IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Oceanview Forest Products Ltd. v. Elphinstone Logging Focus Society,* 2025 BCSC 1431

Date: 20250507
Docket: S253289
Registry: Vancouver

Between:

Oceanview Forest Products Ltd.

Plaintiff

And

Elphinstone Logging Focus Society, Hans Penner, Ross Muirhead, Charlene Penner, Jane Doe, John Doe, and persons unknown

Defendants

Before: The Honourable Justice Thomas

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	G.J. Roper L. Yeom
Counsel for the Defendant, Elphinstone Logging Focus Society:	N.J. Ross
The Defendant, appearing in person:	R. Muirhead
Place and Date of Trial/Hearing:	Vancouver, B.C. May 6, 2025
Place and Date of Judgment:	Vancouver, B.C. May 7, 2025

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[1] **THE COURT:** This is an application for an interim injunction restraining the defendants from physically impeding or delaying access to the harvesting sites located within Timber Sale Licence TA0521 and from interfering with lawful forestry operations.

Timber Sale Licence TA0521

[2] The plaintiff, Oceanview Forest Products Ltd. (“Oceanview”), is a timber harvesting company. It purchased the timber sale licence from the Province of British Columbia through the BC Timber Sales (“BCTS”) on June 10, 2024 for just over $52,000. The licence was issued pursuant to s. 20 of the *Forest Act*, R.S.B.C. 1996, c. 157 [*Forest Act*]. The licence has been issued for 30 months. The license expires on December 10, 2026.

[3] The licence requires the implementation of an environmental management system. Oceanview is in compliance with the environmental management system mandated by the government and included in the licence.

[4] Oceanview has been granted the right to use the Shelf Forest Service Road and its associated branches to access the blocks they are licensed to harvest.

Issuance of a Licence by BC Timber Sales

[5] There was a lengthy approval process prior to BCTS issuing the licence, which involved two rounds of public consultation.

[6] BCTS was required to complete a watershed study before issuing the licence. This study confirmed that the tree harvesting and related infrastructure

would not increase the peak water flows through the streams and water management systems, including areas such as gas lines, hydro lines, culverts, and residential zones below the blocks to be harvested.

[7] BCTS obtained the study, which was called the Polar Watershed Assessment ("PWA") This study concluded that there would be no impact on the water flow, but was silent on the impact on stream crossings. The study recommended that BCTS reach out to the Ministry of Transportation, the Sunshine Coast Regional District, and the Town of Gibsons to ensure that a stream crossing review be completed pre-emptively before any logging and rebuilding take place. I understand that the recommendation was passed on to the Ministry of Transportation, but that no such review took place.

[8] The defendants were worried about the effects of harvesting and hired Dr. Elliott, a hydrology professor at UBC, to review the PWA. Dr. Elliott was very critical of the PWA, pointing out that it lacked basic watershed modelling, such that it could not reliably predict how the downstream points of interest would respond to changes caused by the upslope volume.

[9] Additionally, the PWA overlooked the impact of Reed Creek, a stream that flows directly through one of the blocks planned for logging under the Timber Sale License. There is some disagreement among experts about the significance of Reed Creek's omission and whether it has been addressed later. The main point is that an independent review found that the assessment used by BCTS was based on an outdated framework, which cannot forecast the effects of logging on water flow.

[10] Dr. Elliott's conclusions with respect to the critique he performed are:

> I concluded that Polar's recommendations to BCTS to log right up to set ECA thresholds in the 9 different watersheds affected by Blk TA0521 should not be the tool to use when it comes to ensuring that forestry operations do not result in down-stream high and low flows, and subsequent impacts to Point of Interests and public safety more broadly. The Public Interest is at stake regarding how Crown lands are being sustainably managed and predicting the impacts over time to down slope public and private infrastructure.

[11] Apparently, BCTS did not respond to the concerns raised by the defendants during the public consultation process.

[12] In addition to the scientific evidence, Mr. Muirhead has personally reviewed points of interest and culverts. He has observed that the system is dangerously strained at peak flows. He has witnessed catastrophic collapses at points of interest due to high water runoff and that the culverts, in particular, around Reed Creek, are at or near their maximum capacity during peak flow periods.

[13] BCTS was also required to perform an environmental survey to ensure that wildlife would not be impacted by timber harvesting.

