

CANADA / JUDGMENT

Trans Mountain Pipeline ULC v. Mivasair

2023 BCSC 366

COURT

Supreme Court of British Columbia

DECIDED

27 January 2023

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2023 BCSC 366 Trans Mountain Pipeline ULC v. Mivasair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Trans Mountain Pipeline ULC v. Mivasair,

2023 BCSC 366

Date: 20230127

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), John Doe, Jane Doe, and Persons Unknown

Defendants

Before: The Honourable Justice Fitzpatrick

Oral Reasons for Judgment

(re Lucy Everett and Emily Kelsall Sentencing)

Counsel for the Crown:

E. Leno

Counsel for the Defendants, Lucy Everett and Emily Kelsall:

K.L. Mirsky

J. Schacter, A/S

Place and Date of Hearing:

Vancouver, B.C.

January 27, 2023

Place and Date of Judgment:

Vancouver, B.C.

January 27, 2023

INTRODUCTION

- [1] In the Crown's notice of application filed October 20, 2022, Emily Kelsall and Lucy Everett were accused of being guilty of criminal contempt of court with respect to their actions at what is described as a "Trans Mountain Site" on May 11, 2022.
- [2] The allegations of criminal contempt arise from Justice Affleck's June 1, 2018, order (the "Injunction"). The Injunction was granted to restrain interference with the plaintiff Trans Mountain Pipeline ULC's operations with respect to its pipeline expansion project.
- [3] Earlier today, Ms. Kelsall and Ms. Everett pled guilty to breaching two provisions of the Injunction, namely:
1. The Defendants, and any other person having notice of this Order, are hereby restrained and enjoined from:
 - a) 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 as set out below:

...

(iii) any other project or operations site of Trans Mountain or its affiliates, contractors, or subcontractors that has been reasonably identified as the same (such as through signage, fencing, flagging or boundary markings situated on or around the perimeter of such site) (the "Markings"),

(the sites and work areas referenced in this (a) being collectively, the "Trans Mountain Sites");

...

2. The Defendants, and any other persons having notice of this Order, are hereby restrained and enjoined from coming within five (5) metres of:

(c) the Markings, as set out in paragraph 1(a)(iii) of this Order.

[4] Accordingly, it now falls to the Court to impose a fit sentence on both contemnors.

CIRCUMSTANCES OF THE OFFENCES

[5] These circumstances of the offences follow from the Crown's submissions, which have been substantially agreed to by the defence.

[6] In May 2022, Trans Mountain and its contractors were working on a worksite in the 8600-block of Commerce Court in Burnaby, BC. The area was fenced and included various "Warning Signs", as that phrase is defined in para. 10(b) of the Injunction. In any event, there is no dispute that this worksite was a "Trans Mountain Site" as that term is defined in para. 1 of the Injunction.

[7] On May 11, 2022, Ms. Kelsall, Ms. Everett, and others, who appeared to be their assistants and/or supporters, attended outside of the fenced worksite. Ms. Kelsall and Ms. Everett were both dressed in inflatable T-Rex dinosaur costumes. The group set up a sign "Dino sports day". Someone in their group was filming the activities. As a result, Trans Mountain security personnel arrived at the area.

[8] At some point, Ms. Kelsall and Ms. Everett, still in their dinosaur suits, climbed over the fence at a point that was a very short distance from one of the "Warning Signs". One person assisted them in getting over the fence, while another person filmed the event. Once they were in the worksite, Ms. Kelsall and Ms. Everett set up a badminton net and began to play badminton.

[9] Randy Marquardt, a regional security manager for Trans Mountain, approached both young women and he says he attempted to provide them with a copy of the Injunction. This appears to be the only factual matter somewhat in dispute, in the sense that Ms. Kelsall and Ms. Everett assert that the Injunction was just waved in front of them and was not actually provided to them.

[10] In any event, what is not in dispute is the Crown's later assertion that, when confronted by Mr. Marquardt, Ms. Kelsall and Ms. Everett stated that they were dinosaurs and did not speak English, and they asked what an injunction was.

[11] Mr. Marquardt confirmed with Trans Mountain's workers that work had to stop because of the presence of the two women in the worksite. This is not an uncommon approach when other protestors have entered other Trans Mountain worksites and work had to be stopped to avoid any safety issues.

