

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2020 SKQB 17

Date: 2020 01 22
Docket: QBG 3302 of 2019
Judicial Centre: Regina

BETWEEN:

CONSUMERS' CO-OPERATIVE
REFINERIES LIMITED

APPLICANT (PLAINTIFF)

- and -

UNIFOR CANADA, LOCAL 594 and
KEVIN BITTMAN, representing himself
and all members of Unifor Canada, Local 594

RESPONDENTS (DEFENDANTS)

Counsel:

Eileen Libby, Q.C. and Matthew Klinger for the applicant (plaintiff)
Crystal Norbeck and Samuel Schonhoffer for the respondent (defendants)

JUDGMENT
JANUARY 22, 2020

KEENE J.

I INTRODUCTION

[1] The applicant, Consumers' Co-operative Refineries Limited [CCRL] and the respondent, Unifor Canada, Local 594 [Union] have been involved in a labour dispute. Since December 5, 2019, the Union and its members have been picketing at facilities operated by CCRL in Regina. CCRL took exception to the manner of the picketing and brought an injunction application that was heard on December 17, 2019. Madam Justice McMurtry granted an interim injunction that day, but upon the request of the

respondents, agreed to adjourn the application to December 23, 2019 to again consider the application. The applicant issued the order for an interim injunction on December 18, 2019 and served this order on the Union at 3:11 p.m. that day. The application was heard on December 23, 2019 and Justice McMurtry again granted an interim injunction on December 24, 2019.

[2] The applicant has now brought a civil contempt complaint submitting that the Union had breached the interim order issued December 18, 2019 and seeks a finding of civil contempt and the imposition of a fine(s) and solicitor/client costs.

II THE INTERIM ORDER

[3] Since this order is at the core of this application, I will recite Justice McMurtry's interim decision:

[1] This matter has proceeded to date as an application without notice because the respondents did not have enough notice of today's hearing to respond fully. Thus, as set out in Rule 6-3(3) of *The Queen's Bench Rules*, I must be satisfied that a delay in considering the application "would result in serious mischief".

[2] Unifor has filed a copy of its instructions to members, called "The Right to Picket – Picketing Guide". Members are expected to follow those instructions. Failure to follow the instructions may very well influence the result of the application to restrict picketing, scheduled for December 23, 2019.

[3] CCRL claims individual picketers have intimidated and assaulted persons attempting to cross the picket line. However, the police are responsible for enforcing breaches of the criminal law. Therefore, an interim order is not necessary to avert serious mischief.

[4] CCRL also asserts picketers are obstructing access to and exit from their facilities. The allegations, not yet challenged by Unifor, are that the picketers are going beyond conveying information and soliciting support as they are entitled to do. CCRL asserts the picketers are causing serious delays for persons attempting to enter or leave CCRL properties. Consequently, I accept that until a full hearing of the application, serious mischief would occur if I do not limit the right of picketers' to communicate information to those wishing to receive it to a maximum of five minutes: see *Industrial Hardwood Products (1996) Ltd. v International Wood and Allied Workers of Canada, Local 2693* (2001), 52 OR (3d) 694 (Ont CA) and *Unilux Boiler Corp. v Fraser*, [2005] OJ No 2410 (Ont Sup Ct).

[5] Consequently, an order may issue, pursuant to Rule 6-41, restraining the respondents 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, to a maximum of five minutes.

[4] This resulted in the subject order being issued by CCRL on December 18, 2019 and the relevant portion states:

[T]he Defendants or any of them and all of the agents, officers, representatives and members of the Defendant Unifor Canada, Local 594 and any persons acting pursuant to their counsel, directions or instructions, until a decision is rendered in the main injunction application scheduled for 2:00 pm, December 23, 2019, are hereby restrained from impeding, obstructing or interfering with the ingress or egress to or from, except for the purpose of conveying information and/or soliciting support, to a maximum of five minutes, the following properties possessed by the Plaintiff...

III THE PRESENT ORDER (ISSUED DECEMBER 27, 2019)

[5] It is not necessary to recite the reasons for this order since this order is not the subject of this application. However, I note the pith and substance of this issued order is essentially the same, save for the increase of time from five minutes to 10 minutes. The relevant portion of this order is:

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 ...

[6] I only point this out to confirm that the disposition of the short notice application, heard on December 17, 2019, and the order issued after the more fulsome hearing on December 23, 2019, was much the same.

IV WHAT HAPPENED BETWEEN 3:11 PM ON DECEMBER 18, 2019 AND DECEMBER 22, 2019 AT ABOUT 8:15 AM?

