

CANADA / JUDGMENT

Trans Mountain Pipeline ULC v. Mivasair

2019 BCSC 2122

COURT

Supreme Court of British Columbia

DECIDED

20 November 2019

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2019 BCSC 2122 Trans Mountain Pipeline ULC v. Mivasair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Trans Mountain Pipeline ULC v. Mivasair ,

2019 BCSC 2122

Date: 20191120

Docket: S183541

Registry: Vancouver

Between:

Trans Mountain Pipeline ULC

Plaintiff

And:

David Mivasair, Bina Salimath, Mia Nissen, Corey Skinner (aka Cory Skinner), Uni Urchin (aka Jean Escueta), Arthur Brociner (aka Artur Brociner),

Karl Perrin, Yvon Raoul, Earle Peach, Sandra Ang, Reuben Garbanzo (aka Robert Arbess), Gordon Cornwall, Thomas Chan, Laurel Dykstra,

Rudi Leibik (aka Ruth Leibik), Linda Hutchings, John Doe, Jane Doe, and Persons Unknown

Defendants

And:

Attorney General of British Columbia

Intervenor

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

(Re: Terry Christenson)

Counsel for the Provincial Crown:

M.R. Ruttan

M. Crisp

The Defendant, appearing on his own behalf:

Terry Christenson

Place and Date of Trial:

Vancouver, B.C.

November 19-20, 2019

Place and Date of Judgment:

Vancouver, B.C.

November 20, 2019

INTRODUCTION

- [1] The following are my reasons for judgment from the trial of Terry Christenson for criminal contempt of court.
- [2] On March 15, 2018, on the application of the plaintiff, Trans Mountain Pipeline ULC ("Trans Mountain"), Justice Affleck granted an injunction in this proceeding. That order was replaced by a further injunction granted by Affleck J. on June 1, 2018 on similar terms (the "Injunction").
- [3] The Injunction provides in part:
- a) Paragraph 1 enjoins the defendants and other persons having notice of the Injunction from "physically obstructing, impeding or otherwise preventing access by Trans Mountain, its contractors, employees or agents, to, or work in, any of the sites or work areas" referred to in the Injunction. One of those sites or work areas is described in para. 1(a)(ii) of the Injunction as the "Burnaby Terminal" or "BT", which is depicted on a map attached as Schedule B. This is described in the Injunction as one of the "Buffer Zones"; and
 - b) Paragraph 2(b) provides that the defendants and others having notice of the Injunction are "restrained and enjoined from coming within five (5) metres of the property line of the BT, which property line shall be clearly marked and delineated by Trans Mountain".

- [4] After March 15, 2018, the Burnaby RCMP arrested numerous persons for alleged disobedience of the injunctions. Initially, Trans Mountain applied for orders finding that those persons disobeying the injunctions were guilty of contempt of court.
- [5] On April 16, 2018, upon invitation of the Court, the Attorney General of British Columbia intervened in these proceedings to conduct the prosecution of the alleged contemnors for criminal contempt of court. Criminal contempt of court arose on the basis that those who disobeyed the injunctions had done so in a public manner to attract attention to their opposition to the expansion of the pipeline project underway by Trans Mountain. As far as I am aware, Affleck J. has convicted numerous persons of criminal contempt in these proceedings.
- [6] On October 24, 2019, the RCMP arrested Mr. Christenson after his arrival onto the grounds of the Burnaby Terminal where just before, Trans Mountain security personnel had observed him jumping over the property line fences. After being given the usual Charter and police warnings, Mr. Christenson was arrested, taken into custody and transported to the Burnaby detachment.
- [7] The Crown's application seeks to hold Mr. Christenson in criminal contempt of court with respect to paras. 1(a)(ii) and 2(b) of the Injunction; and if committed, impose such punishment on Mr. Christenson as is appropriate in the circumstances.
- [8] Mr. Christenson has plead not guilty to the charge.

