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| Citation: | *Teal Cedar Products Ltd. v. Rainforest Flying Squad,* |
|   | 2021 BCSC 605 |

Date: 20210401

Docket: S211602

Registry: Vancouver

Between:

**Teal Cedar Products Ltd.**

Plaintiff

And

**Unknown Persons Operating as the “Rainforest Flying Squad”, Robert Arbess (also known as Reuben Garbanzo), John Doe, Jane Doe, and Persons Unknown**

Defendants

Before: The Honourable Mr. Justice Verhoeven

**Oral Reasons for Judgment**

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| --- | --- |
| Counsel for the Plaintiff: | D.L. DalkeA.R. HudsonE.J. SnowN. Liu, Articled Student |
| Counsel for the Defendants Kathleen Code, Carole Tootill and William Jones: | P.C. CanningP. Dwyer |
| Place and Dates of Hearing: | Vancouver, B.C.March 25, 26, 2021 |
| Place and Date of Judgment: | Vancouver, B.C.April 1, 2021 |

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**I.                 INTRODUCTION**

[1]             The plaintiff, Teal Cedar Products Ltd. (“Teal”) applies for an interim, interlocutory injunction prohibiting road blockades and other conduct intended to obstruct Teal’s logging activities and the related activities of its contractors in an area of southwest Vancouver Island.

[2]             Teal is the owner of a forest tenure granted by the Province of British Columbia, Tree Farm Licence 46 (“TFL 46”).

[3]             For the past several months, specifically since August of 2020, Teal’s forestry operations in and around TFL 46 have been subject to a highly organized campaign carried out by various persons, whose objective has been to disrupt and prevent Teal’s logging and roadbuilding operations. To that end, these persons have erected several road blockades in order to deny Teal and its contractors access to the relevant sites.

[4]             Teal’s application materials refer to these persons as the “blockaders”. Although this term is apt, I will refer to them as the “defendants” or the “protestors”.

[5]             Three persons, Kathleen Code, Carole Tootill, and William Jones, are actively defending Teal’s legal action. They are represented by legal counsel in the legal action, and are opposing Teal’s application. I will refer to these three individuals as the “respondents” in order to distinguish them from the rest of the defendants.

[6]             The respondents see themselves as representing a larger group of persons. Their response to civil claim and their application response state that they are acting in their capacity as members of the “Rainforest Flying Squad”. The other named defendant, Robert Arbess, has not participated in the legal proceedings. The evidence shows that there are many other persons involved in the blockades, who, for the time being, are unnamed defendants. Several have expressly refused to identify themselves by name.

[7]             Teal’s activities are lawful, and are all subject to permits issued by the Province of British Columbia.

[8]             On the evidence, it is clear that the defendants are dissatisfied with the forestry policies of the provincial government relating to logging of old-growth forests. Their blockades are designed to interfere with and prevent Teal’s logging activities, and also to influence the government politically.

[9]             They are misguided. Their conduct is illegal, and undermines the rule of law, without which no one is safe, and no one is free.

[10]         In addition to the concern about logging of old growth forests, the defendant William Jones contends that the logging will interfere with his freedom of religion granted by s. 2(a) of the *Canadian Charter of Rights and Freedoms*.

[11]         For the reasons that follow, Teal’s application must be allowed, and an injunction must be granted.

**II.               BACKGROUND**

**A.              The Area, and the Permits**

[12]         TFL 46 is located on Vancouver Island, north of Port Renfrew, and north of the San Juan River, and southwest of Cowichan Lake. It is bounded on the south-west in part by Carmanah Walbran Provincial Park and Pacific Rim National Park Reserve. It is 59,432 hectares in size.

[13]         TFL 46 grants Teal the exclusive right to harvest Crown timber within its limits, for a period of 25 years from July 1, 2012.

[14]         Teal’s logging operations are carried out under the terms of a Forest Stewardship Plan (“FSP”) approved by the Province under s. 3(4) of the *Forest and Range Practices Act*, S.B.C. 2002, c. 69. The FSP sets out how Teal will accomplish various environmental, cultural, aesthetic, and economic objectives of the Province.