[7] The applicant filed the following affidavits:

- a. Tava Burton, sworn December 18, 2019;
- b. Clay Raynard, sworn December 21, 2019;
- c. Justin Nagy, sworn December 22, 2019;
- d. Ryan Konecsni, sworn December 22, 2019;
- e. Simon Brown, sworn December 22, 2019;
- f. Rene Beaudry, sworn December 22, 2019;
- g. Robert Shwydiuk, sworn December 31, 2019; and
- h. Chad Davison, sworn December 31, 2019 and January 13, 2020.

[8] The Union filed the affidavits of Thomas James Milton and Rick Benoit, both sworn on January 8, 2020.

[9] It is convenient here to comment on Mr. Milton's and Mr. Benoit's affidavits.

[10] Mr. Milton deposes to his position with the Union and his general understanding of the picketing and provides log sheets. He has no direct evidence about the events pertaining to this application.

[11] Mr. Benoit similarly deposes to his overall role with the Union and picketing and describes the meeting with the Regina Police Service that Mr. Davison refers to in his second affidavit sworn January 13, 2020. Mr. Benoit provides no direct evidence as to the events in question. His affidavit appears to be offered to show what his take on the meeting with the Regina Police Service (which is disputed by Mr. Davison) entailed. I find Mr. Benoit's evidence does not assist this Court with the actual events that are the subject of this application.

[12] The applicant's affidavits, in short, are not contradicted and I did not note any such challenge from the Union during the arguments presented before me. Therefore, I am in a position to consider the affidavit material presented as being factually undisputed.

[13] I have carefully read these affidavits and viewed and listened to the videos that were attached in electronic form to some of the affidavits. The written word of the affidavit materials (including proof of service of the interim order on December 18, 2019 at 3:11 p.m.) and the videos are accepted by this Court as accurately depicting the events complained of. I can do no

better than counsel for the applicant who helpfully summarizes all of this in the applicant's brief filed January 14, 2020 as:

B. Violations of the Interim Order on December 18, 2019

...

11. At approximately 7:00 PM, on December 18, 2019, two CCRL managers, Ryan Konecsni and Chad Sawchyn, attempted to leave the RBO [Refinery Business Office] in a pickup truck. They were transporting parts which were required to ensure the ongoing safe operation of the Co-op Refinery Complex. They were to take the parts from a storage facility at the RBO, and deliver them to the Co-op Refinery Complex. However, picketers who wore Unifor bibs and carried Unifor flags, indicating that they were acting on behalf of the Union, blocked their exit. When Mr. Konecsni asked the picketers to allow he and Mr. Sawchyn to exit the RBO, one of the Union's picket captain's told Mr. Konecsni that he would not be permitted through the picket line without producing identification.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 3-5.

12. Shortly after Mr. Konecsni and Mr. Sawchyn were prevented from exiting the RBO, one of the picketers and a member of Unifor, Chris Taylor, recognized Mr. Konecsni and identified him to the other picketers. The picketers continued to block the exit to the RBO for approximately five minutes. However, the picketers made no attempt to convey information or solicit support to Mr. Konecsni or Mr. Sawchyn throughout the period they were prevented from exiting the RBO.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 6-7, 21.

13. After exiting the RBO, Mr. Sawchyn and Mr. Konecsni drove to the Co-op Refinery Complex. They attempted to enter Gate 2 of the Co-op Refinery Complex. However, they were unable to do so as a group of picketers and a security guard were blocking Gate 2 by walking in front of the gate. Traffic cones had also been placed across the entrance. The picketers wore Unifor bibs and carried Unifor

flags, indicating that they were acting on behalf of the Union. Two of the picketers were employees of CCRL.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 9-11, 13.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 4-5.

14. Mr. Sawchyn stopped the truck he was driving at the Gate 2 entrance and activated his turn signal to indicate he wanted to enter the Co-op Refinery Complex. Mr. Konecsni called out to the picketers that he was transporting a shipment of parts and needed to enter the facility. Two picketers and a security guard approached the truck. One of the picketers demanded that the occupants of the truck provide identification, so that he could determine whether they were on a list of people who would be allowed to cross the picket line. The picketer indicated that unless identification was provided, the truck would not be allowed across the picket line.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 12-15.

