

Case 1000 (Bell) Hearing only

NO. C916306
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MACMILLAN BLOEDEL LIMITED

PLAINTIFF

AND:

SHEILA SIMPSON ET AL

DEFENDANTS

REASONS FOR JUDGMENT
OF THE HONOURABLE
MR. JUSTICE BOUCK

R.M. Gillen and
B.W. Rendell

J.W. Millar

M.H. Heller

R.A. Moore-Stewart

J.A. Oman

Dates and Place of Hearing

August 30, 1993 to
October 6, 1993
Victoria, B.C.

Counsel for the Plaintiff
Counsel for the Defendant
Yvonne Marie Kato
Counsel for the Defendants
Jennifer Maxwell
Andrew Stevenson
Jonathon Pulker and
Margaret Schmidt

Counsel for the Defendants
Marcelle Bodman
Lessa Heyward and
Todd Andrew Richer

Counsel for the Defendants
Luz Miriam Meyer and
Faith Moosang

INTRODUCTION

Clayoquot Sound is a unique and beautiful wilderness area on the west coast of Vancouver Island. Virgin growths of timber clothe the nearby mountain sides.

Provincial laws give MacMillan Bloedel Ltd. the right to cut some of this timber. Others wish to preserve the trees and retain the land in its natural state. They believe the laws are wrong where they allow the cutting of the ancient forest.

On 20 July 1992, my colleague Tysoe J. gave MacMillan Bloedel Ltd. an injunction in aid of its legal right. The Injunction restrained individuals from interfering with MacMillan Bloedel Ltd's right to harvest the timber. It lapsed on 17 July 1993. Chief Justice Esson renewed it on 16 July 1993 until 30 August 1993.

MacMillan Bloedel Ltd. personnel arrived at the Kennedy River Bridge in the early morning hours of 5 July 1993. They were on their way to log timber in the area covered by the injunction. Protestors blocked their way. Apparently, MacMillan Bloedel Ltd. chose not to get involved in a confrontation that day and so they did not ask for the assistance of the police to make arrests.

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Similar incidents occurred on 6,7,8,9,12,13,14,16, and 19 July 1993. On 20 July 1993, the protest site moved from the Kennedy River Bridge to the junction of Highway #4 and the Kennedy River Bridge Road. Persons who are accused of defying the court orders are now before me charged with contempt of court.

FACTS

The Crown introduced video tapes of the events covered by the allegations. They clearly reveal a large number of people gathered near the Kennedy River Bridge or Highway #4 and the Kennedy River Bridge Road who are intent upon expressing their disagreement with the government's decision to allow logging in the Clayoquot Sound region. They also show people standing on the roadway or the bridge, blocking traffic contrary to the injunction.

Generally speaking, they picture a process server handing out copies of the relevant injunction to those who are doing the blockading. He also serves copies on bystanders who are not on the road or bridge. Most of the bystanders and some of the blockaders accept service of the injunction by taking it in their hands. Other blockaders refuse to reach out for the injunction. The process server then places it on their shoulder or touches them with it. They let the orders fall to the ground where they lie lifeless and unread to be trampled upon amongst the dust and

copy of injunction

Eventually, someone with a conscience gathers up the remains of the orders and returns them to a MacMillan Bloedel Ltd. vehicle.

One day while the process server is performing this duty, two people are seen sticking flashlights into the lens of a video camera in an obvious attempt to destabilize its focusing mechanism.

The process server is seen or heard reading the injunction from a truck. Except for 5 July 1993 he uses a loud speaking amplifier. Protestors pretend not to hear the process server as he reads the terms of the injunction. A number begin singing or humming in an undieguised effort to drown out the sound of the reading.

After the blockaders refuse to move from the roadway or bridge, police officers first ask them to move. When they refuse they are arrested. Most decline to walk from the bridge or the road to the police bus. They must be carried away by the attending officers. As this takes place, supporters who did not choose to get arrested, cheer and applaud those who did. Thus, the will of the people as fortified by a court order is held up to ridicule and mockery. Eventually, those arrested are taken to the Uclulet detachment of the RCMP for processing.

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Besides the video tape evidence, individuals testified on behalf of the prosecution. They were the process server who read the injunction, the cameraman who took the video pictures and police officers involved in the arrests. They explained the contents of video evidence and added to what could be seen in the videos.

Although the routine varied slightly from day to day, that is a general description of the events as taken from the testimony of the Crown witnesses. I recite it in order to put into context the evidence against each individual defendant. I am mindful they can only be found guilty for their individual actions. They cannot be held responsible for the actions of others.

THE POLITICAL ISSUE

All the defendants who testified or made submissions argued they were on the roadway to show their disagreement over government forestry strategy. Many said they were angry with the provincial government forest policies and with MacMillan Bloedel Ltd. because of its supposed bed logging practices.

The issue in these proceedings has little to do with who is right or wrong as between the defendants, the government or MacMillan Bloedel Ltd. Rather, it is whether or not the defendants

disobeyed the injunction order. Many defendants would like me to try the political question of whether government forestry policies are right or wrong. They would also like me to decide whether MacMillan Bloedel Ltd. follows proper forestry practices. But those are not the legal issues the law says I must decide.

