

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tsawak-Qin Forestry Limited Partnership*
v. O'Connell,
2026 BCSC 1695

Date: 20260828
Docket: S256648
Registry: Vancouver

Between:

**Tsawak-Qin Forestry Limited Partnership
and Tsawak-Qin Forestry Inc.**

Plaintiffs

And

**Will O'Connell, William Jones,
John Doe, Jane Doe and Persons Unknown**

Defendants

Before: The Honourable Justice Veenstra

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs/Applicants:

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Respondent, William Jones:

N. Ross
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The Application Respondents, Marlene E.
Simmons and Ever Vuxtafarkash, appearing
in person:

M.E. Simmons
E. Vuxtafarkash

Place and Dates of Hearing:

Victoria, B.C.
August 27-28, 2026

Place and Date of Judgment:

Victoria, B.C.
August 28, 2026

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[1] The plaintiffs, Tsawak-Qin Forestry Inc. and Tsawak-Qin Forestry Limited Partnership (collectively “Tsawak-Qin”), seek an order extending an interim injunction granted by Justice Francis (then of this court) on September 12, 2025 (the “Initial Injunction”). The Initial Injunction prohibited various blockade activities that were obstructing the plaintiffs' logging activities in and around a tree farm license area known as TFL 44. The Initial Injunction covers an area stretching from Cowichan Lake in the north-east to Carmanah Walbran Provincial Park in the south-west (the “Injunction Area”).

[2] Tsawak-Qin says that it has, since August 2025, been subject to an organized, well-publicized campaign to blockade its lawful forestry operations, which campaign continued even after the grant of the Initial Injunction.

The Initial Injunction

[3] In Reasons for Judgment given in this proceeding on September 12, 2025, and indexed at 2025 BCSC 1880, Justice Francis summarized the background to this action:

[5] TFL 44 gives Tsawak-Qin the exclusive right to harvest Crown timber within the area described in the licence for 25 years (commencing August 1, 2019). Tsawak-Qin also owns a road permit that gives it the right to construct, use, and maintain roads in and around TFL 44 (“Road Permit”).

[6] Tsawak-Qin also has a cutting permit issued by the Ministry of Forests (“Cutting Permit”). The Cutting Permit allows Tsawak-Qin to harvest timber within certain specified Cutblocks.

[7] The Cutblocks are within territory claimed by the Pacheedaht First Nation (“PFN”) as their traditional territory. The PFN has provided a letter of support with respect to the Cutting Permit and the Road Permit.

[8] Navalign Forestry is a contractor working with Tsawak-Qin to fell and yard trees.

[9] As a result of the blockade, crews working for Navalign have been unable to access the Cutblocks. The blockade also prevented Navalign's crews from accessing their tools and equipment which includes saws, a fire truck, and an emergency transport vehicle.

[10] On August 28, 2025, Tsawak-Qin personnel attended the blockade and asked the protestors to vacate the area. The protestors refused to comply.

[11] In the meantime, the protestors have been active on social media. The social media accounts used to fundraise and recruit protestors are the

same social media accounts that were used to fundraise and recruit protestors for the Fairy Creek blockades. Many of the posts refer to the current blockade as a continuation of those blockades, saying things like, "The Blockades Are Back." Social media posts about the current blockade warn potential recruits that they are at risk of being arrested.

[12] The blockade in question in this application prevents Tsawak-Qin from exercising its lawful rights under TFL 44, the Road Permit, and the Cutting Permit. The value of the timber in the Cutblocks is, according to the evidence of the plaintiffs, just over \$3 million in revenue. If Tsawak-Qin is unable to harvest the timber in the Cutblocks, it will suffer an economic loss, as will both the Province and the PFN, who will lose out on a share of stumpage revenue.

[13] An additional problem the blockade creates for Tsawak-Qin relates to the "annual allowable cut" ("AAC"), which is the amount of timber that the Chief Forester allows Tsawak-Qin to harvest each year under the terms of TFL 44. If Tsawak-Qin harvests less than its authorized volume before the current cut control period ends on December 31, 2025, it could impact the amount of volume Tsawak-Qin is allowed to cut in later years. TFL 44 is currently undercut by about 50 percent, therefore there is some urgency from Tsawak-Qin's perspective in harvesting the Cutblocks and reducing their undercut position.

[14] Tsawak-Qin will face a further challenge if the blockade continues into the winter months. They must winterize a number of roads before the snow falls. If they do not undertake this work, the roads will be more susceptible to environmental and safety issues.

[4] At the hearing before Justice Francis, the one named defendant in attendance invited the court to "consider the broader public interest in preserving old growth forests, and battling climate change", and argued that "logging of the Upper Walbran Valley will result in loss of old growth forest, biological diversity, and climate resilience": para. 29. With respect to these submissions, Justice Francis commented:

[30] To this, I can only reiterate the words of the Court of Appeal in *Teal Cedar Appeal*, which are conclusive on this point:

[2] The case is not about the wisdom of government forest policy. It is decidedly not about the Court's views on whether and where old-growth logging should occur in this province, even in the context of climate change. In an injunction application, those are matters outside of the constitutional competence of the courts and exclusively within the constitutional purview of the government elected by the citizens of British Columbia.