- [12] Mr. Marquardt then advised Ms. Kelsall and Ms. Everett that they were also committing mischief and that the police had been called. He advised them that he would stop them from approaching any equipment.
- [13] Shortly thereafter, Ms. Kelsall and Ms. Everett ran up the embankment back towards the fence where they had entered the worksite. Unfortunately for Ms. Kelsall and Ms. Everett, their getaway was impeded when they were met by RCMP officers, who arrested them.
- [14] Ms. Kelsall and Ms. Everett were inside the worksite for about 20-25 minutes. The cost borne by Trans Mountain as a result of the delay to its operations was estimated at \$1,240.
- [15] Ms. Kelsall and Ms. Everett were taken to the Burnaby RCMP detachment and released on undertakings to appear, initially on the criminal charge of mischief. After later consideration, the Crown filed its notice of application in October 2022 to proceed with criminal contempt charges, rather than the mischief charge.
- [16] Throughout this entire incident, Ms. Kelsall and Ms. Everett's actions were being filmed by their supporters and also seen by other protestors, site personnel and police officers. In addition, the Crown has provided various social media postings, both print and photographic, which referred to Ms. Kelsall and Ms. Everett's actions. The incident was also reported in the local press, Burnaby Now, on May 12, 2022.
- [17] The materials also indicate that either Ms. Kelsall and Ms. Everett, or someone on their behalf, set up an online fundraising site to raise money for them to pay their "legal defence fund".

SENTENCING PRINCIPLES

- [18] I have dealt with the sentencing principles that apply many times in this proceeding. I do not intend to address them in detail at this hearing. Anyone who has an Internet connection, which I safely assume includes Ms. Kelsall and Ms. Everett, can easily find them. In fact, these contemnors may, in fact, have found them prior to May 2022.
- [19] Many case authorities make clear that the primary sentencing objectives in criminal contempt matters is denunciation and deterrence. These authorities include *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCCA 156 [Trans Mountain BCCA] where the court stated:
- [57] Denunciation and deterrence are the principal sentencing objectives in criminal contempt cases. Chief Justice Farris described the underlying rationale in *Canadian Transport (U.K.) Ltd. v. Alsbury* (1952), 6 W.W.R. (N.S.) 473 at 478 (B.C.S.C.), *aff'd* [1953] 1 D.L.R. 385 (C.A.), *aff'd* [1953] 1 S.C.R. 516:

One law broken and the breach thereof ignored is but an invitation to ignore further laws and this, if continued, can only result in the breakdown of the freedom under the law which we so greatly prize.

- [20] Rehabilitation is not a completely irrelevant consideration, but it certainly plays a lesser role.
- [21] When I speak of deterrence, the courts have repeatedly spoken of that concept as having two different aspects: firstly, there is general deterrence, in the sense that a sentence will signal to others, who might be similarly inclined to breach the Injunction, or any other court order, that there will be consequences; and secondly, specific deterrence in terms of deterring the particular offender from repeating their criminal behaviour.
- [22] Both of these principle sentencing objectives--denunciation and deterrence, both general and specific--loom large in this sentencing.
- [23] The Crown also refers to *MacMillan Bloedel Ltd. v. Brown*, [1994] B.C.J. No. 268 (C.A.) [MacMillan Bloedel] at paras. 6, 12 and 17, about the importance of the sentencing process to emphasize that civil disobedience carries consequences that will be imposed to bring home to offenders that disregard for court orders will not be tolerated.
- [24] Defence authorities also include: *R. v. Nasogaluak*, 2010 SCC 6 at para. 42 on proportionality; and *Transportation Lease Systems Inc. v. Viridi*, 2009 BCSC 695 at para. 17 (referenced in *Trans Mountain BCCA* at para. 58).

POSITIONS OF CROWN AND DEFENCE

- [25] The Crown and Ms. Mirsky, counsel for both Ms. Kelsall and Ms. Everett, seek 21-day jail terms for Ms. Kelsall and Ms. Everett. It is therefore a joint submission and must be considered by the Court in the context of the principles of *R. v. Anthony-Cook*, 2016 SCC 43.
- [26] Crown counsel, as it has typically done in these sentencing hearings, has set out the substantial history of this matter to situate the Court in terms of how past offenders have been addressed.
- [27] In May 2022, the first iteration of the Injunction had been outstanding in excess of four years. I have repeatedly said in these sentencing hearings that the time for early exuberance in the form of civil disobedience came and went many years ago. Unfortunately, breaches of the Injunction have continued over the last four years by various persons who have decidedly chosen to take the law into their own hands.
- [28] Crown counsel has outlined the previous sentencing recommendations that it has presented in this proceeding. These recommendations, as of August 2018, were outlined in *Trans Mountain BCCA* at paras. 9-12 and are referred to as Category One to Category Five. The "Early Category Five" recommendation was a 14-day jail term, in the event of an early guilty plea.
- [29] As noted in *Trans Mountain BCCA* at para. 12, the Crown's sentencing position indicated that the Crown reserves its right to seek longer jail sentences without further notice with respect to arrests after early August 2018.