EVIDENCE AT TRIAL

The Crown's Evidence

- [9] The Crown's evidence was straightforward and was not contested in any way by Mr. Christenson.
- [10] The events in question began in the afternoon of October 24, 2019.
- [11] Robert Parker and Randall Marquardt are security personnel employed or retained by Trans Mountain.
- [12] Both men were at Trans Mountain's Burnaby Terminal site that day. Around 4:00 p.m., while together in a work vehicle, they observed a person climb over the fences at the western property line near the southern boundary and then emerge from the trees in that area within the Burnaby Terminal site.
- [13] Mr. Marquardt gave evidence regarding the state of the property line surrounding the Burnaby Terminal and specifically, the property line on the west boundary of the site where he observed this person climb the fences and enter the Burnaby Terminal.
- [14] Spaced along the property line are signs on posts, each being approximately 10-15 meters apart. The signs, which face out from the property, clearly indicate "Trans Mountain Property Line". Inside the property boundary, approximately three feet from the property

line and the posts, is a small mesh steel fence that stands approximately six feet high and topped with three strings of barbed wire. The overall height is approximately ten feet. Located within that outside fence and further inside the property by about 3-5 feet is the inside fence of about the same height. This fence is a standard steel mesh fence and topped with three strings of barbed wire. The entirety of the perimeter fencing system also includes a system of cameras and motion detectors.

- [15] After spotting this person, Mr. Parker drove the work vehicle toward him and parked the vehicle. Initially, while driving, Mr. Parker observed this person kneeling down and removing something from a backpack. He caught a glimpse of what appeared to be a purple banner. Mr. Marquardt also saw a banner that he said appeared to be burgundy or dark red. Mr. Marquardt described the length of the banner as spanning someone's outstretched hands. He did not observe what it said.
- [16] After Mr. Parker parked the vehicle, he observed the person walking briskly north or northeastward on the Burnaby Terminal property toward an area of the site where the tank farm is located. Mr. Parker and Mr. Marquardt's intention was to stop this person from proceeding further into the property.
- [17] After further observation, both Mr. Parker and Mr. Marquardt quickly came to recognize this person as Mr. Christenson; they have both encountered him before. They both identified Mr. Christenson in court as the person they stopped at the Burnaby Terminal site.
- [18] Mr. Parker called out "Terry" to get his attention. Mr. Parker told Mr. Christenson that he could not allow him to proceed any further toward the tank farm. They both walked for a while back and forth in various directions. Mr. Parker observed that Mr. Christenson's hand was cut and bleeding. During the entire encounter with Mr. Christenson, Mr. Parker was aware that he had a GoPro strapped to his head and his cellphone out. Mr. Parker formed the view that Mr. Christenson was recording the events during the entirety of the encounter with him and later, with Mr. Marquardt.
- [19] Ultimately, Mr. Christenson cooperated and walked with Mr. Parker back to join Mr. Marquardt who was waiting at the truck. Mr. Marquardt made a call to see if the police had been dispatched and he told someone to meet them all at the gate at the regional office on the southwest corner of the Burnaby Terminal site.
- [20] The entire encounter between Mr. Christenson and the Trans Mountain security personnel took approximately 40-45 minutes.
- [21] Cst. Cole Rolland of the Burnaby RCMP attended at the Burnaby Terminal on October 24, 2019. Cst. Rolland also identified Mr. Christenson in court as the person he met at the Burnaby Terminal site that day. Cst. Rolland first provided Mr. Christenson with a verbal charge when they met at the gate at the regional office site. He offered Mr. Christenson medical assistance for his bleeding hand, which Mr. Christenson declined.