15. Approximately 10 minutes after initially refusing Mr. Konecsni and Mr. Sawchyn access to the Co-op Refinery Complex, an additional security guard arrived who put himself forward as a spokesperson for the picketers, and by extension of the Union on whose behalf the picketers were acting. This security guard, later identified as "Lawrence" approached Robert Shwydiuk, a security guard from a company CCRL had contracted who was present at Gate 2 when Mr. Konecsni and Mr. Sawchyn were attempting to obtain access. Lawrence sought information regarding the occupants of the pickup truck to determine if they were named on a list held by the union, explaining that, "We don't want scabs to come in". A few minutes later, after he spoke to someone on a cell phone, Lawrence spoke to both Mr. Shwydiuk and Mr. Konecsni and told them that unless the passengers of the truck produced identification, they would not be allowed in. Throughout these conversations, Lawrence indicated he was acting based on "orders" or "rules" he had been given. He also indicated he was acting based on instructions from the picketers. Mr. Konecsni and Mr. Sawchyn refused to produce identification, and picketers

continued to prevent them from entering the Co-op Refinery Complex.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 16-19, 25.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 7-13.

16. Mr. Shwydiuk specifically told the Union's representative, the security guard identified as Lawrence, that the demands for identification before permitting access to the Co-op Refinery Complex were not in compliance with the injunction. This warning was ignored.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 11.

17. After preventing Mr. Konecsni and Mr. Sawchyn from entering the Co-op Refinery Complex for approximately 30 minutes, representatives of the Union made their only attempt to communicate information to or to solicit support from Mr. Konecsni and Mr. Sawchyn. Two picketers approached Mr. Konecsni and Mr. Sawchyn while they sat in the truck, handed them pamphlets and briefly told them, that "this is why we are out here". This exchange lasted less than 30 seconds, and was the only attempt made to provide information to or solicit support from Mr. Konecsni and Mr. Sawchyn on the evening of December 18, 2019.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at para 21.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 14.

18. Picketers, acting as representatives of the Union, continued to prevent Mr. Konecsni and Mr. Sawchyn from entering the Co-op Refinery Complex even following their brief attempt to communicate information. At approximately 8:00 PM, Lawrence, again acting as a spokesperson for the picketers and the Union, told Mr. Konecsni that he had been recognised by the picketers and could go in, but he continued to insist that the driver of the truck (Mr. Sawchyn) would not be allowed in because he was not identified. He also indicated the truck would not be allowed in until picketers had determined what the truck was carried [*sic*] and determined

that the cargo met with their approval. A number of picketers looked into the back of the truck driven by Mr. Sawchyn and visually inspected the cargo. The picketers objected to one piece of cargo which they (incorrectly) believed was someone's personal effects.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 22-24.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 15-16.

19. Mr. Konecsni and Mr. Sawchyn attempted to gain access to the Co-op Refinery Complex until approximately 8:15 PM, which was approximately 50 minutes after they first requested to enter Gate 2 of the facility. However, representatives of the Union blocked access to Gate 2 and prevented them from entering the facility throughout the period. Therefore, Mr. Konecsni and Mr. Sawchyn abandoned their attempt to gain entry at approximately 8:15 PM, and instead delivered their cargo of parts to a hangar at the Regina Airport.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 25-26.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 17.

20. After delivering their cargo to the Regina Airport, Mr. Konecsni and Mr. Sawchyn returned to the RBO in the same pickup truck. They arrived at the RBO at approximately 9:00 PM, but found the entrance blocked by picketers who wore Unifor bibs and carried Unifor flags, indicating that they were acting on behalf of the Union. Mr. Sawchyn stopped the truck on the side of the road near the RBO entrance, and activated his turn signal to indicate that they wanted to enter the property.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 27-29.

Affidavit of Simon Brown, sworn December 22, 2019, at paras 2-3.

21. The same picket captain who had spoken to Mr. Konecsni and Mr. Sawchyn when they sought to leave the

RBO earlier in the evening approached the truck. The picket captain demanded that Mr. Konecsni and Mr. Sawchyn produce identification in order to be permitted into the RBO, even after Mr. Konecsni pointed out that they had passed through that picket line earlier in the night. The picket captain indicated he would only allow the truck in if he could verify that the occupants were named on a list.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at para 30.

22. Simon Brown, a security guard from a company CCRL had contracted, observed the interaction between Mr. Sawchyn and Mr. Konecsni and the picket captain. After speaking to Mr. Sawchyn and Mr. Konecsni about the situation, Mr. Brown approached the picketers who were impeding access to the RBO and asked that they allow Mr. Sawchyn and Mr. Konecsni to enter the RBO. The picketers refused. One picketer indicated that they had instructions to ask people trying to pass through the picket line for identification to determine if they were CCRL employees, and that since they did not know the driver of the truck, the truck could not enter the RBO property.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at paras 31-32.

Affidavit of Simon Brown, sworn December 22, 2019, at paras 4-6.