[15]         Teal must obtain specific permits from the Province in order to conduct logging or road building activities. In 2020, Teal was granted three permits to cut timber within specified areas of TFL 46. These areas are termed “cutblocks”, and the permits are called Cutting Permits. The Cutting Permits are valid for four years. The Cutting Permits granted to Teal authorize logging within cutblocks 8022, 7165, and 4732. Teal plans to apply for Cutting Permits for three other cutblocks, 7265, 4733, and 1608. In 2019 and 2020 Teal received road building permits for construction of the roads needed to carry out its planned logging operations.

[16]         According to the expert opinion evidence submitted by the respondents, old growth forests in coastal British Columbia are forests in which the trees are more than 250 years old.

[17]         The specific focus of the protestors relates to logging of old growth trees in the Fairy Creek watershed. Fairy Creek is a tributary watercourse to the San Juan River. In comparison to the size of TFL 46, the Fairy Creek watershed has a relatively small area of 1,199 hectares. Most of the Fairy Creek watershed (1,021 hectares, or 85%) is within TFL 46.

[18]         One of Teal’s cutblocks, 7265, straddles the northern edge of the Fairy Creek watershed. Cutblock 7265 is the only one of Teal’s cutblocks that is within the Fairy Creek watershed. The area of cutblock 7265 within the watershed is 12.8 hectares. 12% of cutblock 7265 is set aside as a Wildlife Tree Retention Area for biodiversity retention, as specified in Teal’s Forest Stewardship Plan for TFL 46.

[19]         Of the portion of the Fairy Creek watershed lying within TFL 46, 74% (755 hectares out of the 1021 hectares) is unavailable for logging due to environmental constraints. 722 hectares are protected old growth forest. Other purposes include wildlife protection.

[20]         Parts of the remainder of the Fairy Creek watershed not within TFL 46 are within the Qala:yit Community Forest Area. This area is 158 hectares in size. Timber is cut in this area by a partnership among the Cowichan Lake Community Forest Co-operative, the Pacheedaht First Nation (the “PFN” or “the Pacheedaht”), and the provincial government. 27 hectares is constrained from harvest in this area.

[21]         TFL 46 lies within the traditional territory of the PFN. The PFN has a population of 287. All of Teal’s issued and proposed Cutting Permits have been approved by the PFN, although with reservations of certain PFN rights and claims. In their letters to Teal, the PFN confirmed that after surveying the proposed cutblocks, nothing of archaeological significance was found, and the proposed development could proceed, subject to the laws and procedures of the Crown. The PFN also stated that they would not physically challenge the resource development by the Crown’s licensee, Teal.

[22]         The PFN entered into an agreement with the Province in 2017 governing consultation and revenue sharing for forestry activities within the PFN’s traditional territory, under which the stumpage payments the Province receives from logging operations are shared with the PFN. As part of the agreement, the PFN agreed not to interfere with provincially authorized forest activities.

[23]         Teal’s evidence is that two thirds of the remaining old growth forest within the PFN traditional territory north of the San Juan River is currently protected from logging. These include forests within TFL 46, such as most of the Fairy Creek watershed, and Carmanah Walbran Park, the Pacific Rim National Park Reserve, and the San Juan River Estuary Ecological Reserve. The PFN traditional territory also extends south of the San Juan River, but Teal has no information about old growth forests in those areas.

[24]         In July 2019, the provincial government commissioned preparation of a report concerning old growth forest management in the Province. The report, described as a strategic review, was presented to the Minister of Forests on April 30, 2020. The authors recommended deferring development in some old forests until a new strategy is developed. In response, on September 11, 2020, the government announced that it was deferring old forest harvesting in nine areas throughout the Province, as a first step. TFL 46 and the Fairy Creek watershed are not among the nine areas.

**B.              The Blockades and the Protestors**

[25]         The road blockades began in early August 2020. There have been eight blockades at various locations throughout TFL 46 and at adjacent access roads.

[26]         The blockades have been erected and maintained for the specific purpose of preventing and interfering with Teal’s operations and those of its contractors, such as Stone Pacific Contracting Ltd. (“Stone Pacific”), its road building contractor.

[27]         The protestors and defendants are numerous, highly organized, and well-funded. They make extensive and sophisticated use of communications platforms, such as websites and social media, including Facebook and Twitter. They raise funds with an online campaign, which has raised over $100,000 to date.