- [22] After they walked to the police vehicle, at approximately 4:47-4:49 p.m., Cst. Rolland formally charged Mr. Christenson, arrested him and provided him with the standard Charter and police warnings. Upon arrest, the RCMP found Mr. Christenson in possession of a cell phone and a backpack. He also had a GoPro on his head.
- [23] The evidence of both Mr. Parker and Mr. Marquardt was that construction activities were ongoing in the area where Mr. Christenson arrived at the site. They indicated that some work at the Burnaby Terminal stopped because of the sudden appearance of Mr. Christenson on the site. Some construction workers stopped what they were doing apparently to see what was happening. Mr. Marquardt observed that a dump truck operator stopped the operation of his machine once the person unfurled the banner toward the location of the machine and its operator. Mr. Marquardt considered that the stoppage was about 15-30 minutes. He formed the view that the workers were cautious in waiting to see that the situation was under control before they could safely continue their activities.
- [24] Similar to Mr. Parker, Cst. Rolland formed the view that Mr. Christenson was recording events with his cell phone after they met at the site since he was continuing to speak aloud. When Cst. Rolland asked him to put down his cell phone and turn it off, Cst. Rolland overheard Mr. Christenson say "good bye" before he set it on the hood of the police vehicle.
- [25] Upon arrest, the RCMP found Mr. Christenson in possession of a gasmask and a red banner about four feet long and two-and-a-half feet wide that had large white lettering reading "NO Tanks or Tankers".
- [26] Cst. Rolland transported Mr. Christenson to the police cells at the Burnaby detachment.
- [27] Cst. Daniel Comte is with the Burnaby RCMP. He is now the lead investigator and file coordinator relating to the Trans Mountain matter.
- [28] In the afternoon of October 24, 2019, Cst. Comte learned of an incident at the Burnaby Terminal and, more specifically, that someone had climbed over the fence there. Cst. Comte advised a fellow officer at the Burnaby detachment that the person was arrestable for criminal contempt and that he would come to the detachment to assist.
- [29] After he arrived at the detachment, around 5:12 p.m., Cst. Comte met Cst. Rolland and then, the person arrested and charged by the RCMP for the offence. Cst. Comte immediately recognized Mr. Christenson given his numerous previous interactions with Mr. Christenson, including in July 2019 when Mr. Christenson was in custody.
- [30] I conducted a voir dire to address the admissibility of statements made by Mr. Christenson to Cst. Comte after their arrival at the RCMP detachment. At the conclusion of that voir dire, I ruled that the statement was voluntary and admissible.

- [31] Cst. Comte asked whether Mr. Christenson required any medication or had any dietary restrictions. Mr. Christenson responded that he would be eating on October 25-26, 2019 but that, if still in custody after those dates, he would go on a hunger strike. He further explained to Cst. Comte that he would not put his health in jeopardy; rather, if "his urine turned black", he would "take advice from a doctor".
- [32] I conducted two further voir dires during the trial to consider the matter of the Crown's intention to introduce electronic evidence.
- [33] The first item of electronic evidence arose from a Cst. Comte's Google search of the Internet on October 25, 2019 leading to his review of Mr. Christenson's Facebook page. That webpage depicted the name and a photograph of Mr. Christenson. Cst. Comte took screenshots of some of the Facebook pages and copied them. He also found three videos on the Facebook page, one of which he downloaded and copied for this trial. He compared the screenshots he had taken and the downloaded copy of the approximately 43 minute video with the original Facebook pages and the video posted on the Facebook page. He confirmed that they were identical.
- [34] The Facebook video shows Mr. Christenson and records his actions in moving across a wooded area and climbing over fences. The video further records Mr. Christenson's entry onto the Burnaby Terminal site and his later interactions with the Trans Mountain security personnel, as confirmed by Mr. Parker and Mr. Marquardt's evidence. While Mr. Parker cannot attest to the accuracy of the entire video, the portion indicating his involvement is consistent with Mr. Parker's evidence as to his involvement and the events that day.
- [35] At the conclusion of the voir dire as to the Facebook video, I was satisfied that it was a reliable copy that accurately depicted the events recorded and that it was authenticated for the purpose of depicting the actions of the persons shown in that video. I found that the video was admissible: see *R. v. Ball*, 2019 BCCA 32 at paras. 65-80; and, *R. v. Bulldog*, 2015 ABCA 251 at paras. 31-32.
- [36] My finding on the voir dire was based on the evidence of Cst. Comte as to his actions in copying the video from the Internet, coupled with the circumstantial guarantees of accuracy based on Mr. Parker's confirmation of his actions and statements in portions of the video. The evidence lends credence to the conclusion that it was a continuous recording of events that day. In addition, I was satisfied that the Crown had met the "best evidence" rule given the format on which the video was found (an Internet Facebook page): see *Ball* at para. 72.
- [37] The second item of electronic evidence arose on October 30, 2019 when Cst. Comte visited a webpage "BeFreeYourself.com". Mr. Christenson had mentioned this webpage to him after his arrest. On the webpage, Cst. Comte found an article, took a screenshot of it and then created a PDF file for the Crown. He confirmed that he compared the screenshot with the original on the "BeFreeYourself.com" webpage and that the former was an accurate copy.