[14] The defendants commissioned their own study by a professional biologist, Dr. Mitchell. She determined that a section of the blocks to be logged contained vulnerable frogs and fauna. At tab 5, pages 2 to 3 of Dr. Mitchell's report state:

> 4. Surveys that I have conducted in late March 2025 have confirmed breeding of Red-legged Frogs at two sites (Pond #1 and #2 as labelled in figures 4 & 7 at pages 2 and 4 respectively of the Mitchell Memo) in the vicinity of block TA0521 and approved road building areas. Since water temperatures were only 4 degrees at the time that I conducted these studies (the coldest temperature egg masses are usually laid at), it is highly likely that breeding was active in this area through April.
>
> 5. Based on habitat observations there is limited available breeding habitat for Red-legged Frogs in the area of block TA0521. Historically, Red-legged Frogs would use small forested pools, including wells created by fallen trees in addition to wetlands. However, those sites have been degraded or destroyed over many decades of repeated logging of habitat. Sites with active breeding are important to maintain for the persistence of Red-legged Frogs and other native amphibians. Degradation or destruction of this habitat, particularly with a road proposed to go directly through Pond #1, will impact this population of Red-legged Frogs for years to come as they lack alternative breeding sites.
>
> 6. Red-legged Frogs, classified as Identified Wildlife in the *Forest and Range Practices Act*, are eligible for Wildlife Habitat Area (WHA) establishment using breeding habitat as the core of the WHA. Although there are 100s of Red-legged Frog WHAs in the West Coast Region, there are zero WHAs in the South Coast Region where habitat loss is significant.
>
> 7. The lack of prioritization of WHA establishment in the South Coast Region has led to significant degradation and loss of vital habitat important to Red-legged Frog populations.
>
> 8. Below are important recommendations that should be applied to this area in the form of a WHA. These measures are adopted from WHA's which have been adopted for Red-legged Frogs in other areas of Coastal BC.
>
> *Access*
>
> (a) Do not construct roads;
>
> *Harvesting and Silviculture*

> (b) Do not harvest in the core area;
>
> (c) In the management zone, use partial harvesting systems that maintain 70% basal area. Maintain forest structure and cover by retention of large diameter trees, multi-layered canopies, snags, and coarse woody debris;
>
> (d) Retain as much understorey trees, shrubs, and herbaceous vegetation as is practicable;
>
> (e) No salvage should be carried out;
>
> *Pesticides*
>
> (f) Do not use pesticides.
>
> 9. In addition, the Red-listed Cw – Sword fern and Blue-listed CwSs – Skunk Cabbage habitat that is located in Polygon #1 (Fig. 4) may represent important breeding habitat for Red-legged Frogs and other native amphibians and should be surveyed prior to any tree extraction in this area in order to avoid any direct mortality of adult frogs, egg masses or larvae. The presence of Coastal Tailed Frogs have also been detected in this area and many streams are highly suitable for this species. Stream-side protection measures and any tree extraction should also account for this species.

[15] BCTS did not respond to the concerns raised by Dr. Mitchell.

[16] I am troubled by the apparent lack of response by BCTS to these concerns as they seem to raise various public safety concerns and concerns about the impact of timber harvesting on vulnerable species and fauna.

[17] Although it appears that BCTS has obtained the studies required to issue the timber license, it appears that the studies BCTS obtained are fundamentally flawed. It also appears that BCTS has refused to address clear concerns that raise public safety issues and concerns about vulnerable species and fauna. However, in saying that, I do not have BCTS's side of the story, so I only have a one-sided perspective on these issues.

[18] The defendants lack a definitive plan to address the deficiencies and concerns they have identified. They request a stream crossing review, but that falls outside the jurisdiction of either the plaintiffs or the BCTS. I understand this review can only be carried out by the Ministry of Transport, the Sunshine Coast Regional District, and/or the Town of Gibsons.

[19] The defendants also wish to expand a provincial study into the wildlife and fauna affected by the timber license in the hope of obtaining a wildlife habitat area

designation under the *Forest and Range Practices Act*, S.B.C. 2002, c. 69. There is no evidence before me outlining what this process would entail, how long it might take, or the likelihood of successfully establishing such a designation.

[20] I understand that the defendants were involved in trying to stop licensed logging previously on a different site and sought a judicial review of the underlying certificate for that site due to a failure of BCTS to properly consult the public prior to issuing the license. After filing for a judicial review, they successfully obtained an injunction, but a condition of the injunction required them to post security, which I understand would have involved mortgaging their homes. Consequently, they did not post security, and the injunction was not granted.

[21] This time, the defendants have set up a small peaceful blockade located just off the main shelf forest service road, which prevents the plaintiff from accessing their site with tools or equipment. They have taken this approach because they cannot afford the cost of posting security for an injection while seeking judicial review of the timber license issued by the BCTS.

[22] The defendants have effectively prevented Harbourview from logging pursuant to their lawful license while circumventing the requirement to post security for an injunction (which would be required if they were to seek a judicial review of the licence). Therefore, the defendants elected not to pursue a judicial review of the licence but rather block the plaintiff's access to their site.

[23] The defendants note that Harbourview has advised them that they will modify their road plan so that it does not go through the habitat that may have protected fauna and species in it. Apparently, the habitat is in an abandoned quarry of relatively small size in scope and dimensions. I see this as an admission that the area should be characterised as a wildlife habitat area; rather, I see this as responsible conduct by Harbourview, who is doing everything in their power to be responsible in difficult circumstances.