- [30] Unfortunately, that very scenario has occurred in this proceeding, in that the Court has found it necessary to impose harsher jail sentences, even on first offenders who have chosen to disregard the clear history of this matter and the fact that their jeopardy in the event of a breach of the Injunction remains and could be escalated.
- [31] The jurisprudence that supports the court's ability to impose increasing sentences in the face of ongoing disobedience of a court order is well known and has been referred to repeatedly in this proceeding. These include the words of Chief Justice McEachern in *MacMillan Bloedel* at paras. 47-52. More recently, this approach was endorsed in *Trans Mountain BCCA* at paras. 46, 53, and 60, in the context of applying the parity principle to impose like sentences on like offenders.
- [32] Some highlights of previous sentencings in this proceeding are helpful in terms of assessing the proposed 21-day jail terms.
- [33] There were various guilty pleas arising from breaches of the Injunction in 2021. Earle Peach breached it in March 2021 and received a 14-day jail term in May 2021 (approximately one year before this breach took place): *Trans Mountain Pipeline ULC v. Mivasair*, 2021 BCSC 1749. In September 2021, Janette McIntosh, Ruth Walmsley and Catherine Hembling were arrested and sentenced to 14-day jail terms in February 2022: *Trans Mountain Pipeline ULC v. Mivasair*, 2022 BCSC 323.
- [34] In February 2022, Muhammad Zain Haq and William Winder came before the Court with guilty pleas for their breach of the Injunction in September 2021: *Trans Mountain Pipeline ULC v. Mivasair*, 2022 BCSC 338. This sentencing was the first time that the Crown sought an increased jail sentence beyond the Early Category Five. Mr. Haq was sentenced to 14 days in jail, but I expressed in my reasons for judgment that I only did so in light of the Crown's position and that an increased sentence would have been very much entertained if the Crown had sought one at that time. Mr. Winder was sentenced to 21 days in jail, which is beyond Early Category Five, but there were aggravating circumstances that applied. In my reasons, I stated:
- [55] ... Mr. Haq and Mr. Winder, and everyone else who may see fit to breach the Injunction, are put on notice that the Court is becoming increasingly frustrated with the ongoing breaches and that increasing sentences will be entertained by the Court if they are appropriate in the circumstances.
- [35] In June 2022, Dr. Timothy Takaro pled guilty with respect to his offence in November 2021. Given the aggravated circumstances that arose from his breach, which involved a tree sit, Dr. Takaro received a 30-day jail term: *Trans Mountain Pipeline ULC v. Mivasair*, 2022 BCSC 1034.
- [36] Another first offender was found guilty after trial when William George received 28 days in jail for his breach in January 2021. He was sentenced in May 2022: *Trans Mountain Pipeline ULC v. Mivasair*, 2022 BCSC 791.

- [37] Crown counsel advises the Court that, as of today, the arrest of Ms. Kelsall and Ms. Everett in May 2022 is the last arrest that has taken place where the Crown will be pursuing criminal contempt charges. That is good news from the Court's point of view, and hopefully represents a change in people's behaviour. However, if there are further infractions, I will continue to deal with them as appropriate, including, as I said, a consideration as to whether escalating jail sentences should be imposed.
- [38] In any event, it will be apparent that the Crown is continuing to depart from the Early Category Five sentence in seeking an escalated jail sentence of 21 days for first offenders who plead guilty, given what it says is the need for further general deterrence.

CIRCUMSTANCES OF THE OFFENDERS

- [39] Ms. Mirsky has made some general submissions with respect to both Ms. Kelsall and Ms. Everett and also addressed each of them individually.
- [40] Ms. Mirsky has emphasized their early guilty pleas, which, of course, stand as a mitigating factor. She points out that her clients' actions were non-violent, and I accept that is the case. She indicates that both young women were aware of the penalty that could be visited upon them if they breached the Injunction. Finally, she submits that their guilty pleas signal that they are prepared to accept responsibility for their actions.
- [41] Ms. Mirsky's initial submissions to the Court also indicated somewhat of a sea-change with respect to both young women, in the sense of suggesting that they both had more recently signalled their respect for the Court and its orders. In fact, Ms. Mirsky invited me to view her clients' advertisement of the court process in relation to this prosecution via their social media posts as indicative of that respect.
- [42] After Ms. Mirsky summarized Ms. Kelsall and Ms. Everett's backgrounds, they both addressed the Court, as they are entitled to do before this sentence is passed.