[38] After the voir dire, I was satisfied that the Crown had authenticated this second item of electronic evidence as accurate and reliable, as required and as discussed in Ball and Bulldog. Further, the Crown sought to admit the screenshot, which was hearsay, as Mr. Christenson's admission against interest. I ruled that this electronic evidence was admissible on that basis.

Mr. Christenson's Evidence

[39] Mr. Christenson gave evidence in support of his defence.

[40] I will start by stating that Mr. Christenson clearly has deeply held beliefs in his cause in combating what he perceives as injustices that visited upon certain elements of Canadian society and even American society over our respective histories. In particular, he speaks of the injustices suffered by Canadian Indigenous people over years, if not decades.

[41] He mentioned his failed attempt to persuade Affleck J. in these proceedings to set aside the Injunction and as he put it, "acquit those who fight for their grandchildren's future". Mr. Christenson considers that he is "right"; he sees his cause as just and has indicated a clear intention to continue to fight against what he perceives are unjust laws.

[42] He stated that the court cannot stop him from protesting. That is true, of course; however, the protest must be lawful. This is made clear by the Injunction itself which provides:

14. Provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest.

[43] None of Mr. Christenson's testimony to this point would have attracted any criminal proceedings had Mr. Christenson left it at that. However, during cross examination, Mr. Christenson clearly and unequivocally confirmed that he knew that the Injunction prohibited him from entering the site. He acknowledged that he was given a copy of the Injunction when he was released from custody on July 22, 2019. He also clearly and unequivocally confirmed that it was his intention to publicly breach the Injunction so as to broadcast his view that it is unjust, to make plain to other members of the public that he has little, or no, respect for the Injunction, and to show that he has no compunction in breaching the order.

[44] He is decidedly unapologetic for his actions at the Burnaby Terminal site on October 24, 2019. He considers that he is only one of many people who have deliberately and intentionally disobeyed the Injunction. He knew he did not have the right to access the site but considered that he had the "permission" of the Coast Salish people to be there. His clear view, then and now, is that he is more respectful of environmental concerns and Indigenous sovereignty claims than respectful of the Injunction as an expression of the laws of this country.

- [45] Mr. Christenson acknowledged that he was the person who took the video on his cellphone and that he was livestreaming the video to Facebook for broadcasting to the public or anyone who might visit his Facebook page. He confirmed that the video is an accurate description of his activities in preparing to enter and entering the site and of his interactions with Mr. Parker and Mr. Marquardt leading up to his dealings with Cst. Rolland.
- [46] He confirmed that his "primary target" was to reach the tanks at the tank farm so that he could unfurl his banner and have a "photo-op" of his actions. He intended to accomplish this in two ways: firstly, by the filming or recording, by a colleague who was positioned outside of the site, of his actions at the tanks; and, secondly, by uploading the video to Facebook as events unfolded. His carrying of the GoPro and recording on that device was the "backup" recording mechanism.
- [47] It was Mr. Christenson's intention to reach the operational part of the site where he considered that he might be exposed to gases. This was the reason he was carrying what he described as the "hazmat" mask that the RCMP found in his possession upon arrest.

