

Federal Court



Cour fédérale

Date: 20140228**Docket: T-507-14****Vancouver, British Columbia, February 28, 2014****PRESENT: The Honourable Mr. Justice Simon Noël****BETWEEN:****VANCOUVER FRASER PORT AUTHORITY****Plaintiff****and****UNITED TRUCKERS ASSOCIATION
OF BRITISH COLUMBIA,
JOHN DOE, JANE DOE, AND
OTHER UNKNOWN PERSONS****Defendants****ORDER**

UPON MOTION by the Vancouver Fraser Port Authority [VFPA], the plaintiff, for an interim injunction against the defendants, the United Truckers Association of British Columbia [UTA], John Doe, Jane Doe, and other unknown persons, for the following relief pursuant to Rules 373 and 374 of the *Federal Courts Rules*, SOR/2013-18, s.2(2)(3) (the Rules);

- An interim injunction restraining the defendants, and all of the persons having knowledge of the order, and each of them by themselves, their servants and agents or otherwise, from physically preventing, impeding, restraining or in any other way interfering or

counselling others to physically interfere with any individual or motor vehicle attempting to access the VFPA's road access points;

- A declaration that this order does not prohibit or limit the rights of the defendants, or any other person, to lawfully assemble on lands outside of the VFPA lands;
- An order authorizing any police officer with the Vancouver Police Department, the Delta Municipal Police, the Royal Canadian Mounted Police, or the appropriate police authority in the jurisdiction in question, to arrest and remove any person about whom the police officer has reasonable and probable grounds to believe is interfering with, or obstructing, or is attempting to interfere with or obstruct any other person or vehicle from entering or exiting VFPA lands;
- Such further and other relief as this Honourable Court deems just.

AND UPON the Court instructing counsel for the plaintiff to do their utmost to ensure the presence of the defendants and counsel;

AND UPON reading the material submitted to the Court (which includes videos of demonstration activities by individuals who identify themselves with vests bearing UTA on them) and hearing counsel for the parties. Counsel for the defendant [UTA] came into the hearing as counsel for the plaintiff was going through the evidence. Counsel for the defendant UTA informed the Court that his instructions were limited;

The present motion has an underlying procedure in the form of a Statement of Claim which among other things calls for the issuance of a permanent injunction against the defendants;

In order to succeed the plaintiff must meet the requirements of a tri-partite test as set out by the Supreme Court of Canada in *RJR-Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, [1994] SCJ 17 (SCC) and *Manitoba (A.G.) v Metropolitan Stores (MTS) Ltd.*, [1987] 1 SCR 110: that there is a serious issue to be tried, that the plaintiff would suffer irreparable harm if relief is not granted and that the assessment of the balance of inconvenience favours the plaintiff, which shall also consider any harm to the public interest;

CONSIDERING that at this stage of the interim injunction relief, the motion judge must assess the evidence in a limited, preliminary way, not having the benefit of the full process of disclosure, cross-examinations of affiants, evidence of the defendants and their motion record, etc. and be satisfied that there is urgency in granting the relief;

CONSIDERING that VFPA has to take appropriate measures for the maintenance of order and the safety of persons and property in the VFPA lands (section 5 of the *Port Authorities Operations Regulations*, SOR/2000-55 (Regulations));

CONSIDERING that the facts as presented relate to labour issues arising from trucking services being required by users of the VFP activities;

CONSIDERING that the untested evidence indicates that the defendants, through their actions, have interfered with the public right of access to VFPA entries and authorized activities in the port, but created safety issues through demonstration activities and caused general nuisance on public property by interrupting the normal flow of traffic;

CONSIDERING that the actions of the defendants impact not only on VFPA but also on others such as their tenants, duly licensed VFPA drivers, railway companies, trucking companies and as such create undue interference with the daily trade and commerce in British Columbia;

CONSIDERING that normally in such a situation, the preservation of the status quo is a norm to consider, but that in the present file the right to demonstrate must also be taken in consideration;

CONSIDERING that the present interim injunction motion does not request to forbid legal demonstration, but rather forbid acts of demonstration that have a tone of illegality;

CONSIDERING that there is a public interest which requires that VFPA port facilities be fully accessible to the users of such facilities and that, as a result of the actions of the defendants, third parties have been negatively impacted;

THIS COURT FINDS that the untested facts put in evidence show urgency, do raise serious issues and show irreparable harm, and that the balance of convenience favours the right of access to the port entries and that the public road must not be illegally obstructed;

THEREFORE THIS COURT ORDERS that:

- An interim injunction is granted ordering the defendants, and all of the persons having knowledge of the order, and each of them by themselves, their servants and agents or

- otherwise, from physically preventing, impeding, restraining or in any other way interfering or counselling others to physically interfere with any individual or motor vehicle attempting to access the VFPA Port Authority's road access points;
- Declares that this order does not prohibit or limit the rights of the defendants, or any other person, to lawfully assemble on lands outside of the VFPA lands;
 - Any police officer with the Vancouver Police Department, the Delta Municipal Police, the Royal Canadian Mounted Police, or the appropriate police authority in the jurisdiction in question, are authorized to arrest and remove any person about whom the police officer has reasonable and probable grounds to believe is interfering with, or obstructing, or is attempting to interfere with or obstruct any other person or vehicle from entering or exiting VFPA lands;
 - This interim injunction will terminate on March 11, 2014, at midnight, unless renewed by a judge of this Court;
 - The plaintiff shall undertake to abide by any order concerning damages caused by the granting of this injunction and file with the Registry of the Court by the latest, Tuesday, March 4, 2014 at 16:30 hours, a letter to this effect;
 - Costs in the cause.

“Simon Noël”

Judge