

On Thursday, excerpts from the reasons for sentencing the first group of protesters arrested at the Clayoquot Sound logging road blockades and a letter from one of the jailed protesters were published on this page. Today, Opinion publishes a controversial letter from five MLAs prompted by the sentencing and a statement from the chief justice.

the Judge and the Politicians

WILLIAM ESSON
Chief Justice, B.C. Supreme Court

JUDGES DO NOT as a rule speak publicly except in reasons for judgment. Within the last week, however, much confusion has been created by a flood of comment about these proceedings. The confusion seems to be deepening and I therefore conclude that the time has come to follow the advice of a revered predecessor in this office, the late J.O. Wilson, that, when there is a threat to the integrity of the court which cannot otherwise be met, the chief justice should climb on his bench and make a statement.

I refer first to the assertion by some persons, including ministers of the Crown, that the proceedings were commenced and are being conducted by the court. The fact is that the proceedings were begun and have been conducted by counsel from the ministry of the attorney general. They have done so in the proper discharge of a responsibility which traditionally attaches to the office of attorney general . . .

In these proceedings, the attorney general does not act as a member of government, but as an independent officer of the Crown responsible for maintaining the integrity of the court. His involvement does not imply approval of the position of the

plaintiff and does not imply that he believes that the injunction was a proper order. From such questions, he stands aloof. His participation is necessary . . . to maintain the principle that the integrity of our legal system requires that court orders not be openly defied. It may be that he or the government of which he is a member disapproves of the activity protected by the injunction. That, one can reasonably infer, was the case in the Everywoman's matter. The purpose of the contempt proceedings is not to protect that activity, but is only to protect the integrity of our legal system by upholding the principle that orders of the court must be obeyed.

It is instructive to consider the close similarity between this case and the Everywoman's case. Both involved orchestrated activities by groups of people who felt compelled by their view of what is right to prevent the plaintiff from engaging in a lawful activity. The anti-abortion protesters were motivated by what they saw as a personal right to prevent abortions. These protesters are motivated by what they see as a personal right to prevent logging in the Clayoquot . . .

OVER the past few days, many of our constituents have expressed their frustration and anger regarding the conduct of the contempt trial involving Clayoquot protesters and the imposition of prison sentences . . .

The extent of public anxiety in our communities has caused us great concern . . . We are particularly troubled by suggestions that the conduct of the trial and resulting jail sentences were directed by the premier or the attorney general . . .

At the outset, we feel compelled to underline the legal and constitutional constraints that limit our ability to comment on matters before the court. In order for our democratic structures to function, the independence of the judiciary must be respected. There must not be political interference in the administration of justice.

Those who have expressed their views to us

are passionate and sincere. Some of these views, however — particularly regarding the role of the government — are based upon misinformation.

The decision to commence contempt proceedings against the . . . protesters was a decision of the courts — not the government. Because of the independence of the judiciary, it is the courts that are responsible for commencing and conducting contempt proceedings — without direction from the attorney general or the premier.

Put simply, it was the courts that commenced and conducted action against the Clayoquot protesters, not the government.

We understand that many of our constituents want the government to step in to influence or discontinue these proceedings. However our laws require that the courts be free of political interference. Whether it be a case involving those

who oppose access to abortion or land-use policy, the public must have confidence that court proceedings are directed by legal principles and not political considerations.

Does the attorney general or the premier have the right then to order the courts to alter or terminate these proceedings? For the reasons provided, the answer is no . . .

This case demonstrates the tension that exists between the right to engage in peaceful protest and the need to protect the rights of society as a whole. The courts are charged with a duty to resolve these tensions . . .