23. Shortly after, a man wearing a Unifor toque who said he was "from National" arrived. The man put himself forward as a spokesperson, and in his subsequent statements, he indicated he had authority over the Union's picket line. Mr. Brown asked this man to permit Mr. Sawchyn and Mr. Konecsni to enter the RBO property. The man indicated multiple times that the truck and its occupants would not be allowed into the property without identification, since the picketers did not know who the driver was.

Affidavit of Ryan Konecsni, sworn December 22, 2019, at para 33.

Affidavit of Simon Brown, sworn December 22, 2019, at para 7.

24. The picketers agreed to allow Mr. Konecsni to drive the truck into the RBO property alone, as he had been identified by picketers. Mr. Sawchyn exited the truck. Picketers then prevented Mr. Konecsni from entering the RBO for an additional five minutes, after which he was permitted to enter the RBO property at approximately 9:15 PM (after a total delay of approximately 15 minutes).

Affidavit of Ryan Konecsni, sworn December 22, 2019, at para 34.

Affidavit of Simon Brown, sworn December 22, 2019, at para 8.

25. Despite a further request by Mr. Brown that Mr. Sawchyn be permitted to access the RBO, a representative of the Union continued to refuse to allow him access. As a result Mr. Sawchyn was unable to enter the RBO, and Mr. Brown drove Mr. Sawchyn to his home.

Affidavit of Simon Brown, sworn December 22, 2019 at para 9.

C. Violations of the Interim Order on December 19, 2019

...

27. At approximately 8:30 AM on December 19, 2019, a bus carrying 18 CCRL managers and a security guard arrived at the Admin Gate to the Co-op Refinery Complex. As the bus drove to the Admin Gate, it drove past other entrances to the Co-op Refinery Complex, each of which was blocked by picketers carrying Unifor flags. Upon arriving at the Admin Gate the bus was unable to enter, as approximately 10 to 15 picketers were walking back and forth in front of the Admin Gate entrance. Many of the picketers were carrying Unifor flags, demonstrating that they were acting on behalf of the Union. Traffic cones had also been placed across the entrance. As the bus was unable to safely enter the Admin Gate, the bus driver stopped the bus a short distance east of the Admin Gate on the shoulder of 9th Avenue North. The bus driver activated his turn signal to indicate he intended to enter the Admin Gate.

Affidavit of Rene Beaudry, sworn December 22, 2019, at paras 2-5.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 18-20.

Affidavit of Clay Raynard, sworn December 21, 2019 at paras 2-5.

28. Mr. Shwydiuk was present at the Admin Gate at the time the bus arrived. After the bus arrived he approached picketers and asked to speak to a picket captain, as the bus needed to access the property. None of the picketers came forward to identify themselves as in charge of the picket line.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 21.

29. At approximately 8:40 AM, a group of three picketers, one of whom was wearing a red vest marked, "picket captain" approached the bus and spoke to the driver. The picket captain asked who was on the bus. Upon being told that mangers [sic] were on the bus the picket captain stated that they would be required to produce identification to confirm they were on a list. The picket captain indicated that if they did not produce identification they would not be allowed in. When asked to permit the bus to enter the property as it had been prevented from entering for approximately 13 minutes, the group of picketers refused to acknowledge the request and walked away. No attempt was made by the picketers to provide information or solicit support.

Affidavit of Rene Beaudry, sworn December 22, 2019, at paras 7-10.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 22-24.

Affidavit of Clay Raynard, sworn December 21, 2019 at paras 7-13.

30. Despite the request that the bus be allowed to access the Co-op Refinery Complex, picketers, acting as representatives of the Union, continued to prevent it from entering the property. Mr. Shwydiuk made a series of further requests that the bus be allowed to enter. He observed a picketer who appeared to be coordinating and giving directions to other picketers. At approximately 8:45 AM, Mr. Shwydiuk approached this picketer and again asked that the bus be allowed to access the property. When the picketer

responded by again demanding that the passengers of the bus present identification as a condition of crossing the picket line, Mr. Shwydiuk specifically told her that a court order had established the process for accessing the property, and that the order only permitted a five minute delay of a vehicle. This warning of the existence and key terms of the Interim Order was ignored by the picketer, who had been coordinating picket line activities [as] a representative of the Union.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 26-27.

31. Mr. Shwydiuk made further requests that the bus be permitted to access the Co-op Refinery Complex at approximately 9:25 AM, and at approximately 10:35 AM. The first request was refused and the second request was ignored.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 28-29

32. Despite repeated requests for access, picketers, acting as representatives of the Union, continued to prevent the bus from entering the Co-op Refinery Complex by walking in front of the Admin Gate entrance. As a result the bus was not able to safely enter the property. The bus waited until approximately 12:10 PM, at which point it drove away, as it was by then very clear that the Union had no intention of permitting the bus to enter the Co-op Refinery Complex, regardless of the terms of the Interim Order.