Ms. Everett

- [43] Ms. Everett was born in September 1998 and is now 24 years old. She was born in Delta, BC. Ms. Everett is of Métis heritage, but early in this prosecution she waived her right to a Gladue report. In any event, Ms. Everett has provided certain oral and written submissions to me, which set out some of her Indigenous background, which I will address shortly.
- [44] By all accounts, Ms. Everett comes from a fairly well-to-do family. She attended a private girls' school on Vancouver's West Side and graduated from that high school. She also attended McGill University in Montréal and appears to have been quite successful in her studies there. Her studies included environmental studies.
- [45] As of October 2022, Ms. Everett became employed as a project manager for the Metro Vancouver Alliance, which I am told is an organization that addresses societal issues.

- [46] Ms. Everett also has a history of volunteerism, particularly in the environmental area. Ms. Mirsky describes her client's activities as prosocial, and I accept that, save and except with respect to this incident, her activities have been prosocial and non-criminal. Ms. Everett does not have any criminal record.
- [47] I have been provided with a number of documents with respect to Ms. Everett, and I will summarize those briefly.
- [48] Ms. Everett is a diabetic. It appears that Ms. Everett is adequately addressing that particular health issue, and her condition is not put forward as a reason to avoid incarceration in this case.
- [49] I have also been provided with a letter from Ms. Everett's parents, Robert and Alison Everett, dated January 11, 2023. They confirm that their daughter is working two part-time jobs and is financially independent. They also confirm that she is actively engaged in ongoing medical and psychological therapy for her physical and mental health. I have received a letter from a somatic therapist who has treated Ms. Everett from August 2020-January 2022. Ms. Everett confirmed in Court that she is still seeing two people with respect to her mental health challenges. Those mental health challenges have been described in various ways, but appear to be under the rubric of anxiety and specifically "climate anxiety", as she describes it.
- [50] I also received a letter from Charlotte Euverman, who is Ms. Everett's friend. Ms. Euverman speaks very highly of Ms. Everett's character. Dr. Jen Gobby, who was Ms. Everett's professor at McGill University, also provided a letter speaking very positively in terms of Ms. Everett's passion for the environment.
- [51] Marlene Hale also provided a letter referring to Ms. Everett's character and speaks of Ms. Everett's deep concern for the climate crisis. Finally, Ms. Everett provided a character reference letter from Dr. Hamish van der Ven, a UBC professor, also speaking of Ms. Everett's passion for environmental justice and her intelligence, compassion, enthusiasm and principled outlook.
- [52] Ms. Everett addressed the Court in some detail. Her remarks were made orally from her written statement, which was marked as an exhibit at this hearing. Ms. Everett speaks of her passion for the environment and her involvement in what she called "climate justice activism" and her concern for the future. It is clear, as with most contemnors who come before this Court, that Ms. Everett is strongly opposed to Trans Mountain's pipeline expansion project and would dearly like it to stop. To this point in Ms. Everett life, or at least as of May 22, 2022, it does not appear that Ms. Everett has discovered the legal means by which she is entitled to introduce her voice toward policy change in Canada through democratic means.

- [53] I will also address Ms. Everett's Métis heritage. Ms. Everett states that her paternal grandmother came from the Red River, Manitoba area. She is quite proud of the efforts of her ancestors in the disputes that took place in that area of Manitoba in the late 1800s. Ms. Everett continues to indicate some kinship, with the local First Nations in the Kamloops area, the First Nations in the Lower Mainland, and even in other areas of Canada, in terms of their shared opposition of the pipeline.
- [54] In deciding upon a fit sentence, I have taken into consideration, consistent with the Criminal Code, R.S.C. 1985, c. C-46 provisions, Ms. Everett's Métis heritage. However, as the case law makes clear, that does not dictate a different result in respect of Ms. Everett; it only dictates a different path to the result. I conclude that Ms. Everett's Indigenous history does not stand as a true distinction here in terms of lessening the moral blameworthiness of Ms. Everett. Ms. Mirsky does not suggest otherwise.
- [55] Ms. Everett's personal comments to the Court were very heartfelt although she expressed no sense of remorse in her remarks, written or oral. Having said that, I would emphasize that a lack of remorse is not an aggravating factor; it is simply a lack of a mitigating factor. Ms. Everett stated that she did not mean to indicate disrespect for the Court by her actions. That is a comment that has been made time and time again in these proceedings by various contemnors and can be only taken to a certain point. The fact is that Ms. Everett's actions did have the effect of causing disrespect for the Court and its orders, and whether that was as a result of a refusal to understand or youthful ignorance remains a question.
- [56] In terms of sentencing objectives, general deterrence remains very much relevant in terms of what sentence is fit for Ms. Everett. In my mind, it is an open question as to the matter of specific deterrence, in terms of whether Ms. Everett is now going to find legal ways of advancing her climate causes. I will leave it with her to consider that matter, and hopefully she lands on the side of the law rather than coming before this Court again.