[31] There is no room in the injunction analysis to consider the policy merits of those policies that the protestors wish to have the Provincial

Government adopt. As Justice Verhoeven noted in *Teal Cedar Injunction Application*:

[49] The problem is, all of the concerns raised by the respondents are for the government to address, and not this Court. Forestry decisions are highly policy driven and require the government to coordinate, balance, and reconcile often competing values and interests. ...

[32] I echo the remarks of Verhoeven J. and similar remarks made by other judges of this Court, repeatedly, in similar cases: *Slocan Forest Products Ltd. v. Valhalla Wilderness Society*, [1998] B.C.J. No. 1255 at ¶22-23; *Husby Forest Products Ltd. v. Jane Doe*, 2018 BCSC 676 at paras. 49-52; *Marine Harvest Canada Inc. v. Morton*, 2017 BCSC 2383, at para. 94. As the Court of Appeal has stated, policy matters such as those raised by Mr. Jones are outside the constitutional competence of the court on an injunction application.

[5] The Initial Injunction is:

- a) An interim injunction for a one-year period, the term of which is to expire on September 12, 2026;
- b) It applies to the named defendants, who include “John Doe, Jane Doe, and Persons Unknown”, as well as “anyone having knowledge of” the order;
- c) Within the Injunction Area, it prohibits:
 - i. any interference with any person making use of the roads;
 - ii. any interference with the vehicles, equipment or machinery of Tsawak-Qin or its contractors, subcontractors or suppliers;
 - iii. anyone coming within 50 metres of any such equipment within the Injunction Area;
 - iv. any interference with timber harvesting, road construction or related activities;
- d) It authorizes any police officer to arrest and remove any person who is believed to have contravened any provision of the order, and if necessary

to detain that person in custody until such time as it is possible to bring that person before the court;

- e) It specifically provides for the police to not interfere with members of the media who are attempting to gather information for their respective publications, except where there is a *bona fide* police operational rationale;
- f) It provides liberty to any person affected by the order to apply to set aside or vary the order; and
- g) It confirms the plaintiffs' undertaking to abide by any order as to damages the court may make as a result of the order.

[6] Justice Francis noted at paras. 46-48 that the terms of the Initial Injunction were substantially based on the most recent iteration of the injunction granted in the various *Teal Cedar* matters.

Variation of Injunction Terms

[7] I note that, earlier this year, an application was made to vary the scope of the Initial Injunction in ways that would:

- a) reduce the size of the Injunction Area;
- b) eliminate or reduce the 50-metre "bubble zone"; and
- c) limit one of the powers given to the police to detain and release individuals without arrest.

[8] Judgment on that application was reserved. On August 24, 2026, just before the hearing of this matter, Justice A. Saunders issued a memorandum to counsel acknowledging that completion of his reasons for judgment had been delayed, but advising that the application was dismissed with reasons to follow.

[9] As pointed out by counsel for the defendant William Jones, the parties will not know until the reasons for judgment are released what the basis of Justice Saunders' decision is. In light of these circumstances, counsel did not advance submissions that were in their application response with respect to the scope of the injunction, and I do not in these reasons for judgment draw any conclusions with respect thereto.

Events Since the Initial Injunction

[10] On this application, Tsawak-Qin says that the unlawful activity enjoined by the Initial Injunction has only escalated since September 2025, with the blockades having persisted and spread to other areas within the Injunction Area.

[11] At the time of the Initial Injunction, the primary activity of concern was on a road accessing two of Tsawak-Qin's cutblocks, known as the Cougar Blockade. The Initial Injunction was served on those at the Cougar Blockade almost immediately after it was issued. Those involved did not obey the Initial Injunction voluntarily, and Tsawak-Qin was prevented from accessing its cutblocks until RCMP enforcement began on November 25, 2025.

[12] The RCMP assigned its Critical Response Unit ("CRU") to enforce the Initial Injunction. It conducted enforcement activities during the weeks of November 25 and December 8, 2025. Some 12 individuals were arrested for breach of the Initial Injunction. Two were arrested a second time. Several of them publicized their arrests on social media and invited other like-minded individuals to join in the action.

[13] The evidence before the Court included details of the various "hard block" tactics used by those involved in the blockades. These include the use of tripods installed in a roadway with individuals on top, "sleeping dragons" in which individuals attach themselves to the ground, tree sits and a cantilever placed on a bridge which suspends an individual from a small platform hundreds of feet over a river. These hard blocks are very difficult to remove and very dangerous both for the individuals in them and for the RCMP members tasked with their removal.

[14] After the RCMP began its enforcement action, employees of Tsawak-Qin and its contractors attempted to access the cutblock area but found that a bridge had been damaged and culverts had been diverted in a manner that would cause water to flow across and erode the roadways.