[28]         The defendants and protestors refer to themselves as the “Rainforest Flying Squad”. As the name implies, they use mobile blockades to disrupt logging and road building activities, and to prevent Teal and its contractors from shifting operations to other areas. Some of the blockades have remained in place for many months. In their social media posts they claim to have hundreds of active supporters. Their posts boast of their success in preventing Teal’s operations. They demand that the government immediately stop all old-growth logging, or at least defer it. However, their attempts to influence the government to prohibit logging within TFL 46 have not been successful.

[29]         Their activities have been supported by a member of the PFN, the defendant William (Bill) Jones. He states that the old growth forest within the Fairy Creek watershed is essential to his culture and religion. Two other members, Roxy-Merl Jones and Victor Peter, have sworn affidavits indicating support for the protestors and their activities. None claim to represent the PFN collectively.

[30]         In 2015 and 2016, on Teal’s application, this Court issued injunction orders prohibiting road blockade actions and related activities at TFL 46. Teal states that the blockades at issue now are better organized, better attended, and more numerous than those of 2015 and 2016.

[31]         Teal reported the ongoing road blockades to the police (RCMP) on December 17, 2020. The police have taken no action to remove the blockades or to prosecute the protestors. Therefore, Teal has been required to bring civil proceedings against the defendants, and to seek an injunction.

**III.             ANALYSIS**

**A.              The Legal Test**

[32]         The test for injunctive relief is set out in the decision of the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 [*RJR-MacDonald]*. The applicant must show that:

a)    there is a serious issue to be tried;

b)    the applicant will suffer irreparable harm if the relief is not granted; and

c)     the balance of convenience favours granting the relief.

[33]         The first matter involves the court making a preliminary assessment of the merits of the case brought by the applicant, to ensure that there is a serious question to be tried. Secondly, the court must determine whether the applicant would suffer irreparable harm; that is, harm which cannot be quantified monetarily, or which cannot be cured if the application were refused, often because the applicant cannot expect to collect damages from the other party. Finally, an assessment must be made as to the balance of convenience, which typically starts with consideration of which of the parties would suffer greater harm from the granting or refusal of the remedy, pending a decision on the merits. Many other factors may come into play, depending on the circumstances. In *Charter* cases, the public interest must be considered within the question of the balance of convenience. But in *RJR-MacDonald*, the Supreme Court cautioned:

The *Charter* does not give the courts a licence to evaluate the effectiveness of government action, but only to restrain it where it encroaches upon fundamental rights.

[34]         As noted by Justice Voith in *Cermaq Canada Ltd. v. Stewart*, 2017 BCSC 2526 [*Cermaq*], these three matters are not inflexible considerations, and do not give rise to a series of independent hurdles that the applicant must meet. They are simply guides to coming to a just and equitable result. The fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances: *Cermaq*, at para. 53. The same principle was endorsed by the Court of Appeal in *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395, at para. 38.

**B.              Serious Question to be Tried**

[35]         The respondents concede that there is a serious question to be tried. The threshold is a low one.

[36]         Here, in its notice of civil claim, Teal alleges that the blockades and other actions by the protestors constitute tortious acts; Teal alleges the defendants have committed trespass, nuisance, unlawful interference with economic relations and contractual relations, and other torts. There can be no doubt that these allegations are generally meritorious. There is no question that Teal has the lawful right to carry out its activities. In their pleadings, the respondents specifically admit Teal’s allegation that a group of unknown persons operating under the name “Rainforest Flying Squad” is responsible for some or all of the blockades. As noted, the respondents see themselves as representing this group.

**C.              Irreparable Harm**

[37]         There is also no doubt that Teal will suffer irreparable harm if the injunction is not granted. Teal's business consists of harvesting timber and manufacturing primary lumber products. In addition to harvesting timber, Teal operates two sawmills and a shake and shingle mill located in Surrey, British Columbia. It also operates four remanufacturing facilities. These facilities process wood products for final sale. A large proportion of Teal’s timber supply comes from TFL 46. Teal is particularly reliant on TFL 46 for its supply of cedar.