DISCUSSION

The Law

- [48] The law of criminal contempt was addressed by the Supreme Court of Canada in *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901. Madam Justice McLachlin, later the Chief Justice of Canada, wrote for the majority at 931-933 as follows:

It is my view that a clear distinction exists between civil and criminal contempt and that the law of criminal contempt is sufficiently certain to meet the requirements of fundamental justice. The distinction between civil and criminal contempt rests in the concept of public defiance that accompanies criminal contempt.

Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

These same courts found it necessary to distinguish between civil and criminal contempt. A person who simply breaches a court order, for example by failing to abide by visiting hours stipulated in a child custody order, is viewed as having committed civil contempt. However, when the element of public defiance of the court's process in a way calculated to lessen societal respect for the courts is added to the breach, it becomes criminal. This distinction emerges from *Poje v. Attorney General for British Columbia*, per Kellock J.:

The context in which these incidents occurred, the large numbers of men involved and the public nature of the defiance of the order of the court transfer the conduct here in question from the realm of a mere civil contempt, such as an ordinary breach of injunction with respect to private rights in a patent or a trade-mark, for example, into the realm of a public depreciation of the authority of the court tending to bring the administration of justice into scorn. [Emphasis added.]

What the courts have fastened on in this and other cases where criminal contempt has been found is the concept of public defiance that "transcends the limits of any dispute between particular litigants and constitutes an affront to the administration of justice as a whole" . . . The gravamen of the offence is not actual or threatened injury to persons or property; other offences deal with those evils. The gravamen of the offence is . . . the open, continuous and flagrant violation of a court order without regard for the effect that may have on the respect accorded to edicts of the court.

. . .

To establish criminal contempt the Crown must prove that the accused defied or disobeyed a court order in a public way (the actus reus), with intent, knowledge or recklessness as to the fact that the public disobedience will tend to depreciate the authority of the court (the mens rea). The Crown must prove these elements beyond a reasonable doubt. As in other criminal offences, however, the necessary mens rea may be inferred from the circumstances. An open and public defiance of a court order will tend to depreciate the authority of the court. Therefore when it is clear the accused must have known his or her act of defiance will be public, it may be inferred that he or she was at least reckless as to whether the authority of the court would be brought into contempt. On the other hand, if the circumstances leave a reasonable doubt as to whether the breach was or should be expected to have this public quality, then the necessary mens rea would not be present and the accused would be acquitted, even if the matter in fact became public. While publicity is required for the offence, a civil contempt is not converted to a criminal contempt merely because it attracts publicity, as the union contends, but rather because it constitutes a public act of defiance of the court in circumstances where the accused knew, intended or was reckless as to the fact that the act would publicly bring the court into contempt.

[49] The British Columbia Court of Appeal recently confirmed in this very proceeding that United Nurses continues to be the leading authority on the law of contempt: see *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCCA 267 at para. 22.

Decision

[50] The following are my findings.

[51] I am satisfied that the Crown has proven, beyond a reasonable doubt, the actus reus of the offence of criminal contempt on the part of Mr. Christenson. Mr. Christenson disobeyed the Injunction in a public way.