Affidavit of Rene Beaudry, sworn December 22, 2019, at paras 12-13.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 30.

Affidavit of Clay Raynard, sworn December 21, 2019 at para 14.

33. During the period where the Union had prevented the bus from entering the Co-op Refinery Complex (from approximately 8:30 AM to 12:10 PM), the picketers did not attempt to communicate with the driver or those [on] the bus for the purpose of conveying information or soliciting support for their activities.

Affidavit of Rene Beaudry, sworn December 22, 2019,
at para 11.

Affidavit of Clay Raynard, sworn December 21, 2019
at para 15.

D. Violations of the Interim Order on December 20, 2019

34. At approximately 8:30 AM, on December 20, 2019, a bus was prevented from entering the RBO. The bus could not safely enter because picketers were walking across the entrance to the property. Some of the picketers wore Unifor vests or carried Unifor flags demonstrating that they were acting as representatives of the Union while they impeded traffic attempting to enter the RBO. Traffic cones had also been placed across the entrance.

Affidavit of Robert Shwydiuk, sworn December 31,
2019, at para 32.

35. Mr. Shwydiuk was present at the RBO at the time the bus arrived. Approximately 10 minutes after the bus arrived he approached a woman standing in front of the bus and who he had seen giving directions to picketers. When asked if she was in charge she began to set out conditions under which the picketers would permit the bus to access the property, which indicates she was acting as a representative of the Union. The woman indicated that the people on the bus would not be allowed into the property if they did not identify themselves. The woman claimed to be acting in accordance with “rules” that picketers had been following for “a couple of days”. Mr. Shwydiuk specifically told the woman that according to the Interim Order there was no requirement to provide identification. The woman walked away when Mr. Shwydiuk asked her to allow the bus to cross the picket line.

Affidavit of Robert Shwydiuk, sworn December 31,
2019, at para 33.

36. At approximately 9:20 AM, Mr. Shwydiuk approached a picketer who he noticed was wearing a similar vest to what he had observed other picket captains wearing. He asked the picketer if she was a picket captain, and she confirmed that she was. This picket captain was therefore a representative of the Union. Mr. Shwydiuk asked the picket captain to allow the bus to cross the picket line and enter the property. The

picket captain refused the request and clearly stated that if the passengers did not provide identification they would not be permitted to cross the picket line. Mr. Shwydiuk specifically warned the picket captain that the only rules which applied were those set out in a court order. In response the picket captain reiterated her refusal to permit the bus to enter the property. She threatened that if the passengers of the bus did not identify themselves, "they are going to sit, all day".

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 36-37.

37. Mr. Shwydiuk asked the picket captain again to permit the bus to enter the RBO property at approximately 10:25 AM, but this request was also refused unless the passengers of the bus agreed to identify themselves.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 38.

38. The bus abandoned its attempt to enter the RBO property at approximately 11:30 AM and drove away. Due to the continuous blockade maintained by the Union's representatives, the bus did not have an opportunity to safely enter the RBO property.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 39.

E. Violations of the Interim Order on December 21, 2019

39. At approximately 9:00 AM, on the morning of December 21, 2019, a bus arrived at the Admin Gate to the Co-op Refinery Complex and attempted to enter the property. However, the bus was unable to do so as the Admin Gate entrance was blocked by traffic cones and a picketer (who was joined within moments by a number of other picketers) was walking across the entrance. Many of the picketers wore Unifor vests and carried Unifor flags, indicating they were acting as representatives of the Union. The bus was forced to stop near the Admin Gate entrance, in a position which partially obstructed traffic on 9th Avenue North.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 40-41.

40. Mr. Shwydiuk was present at the Admin Gate when the bus arrived. At approximately 9:09 AM, he observed a group of picketers approach the driver's side of the bus. He stood nearby, and heard one of the picketers (who was wearing a red Unifor vest) tell the bus driver that anyone who wanted to enter the property could come off the bus, and show picketers their identification, at which point they would be let in if they were on a list. Mr. Shwydiuk spoke to this picketer and specifically told him that in accordance with the Interim Order, the passengers did not need to provide identification or get off the bus. Mr. Shwydiuk asked that the bus be allowed to enter the property in accordance with the Interim Order as the bus had been held for five minutes. The picketer refused to speak to Mr. Shwydiuk. Despite Mr. Shwydiuk's requests picketers continued to prevent the bus from entering the Co-op Refinery Complex.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 41-42.

