QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2020 SKQB 38**

Date: **2020 02 12**
Docket: QBG 3302 of 2019
Judicial Centre: Regina

BETWEEN:

CONSUMERS' CO-OPERATIVE REFINERIES LTD.

PLAINTIFF/APPLICANT

- and –

UNIFOR CANADA, LOCAL 594 and
LANCE HOLOWACHUK, KEVIN BITTMAN
and EVAN BRAY, CHIEF OF POLICE OF THE
REGINA POLICE SERVICE

RESPONDENTS

Counsel:

Eileen Libby, Q.C. and Abdu Aziz Aboudheir	for the Applicant
Crystal L. Norbeck and Samuel Schonhoffer	for the main Respondents
Katrina Swan	for Evan Bray, Chief of Police of the City of Regina

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JUDGMENT
February 12, 2020

ROBERTSON, J.

INTRODUCTION

[1] This decision addresses an alleged civil contempt of court. The alleged contempt is through repeated breaches of an injunction to limit interference with access and egress to property during a lockout.

[2] There is no doubt that the terms of the injunction are being violated. The real question is whether the named respondents are guilty and, if so, what sanction should be imposed.

FACTS

[3] The Consumers Co-operative Refinery Ltd. [CCRL] operates a refinery in the City of Regina. Unifor, Local 594 [Union] represents unionized workers employed by CCRL.

[4] CCRL locked out its unionized workers on December 5, 2019, after the Union gave strike notice. The Union began picketing the refinery site, as well as other CCRL properties.

[5] CCRL applied to this Court for an injunction, complaining that the Union's picketing went beyond what was lawful and was improperly interfering with access and egress to the refinery.

[6] The parties appeared before McMurtry J. on December 17, 2019. The application was adjourned for hearing on December 23, 2019. McMurtry, J. made an interim order on December 18, 2019 which limited the time during which picketers could delay vehicles entering the refinery to five minutes for the purpose of communicating their message.

[7] CCRL's application for an injunction was argued on December 23, 2019. McMurtry J. issued a decision on December 27, 2019 granting an injunction: (27 December 2019) Regina, QBG 3302 of 2019 (Sask QB). That decision, at para. 41, states the order:

> [41] Therefore, an order may issue restraining Unifor from impeding, obstructing, or interfering with the ingress or egress to or from the applicant's property, except for the purpose of conveying information and/or soliciting support and the restriction of access to or exit from the said premises, **shall only last as long as necessary to provide information, to a maximum of 10 minutes, or until the recipient of the information indicates a desire to proceed, whichever comes first.** [Emphasis in original]

[8] It should be noted that the decision, at para. 9, made clear that reference to the Union included "all members of Unifor Canada, Local 594."

> [9] The application for an injunction relates to all members of Unifor Canada, Local 594. It is enough to name the union, only.

[9] The Order issued on December 27, 2019 [Injunction] and served upon the Union reflects this decision:

> 1. The Defendant, Unifor Canada, Local 594 and all of its members, until the trial or other final disposition of this Action, or until further order of the court, are hereby restrained from impeding, obstructing, or interfering with the ingress or egress to or from the following properties possessed by the Plaintiff identified below by their municipal and legal land descriptions (collectively the "CCRL Properties"), except for the purpose of conveying information and/or soliciting support, and the restriction of ingress to or egress from the said CCRL Properties, shall only last as long as necessary to provide information, to a maximum of 10 minutes, or until the recipient of the information indicates a desire to proceed, whichever comes first:
>
> (i) 234 East 9th Avenue North, Regina, Saskatchewan [legal description omitted – the Refinery property covering some 800 acres]
>
> (ii) 250 McDonald Street, Regina, Saskatchewan [legal description omitted]
>
> (iii) 580 Park Street, Regina, Saskatchewan [legal description omitted]

(iv) 90 Kress Street, Regina, Saskatchewan [legal description omitted]

(v) 310 Henderson Drive, Regina, Saskatchewan [legal description omitted]

(vi) Victoria Plains Rail Facility, RM of Sherwood, Saskatchewan [legal description omitted]

[10] CCRL made application to hold the Union in civil contempt of the interim order. That application was heard by Keene J. on January 16, 2020, with judgment issued on January 22, 2020. Keene J. found the Union in contempt of court for breaches occurring between December 18 and 22, 2019: 2020 SKQB 17. These breaches, described at para. 13, generally consisted of picketers delaying vehicles for more than the allowed five minutes or preventing vehicles from entering unless the driver or other occupants identified themselves. A sanction of $100,000 was imposed.

[11] Between the time the first contempt application was heard and decided, the entrances to the refinery property were blockaded. This occurred on or around January 20, 2020. Since then, except for brief periods, all entry and exit from the refinery have been prevented.

[12] CCRL made a second application to declare the Union and its President, Kevin Bittman, and one of its Vice-Presidents, Lance Holowachuk, in civil contempt of court for failing to comply with the Injunction, to impose sanctions for that contempt and for an award of costs on a solicitor-client basis. This application was scheduled for February 4, 2020, but adjourned by consent for hearing on February 6, 2020.

[13] At the hearing on February 6, 2020, the Union asked that the hearing be adjourned or, if it proceeded, the issues be bifurcated between

liability and penalty, so that the issue of sanction be heard later, assuming there was any finding of contempt. I dismissed those applications, on the basis that the public interest required that the hearing proceed. At the conclusion of the hearing, I reserved my decision.

ISSUES

[14] This application raised the following issues which will be dealt with in turn:

1. What are the elements necessary to establish civil contempt of court?

2. What is the onus and standard of proof for civil contempt of court?

3. Does the evidence establish breaches of the Injunction?

4. If so, does the evidence establish that the alleged contemnors are guilty of civil contempt for breaches of the Injunction?