Ms. Kelsall

- [57] Ms. Kelsall was born in January 1998 and is 25 years of age.
- [58] Like Ms. Everett, Ms. Kelsall comes from a privileged upbringing. Her family hails from West Vancouver where she currently resides with her mother, father, and siblings. Ms. Kelsall graduated from a West Vancouver private school, Collingwood, in 2016. I was told that she was valedictorian of her class.
- [59] Ms. Kelsall attended Concordia University for a brief period of time. When I enquired as to whether she had completed her studies there, the answer was that she had not. Apparently, she learned of the Wet'suwet'en Nation opposition to various activities, including pipeline activities in Northern BC, and heeded the call to come to their aid. No facts were put before me as to what exactly that aid entailed.

- [60] Ms. Kelsall is also gainfully employed. She is a writer and publisher and a comedian, which might have some relevance to my later comments. She is gainfully employed as a life guard and swim instructor in North Vancouver.
- [61] Ms. Mirsky describes that Ms. Kelsall is in generally good health. However, like Ms. Everett, Ms. Kelsall apparently suffers from anxiety, including again the phrase "climate anxiety". I have been provided with some medical documentation by Ms. Mirsky, which includes a letter from Dr. Cecile Ryder dated January 19, 2023. Dr. Ryder refers to Ms. Kelsall having complex psychiatric symptoms with a current diagnosis of bipolar affective disorder type II, generalized anxiety disorder, and attention deficit disorder. Ms. Kelsall apparently is on various medications for her mental health challenges.
- [62] In addition, Suzannah Stanford, a registered psychotherapist, has provided a letter dated January 21, 2023 confirming that Ms. Kelsall has sought and obtained counselling sessions from her six times between August and October 2022.
- [63] Other documentation in support of Ms. Kelsall includes a letter from a family friend, Theodore Malapanis, who provides a very supportive letter as to Ms. Kelsall's character. An interesting aspect of Mr. Malapanis' letter is that he refers to Ms. Kelsall as being deeply remorseful for the offence that she committed. I will return to that comment in a moment.
- [64] Ms. Kelsall's uncle, Ralph Blaine, also provided a letter dated January 6, 2023, speaking very positively of his niece. Finally, Ms. Kelsall's father, Dr. John Kelsall, provided a letter dated January 26, 2023. As one might expect from a father, Dr. Kelsall speaks very glowingly of his daughter. He mentions Ms. Kelsall's struggle with "climate change anxiety" and her struggle with mental health issues. One particular statement by Dr. Kelsall that bears repeating is his comment that "I am certain that these [mental health] struggles have played a role in creating chaotic thought and producing some poor decision making". Dr. Kelsall refers to his daughter reflecting on how she can best participate in producing beneficial changes to society in a socially responsible and constructive fashion.
- [65] Ms. Kelsall also addressed the Court at the hearing, as she was entitled to do before the imposition of a sentence. Ms. Kelsall's comments are not in writing. Based on those comments, and leaving aside the last part of her remarks, it is manifestly clear that Ms. Kelsall has no remorse for her actions. It is also manifestly clear from her remarks that she has no respect for the rule of law, to the extent that the rule of law gets in the way of what she thinks should happen in terms of dictating to other members of our community what they should do, despite those activities being unlawful.
- [66] At the very end of Ms. Kelsall's remarks, she conducted herself in a way that can only be described as another "stunt", to use Crown counsel's word as to the initial incident. Ms. Kelsall retrieved what I believe was a dinosaur hat/hood, consistent with her dinosaur suit that she donned on May 11, 2022, and put it over her head. Ms. Kelsall then started speaking in some voice in what I believe she considered was an amusing way for dinosaurs to talk. Ms. Kelsall did this, knowing that her supporters were in the gallery to witness it. Indeed,

those supporters clapped and cheered Ms. Kelsall on and laughed at her antics. It is clear from Ms. Kelsall's actions, before this very Court, that she has and displayed a deep disrespect for this Court and a deep lack of respect for the rule of law.