It does not mean to belittle the political cause which the defendants are pursuing. Within the law, they have every right to try and persuade the government and the citizens of this province that logging policies should be changed. The point I tried to make during the course of this trial is that they must do so without infringing on the legal rights of others.

Democracy and the rule of law allow every person to protest by peaceful means. But once protestors infringe upon the rights of others, the law must step in. It does so for two purposes. First to protect the legal right and second to prevent violence. If it did not, then the only way of settling the dispute would be by force of arms. In this case, it would be the forest industry and its allies versus the defendants. There is little doubt who would suffer the most.

Some argue that the rule of law is simply a convenient theoretical tool for the private use of lawyers and judges. They imply it has little to do with the every day life of ordinary

Canadians. They are wrong. If we want to see what happens to a country where the rule of law has no foundation in the fabric of a society we need look no further than the violent events that are taking place in Moscow and the rest of the former Soviet Union.

In saying this, I do not mean to suggest in any way that MacMillan Bloedel Ltd. would use violence. Quite properly, it came to this court for an injunction when protesters denied it access to the timber it is allowed to cut under provincial law. I simply mention these facts to rebut the many allegations of the defendants - that this court, and me in particular, choose to be on the side of MacMillan Bloedel Ltd. and not on the side of ordinary people. While it seems to fall on many deaf ears, I must repeat what I said in my ruling of 24 September 1993:

Courts will always come to the aid of any person whose legal rights are infringed, no matter how important or unimportant that person may be. Everybody is entitled to the protection of the law. By the same token, nobody is above the law.

Until somebody comes up with a better way of resolving these kinds of contentious issues, those are the principles I propose to follow.

PURPORTED IGNORANCE OF THE TERMS OF THE INJUNCTION

Before dealing with the case against each of the defendants, I should first put to rest one of the defences that many of the defendants suggested in their testimony. Every defendant was served personally with a copy of the injunction one way or the other. Many said that they either did not read the injunction or if they did, they did not understand it. Additionally, it was read to them over a loudspeaker before they were arrested. Many testified that they did not really grasp what was being said over the loudspeaker.

Those excuses for non-obedience do not stand up to the facts of the law. The evidence is quite clear that they were at the site to get arrested as a form of protest. That is why they remained on the bridge or the road after they were asked to leave. They all knew they would be arrested for contempt of court if they stayed. At the time, they seemed indifferent to the consequences of their actions or made themselves wilfully blind. If they had any doubt about what might happen to them, they ought to have taken the reasonable step of getting off the road or the bridge until they understood the injunction and what might happen should they disobey it.

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Despite the words of any defendant to the contrary, where a defendant was arrested after the injunction was read and served, the only reasonable inference to be drawn from the proven facts is that the defendant intended to defy the court order.

CIVIL VERSUS CRIMINAL CONTEMPT

Most defendants raised the issue of civil versus criminal contempt. Many were willing to admit they were guilty of civil contempt but not guilty of criminal contempt. The latest decision of the Supreme Court of Canada on this issue is *United Nurses of Alberta v. The Attorney General for Alberta*, [1992] 3 W.W.R. 481 at 492-494. At page 493, Madam Justice McLachlin, writing for the majority, defined the difference in these words:

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....

The gravamen of the offence (of criminal contempt of court) is not actual or threatened injury to persons or property; other offences deal with those evils. The gravamen of the offence is rather 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.

Stout or reckless indifference to the exact terms of a court order is not a defence. As adults, they are presumed to know the law. They must exercise diligence by obeying a court order to the letter. They cannot escape responsibility by feigning ignorance.: *MacMillan Bloedel Ltd. v. MacIntosh et al*, Saunders J., Vancouver Registry No. C916306, 29 January 1993, unreported.

INTENT TO DISOBEY THE ORDERS

Another common issue is that of intent.. Almost all the defendants who testified said they did not intend to commit the offence of contempt of court. Intent is often a difficult finding because it lies within the mind of a defendant where no one else but that person can enter. Words alone do not prove intent. Proof of intent frequently involves looking at deeds or actions as well as words. The legal idea is contained in the common sense maxim: actions often speak louder than words.

Intent can be proved by both direct and circumstantial evidence. In other words, I can draw an inference from the proven facts. Then I can find guilt from the direct and the circumstantial evidence if I am satisfied beyond a reasonable doubt that guilt is the only reasonable inference to be drawn from the proven facts.

to get arrested, employees of MacMillan Bloedel Ltd, sub-
 contractors of MacMillan Bloedel Ltd, and RCMP police officers.
 All of these people are members of the public who saw the
 defendants disobeying the injunction in a way that lessened the
 respect of those individuals for the court. Following is a table
 setting out the various dates of the protest together with the
 approximate number of members of the public and media who were
 present on those days:

DATE	PUBLIC PRESENT	MEDIA PRESENT
5 July 1993	75	50
6 July 1993	75+	40-50
7 July 1993	50	15-20
8 July 1993	59	a few
9 July 1993	150	a few
12 July 1993	108	none
13 July 1993	88	none
14 July 1993	135	none
16 July 1993	220	several
19 July 1993	100	1
20 July 1993	75	a few

There is no doubt that each defendant breached the orders of
 either 20 July 1992 or 16 July 1993. Most defendants say they did
 not intend to lessen the public's respect for the court by their

I take it that the word "continuous" is equivalent to
 something more than a momentary or trivial act of disobedience.
 Similarly, the word flagrant means an act done in an inflammatory
 way. Hence, criminal contempt involves conduct that is more than
 momentary or trivial and amounts to inflammatory behaviour designed
 to lessen the public's respect for the court.