[15] Tsawak-Qin's forestry operations were suspended from December 19, 2025, to March 29, 2026, due to winter weather conditions. During that time, there were incidents of vandalism including damaged gates, obstructed culverts and two gates blocked by abandoned vehicles that were filled with rocks. One was marked with a note "road spiked", which caused Tsawak-Qin's contractor to have to check the nearby roadway carefully for any spikes that could damage vehicles.

[16] In early January, several pieces of equipment belonging to a contractor working on the neighbouring TFL 46, but stored for the winter within the Injunction Area, were damaged by arson. The evidence reflects various other acts of vandalism in respect of Tsawak-Qin's equipment over the course of the winter.

[17] In June 2026, a blockade was re-established within the Injunction Area. On June 11, 2026, a Ms. Vuxtafarkash was said to have ridden a bicycle into an active work site which required operations to be paused. Between June 12 and 15, 2026, several pieces of equipment belonging to Tsawak-Qin's road-building contractor were vandalized. On June 26, 2026, a group blocked a key road near a staging area used by Tsawak-Qin and its contractors with a fire, vehicles and individuals standing in the roadway.

[18] On July 16 and 21, 2026, individuals chained themselves to the Walbran Main Gate and blocked the gate with vehicles. Members of the Lake Cowichan RCMP detachment attended, but did not make any arrests, advising that enforcement action would have to await the availability of the CRU. The main gate was blockaded again on July 27 and 28, 2026.

[19] The most recent incident involves tree-spiking. Two fallers employed by Tsawak-Qin's contractor were working on August 18, 2026, when their chainsaws

struck tree spikes. The chainsaws were damaged beyond repair, but neither of the fallers was injured. That said, any time a chainsaw strikes a tree spike, there is a significant risk of injury or death to anyone in the vicinity. Spikes also present a risk of serious injury or death to sawmill workers.

[20] Subsequent investigations have shown that several hundred trees within one of the cutblocks have been spiked. The heads of the spikes have in many cases been cut off, and bark placed on top of the spikes, making them very difficult to detect.

[21] Tsawak-Qin tendered in evidence several social media posts from individuals involved in the blockades, including the two named defendants, expressing an intention to continue the blockade activities and seeking to recruit others to join in.

[22] Tsawak-Qin says that its lost revenue over the past year is in excess of \$3 million, and it has also had to spend significant amounts repairing damaged equipment. It is also at risk of losing cut volumes that it has been granted if it fails to cut the appropriate volumes. Tsawak-Qin says as well that the blockades prevented it from properly winterizing its roads in late 2025. A failure to winterize roads creates a risk of damage to both the roads and the environment over the course of the upcoming winter.

Submissions to the Court

Tsawak-Qin

[23] Tsawak-Qin submits that the granting of an interim or interlocutory injunction is governed by the three-part test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311:

- a) There is a serious question to be tried;
- b) The applicant will suffer irreparable harm if the relief is not granted; and
- c) The balance of convenience favours granting the relief.

[24] Tsawak-Qin acknowledges that these factors are not a checklist, nor are they watertight compartments; rather, they ultimately illuminate the question of whether an interlocutory injunction is just and equitable in the circumstance such that a court should exercise its discretion to grant an injunction: *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at paras. 22-23; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19.

[25] Tsawak-Qin says that the application of this test to the present circumstances has already been litigated at the hearing before Justice Francis, and to the extent there has been any change in circumstance in the year that has passed, those changed circumstances magnify the need for an injunction. Some of the key individuals involved in the blockades have made clear their intent to continue the conduct regardless of any injunction, and the tactics that have been used in 2026 give rise to clear safety concerns not only for Tsawak-Qin's employees and contractors but also for those engaged in the blockades.

[26] Tsawak-Qin further argued that, rather than simply extend the existing interim injunction for another year, the Court should grant an interlocutory injunction that will continue in place until trial or further order of the court. As noted in *Google Inc.* at para. 24:

[24] An interlocutory injunction is normally enforceable until trial or some other determination of the action. Interlocutory injunctions seek to ensure that the subject matter of the litigation will be “preserved” so that effective relief will be available when the case is ultimately heard on the merits (Jeffrey Berryman, *The Law of Equitable Remedies* (2nd ed. 2013), at pp. 24-25). Their character as “interlocutory” is not dependent on their duration pending trial.

[27] Tsawak-Qin acknowledges that in the year since the Initial Injunction was granted, it has taken no steps to move this matter toward trial. It notes, however, that no party has filed a Response to Civil Claim. The pleadings thus define no matter of dispute which could be the subject of a trial. Counsel advised that he has no instructions to say that this matter will never go to trial. He noted that the year since the injunction was granted has been busy involving as it did applications with respect to the injunction scope as well as various contempt-related proceedings, and also

reported that Tsawak-Qin had only recently served the first named defendant, Will O'Connell, through alternate means.

[28] More generally, Tsawak-Qin says that the Court of Appeal has recognized that there may be claims in which it is not unreasonable for a party to rely upon an interlocutory injunction and not progress the matter toward trial. Tsawak-Qin relies upon comments of Justice Hunter in *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2020 BCCA 120. In that case, the plaintiff had obtained an interlocutory injunction, and in so doing given an undertaking as to damages. The plaintiff did not progress the matter toward trial and then, nearly a decade later, the action was dismissed for want of prosecution. The Court concluded that the undertaking as to damages could not be enforced because there had been no adjudication of the merits: para. 120.