5. If so, what is an appropriate sanction?

6. What further order, if any, should be made?

7. What costs, if any, should be awarded?

REASONS

Civil contempt of court

[15] I have the advantage of the judgment of Keene J. dated January 22, 2020. In that judgment, he summarized the elements of civil contempt of court at para. 16:

> [16] The Supreme Court of Canada, in *Carey v Laiken*, 2015 SCC 17 at paras 32-35, [2015] 2 SCR 79 [*Carey*], sets out the elements of civil contempt of court, which must be proven beyond a reasonable doubt as:
>
> 1. The order must state clearly and unequivocally what should and should not be done;
> 2. The alleged contemnor must have actual notice of the order; and
> 3. The alleged contemnor must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

[16] The intent required to establish civil contempt is not that the respondent intended to breach the court order, but rather that they intended to do what the order forbade, or not to do what the order required. So the respondent's subjective belief that they were not breaching the order is no defence, unless it was objectively reasonable. (The defence available under Rule 11-26(3)(a) of *The Queen's Bench Rules* is one of "reasonable excuse".) The rationale for this was explained by Cromwell J. in *Carey v Laiken*, 2015 SCC 17 at para 38, [2015] 2 SCR 79:

> 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 had notice. ... [T]o require a contemnor to have intended to disobey the order would put the test "too high" and result in "mistakes

> of law [becoming] a defence to an allegation of civil contempt, but not to a murder charge" ([*Sabourin and Sun Group of Companies v Laiken* 2013 ONCA 530], at para. 59). Instead, contumacy or lack thereof goes to the penalty to be imposed following a finding of contempt. ...
>
> 42 [R]equiring contumacious intent would open the door to mistakes of law providing a defence to an allegation of civil contempt. It could also permit an alleged contemnor to rely on a misinterpretation of a clear order to avoid a contempt finding, which would significantly undermine the authority of court orders.

Onus and Standard of Proof

[17] The applicant has the onus of proving the alleged contempt on the criminal standard of proof beyond a reasonable doubt.

[18] The evidentiary burden is explained in Jeffrey Miller, *The Law of Contempt in Canada*, 2d ed (Carswell: Toronto, 2016) at 282:

> 5.6 *Conduct of the proceedings*
>
> *5.6(a) Evidence*
>
> The standard of proof in all contempt proceedings is beyond a reasonable doubt. The law views as at least quasi-criminal any conduct apt to interfere with the administration of justice. The prosecution of the moving party has the *evidentiary burden* of proving, generally speaking, that the impugned conduct is calculated or apt to interfere with the administration of justice, at least in respect of disobedience of court orders. In many circumstances, to establish the mental element, proving recklessness or carelessness will be sufficient. "Mere negligence" is not actionable.
>
> There is no burden to show that the alleged contemnor intended to act contemptuously. ...
>
> [Footnotes omitted] [Emphasis in original]

Clear and Unequivocal Order

[19] The terms of the Injunction are clear and unequivocal and are reinforced by the written reasons of McMurtry J. Apart from the clear words of the order, the alleged contemnors had access to legal advice. I reject the argument that the alleged contemnors misunderstood or were confused as to what they were required to do and what they were not allowed to do to comply with the Injunction. I am satisfied beyond a reasonable doubt that this element is established.

Actual Notice of the Order

[20] CCRL's lawyers served the Union's lawyers with the Injunction on December 27, 2019. The Union's lawyer signed acknowledgement of service on December 27, 2019 at 5:17 p.m.

[21] Notice imports knowledge. The recipient cannot, for example, refuse to read the order and then claim impunity based on wilful ignorance of its terms. In this case, no one disputed that the alleged contemnors had notice of the Injunction. I find that this element is established.

Evidence of Breaches of the Injunction

[22] The evidence is overwhelming that the Injunction was not obeyed. CCRL filed 23 affidavits, including video recordings of events at the refinery. CCRL alleges over one hundred individual acts of contempt. Given the need for a timely decision, I do not intend to review this evidence in detail. I will refer to some of this evidence below in relation to the individual respondents. The breaches fall into three categories: delaying vehicles trying to enter or leave

CCRL property beyond the limits allowed by the Injunction; blockade of entrances/exits at the refinery site beginning on January 20, 2020, which completely denied access or egress; and words spoken by Union officials encouraging others to breach the Injunction.

[23] Each of the alleged contemnors will be considered in turn to determine whether the evidence establishes they are guilty.

The Union

[24] The Notice of Application, in para. 1(a) seeks the following order against the Union:

> 1. ...
>
> > (a) Orders pursuant to Rule 11-26 declaring the Respondent Union in civil contempt of this Honourable Court for failure to comply with the Order of the Order of this Honourable Court issued on December 27, 2019 (the "Injunction Order") by impeding, obstructing and interfering with the ingress and egress of personnel and vehicles from CCRL Properties, in a manner prohibited by the Injunction Order, with respect to each of the incidents which are identified in paragraphs 8-12 of this Application;

[25] The Union's counsel, while putting CCRL "to the strict proof of its allegations", did not deny the fact of the first two category of breaches: delays beyond the limits allowed; and blockading of the entrances and exits to the refinery. In their brief at para. 2(2), counsel, who acted in the best traditions of the Bar, acknowledged that, to the extent the alleged breaches were proved, "the Local has no legal defence to these allegations and must acknowledge that they were in breach of the Order". Later in the Union brief, at para. 174, it states:

> 174 The Local does and must take responsibility for some of the breaches in the pre-January 20, 2020 period. To the extent that the Local held vehicles long in excess of ten minutes or past the time when the vehicle occupants clearly indicated that they wanted to proceed, it must concede that those actions were a violation of the order.

