of the evidence, pending the Supreme Court of Canada's decision.
- [24] Clendening J. held at paras. 7 to 11 inclusive:

The last argument in the application dealt with the decision in *R. v. Voisine*. Mr. Stephenson argued that the trial judge is bound by the decision and could not set over the decision on the basis that *R. v. Voisine* is on appeal to the Supreme Court of Canada.

If the trial judge adjourned for a decision to await the Supreme Court of Canada decision on *Voisine*, this court finds that an appeal pending in the higher court is not a proper reason for an adjournment. On that point in *R. v. Baker, Hilll & Bartlett*, N.S.C.A., March 30, 1994, the Court stated at page 3:

"To follow the course approved by the lower court in this case would bring the judicial system to a halt."

Mr. Stephenson has requested an order of mandamus to compel the trial judge to proceed with the decision.

This court finds that the trial judge should decide the *Devereaux* case as the law now stands in New Brunswick. Because this is adjourned for decision and not for continuation of the trial, this court is reluctant to interfere with the trial judge's discretion to take time to make his decision. If the trial judge is prepared to render his decision on November 15, 1994 at 2:00 p.m. that is sufficient but no further delay on the basis of awaiting the Supreme Court of Canada decision in *R. v. Voisine* should be allowed by the trial judge.

In other words, the trial judge has no authority to grant an adjournment solely for the reason stated. Let it be understood that the judicial discretion to adjourn for a decision is valid unless based upon a reason not supported in law.

[25] *Canada (Attorney General) v. Baker, Hill and Bartlett* (1994), 132 N.S.R. (2d) 349 (C.A.), which was relied upon by Justice Clendening, involved the adjournment of a preliminary inquiry pending the outcome of a case then under appeal to the Supreme Court of Canada. The Nova Scotia Court of Appeal noted twice that the Supreme Court appeal had not yet been set down for hearing. That was the context in which the court worried about bringing the judicial system to a halt.

[26] The court in *Baker* also held that the delay in the preliminary inquiry was not consistent with the accused's rights under s. 11 of the Charter.

[27] In the case at bar, the *Sharpe* appeal is set down for hearing some three months hence, and, as I have discussed, s. 11 of the Charter is not engaged.

[28] It is instructive to consider the case law which permits this accused to take the benefit of *Sharpe*, which was decided after his conviction and obviously long after the date of his then criminal conduct. I say "criminal conduct" subject of course to the accused's substantive submissions on his appeal.

[29] In *R. v. Wigman*, [1987] 1 S.C.R. 246, (1987) 38 D.L.R. (4th) 530, 33 C.C.C. (3d) 97, the court considered the so-called "Ancio Issue" ([1984] 1 S.C.R. 225, 10 C.C.C. (3d) 385) (at pages 257 and 258):

The Ancio Issue

As already indicated, the Ancio decision had not yet been released at the time the appellant sought and obtained leave to appeal.

The appellant, however, submits that the charge of the trial judge to the jury conflicts with the new interpretation of the Criminal Code given in Ancio. The inadequacy of the charge in this respect is not in doubt, as is conceded by the Crown. The main point in issue is whether the appellant can invoke what is now considered to be the correct interpretation of the Code.

The appropriate test is whether or not the accused is still in the judicial system. As expressed in the Crown's factum, this test affords a means of striking a balance between the "wholly impractical dream of providing perfect justice to all those convicted under the overruled authority and the practical necessity of having some finality in the criminal process". Finality in criminal proceedings is of the utmost importance but the need for finality is adequately served by the normal operation of *res judicata*: a matter once finally judicially decided cannot be relitigated. Thus a person convicted under *Lajoie* will not be able to reopen his or her case, unless, of course, the conviction is not final. In the Reference re Manitoba Language Rights, [1985] 1 S.C.R. 721, at p. 757, the Court observed that *res judicata* would even preclude the reopening of cases decided by the courts on the basis of constitutionally invalid laws. The *res judicata* principle would apply with at least as much force to cases decided on the basis of subsequently overruled case law.

[30] In striking the balance between perfect justice and the practical necessity of having some finality in the criminal process, the court adopted the test of whether the accused is still in the judicial system.