[29] Justice Hunter, in his analysis, sought to distinguish comments in cases involving attempts to enforce undertakings after discontinuance, noting:

[122] For purposes of this appeal, I do not consider it necessary to attempt to reconcile the discontinuance cases. ... the challenges of discontinuance have led some courts to express propositions in general terms that do not reflect the flexibility of the interlocutory injunction, and are not in my view helpful in dealing with the issue before this Court.

[123] For example, Justice Willcock has pointed out that in *Ciba-Geigy Canada Ltd. v. Novopharm Ltd.*, [1998] 2 F.C. 527, MacKay J. held that when an interlocutory injunction is granted, "it is with the implied understanding that the plaintiff's complaint will be pursued, and will be evaluated on its merits by the court, with reasonable dispatch." If this statement was intended by MacKay J. to be a statement of general application, I cannot agree. There may be some cases, particularly in intellectual property disputes, where the failure to pursue a case after obtaining an interlocutory injunction can lead to a dissolution of the injunction, but there are also cases in which there is no expectation that the plaintiff will pursue the litigation to judgment. In these cases, including the case at bar, the injunction is the point of the litigation. It is open to the plaintiff to continue the litigation if the plaintiff wishes to obtain damages in addition to the injunction, and it is open to the defendant to continue the litigation if it wishes to obtain damages for the grant of the injunction, but in these cases, neither is under an "implied understanding" that this will be done.

[124] The clearest example of this is the series of interlocutory injunctions that were obtained in the 1990's to prevent interference with logging operations during the Clayoquot Sound controversy. Once the injunctions were obtained, the plaintiff did nothing to advance the litigation. One of the

arguments made by those who had been enjoined was that the failure to advance the litigation after obtaining the injunction was improper and should lead to the injunction being dissolved. This argument was favourably received by Wood J.A. in his dissenting judgment in this Court (*Greenpeace Canada Ltd. v. MacMillan Bloedel Ltd.*, (1994) 96 B.C.L.R. (2d) 201), but did not succeed in the Supreme Court of Canada. In *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048, McLachlin J. (as she then was) dismissed this concern in this way:

[32] It remains to consider a final argument raised by the appellants. Underlying both their submissions and the dissenting reasons of Wood J.A. is the suggestion that it is improper to use private litigation for the sole purpose of obtaining an injunction to constrain public action. Hence the emphasis on the fact that MacMillan Bloedel's main action against the named defendants has never proceeded to trial. Having given this concern my most serious consideration, I conclude that it provides no basis for invalidating the order made in this case. MacMillan Bloedel sued and named as defendants five persons identified at the first blockades. MacMillan Bloedel was entitled to claim against them such relief as the law allows. Although it contented itself with obtaining interim injunctions, MacMillan Bloedel could have proceeded to trial to obtain permanent injunctions and damages against them. The fact that it chose not to pursue the fullest remedy available is not a basis for denying it any other relief allowed by law. The interlocutory injunctions obtained against the named defendants for blocking the logging roads also bound members of the public at large. There is nothing new in this. Canadian courts have for decades followed the practice of issuing orders directed at prohibiting interference with private property rights, which orders affect not only the named parties but also the general public.

[Emphasis added.]

[125] The Court was there dealing with an injunction that was still in effect, although no steps had been taken to advance the litigation at all. More commonly, where the injunction is time-limited, and expires by its own terms before trial, the proposition expressed by MacKay J. in *Ciba-Geigy* has no application whatsoever. A plaintiff is under no obligation, implied or otherwise, to advance the case in those circumstances.

[126] Underlying the assumption that a plaintiff has an obligation to pursue the litigation may be an assumption that there is something improper when a plaintiff seeks an injunction which essentially gives the plaintiff all that is sought in the litigation, as in the case at bar, and then does not pursue the litigation. There is not. In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, the Court discussed this circumstance by explaining that when the result of the interlocutory application will in effect amount to a final determination of the action, a more extensive review of the merits should be made:

Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action. This will be the case either when the right which the applicant

seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial. Indeed Lord Diplock modified the *American Cyanamid* principle in such a situation in *N.W.L. Ltd. v. Woods*, [1979] 1 W.L.R. 1294, at p. 1307:

Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other.

Cases in which the applicant seeks to restrain picketing may well fall within the scope of this exception. ...

[127] In *Potash Corporation of Saskatchewan Mining Limited v. Todd, Heinrich and Energy and Chemical Workers Union, Local 922*, [1987] 2 W.W.R. 481 (Sask. C.A.), Vancise J.A. considered the nature of an interlocutory order that has the practical effect of resolving the dispute between the parties:

[25] The role of the court in labour disputes is to enjoin unlawful acts and to keep the peace. In so doing, it must be aware that the interlocutory injunction issued in the proceedings to restrain picketing does not normally survive the settlement of the other issues between the parties. I know of no instance in this Province where parties have proceeded to trial on any of the issues raised in a statement of claim after an injunction has been granted to limit or restrict picketing, and the parties later settled their dispute and entered into a new collective bargaining agreement. The interlocutory order is in effect a final order, an order which is determinative of the issues between the parties and has the practical effect of putting an end to the action.