[26] The Union, at para. 133 of its brief, acknowledges the fact of the blockade but, at para. 180, states "The Local is not responsible for the blockade and should not be fined."

[27] CCRL, in its application at para. 8 and in its brief at paras. 71 – 173, summarize acts occurring between December 29, 2019 and January 27, 2020 which it says constitute breaches of the Injunction. The brief of law carefully footnotes each alleged breach to the supporting affidavits. Vehicles were repeatedly held up for more than ten minutes, sometimes for over an hour, and despite requests from drivers to enter or leave immediately. In some cases, persons on the picket line demanded that drivers and vehicle occupants produce identification, refusing entry when identification was not produced. When challenged, picketers stated they were following the Union's instructions. After January 20, 2020, entrances were completely blockaded with fencing and lines of parked vehicles, preventing any ingress or egress. This evidence of repeated and continuing breaches over a period of four weeks shows a pattern which I find to be deliberate and reflective of planning.

[28] I am satisfied that the evidence amply proves that someone, in the words of CCRL's application reproduced above, was "impeding, obstructing and interfering with the ingress and egress of personnel and vehicles from CCRL Properties, in a manner prohibited by the Injunction". The question is whether the Union was responsible. This must be established beyond a reasonable doubt.

[29] The Union's defence was two-fold: first, the fact of the breaches must be proved; and second, even if breaches of the Injunction are established, the evidence does not prove who is responsible. The defence put forward focused on this second part. The subtext to the defence appears to be that the Union lost control of the situation and outside parties, such as the parent Unifor Canada, may be responsible. If so, then the Union is an innocent bystander.

[30] Assuming this was the defence, I do not accept it. It is the Union's picket line. If, in fact, outside agitators arrived and hijacked the dispute for their own unlawful ends, then the Union would be expected to denounce them and seek police assistance to restore Union control of its picket line. The evidence does not support this theory.

[31] On the contrary, the evidence shows that the Union was active in controlling and managing its picket lines. The photographs and videos presented in evidence show picketers prominently displaying placards and flags with the "Unifor" name. The Union filed affidavits from Thomas James Milton and Rick Benoit, both dated January 8, 2020.

[32] Mr. Milton is one of the locked out workers. Mr. Milton, at para. 2 of his affidavit, states he is Chair of the Union Continuity Plan. The picket captains report to him and he "oversee[s] teams of employees who are coordinating the various aspects of the picket lines". Mr. Milton states he personally goes out to the picket lines every second day.

[33] Mr. Benoit is a former police officer who was hired by the Union. Mr. Benoit states, at para. 4 of his affidavit, that his "role is to ensure peace and order are maintained in connection with the picket lines at the refinery complex,

and also to act as liaison, handling communications with the police, CCRL, CCRL security and members of the picket line. ...[and] responsible for directing the flow of traffic/truck drivers into the refinery when required." He goes on in paragraph 5 to state he has "personally been on the picket lines 18-22 hours each day that the employees have been locked out."

[34] Kevin Bittman, in his affidavit sworn February 4, 2020, at paras. 26 and 33, states that it is Unifor National (Unifor Canada), not the Union, which has ultimate authority over how the picket lines are run and which made the decision to blockade the refinery. Yet in the recorded speech he made at the rally outside gate 7 on January 20, 2020, in his opening and concluding remarks, Mr. Bittman recognizes and extolls the involvement and support of Unifor Canada and others who have come to support the Union.

> Hello Unifor! The strength and solidarity is in full force today. Two weeks ago we stood on this very spot and said we were going to escalate to try and get the Company back to the bargaining table. The Company refused to remove the concessions, so here we are.
>
> The messages of solidarity from across the country in the last month have been amazing. Hundreds of people jumped on a plane leaving their families to come to Regina in the dead of winter to stand with us and fight against this greedy corporation. Our fight is an important one, not only for our members, but for members across the country.
>
> ...
>
> We are on this line to protect our future. Sisters and Brothers, we will not be discouraged and we will not back down.
>
> Today our membership got bigger. Today, instead of 700 strong, we are 1,400 strong. And don't forget that, most importantly, we are 315 thousand across the country strong. We are united and will stand together for pension security. When you take on Unifor 594, you take on all of Unifor. One day longer, one day stronger!

(January 27, 2020 affidavit of Jared Koback, Exhibit A thumbdrive)

[35] There is evidence that officials with Unifor Canada and other unions did come to Regina to show solidarity with and support for the Union in its dispute with CCRL. If the Union enlists or allows participation from outside supporters or contractors on its picket line, it cannot then disown any responsibility for their actions.

[36] Further, the evidence shows that Union members were personally involved in breaches. And the Union's officials spoke in support of the acts which constituted breaches of the Injunction.

[37] For example, the Union's lead negotiator at the bargaining table, Scott Doherty, in a recorded interview with CKOM and CJME on January 3, 2020, was directly challenged by host John Gormley on the Union's alleged failure to respect the Injunction in terms accurately described by Mr. Gormley as "ten minutes to communicate information or until the recipient indicates a desire to proceed, whichever comes first." Mr. Doherty, in his reply, expressed his view the Union was entitled to hold up vehicles for ten minutes, regardless of whether the driver expressly declined to hear from picketers about their message: affidavit of Jared Koback, at paras. 3 and 7-10. While Mr. Doherty is a member of Unifor Canada and not Local 594, he represents and was speaking on behalf of the Union.

[38] The Union escalated its tactics on January 20, 2020, while the decision of the first contempt application was under reserve, by completely blockading entrances to the refinery. The Union held a rally on January 24, 2020 at the refinery site. When the Union President, Mr. Bittman, spoke, he expressly

acknowledged the blockade, stating, in the context of relaying a prior conversation with CCRL representatives, "And we said, we're not removing the fences.": January 27, 2020 affidavit of Jared Koback, at paras. 25 – 29.

