

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20201113
Docket: S183541
Registry: Vancouver

Between:

Trans Mountain Pipeline ULC

Plaintiff

And

**David Mivasair, Bina Salimath, Mia Nissen, Corey Skinner (aka Cory Skinner),
Uni Urchin (aka Jean Escueta), Arthur Brociner (aka Artur Brociner),
Karl Perrin, Yvon Raoul, Earle Peach, Sandra Ang, Reuben Garbanzo (aka
Robert Abress), Gordon Cornwall, Thomas Chan, Laurel Dykstra,
Rudi Leibik (aka Ruth Leibik), Linda Hutchings, John Doe, Jane Doe, and
Persons Unknown**

Defendants

And

Attorney General of British Columbia

Intervener

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment (Re Stacy Gallagher)

Counsel for the Crown:

M.R. Ruttan
D.J. Pruim

Counsel for Stacy Gallagher:

S.J. Rauch

Place and Date of Trial:

Vancouver, B.C.
August 10-14 and 19-21, 2020

Place and Date of Judgment:

Vancouver, B.C.
November 13, 2020

INTRODUCTION

[1] On June 1, 2018, Justice Affleck of this Court granted an injunction to restrain persons from obstructing and interfering with the operations of the plaintiff, Trans Mountain Pipeline ULC (“Trans Mountain”), at its various Lower Mainland locations (the “Injunction”). One of those locations was Trans Mountain’s tank farm facility in Burnaby, BC, defined in the Injunction as the “Burnaby Terminal” or “BT”. For the purposes of this judgment, I will refer to the facility as the “Burnaby Terminal”.

[2] In this trial, the Crown alleges that Stacy Gallagher is guilty of criminal contempt of court in respect of the Injunction, arising from his presence and activities on or near the Burnaby Terminal on three separate dates, namely November 15 and December 2 and 18, 2019.

[3] The Crown alleges that Mr. Gallagher publicly disobeyed the term of the Injunction that provides:

1. The Defendants, any other person having notice of this Order, are hereby restrained and enjoined from:
 - a) physically obstructing, impeding or otherwise preventing access by Trans Mountain, its contractors, employees or agents, to, or work in, any of the sites or work areas as set out below:

. . .
 - (ii) The Burnaby Terminal (the “BT”), as indicated in the map attached as Schedule “B”

[4] Mr. Gallagher declined to plead to the allegations at the commencement of this trial; as a result, the Court entered a not guilty plea for him.

THE EVIDENCE

[5] For the most part, the Crown’s evidence consisted of video recordings and photographs of the relevant events on the three separate dates noted above and, additionally, on an earlier date, being August 21, 2018. Mr. Gallagher is clearly identifiable in all of the videos played at this trial.

[6] Randy Marquardt is a regional security manager who works for Trans Mountain. He has responsibility for Trans Mountain's operations in the Lower Mainland, known as "Spread 7". Daniel Bond is another regional security manager who works for Trans Mountain in another region, known as "Spread 5". Mr. Bond assists with matters relating to Trans Mountain's operations in the Lower Mainland, as required.

[7] Both Mr. Marquardt and Mr. Bond gave evidence at this trial in support of the Crown's case, along with one police officer.

[8] Mr. Gallagher testified on his own behalf.

August 21, 2018

[9] The Crown's evidence begins well before the late fall/winter 2019 dates, when the Crown alleges that Mr. Gallagher interfered with access to and from the Burnaby Terminal. The Crown relies on video evidence from this earlier date solely to establish that Mr. Gallagher had notice of the Injunction and its terms.

[10] On August 21, 2018, another protest against Trans Mountain and its operations occurred on Bayview Drive in Burnaby. Bayview Drive leads to the entrance to another of Trans Mountain's properties known as the "Westridge Marine Terminal", a further location protected by the Injunction.

[11] A portion of the video tape of that protest, recorded by Cst. Dirk Pinto of the RCMP at that time, was played at this trial.

[12] In the morning of August 21, 2018, a large group of people were gathered on Bayview Drive. One of them was Mr. Gallagher. The video recording shows a number of people on the roadway holding various objects. Banners were also placed on the roadway. Mr. Gallagher is seen speaking to a number of people.

[13] An RCMP officer began playing a pre-recorded recitation of the Injunction over a loudspeaker. Around that time, a number of persons began forming a line across the roadway. Mr. Gallagher moved on and off the roadway. At some point,

other persons began placing chairs behind the people lined up on the roadway. All this was clearly visible to Mr. Gallagher and he interacted with various persons who were lined up.

[14] The audio recording on the video indicates that it was played at a loud level. I accept Cst. Pinto's direct evidence that it was "loud". In addition, the loudspeaker was close enough to the persons on or near the roadway such that anyone with normal hearing capability, including Mr. Gallagher, would have been able to hear the recorded voice.

[15] Approximately one minute into the reading of the Injunction, around the time when the recording included the wording of para. 1(a)(ii) of the Order (referring to the "Burnaby Terminal"), a woman on the side of the road began also speaking to the crowd of people using a megaphone. Despite her speaking in this manner, I accept Cst. Pinto's evidence that he could still clearly hear the reading of the Injunction.

[16] Later, the people lined up on the roadway began holding signs. Again, Mr. Gallagher continued to interact with these persons, while the RCMP loudspeaker continued to broadcast the reading of the terms of the Injunction.

The Burnaby Terminal Intersection

[17] The entrance to the Burnaby Terminal sits at an "L" shaped intersection where Shellmont Street (running east/west) and Underhill Avenue (running north/south) meet (the "Intersection"). Trans Mountain's property line is immediately north of the Intersection and runs east/west just to the north of Shellmont Street.

[18] Immediately north of the Intersection is Trans Mountain's driveway or entrance to the Burnaby Terminal. Signage on both sides of the driveway/entrance provide notice of the south property line of the Burnaby Terminal. There are two property signs visible in the video: on the west, facing Shellmont Street to the south; and, on the east, just to the north of a dirt road leading east from the Intersection. A guardhouse is situated north of the Intersection and the property line and to the west

of the driveway/entrance. A sliding metal gate controls access at the end of the driveway/entrance that allows ingress and egress from the Burnaby Terminal itself.

[19] To the east of the driveway and gate area is a large white sign (approximately 8 feet high and 8 feet wide) that gives notice of the Injunction. The sign reads:

Any person who obstructs access to this site is in breach of an injunction order and may be subject to immediate arrest and prosecution.