[128] In the case at bar, the judge who granted the injunction met the elevated standard referred to in *RJR MacDonald* for cases when the result of the interlocutory motion will in effect amount to a final determination of the action by concluding that “the plaintiff has amply demonstrated it has a strong case”.

[30] I note that in this case, Justice Francis did not apply the “elevated standard”. Tsawak-Qin identifies a number of cases in this court in which injunctions comparable to this have been granted without reference to the elevated test, and says it would meet the elevated test in any event. As well, as noted above, Tsawak-Qin has left it open as to whether this case will proceed to trial in any event.

[31] In support of its request to make this injunction interlocutory until trial or further order of the court, rather than extending it for a specific time period, Tsawak-Qin says that:

- a) Requiring it to periodically return to court to extend the injunction causes it expense and inconvenience, which exacerbates the impact of the unlawful conduct that is already impacting its business operations;
- b) One year after the Initial Injunction, we are in a position where there has been significant non-compliance and an expression by leaders of the blockade of an intention to continue the conduct;
- c) An interlocutory injunction is effective until “further order of the court”; thus, a person with proper standing would be entitled to apply to set it aside if it should ultimately become unnecessary; and
- d) Given the conduct reflected in the evidence, it is appropriate that it is the defendants who face the burden of applying to set the injunction aside.

[32] Tsawak-Qin notes that in *Google Inc.*, after commenting that there was no argument that the injunction in that case would inconvenience Google in any way, Justice Abella stated:

[51] As for the argument that this will turn into a permanent injunction, the length of an interlocutory injunction does not, by itself, convert its character from a temporary to a permanent one. As previously noted, the order requires that the injunction be in place “until the conclusion of the trial of this action or further order of this court”. There is no reason not to take this order at face value. Where an interlocutory injunction has been in place for an inordinate amount of time, it is always open to a party to apply to have it varied or vacated. Google has brought no such application.

[33] Tsawak-Qin acknowledges that the final extension of the interim injunction in the *Teal Cedar* case was only for a one-year period. However, it says that the time-limited extension in that case reflected a view that blockade activity was decreasing – it notes the comments of Justice Thompson at *Teal Cedar Products Ltd. v.*

Rainforest Flying Squad, 2022 BCSC 1661 at paras. 34-35:

[34] The Court has the discretion to extend the interlocutory injunction until trial. This is the order sought by Teal Cedar, and it points to British Columbia cases where an interlocutory injunction has been put in place until the trial of the action.

[35] However, Teal Cedar has not yet moved the case forward in any appreciable degree. And, I must acknowledge the possibility that what I perceive to be a temporary lull in obstructive activity in and around TFL 46 may turn out to be permanent. I think the best course in this case is to require Teal Cedar to periodically demonstrate that it remains just and equitable to leave in place the “drastic remedy” (*Google Inc.*, at para. 23) of an interlocutory injunction. I exercise my discretion to adopt Teal Cedar’s alternative position of extending the injunction for a further year, i.e. until midnight on 26 September 2023.

[34] Tsawak-Qin says that the evidence it has tendered shows that blockade activity is continuing, and thus it submits that the interests of justice favour an injunction that is interlocutory, and not time-limited.

[35] Finally, Tsawak-Qin seeks an order for costs payable forthwith and in any event of the cause. It accepts that the usual rule is that costs of an application are payable to the successful party in the cause, to be assessed after success in the action as a whole is determined: Rule 14-1(12) & (13). However, Tsawak-Qin notes that an order for costs payable forthwith is available in various circumstances, including to deter unreasonable conduct, where it is unlikely that the matter will proceed to trial, or where an application dealt with a discrete issue that is severable from the remaining claims: *Uber Canada Inc. v. Surrey (City)*, 2020 BCSC 342 at para. 6.

[36] Tsawak-Qin notes that the defendant William Jones filed an application response that re-raised issues that were previously decided by Justice Francis, without tendering any new evidence, and also re-argued the issue of injunction scope that was (at the time the Application Response was filed) under reserve by Justice Saunders. While counsel for Mr. Jones did not press those issues at the hearing, Tsawak-Qin says that it was still required to prepare for the entire range of matters in issue. It says that as a result Mr. Jones should be required to pay costs.

William Jones

[37] Mr. Jones was represented by counsel on this matter, who noted that although Mr. Jones has been identified as a person involved in opposing Tsawak-Qin's logging of old growth forests, no attempts have been made to have him found in contempt.

[38] Mr. Jones' counsel advised that he does not contest that the plaintiffs have raised a serious question to be tried. With respect to the other elements of the *RJR-MacDonald* test, counsel acknowledged that, although there have been changes in the factual matrix – including new cutblocks being cut and different types of blockades – there are facts that are roughly equivalent to those present before Justice Francis. Counsel advised that, although Mr. Jones does not concede that irreparable harm and the balance of convenience are met, they would not address those issues in submissions to the Court.

