VII. ENFORCING AN INJUNCTION [§1.44]

A. THE PROCEDURE TO ENFORCE THE INJUNCTION [§1.45]

Previously, British Columbia Supreme Court judges required proof that the injunction was not being obeyed before amending the order to include the enforcement terms. However, more recently the court has been more willing to grant an injunction and hear an application for terms of the enforcement order in the same hearing. See, for example, *Canadian Pacific Railway Ltd. v. Doe*, 2020 BCSC 388 (Chambers); *Red Chris Development Co. Ltd. v. Quock*, 2014 BCSC 2399 (Chambers); *Gitwangak Indian Band v. David*, 2017 BCSC 744 (Chambers); and *Husby Forest Products Ltd v. Jane Doe*, 2018 BCSC 676. However, there are still sometimes exceptions to this (see, for example, *Fraser Health Authority v. Rolly's Restaurant Ltd.*, 2021 BCSC 2096 at paras. 46 to 48) and *Teal Cedar Products Ltd. v. Rainforest Flying Squad*).

The factors a court considers when deciding whether to include an enforcement order are:

(1) if the location is remote;

(2) whether there are safety concerns;

(3) whether there are a large number of persons involved and whether or not they can be identified;

(4) whether the respondents have indicated they will obey an injunction order; and

(5) police approval of the proposed enforcement order.

(*Red Chris Development Co. Ltd v. Quock*, 2014 BCSC 2399 (Chambers); *West Fraser Mills v. Members of Lax Kw'Alaams*, 2004 BCSC 815; *British Columbia Housing Management Commission v. Doe*, 2017 BCSC 2387 (Chambers).)

The RCMP have specific language that they request be present in an enforcement order.

See also "Procedures to Enforce the Injunction" and "Enforcement Orders" in chapter 3.

See the Forms and Precedents section for:

- Sample Interim Injunction Order Restraining Protest with Enforcement Terms

- Sample Injunction Enforcement Order Following a Contested Hearing

B. SERVICE OF THE INJUNCTION ORDER [§1.46]

Service of the injunction order should be carried out with some care. The order should be served personally on everyone continuing the enjoined activity in some way. Personal service on each person may not be possible if the group is large. In those circumstances, the order can provide for the injunction to be posted throughout the site and read to those involved. In addition, service can be ordered using Facebook and other social media postings and publication on the plaintiff-company's webpage. Audio broadcasting of the injunction at the site using either a loudhailer or a "hyper spike" broadcasting system can also be effective. The latter removes the need for the injunction terms to be repeated throughout the day if those involved changes. Service of the injunction should be recorded with video by the plaintiff's process server for proof of service. These videos are useful as proof that those involved knew of the injunction. Parties may ask the police to stand by to keep the peace if there is a probability of violence. Those involved should be given a reasonable opportunity to obey the order before the process server leaves.

Where an enforcement order is a part of the injunction, the RCMP will normally enforce the order. Those disobeying the order may be arrested, processed, and taken before a judge. They will normally be released on their own recognizance, subject to whatever conditions the hearing judge determines are appropriate. Eventually the persons arrested may be tried for contempt of court. It will be the responsibility of the plaintiff to carry the prosecution of that charge, unless the Attorney General of British Columbia takes over the prosecution. The Attorney General may do so if the contempt is sufficiently flagrant and public to be characterized as criminal contempt. The Attorney General will not take over the prosecution as a matter of course, though, and plaintiff's counsel should pursue the prosecution as soon as possible after the arrests.

In *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCSC 515, the court held that a contemnor had sufficient knowledge that the injunction was in place when the police did not read the actual court order to her, or even passages from it, but instead read a summary of the material content of the injunction. In doing so, the court declined to comment on what might be the best police practice in such circumstances. These comments suggest that reading the actual order, or at least the relevant portions of the order, may be more prudent.

C. ENFORCEMENT OF AN INJUNCTION BY POLICE [§1.47]

In British Columbia, enforcement of court orders is subject to policies of the RCMP and other police forces.

The RCMP have the option of arresting persons for breach of s. 127 of the *Criminal Code*, R.S.C. 1985, c. C-46 ("Disobeying order of court"—the contempt provision). More commonly, police will make arrests under the terms of the injunction, leading to a Superior Court hearing for contempt of court rather than a criminal prosecution in Provincial Court. In most cases, the RCMP will not arrest persons for contempt of court unless the order that is being disobeyed contains specific terms authorizing the arrest of such persons. Such terms have come to be known as the "enforcement order" (see, for example, *Red Chris Development Co. v. Quock*, 2014 BCSC 2399 (Chambers)).

In recent years, the B.C. Supreme Court has been more receptive to granting an injunction with a police enforcement clause that is immediately effective, or time-delayed for subsequent activation. This contrasts with the practice around 2000 where injunctions were granted at the initial application, and then the plaintiffs returned to court for the police enforcement clause due to continued defiance by the named and unnamed defendants.

Generally, when the police do take action to enforce an injunction, they will bring the injunction to the attention of those involved and give them an opportunity to stop the enjoined behaviours. Only if there is a refusal to abide by the injunction at that time will the police generally make arrests. Police use a "measured approach", which gives those engaging in the enjoined activity time to read the injunction, understand what the court has directed or prohibited, and then time to withdraw from the prohibited area or activity.

See the Forms and Precedents section for:

- Sample Interim Injunction Order Restraining Protest with Enforcement Terms
- Sample Injunction Enforcement Order Following a Contested Hearing

1. NEED FOR THIS INJUNCTION ENFORCEMENT PROCEDURE [§1.48]

It seems clear that, strictly speaking, the police should not require the "enforcement order" to be authorized in order to arrest persons disobeying a court order. Decades ago, several judges questioned the need for such terms and suggested that the police ought to be prepared to make these arrests without the requirement of such terms (see, for

example, *International Forest Products v. Kern*, 2000 BCSC 1141 at paras. 55 to 60, and *Slocan Forest Products Ltd. v. John Doe*, 2000 BCSC 150 at paras. 16 to 49). Nevertheless, the practice has become entrenched in British Columbia, with pronouncements indicating satisfaction with that procedure (*Interfor v. Simm*, 2000 BCCA 500 at paras. 19 to 25; *Red Chris Development Co v. Quock*, 2014 BCSC 2399 (Chambers); and *Husby Forest Products Ltd. v. Jane Doe*, 2018 BCSC 676).

The "enforcement order" procedure was reviewed by the Supreme Court of Canada in its general review of the Clayoquot Sound injunction procedure, and somewhat faintly endorsed:

> The appellant … 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. (*MacMillan Bloedel Ltd. v. Simpson*, 1996 CanLII 165 (SCC) at para. 41.)

In the years since, the law and practice in British Columbia have generally settled in favour of the "enforcement order" procedure, notwithstanding occasional judicial criticism of the police and Crown counsel policies that underlay it (see, for example, *Telus v. Telecomunications Workers Union*, 2006 BCSC 441).

D. CONTEMPT PROCEEDING AGAINST A KNOWN DEFENDANT [§1.49]

In the typical case of a pre-trial injunction granted in a civil dispute against a known defendant, enforcement may be pursued by way of a contempt of court application. However, because there are many potential defences to a contempt application, the ability to succeed on such a contempt application may increase if it is preceded by an application for an enforcement order.