[38]         Teal employs approximately 450 people within its processing and manufacturing facilities. If Teal is unable to log within the area of TFL 46, it will not have an adequate timber supply for its mills. It may be forced to shut down its mills, resulting in layoffs of employees, and Teal's inability to supply its customers. Teal estimates that the end product value of the products that it will produce from the timber sourced from TFL 46 is approximately $20 million. Teal stands to lose market share, and to suffer damage to its reputation as a reliable supplier of its products.

[39]         Interference with a business as a going concern is regarded as amounting to irreparable harm: *Interfor v. Kern* *et al.*, 2000 BCSC 1141 [*Kern*], at para. 33.

[40]         The blockades have prevented Teal’s road contractor, Stone Pacific, from winterizing logging roads located in steep mountainous terrain, which is necessary to prevent road washouts, erosion, and environmental damage. Some of the protestors’ activities have caused safety risks. Some protestors have ignored signage and entered active work areas while blasting and other construction work is taking place. They have left fires unattended in dry conditions. Some of Stone Pacific’s equipment has been vandalized. They have not kept a safe distance away from Stone Pacific’s trucks. A female Stone Pacific truck driver was harassed and intimidated by a protestor named Hans on December 17, 2020. The incident was reported to the RCMP.

[41]         The losses extend to Teal’s contractors and their employees. Stone Pacific lost $3,500 per day for each day its operations were prevented, and its employees lost wages of $350 to $400 each for every day of work lost.

[42]         There is no reasonable prospect that Teal could recover damages for its losses from the defendants, most of whom are unidentified. As noted, many of the protesters at the blockades have refused to identify themselves.

**D.              Balance of Convenience**

[43]         As to this question, I adopt the comments of Justice Pitfield in *Kern*, at para. 34, where he stated:

[34] Likewise, the balance of convenience assessment in a case such as this is easily made. The actions of the protestors interfere with the lawful right of the plaintiffs to log the Cut Blocks. The plaintiffs' exercise of those rights does not interfere with any right the protestors might have against Interfor. The protestors are free to express their views and protest in any lawful way they wish but they cannot engage in unlawful activities that deny or affect the capacity of another member of the public to exercise a lawful right.

[44]         *Kern* was also a case where the applicants sought an injunction to restrain interference with logging operations. Justice Pitfield stated:

[32] … The complaint that harvesting is taking place at all is a complaint regarding government policy. The concerns of the protestors should be addressed to the legislature rather than a corporate or individual member of the public. The issue of whether logging should take place in the Upper Elaho River Valley is not one to be debated in the court.

[45]         The respondents note that an injunction is a discretionary remedy. They argue that I should refuse the injunction, in the public interest.

[46]         They argue that the injunction should be refused because of the importance and value of old growth trees to the environment. They rely on expert opinion evidence from Drs. James Pojar and Peter Wood. Dr. James Pojar, an ecologist, contends that there is not much old growth forest remaining. He states that old growth forests are critical to the climate crisis and to another global environmental crisis, the loss of biological diversity. He states that a “sizable chunk” of old growth forest is found within the Fairy Creek watershed.

[47]         Dr. Peter Wood opines that logging in the Fairy Creek watershed brings increased risks of forest fires, flooding, landslides, and increases climate change risks.

[48]         David Weaver, a retired professional forester, agrees with Teal that the only Cutting Permit obtained by Teal or expected to be approved by the government that is within the Fairy Creek watershed is Cutting Permit 7265. He also agrees that the majority of the Fairy Creek watershed is protected from logging activities, for reasons including old growth protection, and wildlife habitat protection.

[49]         The problem is, all of the concerns raised by the respondents are for the government to address, and not this Court. Forestry decisions are highly policy driven and require the government to coordinate, balance, and reconcile often competing values and interests. The applicable legal and environmental scheme regarding forestry policy and the use of Crown lands demonstrates this: *Chingee v. British Columbia*, 2017 BCCA 250, at para. 25.

[50]         The protesters’ real complaint is with the government’s policy choices. They believe that their position should prevail, no matter what the government decides. Their actions are designed to make it so. The respondent Kathleen Code states flatly that in her view the Minister of Forests is incorrect in stating that old growth forestry must continue in order to provide communities and workers with work.