[39] Counsel did make submissions on the question of whether the order should be interim or interlocutory. They noted that no steps have been taken to move this matter towards trial, and submitted that this suggests that the plaintiffs have no intention of doing so. While counsel acknowledged that Mr. Jones has not filed a Response to Civil Claim, it was noted that Tsawak-Qin could still have taken steps to move this matter forward.

[40] It is submitted that the risk of making the injunction interlocutory in a case like this is that it becomes a *de facto* permanent injunction without the plaintiff ever having addressed or met the test for a permanent injunction. It was submitted that there have been no arrests in this matter since December 2025, and only 12 persons arrested in total. The RCMP's CRU has not been back to the Injunction Area since December 2025. It was also submitted that the controversy in this matter surrounds Tsawak-Qin's logging of old growth areas, and not its activities in second growth areas. It is submitted that Tsawak-Qin has been granted permits for only seven old growth cutblocks, which suggests that there may not be a long-term need for injunctive relief.

[41] Thus, Mr. Jones submits that it is in the interests of justice that Tsawak-Qin be required to periodically demonstrate that the relief of an injunction is warranted.

[42] Counsel noted that Mr. Jones had raised in his Application Response concerns about the terms of the proposed order, while noting that those specific issues were before Justice Saunders. It was after filing of the Application Response that the parties were advised that Justice Saunders would be dismissing the application; however, the parties do not yet know the reasoning for that decision. In the circumstances, counsel agreed that the situation was not right for any of those issues to be addressed.

[43] With respect to costs, Mr. Jones submitted that costs of this interlocutory application ought to be awarded in the cause, following the general rule in Rules 14-1(12) and (13). Mr. Jones submits that there is no basis to depart from the ordinary rule, that Tsawak-Qin was required to seek an extension of the injunction in any event, and that nothing he has done has created unnecessary or unreasonable court steps.

Ever Vuxtafarkash

[44] Ever Vuxtafarkash described herself as a non-violent environmental activist. She says she is part of a group of non-violent and non-confrontational citizens who call themselves the Walbran Watchdogs and who have gathered to bear witness to the actions of Tsawak-Qin. She says that the Walbran Watchdogs bear witness without interfering with industry. She denies having participated in any blockading activities, and says her group has been at pains to stay off the road and to make clear they are there to bear witness and not to blockade. That said, the evidence tendered by the plaintiffs on this application includes allegations that in June 2026 she cycled along a road within 50 metres of an active work area, which caused work at that time to stop.

[45] Ever Vuxtafarkash acknowledged that she is subject to a pending hearing in respect of allegations of criminal contempt dating back to December 2025. She expressed concern that the injunction in this case criminalizes the actions of

concerned citizens who do not seek to interfere but simply to bring public attention to conduct and peacefully protest. She also expressed specific concern about logging and road-building practices and damage to habitat for the Vancouver Island marmot.

Marlene Simmons

[46] Marlene Simmons described herself as a former blockader, but says that she herself has not blockaded in the forest since 2015. She has, however, attempted to travel to the Central Walbran recently for recreational purposes, and describes having been photographed and had her license plate recorded by the plaintiffs' security guards along the roadway.

[47] Ms. Simmons expressed great concern about the size of the Injunction Area and how it threatens the viability of legitimate recreational and tourist activity, as well as its imposition of a 50-metre buffer zone around work areas when the available roads are narrow and operations often take place in close proximity to those roads. She also expressed concern about the placement of gates and a failure to properly maintain roads. She submitted that all of these operate together to exclude the public from a broad area, and at the very least impact on public use of an important public area for recreation. She also expressed concern that the injunction, through the use of "John Doe and Jane Doe" as parties, and through its application to all persons with knowledge, captures and potentially impacts on the public at large, even those who may not have been directly involved in blockading activities.

[48] I note that the Initial Injunction says nothing about gates on logging roads. I was advised by counsel for the plaintiffs and for Mr. Jones that the gates are the subject of permits issued under the *Forest and Range Practices Act*, S.B.C. 2002, c. 69, and that Mr. Jones has filed a complaint with the Forest Practices Board. Depending on the result of that proceeding, the issue of gates may come to this court by way of judicial review, but it is not the subject of any order sought in this proceeding.

Analysis

Continuation of Injunction

[49] It is clear to me that, while circumstances have evolved, nothing has changed that would undercut the fundamental conclusions of Justice Francis as to there being a serious question to be tried, irreparable harm, and that the balance of convenience favours granting an injunction.

[50] With respect to there being a serious question to be tried, Justice Francis noted at paras. 18-19 the claims pleaded by Tsawak-Qin, and at para. 20 she noted the various rights granted to Tsawak-Qin pursuant to TFL 44, its road permits and its cutting permits. Having reviewed the more recent evidence, I agree that there is an evidentiary basis to conclude that there continues to be a serious question to be tried as to the claims asserted by the plaintiffs.