One defendant argues that since the arrest of the defendants
 soon followed the reading of the injunction, their disobedience was
 not continuous. But it was only short lived because they were
 arrested. It is apparent that they would have blocked the road for
 a long time had they not been arrested. Thus, that argument must
 fail.

Some defendants contend that the disobedience did not take
 place in a public way. They say they did not specifically invite
 media attention so that their disobedience would come to the
 attention of the general public. It is true there is no direct
 evidence of an invitation to the media, but it is also true that
 they did not discontinue their protest when the media was in
 attendance. Besides, their underlying objective was to get public
 sympathy for their cause.

Finally, other members of the public were present when they
 disobeyed the injunctions. They included, protestors who chose not

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actions. They argue that they were merely objecting to the right of MacMillan Bloedel Ltd. to continue logging in Clayoquot Sound. In my view, the logging protest defence was simply a form of moral excuse they used in order to try and justify their unlawful behaviour.

THE ISSUES

As I said during the course of the trial, there are four main issues I must decide:

1. Was a particular defendant on the roadway or the bridge contrary to the terms of the injunction?
2. Did the defendant know about the terms of the injunction?
3. Did the defendant disobey the injunction?
4. Was the conduct of the defendant of such a nature that it amounted to a continuous and flagrant violation of the court order in a public way?

The evidence must prove guilt beyond a reasonable doubt before a defendant can be found guilty of criminal contempt of court.

ANALYSIS

Although the defendants were tried together, they were all charged separately. Therefore, I must examine the evidence against each one of them in order to determine their guilt or innocence. It is convenient to do so in alphabetical order.

1. Dr. Ronald Aspinall

Dr. Aspinall is a medical doctor who practices medicine in and about Todino, B.C. He was at the Kennedy River Bridge on 6, 9 and 16 July 1993 when he was arrested. He gave evidence on his own behalf and called other witnesses in support of his defence.

Dr. Aspinall struck me as a gentle sort of person who is obsessed with his life cause of saving the ancient rain forests. Despite his disclaimer of forest companies and their employees are his enemies. Unfortunately, this fixation clouds his judgment. He tends to see only his side of an issue and is quick to condemn those who think otherwise. Like so many of the defendants, he is preoccupied with his real or imagined Charter rights and indifferent to his responsibilities as a Canadian citizen.

On the one hand, he testified that he did not understand the terms of the injunction. But on the other, he said he tried to

deliberate slow pace across the bridge in a contrived act of defiance. He admitted it took him 57 seconds to complete the short walk.

The third incident occurred on 16 July 1993. Dr. Aspinall walked onto the bridge carrying a large sign. He then stood on the edge of the road beside the bridge displaying the sign for the benefit of the media. The sign protruded out over the travelled portion of the highway. Had he remained standing where he was, trucks could not get by without hitting the sign and probably him. During the period he was at or near the bridge he momentarily went to the middle of the road to speak to a protestor contrary to the order. He was arrested.

Dr. Aspinall attempted to put forward a defence of being in a state of unbelieveability as to the reason for his arrest on this day. Apparently it was intended to support his argument that he did not intend to commit the crime of criminal contempt. Unfortunately for him, the video shows him being taken away by the police with his arm upraised and his fist clenched in an act of defiance as he acknowledges the cheers from other protestors. In other words, the video portrays a man who knew what he did and was proud of it. That does not square with his court room story that he did not understand why he was arrested nor did he intend to disobey the injunction.

conduct himself in such a way that he would not breach its provisions. How could he do that unless he knew what it said? On cross examination, he tended to answer all questions with an argument and thereby showed himself to be evasive. For all those reasons, he was not a credible witness. I cannot rely on anything he told me.

At all material times he either knew about the terms of the injunction or chose to make himself wilfully ignorant of what it said. Either way, the law attaches knowledge of the injunction to him.

He was at the protest site on 6 July 1993 and impeded the free passage of vehicles contrary to the injunction. He did so by standing in the way of a MacMillan Bloedel Ltd. truck and preventing the passage of traffic. He tried to justify his conduct by pretending that a serious traffic accident occurred when a MacMillan Bloedel Ltd. logging truck inadvertently touched the ski rack on the top of his patrol truck as it inched its way by. He called a MacMillan Bloedel Ltd. employee to give evidence on his behalf concerning this incident but that witness did not support his position and gave unfavourable testimony against him.

Dr. Aspinall also attended the site on 9 July 1993. On that day he restricted the free flow of traffic by walking at a