A copy of the order is posted at: transmountain.com. . . .

[20] Between the Intersection and the gate, but within Trans Mountain's property line as part of the driveway, is a crosswalk. A trail used by the public runs east/west just to the north of both the Intersection and the property line. The public traverse the crosswalk when they are using the trail in order to cross Trans Mountain's driveway/entrance to the Burnaby Terminal. This raised crosswalk is about 30 yards from the gate.

[21] Normally, a flag person monitors the area toward ensuring the safe movement of trucks and other vehicles in and out of the Burnaby Terminal and the safe passage of the public over the crosswalk in light of that traffic. On two of the dates in question here (November 15 and December 2, 2019), there is a large stop sign just to the north of the trail and crosswalk for vehicles that are exiting the gate of the Burnaby Terminal. On all three 2019 dates, there is a second smaller stop sign south of the crosswalk and located just before a vehicle would enter the Intersection.

[22] Mr. Marquardt and Mr. Bond confirm that the main entrance to the Burnaby Terminal allows ingress and egress for a variety of vehicles with respect to Trans Mountain's operations. This includes construction vehicles, employees, crew buses and various other equipment that come and go from the site all day long.

[23] Mr. Bond's evidence was that this entrance was the only entrance to the Burnaby Terminal that larger construction vehicles could use to access the site. Mr. Marquardt confirmed that lighter vehicles could also use the entrance on the eastern part of the Burnaby Terminal situate near the regional office; however, as did Mr. Bond, he said that larger vehicles, such as double axle trucks with or without

trailers would only typically use the entrance at the Intersection. While physically possible, with great planning and shuffling of equipment, larger vehicles could access the regional office entrance but this was not a practical option and Trans Mountain did not do this.

November 15, 2019

[24] In the afternoon of November 15, 2019, Mr. Bond was with a Trans Mountain assistant security manager, Lorne Schwartz. Mr. Bond observed a number of protestors moving northbound on Underhill Avenue just south of Forest Grove Drive. Forest Grove Drive is a side street that runs off the east side of Underhill Avenue about 225 meters south of the entrance to the Burnaby Terminal.

[25] Mr. Bond observed three people holding an “Extinction Rebellion” sign who moved into the north bound lane of Underhill Avenue and began blocking traffic moving in that direction. A photograph captures a large dump truck that is blocked by their presence on the road. This activity lasted for about ten minutes. Mr. Bond says that most, if not all, construction vehicles were destined for the Burnaby Terminal, but he is not sure about the destination of the vehicles stopped at this time.

[26] Mr. Schwartz called the Burnaby RCMP to report the matter.

[27] After that time, a red vehicle approached the persons. Mr. Bond observed Mr. Gallagher exiting the red vehicle along with other persons and these new people then joined the protestors who had by then moved to the side of the roadway. Mr. Bond recognized Mr. Gallagher, having met him previously.

[28] After a short time on the east sidewalk of Underhill Avenue, the persons holding the “Extinction Rebellion” sign again moved into the north bound lane of the road. Mr. Bond’s photographs capture Mr. Gallagher in front of that sign, banging on a drum and facing oncoming northbound traffic that had again stopped. That stopped traffic included various construction vehicles, such as tandem dump trucks.

Mr. Gallagher is readily recognizable as the person standing in the middle of Underhill Avenue with a drum, from pictures Mr. Bond took at the time.

[29] This second blockade of Underhill Avenue, in which Mr. Gallagher participated, lasted about five minutes. After that time, the group, including Mr. Gallagher, moved onto the sidewalk and they began walking northbound along Underhill Avenue toward the Burnaby Terminal entrance. Mr. Bond then observed that the stopped traffic, including the dump trucks, began to move northward again although he did not see where the vehicles went.

[30] Shortly thereafter, around 3:15 p.m., Mr. Marquardt observed Mr. Gallagher walk up to the crosswalk area along with other people who Mr. Marquardt understood were Danish radio personalities. Mr. Marquardt was very familiar with Mr. Gallagher before this time, having met him more than 20 times before. Mr. Marquardt identified Mr. Gallagher during his testimony.

[31] After walking north of the Intersection, Mr. Gallagher is the first person to move into the crosswalk area just south of the gate to the Burnaby Terminal. Again, Mr. Gallagher is readily identifiable on the video taken at the gate area for this incident. Another person is with Mr. Gallagher and this person appears to be holding video and/or audio recording equipment. Both of them move to the middle of the driveway and crosswalk area. Other persons are to the east of the Intersection on the gravel road, on the trail to the west of the driveway and across the street on the other side of the Intersection.

[32] Around this time, Mr. Gallagher remarked to Mr. Marquardt something to the effect that Mr. Marquardt “might as well make your calls”. Mr. Bond phoned the RCMP for assistance regarding this protest.

[33] Just after Mr. Gallagher and this other person moved into the crosswalk area, a large truck and trailer full of gravel was pulling up to the large stop sign just north of the crosswalk area after exiting the gate. The truck driver was clearly trying to exit the Burnaby Terminal at the Intersection but the driver could not do so given

Mr. Gallagher's presence in the middle of the driveway on or near the crosswalk, including north of the crosswalk. At this point, the male person standing to the west on the trail holds up a sign facing the truck driver that says "Time is Up", which sign is also, at times, faced toward the Intersection and passing vehicles.

[34] At various times, Mr. Gallagher is seen drumming and moving on his feet, while being shadowed by the other person with the media equipment who is near him, while both are on or just north of the crosswalk and in front of the truck. After about four minutes, another two people come onto the crosswalk area and join Mr. Gallagher in front of the truck; these people were holding a large banner that reads "Extinction Rebellion". Soon, the two people holding the "Extinction Rebellion" sign turn around and face the Intersection, along with Mr. Gallagher, all in front of the truck.

[35] Mr. Marquardt asked the construction manager to stop any traffic coming to the site.

[36] Other people arrived at the site, including some persons who were located on the other side of the Intersection. At various times, Mr. Gallagher and the other two persons are waving to passing vehicles, again while in the crosswalk area and facing away from the waiting truck. The person with the video/audio equipment continued to either face all of these people and the truck or move to the back of the protestors in front of the truck. Mr. Gallagher began to hold one end of the sign at a point.