[51] With respect to irreparable harm, Justice Francis identified five bases on which she concluded that Tsawak-Qin had established irreparable harm:

[24] First, Tsawak-Qin has a property interest in TFL 44 in the nature of a *profit à prendre*. This is a non-possessory interest in land for the purpose of resource extraction. Counsel for Mr. Jones submits that Tsawak-Qin cannot be said to hold a property right by way of TFL 44 because the rights granted under TFL 44 are contingent rights. However, any contingencies Tsawak-Qin was required to meet before it could exercise its right to harvest timber, such as obtaining the Road Permit and the Cutting Permit, have been fulfilled. Therefore I find that Tsawak-Qin does have a property right in the land. Interference with property rights is presumed to be irreparable harm: *Marine Harvest Canada Inc v. Morton*, 2018 BCSC 1302 at para. 163.

[25] Second, if the blockade continues, Tsawak-Qin may permanently lose harvestable volume because of its inability to meet its AAC within the current cut control period, which ends on December 31, 2025.

[26] Third, the defendants' conduct in preventing access to safety vehicles, and its failure to allow access to winterize the roads, are safety risks that are relevant to the irreparable harm analysis. In *Marine Harvest Canada Inc. v. Morton*, 2017 BCSC 2383, Justice Voith noted that safety concerns are relevant to the irreparable harm analysis because "personal harm can never be adequately compensated for in damages": at para. 86.

[27] Fourth, Tsawak-Qin is in the business of harvesting timber. They have a lawful permit to harvest timber on the Cutblocks. The blockade interferes with that business. This has caused and will cause Tsawak-Qin to lose revenue. Interference with a business as a going concern is regarded as

amounting to irreparable harm: *Teal Cedar Injunction Application*, at para. 39. While Mr. Jones argues that any business losses Tsawak-Qin will suffer from the blockade will be monetary and therefore compensable in damages, if damages are not collectable, then that harm is irreparable.

[28] This leads me to the final point on irreparable harm, which is that there is no reasonable prospect that Tsawak-Qin could recover damages from the defendants. The defendants are mostly anonymous, and the potential damages are likely beyond the capacity of most individuals to satisfy. Therefore, even if the potential losses for Tsawak-Qin were purely monetary, there is no reasonable prospect of Tsawak-Qin being made whole by way of damages.

[52] I acknowledge the submission that there have been no arrests to date in 2026. However, there is a significant amount of uncontested evidence showing that there have continued to be significant interferences with the operations of Tsawak-Qin. More significantly, there has been a substantial increase in matters giving rise to safety concerns – particularly the evidence of tree spiking.

[53] In my view, the evidence demonstrates the adoption of evolving blockade techniques and tactics that are steadily more difficult to deal with and that give rise to escalating safety concerns. Thus, the new evidence establishes that there continues to be irreparable harm suffered by Tsawak-Qin.

[54] With respect to balance of convenience, I have already quoted from paras. 30-32 of Justice Francis' judgment, which disposed of submissions made by Mr. Jones at the time with respect to what Justice Francis described (at para. 29) as "the broader public interest in preserving old growth forests, and battling climate change, when weighing the balance of convenience". As Justice Francis noted, the Court of Appeal has ruled conclusively on this point in the *Teal Cedar* appeal. The Court of Appeal's ruling effectively disposes of the submissions made with respect to those issues by Ms. Vuxtafarkash and Ms. Simmons.

[55] Justice Francis' conclusions on balance of convenience are as follows:

[41] In *Teal Cedar Appeal*, the Court of Appeal considered the public interest in upholding the rule of law, and the centrality of this factor in the balance of convenience analysis. They said:

[76] It is not tenable in a democracy for a group to abandon the democratic process and impose their will on others by force. In a

complex, pluralistic society, the democratically-elected government makes laws, and the courts interpret and uphold them. Barring constitutional overreach, the laws and decisions flowing from them are to be respected and enforced.

[77] Protests are part of a healthy democracy; criminal conduct is not. In the circumstances of this case, the injunction is all that stands between Teal Cedar and a highly-organized group of individuals who are intent on breaking the law to get their way. That the criminal law may be used in such circumstances remains a possibility, but it is within the control of neither Teal Cedar nor the court to compel the police and the BC Prosecution Service to charge and prosecute offences under the *Criminal Code*.

[78] In conclusion, and with respect, we are of the view that the judge erred by giving weight to irrelevant considerations and by giving too little weight to the public interest in upholding the rule of law, which must be the dominant consideration in all cases involving significant and persistent acts of civil disobedience.

[42] Counsel for Mr. Jones has made no effort to explain or suggest that the protestors' conduct is legal. This is because it is illegal. The Court in such circumstances has no choice but to protect the lawful conduct and business of the plaintiff, and address the illegality of the defendants' behaviour. The public's interest in preserving the rule of law must be the paramount consideration on the balance of convenience analysis in a case like this.

[43] In these circumstances, I find the rule of law considerations must prevail and the balance of convenience weighs in favour of granting the injunction.