[39] This is also supported by the January 24, 2020 affidavit of Rebecca Knowles, at para. 5 and Exhibit A, which provides a written Union release dated January 20, 2020 under the name of "Kevin Bittman, Unifor 594 President". That release includes the bolded statement "**This morning we locked the Refinery down**."

[40] I am satisfied beyond a reasonable doubt that the Union, which comprises all of its members, intentionally committed acts prohibited by the Injunction, including both excessively delaying vehicles from entering and leaving CCRL properties from December 28, 2019 to January 20, 2020 and blockading the refinery entrances from January 20 to January 27, 2020.

[41] All elements required to establish civil contempt of court have been proved beyond a reasonable doubt in the case of the Union. I find no reasonable excuse for this contempt. I therefore find the Union guilty.

[42] Having found the Union guilty, I will now turn to the individuals. The allegation is that they have personally done things forbidden or failed to do things required by the Injunction. In other words, the allegation which must be proved go beyond mere membership in or leadership of the Union.

Lance Holowachuk

[43] CCRL, in its notice of application, at para. 2(a), seeks the following order against Lance Holowachuk:

> 2. ...
>
> (a) An order pursuant to Rule 11-26, declaring the Respondent, Lance Holowachuk in civil contempt of this Honourable Court for failure to comply Injunction Order by impeding, obstructing and interfering with the egress of a fuel tanker truck from a CCRL Property at approximately 7:00 PM on January 10, 2020, after the driver requested to proceed, in a manner prohibited by the Injunction Order and for aiding and abetting other members of the Union to do the same;

[44] The notice of application asked that Mr. Holowachuk appear at the hearing in person. Mr. Holowachuk did so appear, identifying himself to the court.

[45] The alleged contempt is a single incident on January 10, 2020 involving Mr. Holowachuk's interaction with the driver of a fuel truck trying to leave the refinery property. This incident was recorded by the driver with both audio and video. (January 16, 2020 Affidavit of Keith Whyley, at paras. 55-64; and January 24, 2020 Affidavit of Chad Davison, at para. 3)

[46] The video recording of this incident is 8 minutes and 24 seconds in length. Mr. Whyley is approached by a picketer at 6:59 pm. Mr. Whyley immediately asks to proceed. The picketer says his instructions are to hold the truck for ten minutes. A six minute conversation then ensues. Another picketer holding a red Unifor flag approaches and joins the conversation. Mr. Davison,

at para. 13 of his affidavit, identifies this second picketer as Lance Holowachuk. The conversation is about the lockout and its effect on both workers and truckers. The picketer apologizes to Mr. Whyley for the inconvenience, recognizing he is caught in the middle. Mr. Whyley actively participates in the conversation. Mr. Whyley ends the conversation at 7:05 pm by rolling up his window.

[47] During the conversation, both Mr. Holowachuk and Mr. Whyley state they have copies of the Injunction with them. From the conversation that ensued, Mr. Holowachuk would be aware of the request to proceed. They discuss and disagree as to what it says about how long the picketers can hold the truck. Mr. Holowachuk thanked Mr. Whyley as the conversation drew to a close. The picketers remained respectful throughout.

[48] Mr. Whyley, in his affidavit, states that his truck continued to be held by picketers crossing in front of the truck until ten minutes had elapsed. By the time he exited, the truck had been in line waiting to leave for forty minutes.

[49] Under the terms of the Injunction, Mr. Whyley was entitled to proceed once he said that he did not wish to hear the Union's message and wished instead to proceed. He was told that he would be held for ten minutes regardless, on instructions, I take it, of the Union. There was therefore a breach of the Injunction in which Mr. Holowachuk was an active participant.

[50] I do find that the elements of civil contempt of court are established on the evidence: the Injunction is clear; Mr. Holowachuk had notice of the Injunction; and Mr. Holowachuk intentionally failed to allow Mr. Whyley to

proceed despite his request to do so. This was contrary to the clear terms of the Injunction. The fact that Mr. Holowachuk might have been acting under Union instructions or had a different understanding of what the Injunction required does not constitute a reasonable excuse within the meaning of Rule 11-26(2)(a) of *The Queen's Bench Rule*. I therefore find Mr. Holowachuk guilty of civil contempt of court.

Kevin Bittman

[51] CCRL, in its notice of application, at para. 3, seeks the following order against Kevin Bittman:

> 3. ...
>
> (a) An order pursuant to Rule 11-26, declaring the Respondent, Kevin Bittman in civil contempt of this Honourable Court for failure to comply with the Injunction Order by:
>
> i. Impeding, obstructing and interfering with the ingress of multiple fuel tanker trucks to a CCRL Property at approximately 10:00 AM on January 20, 2020, for more than ten minutes, and for a prohibited purpose, in a manner prohibited by the Injunction Order;
>
> ii. Abetting and directing other members of the Union, and other representatives of the Union to breach the Injunction Order, at approximately 10:04 AM on January 20, 2020; and
>
> iii. Abetting and directing other members of the Union, and other representatives of the Union to breach the Injunction Order, at approximately 3:00 PM on January 24, 2020;

[52] The application also asked that Mr. Bittman attend the contempt hearing. Neither counsel made any mention of him. If he was present, he did not identify himself to the court.

[53] The January 20, 2020 breach is alleged to have occurred at a Union rally by Mr. Bittman's spoken words, which are referred to above, and by his presence at the rally which had the effect of blockading gate 7, one of the entrances to the refinery. (January 24, 2020 affidavit of Laurie Crowley; January 24, 2020 affidavit of Ryan Hickey; and January 27, 2020 Affidavit of Jared Koback, at paras. 17-19 and 22, and Exhibit A thumbdrive recordings).