[37] At about 3:35 p.m., Mr. Marquardt had the truck move forward to allow the gate to close behind it. In addition, Mr. Marquardt wanted to test the resolve of the protestors as to whether they intended to remain. Despite the truck moving forward to just before the crosswalk, they did not move. At one point, a white truck heading east on Shellmont Street stopped just before the Intersection, paused, then drove away. Mr. Marquardt thinks, but is not sure, that this vehicle was trying to come into the entrance and onto the Burnaby Terminal.

[38] In addition, later interactions between the driver of the blocked truck and Mr. Gallagher, then still immediately in front of the truck, made no difference.

[39] After about 26 minutes, Mr. Marquardt had a discussion with Mr. Gallagher and asked him and the others to let the truck get through so the driver could go home. Mr. Gallagher replied that he was “in prayer” and he continued to occupy the area between the truck and the crosswalk. Minutes later, Mr. Gallagher is seen smoking a cigarette and waving to passing vehicles, while still holding his drum.

[40] After about 32 minutes, the protestors, including Mr. Gallagher, formed what appeared to be a circle on the crosswalk just in front of the truck. Mr. Marquardt described this as a “group prayer” or “group hug”. After a few minutes, they moved out of the crosswalk area along with their signs. The truck was then able to leave the driveway and exit at the Intersection.

[41] The blockade ended around 3:51 p.m., after about 40 minutes. The RCMP arrived shortly thereafter. The RCMP did not arrest Mr. Gallagher since, by the time of their arrival, he and the other protestors had left the scene, walking to the east.

December 2, 2019

[42] The events of December 2, 2019, only two weeks later, were similar to those on November 15, 2019. As with the previous protest, Trans Mountain recorded the events that day on video.

[43] In the early afternoon, persons who appeared to be media types were standing across the street on the Intersection with cameras and tripods facing Trans Mountain’s entrance to the Burnaby Terminal. Initially, Mr. Marquardt identified some individuals gathering across the street who he described as “well known protestors”.

[44] At approximately 1:27 p.m., a group of protestors (about nine in total) approach from the east along the trail. Mr. Gallagher is part of that group. No identification issue arises, as Mr. Gallagher is readily identifiable in the video.

[45] The group moves across Trans Mountain's driveway at Burnaby Terminal. Mr. Gallagher is the first person to begin standing on the crosswalk. Around this time, Mr. Marquardt again called the construction superintendent to hold any incoming vehicles in another location to prevent traffic from "stacking up and down" on Underhill Avenue.

[46] Mr. Marquardt also called the RCMP to attend.

[47] Mr. Gallagher begins by smoking a cigarette and waiving to passing vehicles. Later still, Mr. Gallagher brought out a purple jacket and a drum. After hugging a few of his fellow protestors, Mr. Gallagher stands again in the crosswalk area, along with other persons, and begins banging his drum.

[48] As the events unfold, Mr. Gallagher is mostly at the front and centre of the persons blocking the driveway, sometimes waving to people driving by. Other persons are beside the crosswalk and across the street. Mr. Gallagher sometimes moves to the side of the roadway and then returns to the crosswalk area with the others.

[49] It is apparent from the video that some vehicles slow down in front of the Intersection or near the protestors, giving rise to the inference that they were trying to enter Trans Mountain's premises but were unable to do so or that they were distracted by these activities. One vehicle in particular pulls up and then parks along the north side of Shellmont Street. Mr. Marquardt recognized the driver of this truck, who was a Trans Mountain employee or contractor. Mr. Marquardt told the driver of this truck that Trans Mountain had called the police and he hoped the protestors would be moving along "shortly". Minutes later, this truck left.

[50] This group of protestors, including Mr. Gallagher, continued to be on or in front of the crosswalk, leaving aside brief interludes at the side from time to time.

[51] Another white truck pulls up at the Intersection facing north on Underhill Avenue just before turning onto Shellmont Street. Mr. Marquardt believed that this was another Trans Mountain employee or contractor trying to access the site. After

about a minute, while blocking the road, this truck moved off and, like the first truck, parked on the north side of Shellmont Street just by the Intersection.

[52] After about an hour, two Burnaby RCMP officers arrived. The police walked up to and engaged with the protestors, including Mr. Gallagher, who were still in the crosswalk area. During the next 20 minutes or so, the protestors are seen shaking each other's hands and hugging. They pass a pipe around the group members and the police officers in a circle. After holding hands in a circle, the group broke up and moved to the east side of the Intersection, allowing access to the Burnaby Terminal.

[53] The video shows that, almost immediately, vehicles, including many large trucks, began entering and exiting the Burnaby Terminal. The police officers eventually left the scene, even before some of the protestors, without having arrested anyone. Mr. Gallagher was one of the last persons to leave, heading east along the trail.

[54] All told, the December 2, 2019 blockade was up for about one-and-a-half hours. Mr. Marquardt confirms that at no time did he ask Mr. Gallagher to move aside or leave, as he did on November 15, 2019.

December 18, 2019

[55] On December 18, 2019, Mr. Bond was on duty at the Burnaby Terminal in place of Mr. Marquardt. Trans Mountain personnel contacted Mr. Bond and advised that there was further protest activity at the Burnaby Terminal.

[56] Around 9:34 a.m., Mr. Bond arrived at the entrance. He observed two females and Mr. Gallagher standing just to the south of the crosswalk. These people were banging on drums and chanting. Mr. Bond took videos of the incident and a video recording captured the events at the gate area. Again, Mr. Gallagher is readily identifiable in all of the videos.

[57] Mr. Bond called the RCMP for assistance.

[58] The videos of the events that day clearly show a large truck with flashing lights coming north on Underhill Avenue that pulls over on the east side of the road facing north toward the entrance of the Burnaby Terminal. While this first truck was still stopped on the side of the road, another tanker truck heading east on Shellmont Street came along and stopped parallel to the first truck. Then, the second truck pulled away after a few minutes and moved south on Underhill Avenue. After having stopped for about ten minutes, the first truck also leaves and continues west on Shellmont Street after Mr. Gallagher approached the driver's side and either spoke or gestured to the driver.

[59] Early on, Mr. Bond asked Mr. Gallagher how long "we" are going to be there that day. Mr. Gallagher did not respond. At one point, Mr. Bond spoke to Mr. Gallagher while pointing at the large sign at the entrance giving notice of the Injunction. Mr. Bond said something to Mr. Gallagher to the effect "Stacy, you realize there is an injunction".

[60] Mr. Bond called the Burnaby RCMP and asked for assistance.