[51]         It is apparent from their public statements that they also hope to pressure the government into making the decisions they want. Their method is to unlawfully interfere with Teal’s lawful operations. It is impossible for the Court to go along with this, by refusing Teal’s injunction application and leaving it with no remedy.

[52]         As Justice Voith said in *Cermaq*:

[63] … It would mean that persons or entities who conduct their affairs lawfully would have no means to protect their businesses, their property, or themselves. It would suggest that illegal forms of self-help are either justified or potentially effective.

…

[65] It is elected governments that decide whether such activity or such development should take place. …

…

[70] What is not possible, what is simply not on the table, is for individuals to act unilaterally and unlawfully and to choose to forego any political or legal process to achieve their objects.

[53]         Other judges of this court have repeatedly said the same or similar things. Recent examples include: *Red Chris Development v. Quock* *et al.*, 2006 BCSC 1472, at paras. 35-36; *Husby Forest Products Ltd. v. Jane Doe*, 2018 BCSC 676, at paras. 49-52; *Marine Harvest Canada Inc. v. Morton*, 2017 BCSC 2383, at para. 94; and *O’Brien & Fuerst Logging Ltd. v. White*, 2019 BCSC 2011, at para. 27.

[54]         Under s. 423(1) of the *Criminal Code,*R.S.C. 1985, c. C-46, a person who blocks or obstructs a highway, or who watches or besets a person's place of work, wrongfully and without lawful authority, for the purpose of compelling a person to abstain from doing anything that he or she has a lawful right to do, is guilty of an offence. Just as in *Kern*, there can be little doubt that in this case offences within s. 423(1) of the *Criminal Code* have been and continue to be committed by the protesters. An injunction intended to prohibit criminal conduct may be granted where the criminal conduct affects the exercise of a private right: *Kern*, at para. 45.

[55]         The public interest that the respondents rely on is the preservation of old growth forests. However, as I have said, that concern is a matter of public policy to be decided by government, and can play no part whatsoever in my decision to grant or refuse the injunction. Rather, the public interest at stake in this case is upholding the rule of law and enjoining illegal behaviour. As noted by Justice Punnett in *Red Chris Development Company Ltd. v. Quock*, 2014 BCSC 2399 [*Red Chris Development 2014*], at para. 77, it is contrary to the public interest to allow the defendants to persist in their blockades.

[56]         The respondents maintain that they have made every effort to ensure that the blockades remain peaceful and non-violent. The evidence shows they have not always been successful. It is entirely unsurprising that when people incite others to take part in unlawful physical confrontations, with emotional appeals targeting Teal, its contractors, and their employees, they will not be able to completely control the conduct that ensues.

[57]         Based upon the submissions, I understand that the respondents are not relying on Aboriginal rights on this application. However, the respondents rely on the evidence of Victor Peter, who states that he is the unseated hereditary chief of the PFN. He is 18 years of age and expects to be seated as hereditary chief at some point after he attains the age of majority. I note that the 2017 agreement between the province and the PFN was signed on behalf of the PFN by Chief Jeff Jones and two Council members. The political structure of the PFN is not clear on the evidence before me.

[58]         Mr. Peter states that he does not approve of the clear-cutting of old growth forests. He adds that he has not been consulted as a band member about old growth forests. However, the duty to consult exists to protect the collective rights of Aboriginal peoples: *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, at para. 30. On this application, it does not appear that the PFN has authorized Mr. Peter to advance any position on its behalf. Therefore, I take Mr. Peter’s evidence to be presented on his own behalf, only. Similarly, Roxy-Merl Jones gives evidence as an individual member of the PFN.

[59]         The defendant William Jones contends that Fairy Creek is the last forest where he can practice his religion. He states that this forest is where he goes to practice his traditional bathing and prayer. His affidavits also refer to logging at Brown’s Mountain, but none of Teal's logging operations in issue here involve Brown’s Mountain, or Brown’s Creek, as it is also known. 126 hectares within the Brown’s Creek watershed is within the Qala:yit Community Forest Area managed by a partnership which includes the PFN.