[54] The rally was held outside gate 7. CCRL alleges that the rally blocked gate 7 and thereby the participants breached the Injunction. As one of the participants, Mr. Bittman is therefore guilty of contempt.

[55] I agree with CCRL that participation in a group effort to impede or block access could constitute a breach of the Injunction. In other words, no one escapes individual responsibility merely because they are one of the group, even if a single individual could not have achieved that purpose on their own.

[56] In this case, however, there is a question as to whether the rally actually blocked gate 7 in a manner which breached the Injunction. The Injunction is specific in its terms as is the allegation against Mr. Bittman.

[57] The January 24, 2020 affidavit of Ryan Hickey, filed by CCRL, records Mr. Hickey's direct observations at gate 7 on January 20, 2020. He states, at paras. 5-6 and 10-11, that, during the rally, the trucks that lined up to enter through gate 7 were blocked not by the rally, but by vehicles parked with the apparent and successful purpose of blocking access. I also take note that the

rally only lasted eighteen minutes and the group in attendance was fairly compact and quickly dispersed. So, while the rally might have had effect of delaying or denying access, the fact is that gate 7 was already barricaded by the parked vehicles. Those vehicles were in place before, during and after the rally occurred.

[58] The basis on which I am asked to hold Mr. Bittman in contempt for his actions on January 20, 2020 is that he participated in a rally which had the effect of blockading the gate 7 entrance. It is not apparent to me that the rally was intended to have that effect or that it actually did prevent entry or exit.

[59] In the end, I have a reasonable doubt as to whether this charge is proved. As such, that doubt must be resolved in Mr. Bittman's favour.

[60] The other basis on which Mr. Bittman is alleged to have breached the Injunction on January 20, 2020 was in the remarks he made at the rally. This rally was recorded over twelve minutes. Mr. Bittman was the third of four speakers. His remarks, some of which are reproduced above, mainly concern the dispute with CCRL. There is no mention of the court order.

[61] The January 24, 2020 breach is alleged to have occurred by Mr. Bittman's spoken words at another rally. Mr. Bittman was the master of ceremonies at that rally. In the course of that event, he made the following remarks:

> Guess what? They refused to sit down and talk with us. They said to us, until you remove your fences, we're not gonna sit down and talk with you. We said, well then you remove your scabs, and then we'll sit down and talk to you. They said, we're not removing the scabs. And we said, we're not removing the fences.

(January 27, 2020 Affidavit of Jared Koback, at para. 28)

[62] Those spoken words, in particular the last sentence, are alleged to have endorsed the blockade. CCRL argues that publicly encouraging breaches of the Injunction is contemptuous.

[63] The Union questioned whether the offending words constituted contempt, pointing to the caution expressed in the dissenting judgment of Cory, J. and Lamer, C.J.C. in *United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 901 (WL):

> [76] If civil contempt is to be transformed into criminal contempt solely because it has occurred in a public forum, then it will have a very severe impact on all labour relations. Labour disputes culminating in strikes and picketing must necessarily take place in the public eye. Both unions and management rely on publicity to raise public awareness of the issues involved in the dispute. Both sides will seek public support. Court orders pertaining to a labour dispute will attract more attention to it. A defiance of such a court order is bound to attract still further public attention. In the usual course of events the breach of an order of a labour relations board during the course of union organizing, contract negotiations or a strike can, and should be, subject to monetary and legal consequences. The consequences should as a general rule be those provided by the applicable labour relations act or those which would result from civil contempt. It should rarely attract the penalties flowing from criminal contempt.
>
> . . .
>
> [79] The unrestrained use of criminal contempt proceedings in labour relations matters will once again give rise to the perception that the courts are interfering with the collective bargaining process and intervening on behalf of management. If that perception persists, the courts will no longer be seen as impartial arbiters but as the instruments used by society for imposing crushing penalties on unions and union members. ...
>
> [80] Further, in considering the nature of criminal contempt, Courts should have regard to the values enshrined in the *Canadian Charter of Rights and Freedoms* and in particular, the protection of freedom of expression. It is true that the offence exists to fill the perceived need to protect the public from harm. However, the offence must not be so

> broadly defined that it threatens other values important to Canadian society. ...

[64] The Union also pointed to the constitutional protection for freedom of expression and the danger of overreach which chills legitimate public discourse. The Union points out that Mr. Bittman is not counselling defiance of the court order, but rather relaying to Union members a conversation between Union and CCRL representatives aimed at ending the lockout.

[65] I agree with CCRL counsel that words spoken publicly which encourage breaches of a court order may constitute contempt of court. Mr. Bittman's leadership position with the Union is relevant in this regard. I also agree with the Union that the court must consider the context in which the words complained of were spoken.

[66] I have listened carefully to the recorded remarks of Kevin Bittman. The focus of his remarks on both January 20 and January 24, 2020 was on the bargaining issues. At no time did he speak disrespectfully of the court or expressly call upon members to breach the Injunction.

[67] Having regard to the entire context, I have a reasonable doubt as to whether the remarks made by Mr. Bittman on January 20 or 24, 2020 constitute civil contempt of court. I therefore find him not guilty of that charge.

Sanctions

[68] Rule 11-27 of *The Queen's Bench Rules* set out penalties or sanctions available for civil contempt.