[61] While Mr. Bond was on hold on that call, another female came west along the trail. That female arrived at the crosswalk and joined the other two females and Mr. Gallagher. Mr. Gallagher handed her his drum. Mr. Bond observed that these people, including Mr. Gallagher were singing, dancing and drumming and performing what Mr. Bond thought was a smudging ceremony. These protestors faced both the Trans Mountain entrance and the passing vehicles.

[62] At various points, Mr. Gallagher walks around the group and almost into the Intersection. Mr. Bond observed Mr. Gallagher using his cell phone at least twice and that he held up his cell phone in the direction of the chanting females.

[63] Around 10:18 a.m., the RCMP pulled up in their vehicle. Mr. Bond then observed Mr. Gallagher say something to the females. Mr. Gallagher then picked up his knapsack and the entire group moved off the crosswalk area and started walking

eastbound along the trail. By the time the officers came up to the crosswalk area, Mr. Gallagher and the females had all left.

[64] As he left, Mr. Gallagher said to Mr. Bond “good night, I’ll see you tomorrow”.

[65] Mr. Bond’s evidence is that this activity at the Burnaby Terminal entrance effectively blocked the entry and exit of various vehicles from that location. As with the other incidents, Mr. Bond stated that once the blockade ended, traffic began again moving in and out of the Burnaby Terminal, a fact evident from the video.

[66] This activity - or lack of activity - at the Burnaby Terminal entrance on December 18, 2019 lasted around 53 minutes, all as captured on the video taken that day.

Defence Evidence

[67] Mr. Gallagher concedes that he was present on all three days in question. In general, he indicates that, as a guest of unceded territory (including the location of the Burnaby Terminal entrance), he was there to follow “natural laws”.

[68] Regarding his attendances on November 15 and December 2, 2019, Mr. Gallagher says that he was there because he was asked to be; he refers to having the permission of the “grandmothers” to be there as a “good relative”. His intention was to support his relatives in ceremony.

[69] The same applies to his attendance on December 18, 2019. Mr. Gallagher says he was there with the women to sing, dance and pray for the protection of the land.

[70] The defence also called John Clarke. Mr. Clarke lives near the northwest corner of the Burnaby Terminal property. He confirms that the “main entrance” to the Burnaby Terminal is at the Intersection. Consistent with Mr. Marquardt, he says that the office entrance further west on Shellmont Street could be used by trucks in an emergency. He also confirms a third entrance near his residence that is now in disuse and only used by Trans Mountain for emergencies.

DISCUSSION AND FINDINGS

[71] I will address the issues below, and in doing so, address the Crown and defence submissions.

Criminal Contempt

[72] The law of criminal contempt was set out by the Supreme Court of Canada in *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901. Justice McLachlin, later the Chief Justice of Canada, wrote for the majority at 931-933 as follows:

It is my view that a clear distinction exists between civil and criminal contempt and that the law of criminal contempt is sufficiently certain to meet the requirements of fundamental justice. The distinction between civil and criminal contempt rests in the concept of public defiance that accompanies criminal contempt.

Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

These same courts found it necessary to distinguish between civil and criminal contempt. A person who simply breaches a court order, for example by failing to abide by visiting hours stipulated in a child custody order, is viewed as having committed civil contempt. However, when the element of public defiance of the court's process in a way calculated to lessen societal respect for the courts is added to the breach, it becomes criminal. This distinction emerges from *Poje v. Attorney General for British Columbia*, [1953] 1 S.C.R. 516 at p. 527, per Kellock J.:

The context in which these incidents occurred, the large numbers of men involved and the public nature of the defiance of the order of the court transfer the conduct here in question from the realm of a mere civil contempt, such as an ordinary breach of injunction with respect to private rights in a patent or a trade-mark, for example, into the realm of a public depreciation of the authority of the court tending to bring the administration of justice into scorn. [Emphasis added.]

What the courts have fastened on in this and other cases where criminal contempt has been found is the concept of public defiance that “transcends the limits of any dispute between particular litigants and constitutes an affront to the administration of justice as a whole” ... The gravamen of the offence is not actual or threatened injury to persons or property; other offences deal with those evils. The gravamen of the offence is ... the 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.

[Emphasis in original.]

[73] At 933, the Court in *United Nurses* set out the elements of criminal contempt:

To establish criminal contempt the Crown must prove that the accused defied or disobeyed a court order in a public way (the *actus reus*), with intent, knowledge or recklessness as to the fact that the public disobedience will tend to depreciate the authority of the court (the *mens rea*). The Crown must prove these elements beyond a reasonable doubt. As in other criminal offences, however, the necessary *mens rea* may be inferred from the circumstances. An open and public defiance of a court order will tend to depreciate the authority of the court. Therefore when it is clear the accused must have known his or her act of defiance will be public, it may be inferred that he or she was at least reckless as to whether the authority of the court would be brought into contempt. On the other hand, if the circumstances leave a reasonable doubt as to whether the breach was or should be expected to have this public quality, then the necessary *mens rea* would not be present and the accused would be acquitted, even if the matter in fact became public. While publicity is required for the offence, a civil contempt is not converted to a criminal contempt merely because it attracts publicity, as the union contends, but rather because it constitutes a public act of defiance of the court in circumstances where the accused knew, intended or was reckless as to the fact that the act would publicly bring the court into contempt.

[74] The British Columbia Court of Appeal recently confirmed in this proceeding that *United Nurses* continues to be the leading authority on the law of contempt: see *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCCA 267 (“*Trans Mountain #15*”) at para. 22.

Notice of the Injunction

[75] In *Carey v. Laiken*, 2015 SCC 17 at para. 33, the Court stated that the order alleged to have been breached “must state clearly and unequivocally what should and should not be done”. Actual knowledge is also a requirement per *Carey*:

[34] The second element is that the party alleged to have breached the order must have had actual knowledge of it: *Bhatnager*, at p. 226; *College of Optometrists*, at para. 71. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine (*ibid.*).

[76] The concept of inferring actual knowledge based on willful blindness arose in respect of the Clayoquot Sound protests in BC in the early 1990s.

[77] In *MacMillan Bloedel Ltd. v. Simpson*, [1993] B.C.J. No. 2869 (S.C.) (“*MacMillan #1*”), many of the protestors said that they didn’t read the injunction that was provided to them and suggested that they did not grasp what was being said to them when the injunction was read over a loudspeaker. At paras. 20-22, Justice Bouck dismissed such arguments, stating that they could not, though “studious or reckless indifference”, escape responsibility by “feigning ignorance”.