The Impact of the Blockade on Oceanview

[24] Oceanview has spent the last few months preparing to begin logging on the block they have the license to harvest. They met with Ministry officials and confirmed that all conditions and environmental permits had been met. They

started logging in some areas on April 1st and 2nd, 2025. However, they have been unable to log since April 14th due to the blockade.

[25] I use the term blockade. I wish to emphasize that this is a very peaceful and civilized form of protest. It involves a person sitting on the road with a vehicle blocking the way and a banner across the road. The person simply informed Oceanview that they could not take any equipment or vehicles further up the road to the site because they would not move.

[26] Mr. Grill described the impact of this blockade in his affidavit. I am not going to read these parts in, I will simply refer to paras. 50-71 of his affidavit.

[27] The defendants take issue with a number of the facts referred to by Mr. Grill. They say that it is common on the coast to harvest timber all year round and they do not accept Mr. Grill's evidence of a limited time for logging due to rain and forest fire risks. In my view, this is an evidentiary issue. The evidence of Mr. Grill is internally consistent on this issue and seems to make logical sense given the steepness of the terrain.

[28] The defendants say the evidence of the penalty clause is Mr. Grill's interpretation of the contract. In addition, they note that if the blockade is voluntarily lifted, it may be that Mr. Grill could fulfill the terms of the contract. I note that Exhibit V of Mr. Grill's affidavit at page 215 and Exhibit U at page 205 tend to support his interpretation. However, in my view, the interpretation is an evidentiary issue. Mr. Grill's interpretation of the contract on its face appears to be internally consistent and, in my view, is not clearly wrong.

[29] Mr. Grill relies on hearsay evidence estimating the number of trees and the value of trees and estimating his potential losses at para. 62 of his affidavit. The defendants say that such evidence is inappropriate and rely on *Litchfield v. Darwin*, 1997 CanLII 3830 and *British Columbia Hydro and Power Authority v. Boon*, 2016 BCSC 355 at paras. 39-40 [*BC Hydro*].

[30] The main issue regarding the concern for hearsay involves the estimates of the number of trees in the blocks to be logged and the value of those trees. Regarding the value of the trees, this is knowledge that resides within the industry. If there had been a serious dispute about the pricing information, Mr. Grill could have been cross-examined. As I understand it, the source of these valuations is

available from specialized publications accessible to industry professionals like Mr. Grill. This information, in its true sense, can only be obtained through hearsay evidence.

[31] The second issue concerns estimating the number of trees. Again, I should clarify that this is an estimate. It's evident that there are valuable trees to be cut under the license. The precise number and value of these trees remain uncertain and might not be known until the trees are actually harvested. I believe that providing a detailed estimate of the tree count would not be practical given the nature of this application. In my view, this is more about the weight of the evidence than its admissibility. Care must be taken to understand the general nature of this evidence.

[32] Mr. Grill has not provided a detailed breakdown of his daily costs of $1,500, which include Oceanview personnel, wages, vehicles, and travel expenses under that category. The defendants argue that more detailed information should be provided, and suggest that other projects might offset the losses. I agree that the evidence is not sufficiently detailed or specific to fully address these possibilities. In these circumstances, I will consider these concerns as part of the overall assessment of the evidence's weight. Had there been serious disputes over whether any losses are or would be incurred, Mr. Grill could have been cross-examined, given his presence in the courtroom.

[33] The defendants raise the same concerns regarding the $6,500 overhead costs related to Skytech for equipment time. These daily charges are not included in the contract between the plaintiff and Skytech. I note that it is common for contractors to receive compensation for downtime or a daily rate in addition to a per-cut charge; however, there is no evidence regarding the specific terms between the parties concerning these costs or compensation for downtime. I will consider these matters as of weight rather than an admissibility issue, for the same reasons I outlined in the previous paragraphs.

Balance of Convenience Test

[34] This test is fairly set out in the *Red Chris Development Company Ltd. v. Quock* case, 2014 BCSC 2399 [*Red Chris*], which is set out in para. 19 of the book of authorities. I am now just reading from para. 45:

> The test for an interlocutory injunction is set out in *RJR-MacDonald Inc. v. Canada (Attorney General),* 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311, at para. 43:
>
> … First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits. ...

[35] I will deal with each of these three considerations individually and then consider them as a whole.

Is There a Fair Question to be Tried?