- [67] Frankly, based on Ms. Kelsall's actions in this Court, I would have been inclined to immediately convict her for her criminal contempt in the face of this Court, as a result of her egregious actions before this Court. I do not find Ms. Kelsall's actions to be humorous, both on May 22, 2022, and today. I find Ms. Kelsall to be contemptuous, consistent with her contemptuous actions on May 22, 2022.

DISCUSSION

- [68] It is clear that Ms. Kelsall and Ms. Everett breached the Injunction in a very public manner. It was clearly a planned event, or as the Crown calls it, a "stunt" to be made public. Their actions had the effect of halting work on the worksite. Their actions took place some four years after the Injunction was imposed. It was clearly an intentional breach of the Injunction committed in a public manner with knowledge or, at the very least, recklessness that their actions would tend to depreciate the authority of the Court. The Court must take cognizance of and address these contemptuous actions.
- [69] As I said, I would have been inclined to have found Ms. Kelsall immediately in contempt in court and sentenced her at this time to another contempt charge. However, I am not going to do that. Another approach is available to me.
- [70] I return to the fact that this is a joint submission and I am bound by the principles of Anthony-Cook to give due consideration to that submission.
- [71] When Crown counsel and Ms. Mirsky were discussing a joint sentence, they no doubt discussed it in the context of Ms. Mirsky's submissions to the Court regarding Ms. Kelsall. This involved Ms. Kelsall's supposed newfound respect for the Court and the suggestion that she was remorseful and going to undertake prosocial actions in the future, as indicated by the Kelsall family friend, Mr. Malapanis.
- [72] It is apparent that Ms. Kelsall either misled Ms. Mirsky about her position at the sentencing hearing or she changed her mind and did not inform her counsel before she pulled this latest stunt. I accept of course Ms. Mirsky's submissions that she knew nothing about this in advance. Ms. Kelsall will bear the full brunt of that.
- [73] In any event, Ms. Kelsall's latest actions change the complexion of the joint submission in the sense that the basis upon which it was agreed to between the Crown and Ms. Mirsky has been undermined. I therefore consider that, per Anthony-Cook, I am able to depart from the joint submission with respect to Ms. Kelsall by reason of her activities in this Court today, which were contemptuous, disrespectful, and, in my mind, indicative of her continuing disrespect and no doubt future disrespect that she will show this Court and its orders.

[74] In that respect, general deterrence remains a very large component of Ms. Kelsall's sentence. Less so than Ms. Everett, I consider that Ms. Kelsall presents a very high risk of reoffending because she does not seem to understand or agree that the rule of law applies to her and that she cannot act as she wishes in dictating to other law-abiding members of our community what they are or are not allowed to do.

RESULT

[75] Ms. Everett, would you please stand. I find you guilty of criminal contempt of court arising from your actions on May 22, 2022. I am accepting the joint submission with respect to the jail sentence that I also believe is fit in your case. I am imposing a 21-day jail sentence.

[76] I am also departing from the joint submission to another degree with respect to the restitution matter. I grant a standalone restitution order that Ms. Everett will pay \$1,240 to Trans Mountain to make recompense in respect of her activities. In doing so, I am signalling to those who might breach the Injunction in the future that if evidence is put before me in respect of the cost of further disruptions to Trans Mountain, I will consider that as part of any sentence.

[77] You may sit down.

[78] CNSL K. MIRSKY: Madam Justice, if I may, noting that the cost to Trans Mountain was \$1,240 and there are two contemnors before the Court, perhaps I would canvass if the Court meant to break that evenly between each of them?

[79] THE COURT: No. They will each be jointly and severally liable to pay the whole amount.

[80] CNSL K. MIRSKY: Thank you.

[81] THE COURT: Ms. Kelsall, I find you guilty of contempt of court arising from your actions on May 22, 2022. Like Ms. Everett, you will be subject to a restitution order for \$1,240, which, as I just indicated to your counsel, will be joint and several with Ms. Everett. In other words, the two of you have to pay the total amount; you do not each have to pay that amount.

[82] With respect to the jail term, as I said, I consider myself at liberty to depart from the joint submission with respect to Ms. Kelsall, given her stunt in this Court. Ms. Kelsall is sentenced to a 28-day jail term.

"Fitzpatrick J."

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