[78] In *MacMillan Bloedel Ltd. v. Simpson*, [1994] B.C.J. No. 542 (S.C.) (“*MacMillan #2*”), Justice Colver stated the test for actual notice as “did [the] defendant know, or was he or she wilfully ignorant, about the terms of the injunction”. In that case, a person read the words of the injunction into a microphone which was broadcast over an amplifier where the protestors were present. A process server also handed a copy of the order to any remaining protestors. At para. 16, the Court found that actual notice had been proven:

Given the circumstances in which the injunction was read before the arrest of each defendant as well as the manner in which each defendant came to be at the blockade site and, with others, took his or her place on the road to prevent vehicles from passing, I am satisfied beyond a reasonable doubt that, notwithstanding either distractions or hearing difficulties attributable to the numbers or activities of protesters at the blockade site, all defendants knew or were wilfully ignorant about the terms of the injunction.

[79] Paragraph 10(c) of the Injunction provides that notice of the Injunction may be given by the reading of the order, including over an amplification system. Paragraph 11(a) provides that a person is deemed to have knowledge and notice of it if a copy of the Injunction is read to them, including over an amplification system.

[80] The Crown alleges that Mr. Gallagher was aware of the Injunction because of his attendance on August 21, 2018, when a recording of the entire wording of the Injunction was played over a loudspeaker. The Crown also alleges that various aspects of Mr. Gallagher’s attendances at the entrance to the Burnaby Terminal confirm that he had or then received notice of the Injunction, generally or specifically.

[81] I am satisfied beyond a reasonable doubt that Mr. Gallagher had actual notice of the Injunction based on the Crown's evidence, that I accept as follows:

- a) Based on my review of the August 21, 2018 video, Mr. Gallagher was clearly there with other protestors who were forming a blockade across the road in the presence of police officers;
- b) It was one of those police officers who was holding the loudspeaker over which the Injunction was read. The recording could be plainly heard by anyone within a reasonable distance, including Mr. Gallagher who was near the loudspeaker. There is no suggestion that Mr. Gallagher had any issues with his hearing that day;
- c) In my view, it would have been impossible for Mr. Gallagher not to have heard the recording and understood that the RCMP was there to address the protestors as being in breach of the Injunction, as was being read out by the RCMP officer. I find as a fact that he did hear the recording of the Injunction terms over the loudspeaker and chose not to obey;
- d) The first part of the recorded Injunction that was played for the gathered protestors was done without any other significant noise and before the woman started speaking into the megaphone; those words included the key elements of alerting those persons that there was an order prohibiting anyone from obstructing or impeding or preventing access to Trans Mountain's work sites;
- e) Defence counsel's suggestion that Mr. Gallagher was paying attention to the woman and not the RCMP recording is unsupported by any evidence;
- f) Mr. Gallagher is not in position to argue that the woman's words over the megaphone distracted him, which would again be willful blindness

or indifference as to the circumstances: see *MacMillan #1* at para. 22 and *MacMillan #2* at para. 16;

- g) In any event, the video recording supports that a person on the scene could hear both her voice and the police recording clearly, as confirmed by Cst. Pinto's evidence;
- h) On all three 2019 dates, when Mr. Gallagher was present at the entrance to the Burnaby Terminal, he was standing very near the large white sign posted there by Trans Mountain to alert people to the Injunction. The large words copied key portions of the Injunction and advised persons that anyone obstructing access may be subject to immediate arrest;
- i) On November 15, 2019, Mr. Gallagher remarked to Mr. Marquardt to the effect that Mr. Marquardt "might as well make your calls", clearly implying that he knew he was not supposed to be present there and that there would be consequences; and
- j) On December 18, 2019, Mr. Bond gestured to the sign in an attempt to draw Mr. Gallagher's attention to the fact that his presence on the driveway was in violation of the Injunction. Despite these efforts, Mr. Gallagher did not change his behavior, strongly suggesting that he either already knew of the Injunction and did not care or that he then refused to make any efforts to confirm the terms of the Injunction, as relevant to his actions that day. Again, at the least, this was willful ignorance or indifference: see *MacMillan #1* at para. 21.

[82] Leaving aside the Crown's evidence, Mr. Gallagher's direct testimony confirms that he was well aware of the Injunction and its terms prior to his attendance at the Burnaby Terminal on November 15, 2019 or was, in the alternative, willfully blind or indifferent to it:

- a) He refers to having the permission of others to be present at the Burnaby Terminal, noting that this was in conflict with a “different system”. This statement implies that he knew that he was not supposed to be present there, particularly in light of his then statement that “no one tells me where to go”;
- b) He concedes in his direct testimony that he was aware of a “spiritually violent restriction” that “someone was trying to impose on him” to restrict his access to unceded land, namely the entrance to the Burnaby Terminal. In making this concession, he again notes that he wasn’t at the entrance to the Burnaby Terminal to challenge anything; rather he was just there to do “what he does” in following natural laws. I find that all of these statements are referring to the Injunction;
- c) He plainly concedes that he knew there was an order and that injunctions are “racist”. He states that he knew he was at risk if he went “against” the Injunction; and
- d) He says that he would not claim ignorance of the order. He claims that no one has ever read the order to him. However, he refers to it as possibly having been “blasted at me”, which I find is a clear reference to the broadcasting of the Injunction that he heard on August 21, 2018.

[83] Mr. Gallagher says that he considered that, before he was at risk, someone would ask him to leave and that he would have an opportunity to leave. He says that this is consistent with his understanding of the “five step” process set out in paragraph 12 of the Injunction that the police are to follow before making any arrest.

[84] In *Telus Communications Re: Alleged Contempt of Robert Waite*, 2006 BCSC 16 at para. 25, Justice Burnyeat cited *British Columbia Telephone Co. v. Telecommunications Workers Union* (1981), 121 D.L.R. (3d) 326 where union members in violation of an order refused a copy that was offered to them. In the latter decision, Justice McKenzie stated at para. 45:

I am satisfied wholly that each participant in these incidents was fully aware of the injunction order and its contents. This is not to suggest that each participant had memorized the rather formal language but rather that each knew that such mass demonstrations involving hazing, verbal abuse and generally obnoxious behaviour were forbidden.