[36] The considerations of a fair question to be tried are set out in *Red Chris* atparas. 48-50:

> [48] The onus on a plaintiff to establish a “fair” or “serious” question to be tried is a low one. A strong prima facie case is not required, as the Court must merely be satisfied that the plaintiff’s case is neither frivolous nor vexatious (*RJR-MacDonald Inc.*, at para. 55). At this stage, the Court makes a preliminary assessment of the merits of the case to confirm that the right or rights alleged exist, and that there is an actual or apprehended breach of those rights.
>
> [49] The conduct of the blockaders potentially amounts to a number of legal wrongs including nuisance, breach of ss. 423 and 430 of the *Criminal Code*, the tort of intimidation, inducement of breach of contract, interference with economic relations by unlawful means, and conspiracy. For the purpose of an interlocutory injunction, the threshold to show that there is a fair question to be decided is a low one. In commenting on potential wrongs I am not determining their merits, but rather limit my findings to the question of whether there is a fair question to be tried in respect of those alleged wrongs.
>
> [50] The evidence indicates that the plaintiff has obtained all permits and approvals required for its activities to date. The plaintiff has a right to access and occupy both the Ealue Lake Road, which is a public road, and the Red Chris Mine Road. By blockading these roads, the defendants prevent the plaintiff from enjoying its right of access.

[37] The essence of these paragraphs is that there is a very low bar to establish whether there is a fair question to be tried.

[38] The first cause of action is one of public nuisance and *Criminal Code*, R.S.C. 1985, c. C-46 violations. I find the discussion on the general law pertaining to these issues to be fairly set out in the *Red Chris* case at paras. 51-53.

> [51] Turning first to nuisance, the blockading of a lawful business resulting in interference with its use of its land has been found on numerous occasions to engage that tort: *Hudson Bay Mines & Smelting Co. Limited v. Dumas*, 2014 MBCA 6, at para. 74, and *Tlowitsis Nation v. MacMillan Bloedel Ltd.*, (1991), 1990 CanLII 2335 (BC CA), 53 B.C.L.R. (2d) 69 (C.A.), at paras. 29-30.
>
> [52] Additionally, the *Criminal Code* addresses the type of conduct of engaged in by the blockaders as follows:
>
> > 423. (1) Intimidation -- Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,
> >
> > …
> >
> > (g) blocks or obstructs a highway. [Emphasis in original.]
>
> [53] Standing on a highway with the purpose of preventing the passage of others has been found to be conduct violating s. 423(1)(g). "Highway" is defined broadly in s. 2 of the Code to mean "a road to which the public has a right of access, and includes bridges over which or tunnels through which a road passes." A forest service road has been found to be a highway under this provision: *Interfor v. Kern et al*, 2000 BCSC 1141, at paras. 73-74. As noted above, there is a public right of access concerning the Ealue Lake Road, and accordingly s. 423(1)(g) is engaged by the defendants' blockade.

[39] The defendants say that the lack of any interest in property is a defence to the tort of public nuisance. It makes the applicability of this cause of action far from clear. I found the analysis at *Canadian Forest Products Ltd. v. Sam*, 2011 BCSC 676 at para. 96 to be helpful on this point and actually decisive.

> [96] Canfor's claim is that the Sam defendants have directly interfered with its right to harvest timber by preventing access to the Red Top Road. This claim is within the extent of the caselaw on trespass as has been recognized and, as such, raises a serious question to be tried even though careful examination of the language of the licence and legislation may lead to a different result.

[40] And for the same reasons given there, I find that a serious issue to be tried exists at this stage in the proceedings. It is not a determinative finding. It is just that there is a serious issue to be tried.

[41] With respect to the *Criminal Code* violations, the defendants say the blockade is not on the main forest service road and as such the branch may not

be a gazetted road. If it is not a gazetted road there may not be a *Criminal Code* violation. In my view, this is a matter of fact to be determined later in the proceedings. In the present, it is not sufficient to convince me that there is not a serious issue to be tried.

The Tort of Intimidation

[42] The plaintiff relies on *Red Chris* at para. 56 to set out the specifics of this cause of action.

> [56] Given the blockades, and the threats to continue blockading the roads made by the defendants, the plaintiff's employees have been denied access to the mine site, deliveries have been prevented and operations interfered with. Arguably, two-party intimidation could be found on such facts. Likewise, the interference with third-party contractors' ability to fulfil their contracts with the plaintiff could meet the requirements of three-party intimidation. I conclude that there is a fair question to be tried in this regard, as it cannot be said that the plaintiff's claims are frivolous or vexatious.

[43] In my view, the facts of this case raise an issue to be tried that the blockade, despite its non-violent and civilized nature, could give rise to this tort given the refusal to let vehicles and tools through the blockade to access the site. I am not indicating that there has been any violence or threats made by the defendants.