Punishment for civil contempt of Court

11-27(1) Every person declared to be in civil contempt of Court is liable to any one or more of the following penalties or sanctions in the discretion of a judge:

(a) imprisonment until the person has purged the person's contempt;

(b) a fine;

(c) if the person is a party to an action, application or proceeding, an order that:

(i) all or part of a commencement document, affidavit or pleading be struck out;

(ii) an action or an application be stayed;

(iii) a claim, action, defence, application or proceeding be dismissed, a judgment be entered or an order be made; or

(iv) a document or evidence be prohibited from being used or entered in an application or proceeding or at trial.

(2) The Court may also make a costs award against a person declared to be in civil contempt of Court.

(3) If a person declared to be in civil contempt of Court purges the person's contempt, the Court may waive or suspend any penalty or sanction.

(4) The judge who imposed a penalty or sanction for civil contempt may, on notice to the person concerned, increase, vary or remit the penalty or sanction.

[69] This range of sanctions is not exhaustive of the court's powers under its inherent jurisdiction. So, for example, in *Regina (City) v Cunningham* (1994), 122 Sask R 47 (Sask QB), MacPherson, C.J.Q.B., granted an order of sequestration of the property of the contemnor, where earlier sanctions had failed to stop a continuing breach of a court order.

[70] I will deal with each contemnor in turn in imposing sanctions.

Union

[71] CCRL asks for a fine of one million dollars. The Union argued such a fine amount was excessive and beyond any precedent. The Union, while not conceding contempt, suggested a fine in the range of one hundred thousand dollars would be appropriate if the Union was held in contempt for the blockade.

[72] Counsel for both parties provided precedents in their briefs which were reviewed in argument. The following decisions illustrate the range of fines imposed against unions for contempt occurring during labour disputes:

- *Newfoundland (Treasury Board) v Newfoundland Association of Public Employees* (1990), 196 Nfld & PEIR 105 (Nfld SC)
  - illegal strike by 6,200 hospital support workers
  - $675,000 fine (civil contempt)
- *United Nurses of Alberta v Alberta (Attorney General),* [1992] 1 SCR 901
  - illegal strike of 11,000 nurses
  - $250,000 fine on first contempt and $150,000 on second contempt (criminal contempt)
- *Saskatchewan Association of Health Organizations v Saskatchewan Union of Nurses* (1999), 177 DLR (4th) 235 (Sask QB)
  - illegal strike by 8,400 nurses
  - $120,000 fine (criminal contempt)
- *HEABC v Facilities Subsector Bargaining Assoc*, 2004 BCSC 762, 31 BCLR (4th) 124 [*CCEBU v FSBA*]
  - illegal strike of 28,000 health care workers

- $150,000 fine (civil contempt)

- *BC Public School Employers Assoc. v BC Teachers Federation*, 2005 BCSC 1490, 260 DLR (4th) 533
  - eleven day illegal strike by 38,000 teachers
  - $500,000 fine (criminal contempt)
- *Great Canadian Railtour Company Ltd. v Teamsters Union, Local 31*, 2012 BCSC 632
  - breaches of court order restricting picketing
  - fine of $25,000 (civil contempt)
- *Consumers' Co-operative Refineries Limited v Unifor Canada, Local 594,* 2020 SKQB 17
  - breaches of court order restricting picketing
  - $100,000 fine (civil contempt)

[73] I recognize that only the last two cases involved breaches of court orders restricting picketing, whereas the earlier cases involved illegal strikes. The last decision is most relevant, since it involves the same parties and is most recent.

[74] There are aggravating factors in this case. There were multiple breaches from December 28, 2019 to January 20, 2020, when the action escalated to a blockade which continued, on the evidence, to January 27, 2020. (While I take judicial notice that the blockade has continued beyond that date, the finding of contempt and sanction imposed is only for the breaches occurring in that period.) The Union was found in contempt on January 22, 2020 and fined $100,000 for breaches relating to the interim order. That had no apparent effect in restoring respect for the court's authority.

[75] I have decided to impose a fine of $250,000 for this contempt, payable forthwith. The fine is payable to Her Majesty, in Right of the Province of Saskatchewan.

[76] The Union asked that any fine be paid to Street Culture Project Inc., which provides programming and shelter for underserved youth in Regina.

[77] There is precedent for allowing contempt fines to be paid other than to the Government. For example, in *CCEBU v FSBA*, the court ordered the fine be paid to hospital foundations. At the same time, the deployment of police resources has been provided at the expense of the public purse. The fine may be reduced to $125,000, provided an equal sum of $125,000 is paid to Street Culture Project Inc. If the $125,000 is paid to Street Culture Project Inc., then the fine payable to the Government may be reduced to $125,000.

[78] In either case, the Union must pay a total of $250,000. The Union must provide proof of payment to the Registrar within 14 days. If proof of payment is not made, then the Government of Saskatchewan may take steps to collect the unpaid fine.

Lance Holowachuk

[79] CCRL proposed a jail term of 90 days, while saying that, Mr. Holowachuk might still avoid serving that sentence by purging his contempt.

[80] The Union suggested 24 hours of community service or a fine of $200.

[81] While not excusing this breach, there are circumstances I regard as mitigating factors. This was a single incident. Mr. Holowachuk was polite and respectful throughout his encounter with Mr. Whyley. The truck was allowed to proceed after ten minutes. Mr. Holowachuk was apparently acting under instructions of the Union, which is separately sanctioned. Mr. Holowachuk attended the court hearing, remaining for the entire six hours. Mr. Holowachuk, in his affidavit sworn February 4, 2020 at para. 6, states that he did not intend to breach the court order and sincerely apologizes if he is found to have done so. Mr. Holowachuk also states, at para. 8, that he will abide by the terms of the Injunction in future. The apology and assurance were repeated at the hearing by his counsel. The court accepts his apology and assurance.

[82] Mr. Holowachuk has been locked out of work since early December of 2019, so a fine might impose special hardship. And, as CCRL counsel said, any fine might be paid by the Union.