[85] All of Mr. Gallagher's evidence, as above, overwhelmingly supports that, at the very least, he had a general understanding of the terms of the Injunction, well beyond that the Injunction existed. He could not have learned of the "five step" process outlined in the Injunction without also being alerted to the existence of the Injunction and its overall objectives in prohibiting certain behavior at Trans Mountain's work sites. If, after learning of the Injunction, he did not take any reasonable steps to confirm any of the other specific terms, that is willful blindness or indifference: see *MacMillan #1* at para. 21.

[86] In conclusion, I find beyond a reasonable doubt that Mr. Gallagher had actual notice of the Injunction and its specific terms on August 21, 2018. Also, he was deemed to have knowledge and notice of the Injunction on that date. Mr. Gallagher did not by any stretch of the imagination "forget" about the Injunction some 15 months later in November/December 2019. I reject defence counsel's submission that there is some "ambiguity" about what portions of the Injunction applied after October 2018. Mr. Gallagher did not express any doubts in that respect; if he had, he need only have read the Injunction, arising from clear notice of it when he arrived at the site on November 15, 2019.

[87] In addition, he received a clear reminder on those later dates that the Injunction remained in place from Mr. Bond and from the large white sign visible at the Burnaby Terminal entrance where he stood nearby. At the very least, Mr. Gallagher was willfully blind and indifferent to the Injunction and its terms.

Actus Reus

[88] The Crown must establish, beyond a reasonable doubt, that Mr. Gallagher disobeyed the Injunction in a public way (*United Nurses* at 933). The Injunction prohibits persons from:

. . . physically obstructing, impeding or otherwise preventing access by Trans Mountain, its contractors, employees or agents, to, or work in, . . . [t]he Burnaby Terminal . . .

[89] The Crown alleges that Mr. Gallagher:

- a) On November 15, 2019, physically obstructed or impeded access to the Burnaby Terminal by participating in a blockade of the northbound lane of Underhill Avenue;
- b) On November 15, 2019, physically obstructed, impeded and prevented access to the Burnaby Terminal by his presence on the driveway, including the crosswalk;
- c) On December 2, 2019, physically obstructed, impeded and prevented access to the Burnaby Terminal by his presence on the driveway, including the crosswalk; and
- d) On December 18, 2019, physically obstructed, impeded and prevented access to the Burnaby Terminal by his presence on the driveway, including the crosswalk.

[90] Defence counsel argues that Mr. Gallagher was careful where he stepped on the driveway, being on the crosswalk and in front of the crosswalk. She asserts that the crosswalk is a public trail and that the area south of and in front of the crosswalk is also a public area.

[91] The evidence is contrary to this assertion. Mr. Marquardt's evidence is that the driveway, which includes the crosswalk that allows people to cross while using the trail, is on Trans Mountain's property since it is north of the property signs just to the north of Shellmont Street. Mr. Marquardt was unshaken on cross-examination in that respect and there is no contrary evidence.

[92] Defence counsel refers to the members of the public who are shown in the videos as traversing the crosswalk across the driveway to continue along the trail.

That is true, but what is also true is that none of these people chose, like Mr. Gallagher, to stand in the middle of the driveway and not move in order to block traffic going in and out of the gate.

[93] I find as a fact that the crosswalk area, including the entire driveway which includes the crosswalk where Mr. Gallagher is seen on all three days, is on Trans Mountain's property. In any event, Mr. Gallagher, as part of his activities, was standing on many areas of the driveway and not at times on the crosswalk, particularly when he was standing just in front of the truck trying to leave through the gate on November 15, 2019. The defence does not dispute that Mr. Gallagher was present on the driveway and off the crosswalk, all of which is Trans Mountain's property.

[94] Defence counsel also argues that, since there were two other entrances to the Burnaby Terminal, there could be no physical obstruction by Mr. Gallagher as a result of his presence on the driveway and crosswalk area.

[95] The evidence clearly supports that this was the main entrance to Burnaby Terminal and the *only* one used by heavy vehicles, such as large trucks and other construction vehicles. Mr. Marquardt confirmed that Trans Mountain could have possibly used the office entrance for large trucks and vehicles, but only with considerable difficulty in planning and execution. I do not see this scenario as feasible given the sudden nature of Mr. Gallagher's attendance at the Burnaby Terminal. There was no evidence that Trans Mountain could have used the third emergency entrance for its regular large sized and heavy vehicle traffic, beyond Mr. Clarke's very vague and speculative evidence that I do not accept.

[96] As I read the Injunction, there need only be physical obstruction, impeding or preventing of access of the work sites. The main gate allowed Trans Mountain to do just that and I have no doubt that access there was chosen for various reasons, including safety. I do not read paragraph 1 of the Injunction as allowing persons to block access such that they choose how, where and when Trans Mountain accesses its own sites. The clear import of the Injunction is to prevent Trans Mountain from

undertaking its normal operations; allowing access through the main gate is part of those operations.

[97] Mr. Marquardt's evidence was that, as soon as a blockade happened, he made efforts to call off trucks to other locations or to delay their arrival. Such reasonable efforts do not undermine the fact that Mr. Gallagher's presence on the driveway had the immediate effect of physically obstructing, impeding and preventing access to and from the Burnaby Terminal. It is not necessary in the circumstances to prove that vehicles were, in fact, diverted or delayed at other locations.

[98] It is not necessary in the circumstances to require that Trans Mountain have all these vehicles stacked up the neighbourhood, no doubt with ensuing road chaos, safety issues and cost considerations, before any breach can be alleged. This Court came to the same conclusion in *Trans Mountain Pipeline ULC v. Mivasair*, 2018 BCSC 1070 at paras. 37-38, citing *Newfoundland (Attorney General) v. N.A.P.E.*, [1988] 2 S.C.R. 204 at 212.

[99] Leaving aside what happened to diverted or delayed vehicles, the videos clearly show that a large truck was prevented from leaving the Burnaby Terminal on November 15, 2019 when Mr. Gallagher was present on the driveway. Similarly, I find as a fact that the two trucks that stopped in front of the Burnaby Terminal on December 2, 2019 and the large truck that stopped on the roadway in front on December 18, 2019 were trying to enter the Burnaby Terminal on those dates. All of these vehicles were impeded or blocked given Mr. Gallagher's presence on the driveway.

[100] The Crown also alleges that, while not blocking access, on November 15, 2019, Mr. Gallagher impeded traffic to the Burnaby Terminal when he stepped into the middle of Underhill Avenue and stopped large construction trucks who were travelling northbound at a spot that is just south of the Burnaby Terminal entrance. The photographs clearly show that Mr. Gallagher's presence on the roadway had that effect.