- [52] Mr. Christenson was fully aware of the Injunction and its terms by no later than July 22, 2019. On that date, Affleck J. released him from custody on an undertaking and promise to appear. In that undertaking, Mr. Christenson agreed to "strictly comply" with the terms of the Injunction that was attached as Schedule A to the undertaking.
- [53] Mr. Christenson acknowledged that he was fully aware of the terms of the Injunction and that he intended to defy it in a public manner by breaching the Buffer Zone at the Burnaby Terminal.
- [54] I am more than satisfied that, in the afternoon of October 24, 2019, Mr. Christenson purposefully jumped the two fences at the perimeter of the Burnaby Terminal and then entered the site. Mr. Christenson fully and freely admits this, even leaving aside the clear evidence of Mr. Parker and Mr. Marquardt as to Mr. Christenson's unlawful presence on the site on October 24, 2019. I find beyond a reasonable doubt that these actions were a violation of para. 2(b) of the Injunction.
- [55] Paragraph 1(a)(ii) of the Injunction requires that I find that Mr. Christenson's actions physically obstructed, impeded, or otherwise prevented access by Trans Mountain, its contractors, employees, or agents, to, or work in, any of the sites or work areas.
- [56] Both Mr. Parker and Mr. Marquardt referred to the stoppage of work by Trans Mountain employees or contractors when Mr. Christenson arrived at the site. In the Facebook video, Mr. Christenson refers specifically to the truck driver who stopped his machine when Mr. Christenson suddenly appeared and unfurled his banner in front of him facing that truck driver and perhaps others who had that view. I find as a fact that this was the same truck that Mr. Marquardt referred to as stopping as a result of the commotion.
- [57] Mr. Christenson's statements on the video indicate that he clearly understood that his sudden appearance at the site had caused confusion on the part of workers about what was happening and that this confusion caused the workers to stop their activities. It is not surprising that there was work stoppage, given that it was an active construction site, and that Mr. Christenson's unauthorized presence would cause safety concerns.
- [58] I find beyond a reasonable doubt that Mr. Christenson's actions were a violation of para. 1(a)(ii) of the Injunction.
- [59] I am also satisfied beyond a reasonable doubt that the breaches of the Injunction were done "in a public way", as evidenced by the following facts I have found arising from this trial:
- a) Mr. Christenson fully intended to, publicly, video record his entry onto the site. Mr. Christenson was videotaping his actions in entering the Burnaby Terminal site and livestreaming the video to his Facebook page on the Internet in real time as he entered the site;

- b) Mr. Christenson had arranged to have someone else outside of the Burnaby Terminal record his actions. This person is mentioned by Mr. Christenson in the Facebook video as being ready to take pictures or perhaps video of him as he moved within the Burnaby Terminal site and, as initially intended, reached the tanks;
- c) Mr. Christenson was carrying a banner and, on the video, he indicates that he wanted to hang up a banner. While on the site, he unfurled his banner and waved it in the direction of a moving truck such that he displayed it to workers on the site just after he entered the site; and
- d) Mr. Christenson uploaded the Facebook video to a public Facebook page that anyone visiting that page could view. Cst. Comte confirmed that he was easily able to access the Facebook page the next day on October 25, 2019.

[60] In addition, I am satisfied that the Crown has proven, beyond a reasonable doubt, the mens rea of the offence of criminal contempt on the part of Mr. Christenson. I conclude that Mr. Christenson consciously entered the Burnaby Terminal site with the clear intent and knowledge that he was defying the Injunction and that he was doing so in a public manner by publication of his actions on the Internet with the overall intention of depreciating the authority of this Court. This aspect of the Crown's case was proven principally by Mr. Christenson's own evidence.

[61] In *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCSC 1247 at paras. 89-90, Affleck J. adopted the statement in *Carey v. Laiken*, 2015 SCC 17 as to what is required for the required "intent" to establish civil contempt:

38 It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable double of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice

[62] At para. 90, Affleck J. added that the "distinguishing feature of criminal contempt is knowledge or recklessness that public disobedience will tend to lower the authority of the court".

[63] I appreciate Mr. Christenson's evidence that he was also attempting to make a statement as to what he considers the environmental and other consequences of the continuation of activities at the site. His statements in the Facebook video also confirm that he wished to draw attention to the Swedish climate activist, Greta Thunberg's, visit to Vancouver the next day.