41. Approximately, one minute later, two picketers approached the bus again and requested that the driver provide identification for the passengers. Mr. Shwydiuk approached these picketers, one of whom was wearing a toque marked "Picket Captain". Mr. Shwydiuk spoke to the picket captain and specifically told her that the Interim Order meant that the Union could only stop vehicles for five minutes, and that it had been longer than five minutes. Mr. Shwydiuk asked the picket captain to allow the bus to access the property. The picket captain disregarded this warning and walked away, while picketers continued to prevent the bus from entering the property. A further, general request Mr. Shwydiuk made to those on the picket line at approximately 9:35 AM to allow the bus to enter the property was similarly completely ignored by the picketers.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 43-45.

42. At approximately 9:53 AM, an officer from the Regina Police Service (the "RPS"), arrived at the Admin Gate entrance and spoke to Mr. Shwydiuk. Mr. Shwydiuk told the police officer that the bus had been prevented from entering the property for over 40 minutes. He told the police officer [sic] that the Interim Order indicated the bus could only be held for five minutes. He asked that the police officer provide assistance in moving pylons and allowing the bus to safely

enter the property. The police officer refused to provide assistance and indicated that his concern was that the bus was blocking traffic. After the police officer spoke to picketers he returned and spoke to Mr. Shwydiuk and the bus driver. The officer refused the bus driver's request for assistance in allowing the bus to enter the property. The officer indicated that the bus was blocking the roadway. In accordance with the officer's instructions the bus drove away from the Admin Gate, at approximately 10:00 AM.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 46-49.

F. Violations of the Interim Order on December 22, 2019

43. At approximately 8:15 AM, on the morning of December 22, 2019, a bus arrived at the Admin Gate to the Co-op Refinery Complex and attempted to enter the property. The bus was unable to enter the property as there were four picketers in front of the Admin Gate entrance. Some of the picketers wore Unifor vests and carried Unifor flags, indicating they were acting as representatives of the Union. The bus was also unable to enter the property because a truck was parked across the entryway. Later, at approximately 8:23 AM, one of the picketers drove the truck away from the Admin Gate, indicating that the truck was placed there by a picketer.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 50-51, 53.

44. At approximately 8:20 AM, two picketers approached the bus and asked that everyone on the bus provide identification. When the bus driver refused, they walked away despite Mr. Shwydiuk (who was present at the Admin Gate that morning), attempting to talk to them.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at para 52.

45. At approximately 8:40 AM, Mr. Shwydiuk spoke to one of the picketers who was wearing an orange vest and asked if he was a picket captain. The man confirmed he was a picket captain. Mr. Shwydiuk asked the picket captain to allow the bus to enter the property as it had been waiting more than twenty minutes to do so. The picket captain refused

to allow the bus to enter the property unless the passengers provided identification.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 54-55.

46. At approximately 9:45 AM, Mr. Shwydiuk spoke to the picket captain, and again asked him to allow the bus to enter the property. The picket captain ignored the request and walked away. Picketers continued to block the bus from accessing the Admin Gate, despite the request.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 56-57.

47. At approximately 10:00 AM, an officer from the RPS arrived and told Mr. Shwydiuk that since the bus waiting to enter the Co-op Refinery Complex was blocking the roadway, it would have to move away from the Admin Gate. The bus abandoned its attempt to enter the Co-op Refinery Complex and drove away at approximately 10:05 AM.

Affidavit of Robert Shwydiuk, sworn December 31, 2019, at paras 58-60.

[14] As I have stated above, I accept the above summary.

V THE LAW AND ANALYSIS

[15] *The Queen's Bench Rules* provide:

11-26(1) Except when a person is before the Court as described in subclause (3)(a)(ii) or (v), before an order declaring a person in civil contempt of Court is made, notice of the application for a declaration for civil contempt must be served on the person in the same manner as a commencement document.

(2) A notice of the application pursuant to subrule (1) must be in Form 6-5. (3) A judge may declare a person to be in civil contempt of Court if:

(a) the person, without reasonable excuse:

(i) does not comply with an order, other than an order to pay money, that has been served in accordance with the rules for service of commencement documents or of which the person has actual knowledge;

... or;

(b) an enactment so provides.

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.

[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.

[17] I will now go through each heading to see if the applicant has proven beyond a reasonable doubt the required elements.

1. Was the interim order clear and unequivocal?

[18] I have set out the interim order above. I find that the order is well drafted and lends itself to easy and understandable reading. It is clear. It is unequivocal. I am not sure what more I can say than this. I am satisfied beyond a reasonable doubt this element has been satisfied.