[101] Mr. Bond's evidence was that most, if not all, construction vehicles heading up Underhill Avenue were destined for the Burnaby Terminal, but he is not sure about the destination of the vehicles stopped by Mr. Gallagher's actions.

[102] I am satisfied beyond a reasonable doubt that Mr. Gallagher was acting in violation of paragraph 1(a)(ii) of the Injunction on November 15 and December 2 and 18, 2019 when he physically occupied the Trans Mountain driveway at the main gate of the Burnaby Terminal. However, given the uncertainty about the destination of the stopped vehicles on Underhill Avenue just south of the Burnaby Terminal entrance on November 15, 2019, I am unable to conclude beyond a reasonable doubt that Mr. Gallagher's actions earlier that day were in breach of the Injunction.

[103] I am also satisfied beyond a reasonable doubt that Mr. Gallagher's breaches of the Injunction were done "in a public way".

[104] On all three occasions, Mr. Gallagher would have been well aware of other members of the public who witnessed his open violation of the Injunction. The public who did so included the people who viewed the activity from across the Intersection, other protestors who stood to the side of the driveway, people who drove by the Intersection and Trans Mountain's employees and contractors: see *MacMillan Bloedel Ltd. v. Simpson*, [1994] B.C.J. No. 670 (C.A.) ("*MacMillan #3*") at para. 31-32. I find that Mr. Gallagher was keenly aware of this public presence, being more often than not facing the Intersection. He often waved at the continual stream of traffic moving along the roadway, some of which slowed or stopped at the Intersection, either as the initiator or in response to an acknowledgement from the drivers and/or occupants of those vehicles.

[105] As with the defendants in *MacMillan #3* at para. 31, Mr. Gallagher claims that he never contacted the media to attend on any of the three 2019 dates in question. That may be so, but he does not appear to have had any difficulty continuing with his flagrant violation of the Injunction while being recorded and observed in a very public fashion. It is apparent enough that a "media" person of some stripe was shadowing him on November 15, 2019.

[106] Finally, on November 15, 2019, Mr. Gallagher is clearly seen holding the “Extinction Rebellion” sign while facing the Intersection. The only reasonable explanation for this action, together with his other public actions, was to engage the public with his cause.

[107] I conclude that the Crown has proven the *actus reus* of criminal contempt in these circumstances beyond a reasonable doubt in respect of his actions, as alleged in paragraph 88(b)-(d) above.

Mens Rea

[108] The Crown must establish, beyond a reasonable doubt, that Mr. Gallagher disobeyed the Injunction in a public way with intent, knowledge or recklessness as to the fact that the public disobedience will tend to depreciate the authority of the court.

[109] In *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCSC 1247 (“*Trans Mountain #13*”) at paras. 89-90, Affleck J. adopted the statement in *Carey* as to what is the required “intent” to establish civil contempt:

[38] It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice . . .

At para. 90, Affleck J. added that the “distinguishing feature of criminal contempt is knowledge or recklessness that public disobedience will tend to lower the authority of the court”.

[110] Mr. Gallagher states that it was never his intention to stop work at the Burnaby Terminal. His intention was to be there for ceremony and prayer. He says that he was aware that there were other ways for trucks to access the Burnaby Terminal.

[111] I have no hesitation finding that the only reasonable inference is that Mr. Gallagher, with full knowledge of the Injunction, fully intended to present himself

at the entrance to the Burnaby Terminal on these three occasions and that he intended to occupy the crosswalk area in a public way.

[112] I appreciate Mr. Gallagher had his own personal intentions and reasons for disobeying the Injunction, arguably said to be his adherence to “natural laws” and concerns for the environment and citizens of Canada. Similar arguments by defendants, to the effect that their intention was to protect the environment and not disobey the order, have been rejected: see *Trans Mountain #13* at paras. 89-94; *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCSC 2122 at paras. 63-64; and *MacMillan #3* at para. 25.

[113] Mr. Gallagher’s assertions that he was in prayer or ceremony after having arrived at the crosswalk area are, with respect, irrelevant. There is no evidence that Mr. Gallagher, even while conducting prayer or ceremony, lost his senses as to where he was and what he was doing. In any event, it is not clear to me how Mr. Gallagher’s praying and ceremony goes hand in hand with holding protest signs and smoking cigarettes.

[114] The Crown’s case would certainly also support a finding that Mr. Gallagher was at least reckless in terms of the effect that his actions would have on the respect accorded to the court and its orders.

[115] In *Trans Mountain #15*, a similar protest and blockade of the Burnaby Terminal was considered. At para. 41, the court confirmed that, following *United Nurses*, recklessness as to the effect of publicly disobeying the Injunction is sufficient to satisfy the *mens rea* element of the offence:

[41] As mentioned above, the gravamen of criminal contempt is the continuous and flagrant violation of a court order without regard for the effect that conduct may have on the respect accorded the courts. That is precisely what the appellants admitting doing. There is, therefore, no basis on which to interfere with their convictions.

[116] I find beyond a reasonable doubt that Mr. Gallagher had the intention and the knowledge that his public defiance would tend to diminish the authority of the court and its orders, including the Injunction; in the alternative, I find that he was reckless

in that respect. Both findings support that the Crown has satisfied the *mens rea* element of the offence.

Indigenous Issues

[117] Defence counsel has made substantial submissions concerning “Indigenous law” and that Mr. Gallagher is bound by those laws which are different than those laws applied by the Court.

[118] That said, no evidence was adduced of any Aboriginal or Indigenous laws that may be applicable to Mr. Gallagher’s conduct here. More importantly, no evidence of any other relevant laws relating to this criminal contempt prosecution under the Injunction are evident. I reject the suggestion from defence counsel that Mr. Gallagher, in following what he considered as “natural laws”, was free to ignore the Injunction. In a previous matter in this proceeding, Affleck J. rejected similar arguments: *Trans Mountain Pipeline ULC v. Mivasair* (Unreported; October 25, 2019) at paras. 47-49.

[119] In addition, Mr. Gallagher has failed to identify any statutory authority that would excuse his behavior in the face of the Injunction. Paragraph 13 of the Injunction provides that it does not apply to persons “acting in the course of or in the exercise of a statutory duty, power or authority”. Similar arguments failed in *Trans Mountain #13* at paras. 91-94 and *Trans Mountain Pipeline ULC v. Mivasair* (Unreported; October 25, 2019) at para. 40. Defence counsel’s suggestion that the “grandmother’s permission” provided that statutory duty is entirely without merit.