Breach of Contractual Relationship

[44] *Red Chris* at paras. 57-59 which were relied upon by the plaintiff, set out the relevant legal principles on this issue:

> [57] Turning to the tort of inducing breach of contract, as held in Verchere v. Greenpeace Canada et al, 2003 BCSC 660 (aff'd 2004 BCCA 242), at para. 29, the requirements are as follows:
>
> > [29] …
> >
> > (1) that each of them had a valid and enforceable contract with Hayes at the time of the alleged interference;
> >
> > (2) that the Defendants knew of the existence of that contract;
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> > (3) that the Defendants definitely and unequivocally persuaded, induced or procured them to break their contracts;
> >
> > (4) that the Defendants intended that they breach their contracts;

> (5) that the personal Plaintiffs did breach their contracts as a result of the interference of the Defendants;
>
> (6) that the interference of the Defendants was wrongful; and
>
> (7) that the personal Plaintiffs suffered damages as a result of that interference.
>
> [58] This test does not demand that the blockaders have actual knowledge of the contracts between the plaintiff and its suppliers. It is enough if the blockaders knew, or ought to have known that their activities would interfere with the plaintiff's contractual relations: Verchere, at paras. 35-37, 48.
>
> [59] I am of the view that by blockading third-party suppliers and contractors, and by asserting that the mine was being "shut down," there is evidence that the blockaders were either aware or should have been aware that their actions were preventing these suppliers and contractors from fulfilling their contracts. As a result, the requisite elements of inducing breach of contract and interfering with economic relations are accounted for, and the plaintiff has a viable claim under either or both of these torts. I find that there is a fair question to be tried in this regard.

[45] In this case, there is clear knowledge and intent on behalf of the defendants to prevent Oceanview from harvesting the trees subject to their license. The license has a penalty clause if the trees are not harvested, as well as costs incurred due to delay. The defendants say the contract is not breached until the end of the period for harvesting the contract.

[46] I disagree. The defendants are interfering with the plaintiff's ability to access the blocks to harvest the trees as allowed by their contract with the government. There is no timeframe for when the blockade will be lifted. The plaintiff has a limited period of time to harvest the trees. They will be suffering daily damages as long as the blockade remains and prevents them from accessing the timber the government has contractually allowed them to access. In my view, there is a clear serious issue to be tried with respect to a breach of contractual relations.

Conspiracy

[47] The plaintiff relies upon *Red Chris* at paras. 60-61:

> [60] The plaintiff may also have a viable claim under the tort of conspiracy, which involves two or more parties agreeing to do an unlawful act, or agreeing to do a lawful act by unlawful means: *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, 2013 SCC 57 [*Pro-Sys*], at para. 72. There are two forms of actionable conspiracy in tort law: predominant purpose conspiracy and unlawful means conspiracy. The former arises where the defendant acted predominantly to cause injury to the plaintiff, whether the means of

> injury were lawful or unlawful, and the plaintiff did suffer loss as a result: *Pro-Sys*, at para. 74. On the other hand, where there is no predominant purpose, the tort of conspiracy is nevertheless engaged where there is unlawful conduct directed toward the plaintiff, respecting which the defendant knows or ought to know that injury to the plaintiff will result, and injury does in fact occur: *Pro-Sys*, at para. 80.
>
> [61] According to the plaintiff, the blockade has caused depleted fuel inventories, which in turn has resulted in the suspension of certain activities, limitations on the operation of equipment, construction delays, placing employees out of work and preventing third-party contractors from accessing the site, further delaying construction and operations. Those results are consistent with the stated intentions of the blockaders to "Shutdown Imperial" as evidenced by the defendants' protest signs, and by their statements to that effect. In my view, this evinces a predominant purpose on the part of the defendants, that is, to cause injury to the plaintiff. As the defendants' blockading activities are themselves unlawful, are directed toward the plaintiff, and are intended to halt the plaintiff's operations, there is a viable claim against the defendants in conspiracy.

[48] The defendants say there is no evidence of an agreement between two or more people. In my view, there is no direct evidence, but this is not unusual in a conspiracy case. There is evidence of, at least, two people engaging in common activity, that is, the blockade, for the same purpose. They both have signs indicating that it is to prevent the site from being logged. In my view, this is sufficient to raise a serious issue to be tried on this issue.

Irreparable Harm

[49] The plaintiff relies upon the law of irreparable harm set out in paras. 63-67 of *Red Chris* and also at para. 24 at page 10 of their notice of application:

> [63] Turning next to the issue of irreparable harm, I note that this factor need not be clearly proven, as doubt as to the adequacy of damages may be sufficient to support the issuance of an injunction: *Wale*, at paras. 48, 51.
>
> [64] In addition, even where damages are quantifiable, irreparable harm arises where a plaintiff cannot collect damages from a defendant. Hence, the impecuniosity of a defendant is a relevant factor to be considered (though it is not dispositive): *RJR-MacDonald Inc.*, at para. 64.
>
> [65] The plaintiff asserts that illegal activity has occurred, that the plaintiff has suffered harm as a result, and, absent an injunction, will continue to suffer harm which cannot be remedied through an award of damages. As discussed above, the harm to the plaintiff stems from construction delays, increased costs, and layoffs occasioned by the inability to sufficiently supply the Red Chris site with human and material resources. The plaintiff's evidence on this point has not been seriously disputed by the defendants.