[83] In all the circumstances, I am satisfied that a sentence of 40 hours of community service is appropriate. Mr. Holowachuk will satisfy this order by completing and providing proof of 40 hours community service. This community service is to be completed by June 1, 2020.

[84] Mr. Holowachuk's counsel asked if Mr. Holowachuk could complete community service through his volunteer service with inmates. This would be acceptable to the court. If this is not possible, then Mr. Holowachuk may propose another form of community service, such as with the Regina Food Bank.

[85] The proof of completion of community service must be provided through his lawyer to the Registrar on or before June 1, 2020. If Mr. Holowachuk wishes to propose another form of community service or if, for some good reason, Mr. Holowachuk is unable to complete his community service by the deadline, he may apply to this Court to approve the form of community service or for an extension of time. Such application may be made as a without notice application through counsel by letter to the Registrar for my attention.

Order

[86] CCRL asked that the court amend the Injunction to provide additional relief.

Other persons having notice

[87] The Union, in its argument, suggested that some of the mischief occurring on the picket line might be attributed to persons not named in the Injunction. If so, then it is appropriate to broaden the scope of the Injunction to include other persons having notice of the court order. I therefore amend the order of McMurtry, J. to add the following underlined words to the order:

> 1. The Defendant, Unifor Canada, Local 594 and all of its members, and any other person having notice of this order, until the trial or other final disposition of this Action, or until further notice of this court, are hereby restrained from impeding, obstructing, or interfering with the ingress or egress to or from the following properties possessed by the Plaintiff identified below by their municipal and legal land descriptions (collectively the "CCRL Properties"), except for the purpose of conveying information and/or soliciting support, and the restriction of ingress to or egress from the said CCRL Properties, shall only last as long as necessary to provide information, to a maximum of ten minutes, or until the

> recipient of the information indicates a desire to proceed, whichever comes first:

Removal of Barricades

[88] CCRL asked for authorization to remove barricades from the entrances to its property. I agree that this is appropriate and will therefore amend the Injunction to authorize that action.

Police Authorization Clause

[89] CCRL has asked that the court authorize police to assist in enforcement of the Injunction. While conceding that such a clause is not required for police to exercise their lawful authority, it says that such judicial authorization is appropriate in this circumstances.

[90] The Supreme Court of Canada, in *MacMillan Bloedel Ltd. v Simpson*, [1996] 2 SCR 1048, at para 41, approved the use of such police assist clauses.

> C) *Provisions Authorizing Arrest and Detention*
>
> 41 The appellant Valerie Langer has questioned the appropriateness of including a provision authorizing the police to arrest and detain persons breaching the injunction. She argues that no authorization or direction from the court is necessary to enable the police to act. The respondent accepts that the authorization is superfluous, and states that it is included only because the police have requested such wording. No objection to this term was made before Hall J. and it is not suggested that it vitiates the order. In these circumstances, this Court need not consider it further. I observe only that the inclusion of police authorization appears to follow the Canadian practice of ensuring that orders which may affect members of the public clearly spell out the consequences of non-compliance. Members of the public need not take the word of the police that the arrest and detention of violators is authorized because this is clearly set out in the order signed by the

> judge. Viewed thus, the inclusion does no harm and may make the order fairer.

[91] The Chief of Police of the Regina Police Service was served with notice of this application. This was appropriate, since the court will be reluctant to name persons who have not had notice. Counsel for the Chief of Police said she had no objection to the proposed police assist clause, noting that it authorizes and does not direct. This distinction is important.

[92] Police officers are appointed to a public office, sworn to perform public duties and exercise a degree of independence and discretion in the manner of performing their duties, subject to a chain of command ending with the chief of police or other commanding officer. The chief of police enjoys a high degree of operational independence, necessary to the performance of his or her common law and statutory duties. Both the Legislature of Saskatchewan and the Parliament of Canada have conferred and recognized this police authority in legislation: in ss. 35 and 36 of *The Police Act, 1990,* SS 1990-91, c P-15.01 in the case of Saskatchewan chiefs of police and police officers under their command; and in ss. 5 and 18 of the *Royal Canadian Mounted Police Act,* RSC 1985, c R-10 in the case of the RCMP Commissioner and RCMP officers.

[93] This concept of police independence and impartiality was recognized in the judgment of Chief Justice Martin of the Saskatchewan Court of Appeal in *Bruton v Regina City Policemen's Assoc.,* [1945] 2 WWR 273 (CanLII):

> [20] The police commissioners constitute a separate department of municipal government; they are invested with special statutory powers and are independent of the municipal council except that they are dependent upon the council for moneys with which to maintain the police force. In providing for such a body to administer the police force, I am of the

> opinion that it was the intention of the Legislature to ensure a just and impartial carrying out of the duties which devolve upon constables and peace officers and to place the chief of police, the officers and the constables of the force in a position where they are removed from the influence of persons who may attempt to interfere with the due performance of police duties such as the detention and arrest of offenders, the preservation of the peace, the enforcement of laws, and other similar duties with which police officers are entrusted by law.
>
> [21] Under the provisions of *The City Act* [RSS, 1940, ch 126] police officers and constables are appointed by the Board of Police Commissioners but this does not make them the servants or agents of the city or of the police commissioners; they are appointed to perform a public service in which the city has no corporate interest; their duties are derived from the law and not from the city or the police commissioners, and in performing these duties they act not in the interests of the city but of the public at large: ...