[120] There was considerable controversy during this trial concerning the defence assertion that the Burnaby Terminal was on unceded Aboriginal territory. The Crown did not concede that assertion as a fact. I ruled against Mr. Gallagher’s request that the Court take judicial notice of that matter on the basis of the well settled law, including that found in *R. v. Spence*, 2005 SCC 71.

[121] Having failed in that respect, Mr. Gallagher then indicated that he wished to adjourn the trial in order to call evidence on the issue. The Crown objected and as a result, I heard arguments as to whether such evidence was admissible at this trial.

[122] I ruled that such evidence could only have been relevant in support of Mr. Gallagher's argument that, since he was on unceded territory, he was immune from the effect of the Injunction. Such an argument flies in the face of well-established BC authority that this Court has jurisdiction over Aboriginal persons and any such argument is a collateral attack on the validity of the order: see, for example, *British Columbia (Attorney General) v. Mount Currie Indian Band*, [1991] B.C.J. No. 616 (S.C.) at paras. 52-54 and *R. v. Ignace*, [1998] B.C.J. No. 243 (C.A.) at paras. 11-12.

[123] The same argument was made and rejected by this Court in this very proceeding. In *Trans Mountain Pipeline ULC v. Mivasair*, 2018 BCSC 1909 at paras. 21-24. Justice Affleck stated:

[24] Another argument that might have been made by S.B. is that the injunction is invalid so far as it purports to apply to S.B. because he enjoys aboriginal status, and the document spoken of by Mr. Manuel may provide some form of immunity from the injunction. There are many difficulties with this potential argument. One I have already mentioned is that the courts of this province have jurisdiction over aboriginal accused persons where it is alleged an offence has been committed. Another difficulty is that the injunction must be accepted as valid and enforceable by its terms unless it is set aside or varied.

[124] I acknowledge Mr. Gallagher's statements that he considered that he was standing on unceded Indigenous territory. However, even if true, the Injunction still applied to him and he was subject to the authority of this Court and governed by the restrictions in that order. He cannot argue that this Court had no jurisdiction to grant the Injunction to govern his actions at the Burnaby Terminal, as it would be an impermissible collateral attack on the validity of the Injunction.

Fairness

[125] Mr. Gallagher also complains about the fact that he is the only one before the Court when there were numerous other persons at the Burnaby Terminal doing the same thing that he was.

[126] Evidence on that issue is found in the testimony of Cst. Daniel Comte, a Burnaby RCMP officer. During the November/December 2019 period, Cst. Comte was the lead investigator with respect to protest activity at the Burnaby Terminal.

[127] Cst. Comte said that, after his review and assessment of Trans Mountain's evidence as to the activities on those three days, he formed the view that Mr. Gallagher was arrestable. Principally, Cst. Comte's assessment was based on his ability to identify Mr. Gallagher in the videos and the record of the activities in the video recordings. Cst. Comte then sent the disclosure to the Crown. Cst. Comte also had evidence as to Mr. Gallagher's knowledge of the Injunction, a key point that had to be proven at any trial.

[128] Again, Affleck J. addressed this "selective enforcement" issue in one of his previous decisions in this matter: *Trans Mountain Pipeline ULC v. Mivasair*, 2018 BCSC 1239. At paras. 4-6, this Court, following *R. v. Armstrong*, 2012 BCCA 242, held that no defence arose because of alleged inconsistent enforcement of the order. The same applies here if, in fact, any inconsistent enforcement issues arises.

Arrest Issue

[129] Mr. Gallagher also argues that, in order to be "at risk" under the Injunction, the police had to perform for him the "five step" process under paragraph 12 of the Injunction. He asserts that he was "denied" that process in terms of being asked to stop his illegal activities and being advised of his potential jeopardy. In the alternative, Mr. Gallagher says that, at the least, someone in authority had to ask him to leave the site.

[130] This argument makes little sense in the context of the November 15 and December 18, 2019 incidents. By the time the RCMP arrived, after having been

called by Trans Mountain personnel, Mr. Gallagher had left and he was no longer there to be arrested after the “five step” process.

[131] I reject the defence suggestion that the protestors were entitled to disobey the Injunction so long as they did so before any arrest. To allow this argument to succeed would invite the type of guerilla tactics that Mr. Gallagher and his cohorts chose to use on these occasions. It makes little sense to have an Injunction in place if the breach can occur and, just before the authorities arrive, the offenders scurry away and flee into the adjoining neighbourhood without consequences.

[132] Even so, the Injunction does not require any arrest before a breach occurs. Paragraph 6 of the Injunction plainly authorizes a police officer to arrest subject to that officer exercising his or her operational discretion. In addition, as the Crown notes, paragraph 12 of the Injunction (i.e. the “five step” process before arrest) does not detract from the overall import of the Injunction, given its opening words as not “limiting the foregoing”, which would include paragraph 1.

[133] Mr. Gallagher’s complaint that someone had to ask him to leave is also without merit. The Injunction and breaches under the Injunction are not subject to this requirement. As an adult person, he knew he was not supposed to be present in the crosswalk area. The Trans Mountain personnel did not consider that they had the authority to deal with Mr. Gallagher; that is why they called the RCMP to deal with him by enforcing the requirements under the Injunction, if necessary.

[134] Further, Mr. Gallagher’s assertion that no Trans Mountain personnel asked him to leave borders on the nonsensical.

[135] It is an incredible proposition that Mr. Gallagher did not understand on November 15, 2019 that, when he was facing down the truck that wanted to leave the Burnaby Terminal, *he* was being asked to get out of the way. Mr. Marquardt specifically asked him to let the truck leave. The same can be said for December 18, 2019 when Mr. Bond specifically engaged with Mr. Gallagher, including pointing to the Injunction and asking him how long he was going to be there. It belies common

sense to suggest that Mr. Gallagher did not know that Trans Mountain personnel wanted him to get out of the way so that ordinary operations in and out of the Burnaby Terminal could resume.

[136] If Mr. Gallagher is suggesting that he did not understand that Trans Mountain personnel were asking him to leave, I reject that evidence as entirely lacking in credibility and without support within the context of the body of evidence at this trial.

CONCLUSION

[137] The Crown has met its burden in proving its case beyond a reasonable doubt. I find that Mr. Gallagher is guilty of criminal contempt of court on November 15 and December 2 and 18, 2019.

“Fitzpatrick J.”