> [66] The plaintiff also submits that the harm suffered is irreparable, because it is incapable of quantification and, in addition, because the defendants are not able to pay damages: they acknowledge they are impoverished.
>
> [67] In *Trans Mountain Pipeline ULC v. Gold*, 2014 BCSC 2133 [*Trans Mountain*], this Court held that primarily economic injury may constitute irreparable harm:
>
> > [118] As to the question of irreparable harm, I am satisfied that the failure to grant the injunction would cause the plaintiff irreparable harm. The plaintiff has advanced essentially uncontradicted evidence that the delays occasioned by the activities at issue have and will continue to cause the substantial costs and potential losses of revenues which are not recoverable. The harm although primarily economic, is thus, nonetheless, irreparable.

[50] Interference with a business as an ongoing concern has long been regarded as constituting irreparable harm.

[51] The defendants say that although economic harm can cause irreparable harm, in this case, there is no admissible evidence of economic harm due to the hearsay objections in Mr. Grill's affidavit.

[52] However, I determined that this evidence meets the threshold for admissibility. I acknowledge that care must be taken to recognize that the evidence is only an estimate of the losses. This would clearly factor in on the balance of convenience, where the amount of irreparable harm is a consideration. Notwithstanding these considerations, I find there is clear significant economic loss being suffered on a daily basis by the plaintiff. In addition, if the blockade is not removed, it appears likely the plaintiff will be subject to significant penalty clauses for failing to be able to cut the trees on the licence.

Balance of Convenience

[53] The defendants say there is no need for an injunction, as if they are breaking the law, the police can simply enforce the law. I reject this as a consideration. See *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCCA 26, at paras. 75-78. The defendants have raised significant issues that they say are a public concern at law with respect to the safety and protection of people living below the affected areas and for the protection of vulnerable wildlife and fauna. However, these concerns run in the face of a validly issued permit. There is

no substantive process in place to either challenge the permit or to address the concerns raised by the defendants.

[54] The plaintiff says this is a collateral attack on the permit process and the defendants should challenge the permit. They have not done so to avoid the economic consequences of a judicial review and stay application. The plaintiff is an innocent victim who is being forced to suffer irreparable harm. The plaintiff relies on *Moulton Contracting Ltd. v. Her Majesty the Queen in Right of the Province of British Columbia*, 2010 BCSC 506 at paras. 114-121:

> [114] By October 19, 2006, the defendant George Behn must be taken to have been aware that judicial review was another means by which to have his concerns addressed by the Court, as that avenue was then raised by the defendant, Fort Nelson First Nation. His choice, and that of the other Behn defendants, was advertent; they cannot now be permitted to attack the contractual rights of a third party's by challenging them in these proceedings. To allow them to do so, in the circumstances, would amount to an abuse of process: *Shuswap Lake Utilities Ltd. v. Mattison*, 2008 BCCA 176 at para. 59.
>
> [115] I accept the submission of Moulton that the choice of the Behn defendants not to avail themselves of the remedies of either judicial review or injunctive relief with respect to the grants of the TSLs and the Road Permit renders their attempt to defend the case against them in tort, by alleging a procedural right, an abuse of process.
>
> [116] Moulton also argued that to permit the Behn defendants to challenge the TSLs and the Road Permit would be to permit an inappropriate collateral attack.
>
> [117] The doctrine of collateral attack prevents a party from undermining previous orders issued by a court or an administrative tribunal by attempting to challenge the validity of a binding order in the wrong forum: Toronto (City) v. Canadian Union of Public Employees, Local 79, 2003 SCC 63. The doctrine is concerned with "ensuring finality, preserving the integrity of decision making processes and requiring parties to pursue the most appropriate avenue of challenge": *Braithewaite v. Nova Scotia Public Service Long Term Disability Plan Trust Fund* (1999), 1999 NSCA 77 (CanLII), 176 N.S.R. (2d) 173 at para. 58 (C.A.). Not all collateral attacks are offensive: *Toronto (City) v. Canadian Union of Public Employees, Local 79 (2001)*, 2001 CanLII 24114 (ON CA), 55 O.R. (3d) 541 at para. 48 (C.A.), aff'd in 2003 SCC 63.
>
> [118] In *Telezone*, Borins J. A. said the following at para. 98:
>
> > I agree with the following comments of Morawetz J. about collateral attack at para. 82 of *TeleZone*:
> >
> > > In my view, *TeleZone's* claims against the Crown do not necessarily constitute a collateral attack on decisions of a federal board or tribunal. The collateral attack doctrine applies when a litigant is seeking to challenge the legal force of a prior court order, or judicial or quasi-judicial decision of

> an administrative tribunal, in subsequent proceedings. In its pleading, TeleZone is not challenging the decision of the Minister. It is not seeking to set aside the licences that have been granted. It is not seeking a licence for itself. It is seeking damages as a result of alleged breach of contract and negligence and the collateral attack doctrine has no application. Phrases like "challenge to the lawfulness of a decision" and "impugning a federal agency's decision" must be used with care in this context in order to be consistent with the Supreme Court of Canada's jurisprudence on the doctrine of collateral attack. A claim should only be struck as a collateral attack if it seeks to affect a decision's legal validity.