[94] The classic statement of police independence is found in the dictum of Lord Denning, which was quoted with approval by the Supreme Court of Canada in *R v Campbell*, [1999] 1 SCR 565 at para 33:

> 33 While for certain purposes the Commissioner of the RCMP reports to the Solicitor General, the Commissioner is not to be considered a servant or agent of the government while engaged in a criminal investigation. The Commissioner is not subject to political direction. Like every other police officer similarly engaged, he is answerable to the law and, no doubt, to his conscience. As Lord Denning put it in relation to the Commissioner of Police in *R. v. Metropolitan Police Comr., Ex parte Blackburn*, [1968] 1 All E.R. 763 (C.A.), at p. 769:
>
> > I have no hesitation, however, in holding that, like every constable in the land, he [the Commissioner of Police] should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the *Police Act* 1964 the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land.

> He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.
>
> [Emphasis added in Supreme Court judgment]

[95] Which is not to say that the courts cannot direct police action where police officers fail to do their duty, as Lord Denning acknowledged in a 1973 judgment involving the same parties: *R v Commr. of Police of Metro; Ex parte Blackburn (No. 3)* (CA) [1973] QB 241 at 254:

> Conclusion
>
> In *Reg. v. Commissioner of Police of the Metropolis, Ex parte Blackburn*, [1968] 2 Q.B. 118, 136, 138, 148-149, we made it clear that, in the carrying out of their duty of enforcing the law, the police have a discretion with which the courts will not interfere. There might, however, be extreme cases in which he was not carrying out his duty. And then we would. ...

[96] The primary duty of police in these situations is to keep the peace and protect the rights of all citizens. This includes the right of the Union to peacefully picket and protest, guaranteed under the freedoms of expression and peaceful assembly in clauses 2(b) and (c) of the *Canadian Charter of Rights and Freedoms,* the right of CCRL to use and access its property, and the ancient right of all citizens to free passage over the Queen's highways and to go about their lawful business without undue interference.

[97] I am satisfied that it is appropriate to provide this judicial authorization, which may assist the police to do their duty. In doing so, I recognize that the chief of police retains and may exercise his necessary discretion in how and when to do so.

Costs

[98] CCRL sought costs on a solicitor-client basis. The Union argued that the court must consider the interplay between sanction and costs. In other words, there should not be a double penalty.

[99] Keene J. in his judgment of January 22, 2020, at para. 34, found that application was not a case for the exceptional awarding of solicitor/client costs and instead awarded costs on Column 3 of the Tariff of Costs of *The Queen's Bench Rules*. Having regard to the sanction imposed on the Union by way of fine, I have decided to do likewise. Costs are therefore awarded to CCRL payable forthwith by the Union calculated on Column 3 of the Tariff.

Summary

[100] The Union is found guilty of contempt of court for repeated breaches of the Injunction between December 28, 2019 and January 27, 2020. The Union is ordered to pay a fine of $250,000 to Her Majesty, in Right of the Province of Saskatchewan. The fine is payable forthwith.

[101] The Union may satisfy this fine by paying $250,000 to the Registrar of the Judicial Centre of Regina for the Court of Queen's Bench or paying $125,000 to the Registrar and $125,000 to Street Culture Project Inc. In either case, the total amount that must be paid is $250,000. However paid, the Union

shall make or provide proof of payment to the Registrar by 12:00 noon on February 28, 2020. If any amount remains unpaid after that date, the Government may take steps to recover the unpaid fine.

[102] Lance Holowachuk is found guilty of contempt of court for a breach of the Injunction on January 10, 2020. A sanction of 40 hours community service is ordered, which is to be completed by June 1, 2020.

[103] Kevin Bittman is found not guilty of contempt of court.

[104] The Injunction is amended by adding the following underlined words to paragraph 1:

> 1. The Defendant, Unifor Canada, Local 594 and all of its members, and any other person having notice of this order, until the trial or other final disposition of this Action, or until further notice of this court, are hereby restrained from impeding, obstructing, or interfering with the ingress or egress to or from the following properties possessed by the Plaintiff identified below by their municipal and legal land descriptions (collectively the "CCRL Properties"), except for the purpose of conveying information and/or soliciting support, and the restriction of ingress to or egress from the said CCRL Properties, shall only last as long as necessary to provide information, to a maximum of ten minutes, or until the recipient of the information indicates a desire to proceed, whichever comes first:

[105] The Injunction is also amended by adding the following clause authorizing CCRL to remove the barricades blocking entrances to its property:

> CCRL may, through its employees and agents, remove and retain any property, including fencing and vehicles, located in the immediate vicinity of entrances to the CCRL properties which is being used as barricades to block or impede access to entrances to the CCRL properties. The owners of property so removed may, within thirty days and upon proof of ownership, reclaim their property by paying the reasonable cost of removal

> and storage of that property and by removing the property from the place of storage. CCRL shall not be liable for damage to property removed where the damage necessarily resulted from the removal. If the owner does not reclaim their property within thirty days, then CCRL may dispose of the property so removed and any further claim for compensation is barred.

[106] The Injunction is also amended by adding the following clause authorizing police to take any lawful measure they deem necessary to enforce the Injunction:

> The Chief of Police of Regina, and any officers serving under his command, are authorized to assist CCRL in removing the barricades by keeping the peace while CCRL removes the barricades. This authority includes the power to arrest and detain persons interfering with this action.

[107] CCRL is awarded costs of this application on Column 3 of Schedule I-B of the Tariff of Costs of *The Queen's Bench Rules*. Subject to any taxation, the Union shall pay those costs forthwith upon presentation of a bill of costs from CCRL.

[108] If breaches of the Injunction continue, CCRL has leave to return to court upon three clear days' notice to the Union. The court hopes this will not be necessary.

[109] Finally, I wish to express my appreciation to counsel for all parties for the assistance they provided the court and for their professionalism.

Neil Robertson J.

D.N. ROBERTSON