[64] However, the Crown's case would certainly have supported a finding that Mr. Christenson was at least reckless in terms of the effect that his actions would have on the respect accorded to the court and its orders. Recklessness as to the effect of publicly disobeying the Injunction is sufficient to satisfy the mens rea element of the offence of criminal contempt: see *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCCA 267 at paras. 34-41.

- [65] In any event, based on Mr. Christenson's own evidence, I find beyond a reasonable doubt that he had the intention and the knowledge that his public defiance would tend to diminish the authority of the court and its orders, including the Injunction.
- [66] Two other matters require some brief discussion.
- [67] Firstly, during his cross-examination, Mr. Christenson referred to the defence of necessity without any particular evidentiary basis for that argument. I will not address that argument further, save to note that Affleck J., in these proceedings, has rejected that defence for other defendants who advanced the same general explanation for their actions, namely saving the environment: see, for example, *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCSC 50 at paras. 12-31; and, *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCSC 1246.
- [68] Secondly, the other matter arises from para. 12 of the Injunction, which is a provision providing for a 5-step process for the warning and arrest of persons who may breach the Injunction. That paragraph states that any persons who breach the Order "will be" arrested in accordance with this process.
- [69] Cst. Comte, as lead investigator, did not ask Cst. Rolland to observe the warning and arrest process when arresting what turned out to be Mr. Christenson. Cst. Rolland did not have any notes of having conducted the 5-step process and considered it possible that he had not done so.
- [70] I find as a fact that, Cst. Rolland did not follow the 5-step process during his interaction with and later arrest of Mr. Christenson. However, I agree with the Crown, that, in the circumstances relating to Mr. Christenson, it would have been a process without meaning. The 5-step process was clearly intended to provide some warning to persons of their imminent arrest should they choose to continue to act unlawfully. Here, Mr. Christenson had already been acting unlawfully in breach of the Injunction for some 40-45 minutes before the arrival of Cst. Rolland. At that point, there was little utility in attempting to warn Mr. Christenson of the consequences of his actions, given that the elements of criminal contempt were complete and Mr. Christenson, knowing of his imminent arrest, was fully cooperating in proceeding to the police vehicle to meet his fate.
- [71] I do not consider the failure of Cst. Rolland to undertake the 5-step process as fatal to the validity of Mr. Christenson's arrest in these circumstances. To consider otherwise would be to allow form to triumph over substance. A reasonable interpretation of the Injunction still would allow for an arrest of an offender such as Mr. Christenson in these circumstances.

CONCLUSION

- [72] Ultimately, Mr. Christenson's statements on the Facebook video and at this trial make clear that his incursion onto the Burnaby Terminal site was planned and co-ordinated. He stated in the video was that he expected to be arrested after he managed to unfurl his banner somewhere on the site, hopefully at the tank farm. He testified that he willfully and

purposefully disobeyed the Injunction. His conduct took place within a co-ordinated plan to record his actions and upload the video to the Internet for any member of the public to see. Mr. Christenson meant to convey to the public his open defiance and disrespect for the Injunction. At the very least, Mr. Christenson accomplished that goal of publication of his actions and intentions.

- [73] Mr. Christenson is entitled to his beliefs; he is also entitled to lawfully protest the laws or actions of our government or other citizens to which he objects. He is not entitled to disregard the authority of this Court, in upholding the laws of this country, as he wishes in pursuit of those beliefs. As previously stated many times in this proceeding by Affleck J., to invite such behavior on the part of citizens of this country would similarly invite chaos and lawlessness into our society.
- [74] If Mr. Christenson wishes to change the narrative and laws of our society, there are democratic ways to do so. Flagrant disregard of court orders is not a democratic action. Rather, it is an individual imposing his will and views on society and other citizens in a decidedly undemocratic manner.
- [75] Mr. Christenson, please stand.
- [76] I am satisfied beyond a reasonable doubt that the Crown has proven the elements of the common law offence of criminal contempt against you, Mr. Christenson. I find that you are guilty of that offence.

"Fitzpatrick J."

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