> [119] The Behn defendants argued that the doctrine of collateral attack has no application to this case because they are not bringing what amounts to a judicial review application and they do not seek any relief (beyond costs) from Moulton.
>
> [120] I am unable to agree. I am satisfied that the doctrine of collateral attack applies in this case. The Ministry of Forests made a decision to amend the FDP, which resulted in the authorization of the TSLs and the Road Permit. The appropriate means to challenge this authorization is by way of judicial review. The Behn defendants knew that this was an available option, but neither they nor the representatives of the Fort Nelson First Nation specifically chose to challenge the validity of the TSLs and the Road Permit through that means. I conclude that the attempt by them to do so in these proceedings is, in effect, a collateral attack to the avenue and means that is intended to resolve the validity of that which they purport to challenge in these proceedings.
>
> [121] Just as the defendants did in Relentless Energy, the Behn defendants should have pursued their claims of invalidity in the appropriate forum, and cannot be permitted to avoid doing so by introducing the issue into these proceedings for determination.

[55] The defendants distinguish these cases on the basis that those cases involve rights involving aboriginal title, which only arise upon judicial recognition. With respect, I do not think this is a valid distinction. I would refer to *BC Hydro* which is located at tab 5 of the materials. I am going to summarize para. 71 and then 73-79, as in my view these paragraphs are applicable to this situation:

> My conclusions on the first two branches of the test are decisive in relation to consideration of the strength of the plaintiff’s case. As I have described, the plaintiff has a relatively strong case, while the Named Defendants have put forward no arguments which support their right to interfere with Hydro’s use of the LRA for clearing and construction. Hydro is proceeding with the construction activities pursuant to the Clearing and Construction Licences following an extensive public process. The protestors have no contrary position to put forward. In spite of this, they say that the *status quo* would be preserved by denying the application until the appeals in the various court proceedings have been heard and a decision is granted in the judicial review proceeding now under reserve.

While I initially had some concern with regard to the outstanding appeals and the judicial review challenge to the Licences, I have concluded that the *status quo* would be preserved by granting the injunction. As Hydro argues, the protestors have no right to prevent Hydro from proceeding with the Project. To allow them to achieve that result by declining to issue the injunction would permit the protestors to collaterally attack the various orders and ministerial decisions which are in place and have survived challenges in the trial courts.

The comments of Cullen A.C.J. in *Trans Mountain Pipeline ULC v. Gold*, 2014 BCSC 2133 at para. 76 are applicable to the situation before me:

> [76] This Court is faced with the state of affairs as they exist today, not as they may become in the future. What the defendants are in effect asking this Court to do is to assess the merits of the appeals before the Federal Court of Appeal and the British Columbia Court of Appeal and decide whether a stay should be issued in one or another of those Courts if one were sought by Burnaby. I am in no position to make that assessment.

The circumstances here are similar to those in *Behn*, where members of an Aboriginal community blocked a forest company's access to logging sites over which it held timber rights. The company brought a tort action against the group who was blocking the road. The defendants argued that the timber licences held by the company were void because of the government's failure to adequately consult. That defence was struck as an abuse of process. At paragraph 42 the court stated:

> [42] In my opinion, the Behns' acts amount to an abuse of process. The Behns clearly objected to the validity of the Authorizations on the grounds that the Authorizations infringed their treaty rights and that the Crown had breached its duty to consult. On the face of the record, whereas they now claim to have standing to raise these issues, the Behns did not seek to resolve the issue of standing, nor did they contest the validity of the Authorizations by legal means when they were issued. They did not raise their concerns with Moulton after the Authorizations were issued. Instead, without any warning, they set up a camp that blocked access to the logging sites assigned to Moulton. By doing so, the Behns put Moulton in the position of having either to go to court or to forgo harvesting timber pursuant to the Authorizations it had received after having incurred substantial costs to start its operations. To allow the Behns to raise their defence based on treaty rights and on a breach of the duty to consult at this point would be tantamount to condoning self-help remedies and would bring the administration of justice into disrepute. It would also amount to a repudiation of the duty of mutual good faith that animates the discharge of the Crown's constitutional duty to consult First Nations. The doctrine of abuse of process applies, and the appellants cannot raise a breach of their treaty rights and of the duty to consult as a defence.