[31] Mr. [V.P.S.], at the time of *Sharpe*, was, and is today, still in the judicial system. Accordingly, he may invoke *Sharpe*. Persons convicted under s. 163.1(4) who had exited the system before the decision in *Sharpe* may not; their convictions, under a law later declared unconstitutional by the British Columbia Court of Appeal, stand.

[32] In my view, as a matter of fairness in the balancing process described in *Wigman*, it is not wrong to say to Mr. V.P.S.:

You are in the system - you may invoke *Sharpe* - but only when the appeal process in the system has been exhausted.

[33] Mr. *Sharpe* remains in limbo while the appeal process is pursued. It is appropriate that those who seek to ride his coat-tails await the final decision in his case as well.

[34] I say this, of course, in the context of the case before me and the fact that the Supreme Court of Canada hearing has been set down for January 2000.

[Emphasis added.]

[32] The Crown points to trial adjournments granted to many of these and other alleged contemnors while they pursued an application (or awaited the outcome) of an application to stay contempt proceedings on the basis of alleged abuses during police enforcement of the injunction order. Given the nature of this proceeding and common features of their complaints, this large group were trying to find a path to have their stay applications determined collectively rather than individually. Indeed, on this application, the Crown argued that while this action is not a class proceeding, the fact that there are hundreds of alleged contemnors creates some similarities to a class proceeding. The Crown's first level response to the stay applications was to argue that they did not justify an evidentiary hearing and ought to be summarily dismissed. This Vukelich application was unsuccessful: *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCSC 429.

[33] After a series of management conferences conducted by my colleague Justice Baird, the alleged contemnors brought a motion to have their applications heard collectively. This failed. Baird J.'s reasons for dismissing the motion are indexed at *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCSC 1912. I attribute no blame to the alleged contemnors who have experienced delay while pursuing a stay of proceedings or to those who obtained an adjournment of their cases to await an outcome of the stay applications. I have previously described the issues surrounding police conduct during the enforcement operation, including the unlawful use of exclusion zones, checkpoints, searches, and restrictions on the media: *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 1554. The complaints, and efforts to obtain a remedy in the contempt prosecutions, cannot fairly be characterized as frivolous. I take notice that police tactics in this proceeding will be further examined in other forums. On 9 March 2023, the Civilian Review and Complaints Commission for the RCMP initiated a systemic investigation of the RCMP's Community-Industry Response Group, focused on its activities and injunction enforcement operations in connection with the injunction in this proceeding, and two other injunction orders of this Court. The day earlier, a class action proceeding was commenced on 8 March 2023; the notice of civil claim alleges widespread RCMP infringements of constitutional rights of members of the public in the course of its enforcement operation.

[34] All of which is to say that I have decided previous adjournment applications in this proceeding on the basis of the realities of the cases at the time, consistent with my perception of the interests of justice. It was plainly not in the interests of justice at the time to cut off the alleged contemnors' efforts to find a timely and realistic way to have their stay applications adjudicated or to refuse others the opportunity to await the outcome of those efforts - and, to their credit, Crown counsel at the time of those adjournment applications did not suggest otherwise. To be clear, I would not characterize the realistic and reasonable Crown responses to these previous adjournment applications as acquiescing in delay.

However, the fact that cases have previously been adjourned at the instance of the alleged contemnors does not, in these circumstances, significantly assist the Crown on these applications.

- [35] Although the outcome of weighing the broader societal interests was sufficient to dispose of the Crown's applications, I recognized that the delay that would occur before these cases could ever come on for trial again would prejudice the alleged contemnors in the sense explicitly recognized in *Jordan*: "a long-delayed trial means prolonging the stress, anxiety, and stigma an accused may suffer" (para. 20). The Crown offers to join in an application to remove the conditions of the alleged contemnors' release that prohibit their presence in the injunction area, but this would not mitigate the alleged contemnors' stress or anxiety. In each of the ten cases under consideration, this would add further weight to the case against adjournment - but much less weight in Mr. Arsenault's case than in the others' because of his repeated failures to attend court.
- [36] On balance, considering the totality of the present circumstances in each case, viewed realistically, I concluded that it is not in the interests of justice to further adjourn any of these trials.

"Thompson J."

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