Robin Stencos, Victoria-Hills
Gretchen Brewer, Victoria-Beacon
Elizabeth Cull, Oak Bay-Gordon H
Andrew Petter, Saanich So
Moe Sihota, Esquimalt-Metch



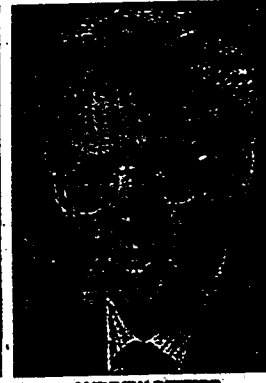
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ELIZABETH CULL



GRETCHEN BREWER



ANDREW PETTER



MOE SIHOTA

The history of the Everywoman's case is also relevant. The first blockade was on Jan. 21, 1989. On that day an injunction was granted, the demonstrators refused to comply and were arrested. The first applications to find them in contempt were brought before the court by the plaintiff. On Feb. 8, there was a very large demonstration which resulted in 103 persons being arrested and brought before the court. The first appearance was before Justice Finch who [requested the involvement of the attorney-general and said:

"From what I have heard today, and I'm not in a position, of course, to make any findings on the matter, but from what I have heard today, the conduct of the persons cited is a classic case of criminal contempt. It is a contempt which if proven would tend to bring the administration of justice into scorn or disrepute, and it seems to me, therefore, it's a matter in which the attorney ought properly and in the interests of the public and in the interests of peace and good order to intervene and assume the conduct of the contempt proceedings."

I digress to note that the ministry of the attorney-general first became involved with this case in 1992 after receiving a similar request from a judge of this court. Those contempt proceedings were

concluded many months ago but the present cases arise out of breaches of the same injunction.

The request by Justice Finch was conveyed to the attorney-general of the day who, at first, rejected it. He publicly expressed the view that he had no responsibility in the matter. A lively public debate ensued. It ended a few days later with the attorney-general taking conduct of the proceedings . . .

Throughout our history, but with increasing frequency in recent years there have been periods of a surge in incidents of public disorder. At such times, there is frequent recourse to injunctions and to contempt proceedings. Through it all, the judges of the court must continue to do their best to hold an even hand, often in circumstances of extraordinary stress. We would rather be doing other things. We accept with such fortitude as we can muster the sometimes vigorous, often ill-informed criticism of our decisions and procedures which come from people caught up in the emotions of the day. But we are entitled to expect better from political leaders and lawyers and are distressed to see some of them joining in crucial comments relating to proceedings which are ongoing.

I turn to a different aspect of the matter. There has been much crit-

icism of the court for conducting "mass trials" and "denying the right to counsel." Those criticisms consistently ignore the unique nature of contempt proceedings. Unlike ordinary criminal proceedings, they arise from conduct directed against the court by defying its orders. For that reason, it has always been accepted that such conduct should be dealt with promptly, i.e. summarily.

As these matters may be the subject of appeals I am not going to discuss in any detail what took place. But I feel compelled to deal with the assertions that the procedure followed was without precedent. The fact is that the procedure was essentially identical to that employed in all similar cases in recent years except that the court went further . . . in granting adjournments to obtain counsel and in limiting the number to be tried together . . .

Another matter (that has caused) much confused discussion is that of the distinction between civil and criminal contempt. Some have suggested that there was an option to proceed against the protesters only for civil contempt. In relation to that, I quote the words of Justice Wood in the Everywoman's case . . .

"As I have attempted to make clear, it is the nature and quality of the conduct which determines whether a contempt of court is crim-

inal or civil. That from the moment the defendants acted in this case the contempt was a criminal contempt . . . I did not . . . "convert charge" to one of criminal contempt. The contempt was criminal from the outset.

Finally, I will touch on the topic of civil disobedience. Much has been said by way of suggesting that persons whose actions are so described should not be found in contempt. With respect to that, I quote from the reasons for judgment of [Chief Justice] McEachern in the Everywoman's case on appeal . . .

"Civil disobedience was mentioned in argument almost as if it were a principle of law justifying leniency. Civil disobedience is philosophical, not a legal principle. Presumably for this reason, dimensions have never been fully examined in authoritative jurisprudence.

"Those commentators who have written on this subject all seem to agree that, except with respect to a law which every right thinking person would regard as intrinsically evil, it is the duty of every citizen to obey the law. Even philosophers agree that those who disobey the law, by civil disobedience or otherwise, must expect to be punished according to law. Civil disobedience is not a defence to any wilful breach of the law . . ."