But, the essence of that opinion is that it was stayed as an abuse because the appropriate judicial review to challenge the licence had not been accessed.

> The protestors here are in a position similar to the defendants in *Behn*. They are individuals, some of whom are members of Treaty 8, and have no right to challenge the issuance of the Clearing and Construction Licences on the basis that the actions of Hydro are an infringement of treaty rights or are otherwise invalid because of a breach of the duty to consult. The suggestion that I can consider those matters at this stage of the injunction application ignores the fact that the protestors have no right to raise these issues. As in *Behn*, if I were to give effect to their argument, it would be tantamount to condoning self-help remedies and would bring the administration of justice into disrepute.

[56] In my view, the issue of public interest does not arise in this case. The matter of public interest has already determined: it is in the public intertest to log the block of land pursuant to the issued permit. Although the defendants have raised some persuasive arguments and valid concerns, this court is not the appropriate place to make those arguments. They should be made through public advocacy, pressure on local government, through the judicial review process, or through the appropriate legislative designations to protect wildlife and fauna.

[57] I find it is just and convenient to order the injunction sought by Oceanview given the circumstances of this case. I adopt the comments of Pitfield J. in *British Columbia Transmission Corporation v. Lemoignan*, 2008 BCSC 1045, at para. 31. Our society works and functions on the basis of the rule of law. The protestors in this case had invested a great deal of time, scientific and emotional energy, in order to challenge the timber licence. However, this court in this proceeding is not the appropriate place to make these arguments. As stated by Pitfield J.: The rule of law requires that when the processes have been followed and completed, as they have in this case, those who have been granted the rights to do so, must be permitted to proceed.

Order

[58] I find it just and convenient to order the injunction sought by the plaintiff in this case with appropriate modification to ensure it is carefully drafted to address the concerns raised by the defendants. I have been provided a further draft order which appears to meet the concerns that were raised by the defendants. However, I would also impose a discrete time limit on the order, which in the absence of argument I would suggest to be set at three months. Counsel are welcome to make submissions with respect to particulars of the injunction as I have set out.

[59] However, there is another order sought by the defendants that is an enforcement order. In addition to the injunction, the plaintiff seeks an enforcement order authorizing the RCMP to arrest anyone in violation of the injunction.

> The law with respect to enforcement orders is set out in *Canadian Forest Products Ltd. v. Funk*, 2005 Carswell BC 3496 (B.C.S.C.) at paras. 37-40 [*Canadian Forest Products*]. In that case, at para. 39, the court reviews the guideline or set of criteria that is typically followed by the courts to grant an enforcement order. It is as follows:
>
> 1. While s.127 of the *Criminal Code* is available in this province as a means of enforcing an order of this court, it is not a practical alternative in disputes of this nature in light of the present policies of the R.C.M.P. and the Vancouver City Police.
> 2. Those policies, designed to ensure that the police are regarded as impartial in any civil dispute, are supported by sufficient logic to dictate against an outright clash between the court and the law enforcement agencies which direct the police.
> 3. Rule 56 procedures should be considered as the first alternative where there is apparent disobedience of an order of this court in a civil proceeding. Those procedures allow for the "measured response" in civil disputes which is emphasized by the law enforcement authorities.
> 4. Enforcement orders, such as the one set out above, containing arrest and detention provisions should be included in the original injunction order only in unusual situations. The court will continue to expect its orders to be obeyed with or without such a provision. When those orders are not obeyed, proceedings for contempt of court are the appropriate remedy.
> 5. *Prima facie* proof of the breach of an order of this court should normally be a condition precedent to the granting of an enforcement order, as it is to the issuance of a Rule 56(5) warrant.
> 6. Large numbers of potential contemnors, flagrant disregard of an injunction, events occurring in a remote geographical area, identification difficulties and other such problems may dictate against Rule 56 procedures and in favour of an enforcement order in a given situation.

[60] In providing an enforcement order in *Canadian Forest Products* at para. 40 it was noted:

> I have concluded that an enforcement order is necessary in these circumstances because:
>
> (1) there has already been conduct by the protestors in breach of February 21st order.
>
> (2) there are a large number of potential contemnors, and there is difficulty identifying them.

(3) without an enforcement clause, the RCMP will not assist the company enforcing the order, and

(4) I consider there is some risk of violence in the present situation.

[61] The defendants say there are no special circumstances that would warrant an enforcement order in these circumstances. I agree. There are only three individuals involved in the protests. There is no risk of violence and there has been no evidence in my view of non-compliance.

[62] The plaintiff has been generally successful and in normal circumstances would be entitled to costs. However, if the parties feel it is appropriate I could hear any submissions that they wish to make on costs.

[63] THE CLERK: Order in chambers. Chambers is adjourned.

“Thomas J.”