2. Did the Union have actual notice of the order?

[19] This is not contested by the Union. I find that the Union, via its lawyers on record, were served with the order on December 18, 2019 at 3:11 p.m. The Union seems to be arguing for some sort of grace period. I find that

by 7:00 p.m. on December 18, 2019 (the first event set out above), the Union would have had ample time to get the word out.

[20] Therefore, I am satisfied beyond a reasonable doubt that the Union had actual notice of the subject order prior to the events that are the subject of this application.

3. Did the Union intentionally do the acts the order prohibits or intentionally fail to do the acts the order compelled?

[21] It is not necessary to repeat the summary that I have accepted above displaying the Union's members' conduct at the times referred to. This uncontradicted evidence clearly shows a course of conduct directly, and at times in a determined fashion, to ignore the order. Union members are actively engaged in preventing ingress or egress from CCRL's designated properties and facilities. The affidavit evidence establishes this and is buttressed by the modern day technology provided by the seemingly present day omnipresent video recording of events which depict what was happening as it actually unfolded. The only challenge to the violation of the order that was presented in argument by the Union was some sort of necessary precursor to involvement in the engagement with the persons trying to get in and out of the facilities. There is nothing in the order that allows or even that could be said to contemplate this. Accordingly, I find that I am easily satisfied that the applicant has proven beyond a reasonable doubt that the Union intentionally disobeyed the order on numerous occasions by obstructing entrance in and out of facilities. This obstruction exceeded the five minute maximum set out in the order. This is set out in the above summary.

[22] Therefore, I find all of the elements set out in *Carey* have been proven beyond a reasonable doubt by the applicant. However, the Union argues that this application is moot in any event because this is just a violation of an interim order because the real order followed on December 23, 2019.

[23] I am not persuaded such an argument should succeed. In support of this, I note our Supreme Court of Canada's comments in *United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 901 (WL) where the court, at para. 20, stated:

20 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 dependant 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.

[24] Further, Justice McMurtry, in her initial fiat, stated, "I accept that until a full hearing of the application, serious mischief would occur if I do not limit the right of picketers to communicate information to those wishing to receive it to a maximum of five minutes." Implicit in this is the court's understanding that the order was necessary. It goes without saying that equally implicit in that, and all orders granted by this Court, is: an order is to be followed regardless if it is an interim order or final order.

VI CONCLUSION ON CIVIL CONTEMPT APPLICATION

[25] Accordingly, for the above reasons, I find that the applicant has proven that the Union was in civil contempt of the court order on all of the occasions set out in the above summary.

VII WHAT SHOULD THE SANCTION FOR THE UNION'S CONTEMPT BE?

[26] Rule 11-27 of *The Queen's Bench Rules* sets out the type of sanctions available.

[27] The applicant sets out its position in its brief filed January 14, 2020 as follows:

126. There are a number of cases where courts have imposed substantial fines on unions for contempt of court orders specifically in relation to strike activity. In each case the union deliberately engaged in strike activity which was in violation of a court order:

- a) *Saskatchewan Health-Care Assn.* (1999, SKQB) [*Saskatchewan Health-Care Assn. v SUN* (1999), 182 Sask R 248 (Sask QB)] – fine of \$120,000 (criminal contempt);
- b) *UNA* (1992, SCC) [*United Nurses Association v Alberta (Attorney General)*, [1992] 1 SCR 901] – fines of \$250,000 and \$150,000 (criminal contempt);
- c) *New Brunswick Electric Power Commission* (1976 NBCA) [*New Brunswick Electric Power Commission v IBEW, Local 1733* (1976), 73 DLR (3d) 94 (NB CA) – fine of \$15,000 (civil contempt);
- d) *Health Employers Assn. of British Columbia v Facilities Subsector Bargaining Association*, 31 BCLR (4th) 124] 2004

BCSC 762 [Tab 15][– fine of \$150,000 (civil contempt);

- e) *British Columbia Public School Employers' Assn. v [B.C.T.F.]*, 2005 BCSC 1490 [260 DLR (4th) 533] [Tab 16] – fine of \$500,000 (civil contempt).

127. In the circumstances of this case, where there have been multiple acts of contempt CCRL, submits that it is appropriate to impose a fine reflecting the gravity of each act of contempt, while ensuring the overall fine is proportionate to the gravity of the Union's misconduct. CCRL submits that this fine should be substantial given the significant aggravating factors the absence of any mitigating factors in the Union's misconduct.

