



Court File No. S-183541
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRANS MOUNTAIN PIPELINE ULC

PLAINTIFF

- and -

DAVID MIVASAIR, BINA SALIMATH, MIA NISSEN, COREY SKINNER (aka CORY SKINNER), UNI URCHIN (aka JEAN ESCUETA), ARTHUR BROCIER (aka ARTUR BROCIER), KARL PERRIN, YVON RAOUL, EARLE PEACH, SANDRA ANG, REUBEN GARBANZO (aka ROBERT ARBESS), GORDON CORNWALL, THOMAS CHAN, LAUREL DYKSTRA, RUDI LEIBIK (aka RUTH LEIBIK), JOHN DOE, JANE DOE, AND PERSONS UNKNOWN

DEFENDANTS

NOTICE OF APPLICATION

Name of Applicant: Trans Mountain Pipeline ULC ("**Trans Mountain**")

To: The Defendants/Respondents, Elizabeth May ("**May**") and Kennedy Stewart ("**Stewart**"), Timothy Bartoo, Jonathan Michael Bessette, Christine Marie Coles, Victoria Detoro, John Embree, Richard Farthing-Nichol, Mark Fettes, Brenda Guild, Robert Hackett, Myna Lee Johnstone, Hope Laughlin, Zoe Frances Luba, Thomas Lockhart Mitchell, Carmen Melanie Moore, Darian David Newell, Briony Heather Penn, Paul Prescod, Murray Reiess, Marcelle Roy, Natasha Kay-Sanders, Shannon Walsh, Tracy White, and Jean Wilkinson (collectively, the "**Respondents**")

And to: Ministry of Attorney General (British Columbia), Legal Services Branch

RCMP Burnaby Detachment

TAKE NOTICE that an application will be made by the Applicant to the Honourable Justice K.N. Affleck at 800 Smithe Street, Vancouver, British Columbia, on April 9, 2018 at 10:00 a.m. for the Orders set out in Part 1 below:

PART I. ORDERS SOUGHT

1. A finding that the Respondents breached the Order issued by the Honourable Justice K.N. Affleck on March 15, 2018 (the “**Injunction Order**”) and are in criminal and/or civil contempt of court.
2. In the alternative, that an application in respect of the Respondents’ breach of the Injunction Order be set for April 16, 2018, or such other time as this Court may determine.
3. That the Respondents be added as parties to this Action.
4. Such further relief as Trans Mountain may request and this Court may grant.

PART II. FACTUAL BASIS

5. On March 15, 2018, the Honourable Justice K.N. Affleck issued the Injunction Order, which was filed on March 16, 2018.
6. On March 23, 2018, each of the Respondents breached the Injunction Order when they obstructed the main gate of Trans Mountain’s Burnaby Terminal (the “**BT**”) and refused to cease their obstructions (the “**Breach**”). The Respondents were subsequently arrested by the RCMP.
7. Prior to the Breach, May and Stewart publicly announced that they intended to breach the Injunction Order. A large contingent of media personnel were at the BT prior to the Breach. The media documented the Breach and the arrests of May, Stewart, and the other Respondents, which the media widely circulated to the public.
8. After the Breach, May issued public statements in which she encouraged others to breach the Injunction Order.

PART III. LEGAL BASIS

9. Trans Mountain relies on:
 - (a) Rules 6-2(7), 8-5 and 22-8 of the *Supreme Court Rules*;
 - (b) this Court’s inherent jurisdiction; and

- (c) such other authorities that this Court may allow.

A. Contempt of Court

10. In a contempt of court application for breach of a court order, the Court exercises its power of contempt to uphold its dignity and process and respect for the rule of law. It is a civil contempt to disobey a court order.

Law Society of British Columbia v. Gorman, 2011 BCSC 1484 (“**Gorman**”) at para 26, citing *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 8

11. The onus is on an applicant to prove civil contempt beyond a reasonable doubt. The elements of civil contempt for breach of a court order are:

- (a) the existence of a court order;
- (b) the contemnor knew of the existence of the court order and its terms; and
- (c) the contemnor did one or more acts to disobey that order.

College of Dental Surgeons of British Columbia v Wu, 2013 BCSC 1986 (“**Wu**”) at para 16, citing *Gorman* at para 28.

12. Breach of a court order may also constitute criminal contempt if an applicant proves the following elements beyond a reasonable doubt:

- (a) disobedience of a court order;
- (b) in a public way; and
- (c) with the intent, knowledge or recklessness that the disobedience will undermine the court’s authority.

Wu at para 28, citing *College of Midwives of British Columbia v. Lemay*, 2003 BCCA 583 (“**Lemay**”) at para 36.

13. While criminal contempt may involve injury to the public interest, it can occur in other circumstances, including if there is an “open, continuous and flagrant violation of a court order without regard for the effect that may have on the respect accorded to edicts of the court.”

Wu at para 30, citing *Lemay* at para 40.

B. Contempt of Court.

14. The Respondents each breached the Injunction Order: they were each notified of the Injunction Order and its terms, provided with an opportunity to comply with its terms, yet refused to comply.

15. The Respondents' conduct satisfies not only the test for civil contempt, but also the test for criminal contempt in that they each engaged in a deliberate, public, and flagrant violation of the Injunction Order.

16. May and Stewart's contempt is exacerbated by the fact they are elected officials (and in May's case a lawyer) and ought to serve as role models that uphold the rule of law. May and Stewart intended, either through their words and/or actions, to encourage other persons to breach the Injunction Order.

PART IV. MATERIAL TO BE RELIED ON

1. Affidavit #1 of Corporal Kalwant Basi, sworn March 29, 2018.

The Applicant estimates that the application will take a half day.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: March 29, 2018



Signature

Applicant Lawyer for applicant

for Maureen Killoran, Q.C. / Shaun Parker

THIS NOTICE OF APPLICATION is prepared and delivered by Maureen Killoran, Q.C. / Shaun Parker of the firm Osler, Hoskin & Harcourt LLP whose place of business and address for service is #2500. 450 – 1st Street, Calgary, Alberta, T2P 5H1.

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this notice of application
- with the following variations and additional terms:

Dated:

Signature of

Judge **Master**

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other