[60]         Mr. Jones states that if the Fairy Creek forest is cut, he will be unable to practice his religion. As noted previously, most of the Fairy Creek watershed area is in fact protected from logging, so it is difficult to accept Mr. Jones’ evidence on this point at face value. His evidence does not relate specifically to the relatively small portion of the Fairy Creek watershed located within cutblock 7265, the only Teal cutblock within the Fairy Creek watershed. In response, Teal says that cutblock 7265 is a high elevation cutblock, wherein there are only small intermittent mountaintop watercourses and no bathing pools.

[61]         On behalf of Mr. Jones, the application respondents rely on s. 2(a) of the *Canadian Charter of Rights and Freedoms*, which guarantees freedom of conscience and religion. However, the *Charter* has no application to this case. The *Charter* binds the actions of governments and not private actors: s. 32(1) of the *Charter*; *RWDSU v. Dolphin Delivery Ltd*., [1986] 2 S.C.R. 573; *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at paras. 65-66. Therefore, the complaint of Mr. Jones about interference with his religious practice or beliefs can only be directed at the government, not Teal. So, for example, Mr. Jones could have attempted to challenge the issuance of the relevant permits on this ground, but he cannot use it to justify blockading of roads and interfering with Teal’s operations. Nor can the other protestors rely on his claims.

[62]         To establish an infringement of the right to freedom of religion, the claimant must demonstrate, among other things, that the state’s conduct interferes in a manner that is non-trivial and not insubstantial with his or her ability to act in accordance with a sincerely held religious practice or belief: *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 [*Ktunaxa Nation*], at para. 68. In *Ktunaxa Nation*, the Court held that the *Charter* protects the freedom to worship, but does not protect the spiritual focal point of worship: at para. 71.

[63]         Finally, as noted, Mr. Jones does not purport to speak on behalf of the PFN as a whole.

[64]         In summary, Aboriginal or *Charter* rights are not engaged in this matter.

**E.              Terms of the Order**

[65]         For the reasons I have given, Teal's application for an injunction must be allowed.

[66]         Teal seeks orders for police enforcement of the injunction.

[67]         Police enforcement terms are required in this case. There appears to be little or no likelihood that the injunction order will be respected, otherwise.

[68]         Through communications from counsel for the RCMP to Teal’s counsel, the RCMP have indicated a preference for police enforcement terms in circumstances such as this, where the blockades are numerous and persistent. There are a large number of persons involved. Some of the locations are remote. For the most part, the protesters have refused to identify themselves.

[69]         The protestors are a very militant group. As noted, they claim to have hundreds of active participants. In their social media posts, supporters of the “Rainforest Flying Squad” have expressly threatened a “protracted civil disobedience struggle”. They make public appeals for others to join their campaign. They refer to a “war” and “battles”. They have stated that Teal's actions in seeking an injunction “will be met with resistance”. These are words that may incite violence. A Facebook posting of February 20, 2021, the day after the injunction application was served, seeks involvement of “people prepared to take Bold Action in a last stand for the Ancient forest campaign”. Some blockaders have already stated publicly that they will defy the Court’s order and go to jail if necessary.

[70]         The issue of police enforcement was discussed in some detail by Punnett J. in *Red Chris Development 2014*, at paras. 79 through 87. Justice Punnett made police enforcement orders in that case. The court's reasoning in that case applies here.

[71]         As I indicated during the course of submissions, in my view, some of the orders sought by Teal are unnecessary or vague. I will hear submissions from counsel about the terms of the order, and ancillary orders, shortly.

**IV.            COSTS**

[72]         Teal’s notice of application seeks costs. I will hear submissions about costs.

**V.              CONCLUDING REMARKS**

[73]         I wish to add some concluding remarks.

[74]         The protestors have serious and passionate concerns about the environment. There is no doubt that climate change is real, and poses a grave threat to humanity’s future. The Supreme Court of Canada has said so just a few days ago: *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, at para. 2. But as I have said, the effect of old growth forest logging on climate change and biodiversity is not before me, and is not for me to say.

[75]         What is at stake in this Court is the maintenance of law and order and respect for the rule of law. The protestors are free to protest, demonstrate, and attempt to influence the government in any lawful way they may choose. But no one has the right to disobey a court order, no matter how passionately they may believe in their cause.

“Verhoeven J.”