128 CCRL submits the following fines are appropriate with respect to each of the Union's acts of contempt:

- a) December 18, 2019, egress from RBO at approximately 7:00 PM – \$10,000:

While all violations of the Court's orders are serious, this violation was less serious as the five minute time limit was adhered to. The substance of the violation was in interfering with egress for an improper purpose.

- b) December 18, 2019, ingress to Co-op Refinery Complex at approximately 7:25 PM – \$20,000:

This violation requires a strong sanction, as the Union intentionally blocked a shipment of parts from being delivered, prevented entry for much longer than the maximum time limit, and ignored a warning that the Union's actions were not in accordance with the Interim Order.

- c) December 18, 2019, ingress to RBO at approximately 9:00 PM – \$15,000:

In this case one manager was permitted to cross the picket line, although after a delay

of longer than five minutes. One manager was completely barred from reporting to work by the Union.

- d) December 19, 2019, ingress to Co-op Refinery Complex at approximately 8:30 AM – \$20,000:

This violation requires a strong sanction, as the Union prevented a bus containing managers from entering the property, and continued its blockades for much longer than the maximum time limit. The Union also ignored a warning that the terms of access had been established by the Court.

- e) December 20, 2019, ingress to RBO at approximately 8:30 AM – \$20,000:

This violation requires a strong sanction, as the Union prevented a bus from entering a CCRL property, and continued its blockades for much longer than the maximum time limit. The Union also ignored multiple warnings that the terms of access had been established by the Court.

- f) December 21, 2019, ingress to Co-op Refinery Complex at approximately 9:00 AM – \$30,000:

This violation requires a strong sanction, as the Union prevented a bus from entering a CCRL property, and continued its blockades for much longer than the maximum time limit. The Union also ignored multiple warnings that the terms of access had been established by the Court. The violation is more serious because the Union conducted their blockade in a manner that resulted in the obstruction of a public roadway, and did not desist even when a police officer arrived to address the obstruction of the roadway.

- g) December 22, 2019, ingress to Co-op Refinery Complex at approximately 8:15 AM – \$35,000:

This violation requires a strong sanction, as the Union prevented a bus from entering a CCRL property, and continued its blockades for much longer than the maximum time limit, several days after the Interim Order was issued, making the continued violations very serious. The violation is also more serious because the Union conducted their blockade in a manner that resulted in the obstruction of a public roadway, and did not desist even when a police officer arrived to address the obstruction of the roadway.

[28] The applicant goes on to state in argument that the Union in this application is a large union, some 750 members with significant resources.

[29] The Union counters this by down-playing the events. Again, the Union focused on the fact that this was an interim order and not the final order. There was also an attempt, during argument, to persuade this Court that somehow the order was hard to understand or could be interpreted in a fashion that excused the Union's actions. I have already found this is not the case. The acts of the Union were deliberate. I also note no apology was made to this Court regarding the failure to follow the order. Such an apology is present in some of the cases presented by the Union in argument. The Union suggests a more modest penalty of around \$25,000.00, and also indicates that costs should either not be awarded or should somehow be reflected in the size of the fine.

[30] I find that the Union intentionally and deliberately disobeyed the order. I was not presented with any mitigating factors of note.

[31] I am satisfied a proper level of deterrence is required to bring home to the respondent the need to follow court orders, particularly those intended to bring some level of stability to a tense labour dispute.

[32] I have gone through the applicant's reasons for each suggested penalty and I am persuaded that the reasons for the varying amounts of fines in each situation makes sense and, quite frankly, is fair under the circumstances. However, rather than individually and in an aggregate form come to \$150,000.00 as the total amount of fine, I prefer to set a global fine or penalty at \$100,000.00. I believe that should be significant enough to sanction the Union and provide a deterrence for the future, if necessary.

[33] Therefore, I order that the Union shall pay a fine of \$100,000.00 to this Court forthwith.

VIII COSTS

[34] The applicant is the successful party and requests substantial costs, submitting solicitor/client costs would be appropriate. I have reviewed Rule 11-1 which sets out the court's discretion to award costs. Our Court of Appeal in *Siemens v Bawolin*, 2002 SKCA 84, [2002] 11 WWR 246 discusses solicitor/client costs and provides the governing principles in para. 111. I find that upon considering those informing principles that this is not a case for the exceptional awarding of solicitor/client costs. There is nothing within the encapsulized litigation arising from this application that warrants such an award. Accordingly, the applicant shall receive costs from the Union under

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Column 3 to reflect the relative complexity and importance of this application.
Such costs shall be paid forthwith and in any event of the cause.



J.
T. J. KEENE