[56] In my view, there has been no change in circumstance that would undercut those conclusions. I conclude that the balance of convenience continues to militate in favour of granting injunctive relief.

[57] I note as well that Tsawak-Qin has confirmed continuation of their undertaking as to damages.

[58] In all the circumstances, I conclude that it is just and equitable to continue the injunction granted by Justice Francis. In light of my comments above, I decline to embark upon consideration of any potential changes as to the terms, other than as to time.

Interlocutory or Interim

[59] I turn now to the primary substantive issue that arose before me – whether to extend the injunction for a defined period of time or until trial or further order of this court.

[60] I expressed concern during the hearing about the lack of progress towards moving this matter to a trial on the merits. I raised that concern because, in my experience, there are some cases in which a party who may have a weak case on the merits but a stronger case on the balance of convenience is motivated to leave an interlocutory injunction in place as long as possible.

[61] In deciding whether to grant an interlocutory injunction, there are good reasons for not embarking upon a detailed consideration of the merits of the case. As Justice Diplock explained in *American Cyanamid Co. (No. 1) v. Ethicon Ltd.*, [1975] UKHL 1, [1975] A.C. 396 (H.L.):

In those cases where the legal rights of the parties depend upon facts that are in dispute between them, the evidence available to the court at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by oral cross-examination. The purpose sought to be achieved by giving to the court discretion to grant such injunctions would be stultified if the discretion were clogged by a technical rule forbidding its exercise if upon that incomplete untested evidence the court evaluated the chances of the plaintiff's ultimate success in the action at 50 per cent, or less, but permitting its exercise if the court evaluated his chances at more than 50 percent.

[62] For this reason, the court, on an interlocutory injunction application, typically does not apply too high a standard to the question of whether there is a serious question to be tried, and focuses rather on the other parts of the test. This leaves open the possibility of abuse, if there is dilatory conduct with respect to moving the matter toward trial.

[63] As I read the judgment in *Ralph's Auto Supply*, it does not determine that a failure to move a case toward trial can never be a factor impacting on the court's discretion whether to grant an injunction and on what terms. It recognizes the reality

that in some cases there may never be a trial – not because the case has been fully determined, but because none of the parties see the need to move it toward trial.

[64] In this case, there has been no response to civil claim filed. No defendant has sought to move the case toward trial. The plaintiffs have in no way been dilatory in dealing with this action.

[65] In my view, whether there have been or should have been steps taken to move a matter toward trial is a factor that may impact on the court's exercise of its discretion with respect to an injunction. In the present case, if I thought that there was a concern about such behaviour, then I might have considered, for example, granting a term requiring certain actions of the plaintiffs as a condition of the injunction. I have no such concerns, however, in the particular circumstances of this case. I have concluded that the lack of progress toward trial over the past year does not generally impact on my decision as to whether this injunction should be interlocutory or for a defined period – other than to recognize the reality that this case may well never go to trial.

[66] I turn to the other factors that appear to me to be significant with respect to this issue:

- a) The plaintiffs' rights to TFL 44 have a 25-year term;
- b) I am told that controversy and the blockades relate only to old growth areas – while I do not know exactly how much of TFL 44 is old growth, I was advised that only some of the cutblocks that are presently active include old growth trees;
- c) The Initial Injunction incorporates an Injunction Area that extends well beyond the boundaries of TFL 44; with respect thereto:
 - i. It appears that both Justice Francis and Justice Saunders have concluded that the board scope of the Injunction Area, the 50-metre bubble zone and the broad scope of the conduct covered by the order

are necessary – presumably as a result of the tactics undertaken by those involved in the blockades, as disclosed by the evidence;

- ii. At the same time, it is important to recognize the impacts of those broad terms not only on those engaged in blockades but also on those who wish to bring transparency and to exercise rights of peaceful protest, not to mention members of the public who may want to have access to the Walbran area for recreational purposes; and
- d) There are intrusive police enforcement provisions as well as the risk of contempt proceedings for anyone who falls afoul of the broad terms of the order, provided they can be said to be aware of it.

[67] I accept that Justice Francis and Justice Saunders have concluded that the broad scope of the Initial Injunction is reasonable and necessary in the present circumstances. I am not satisfied that it is reasonably necessary on an indefinite basis.

[68] In my view, given the broad nature of the order, and given that there is a reasonable likelihood that this matter will never come to trial, I see it as reasonable to grant a renewal for a time-limited period. In my view, the time should be set with a view to the seasonal nature of the work being done by Tsawak-Qin and its contractors. I see the winter as an appropriate time to review and consider the nature and extent of any ongoing activities interfering with the operations of Tsawak-Qin, and the need for injunctive relief to be extended to the upcoming year. That, in my view, would be much more appropriate than determining at the height of the work season whether the injunction should be extended.

[69] In all the circumstances, I conclude that it is appropriate to extend the injunction as an interim injunction to expire on January 31, 2028.

Costs

[70] I turn finally to the question of costs.

[71] In my view, it was not unreasonable for the responding parties to have raised scope issues in the circumstances. It was possible that even if they had been successful before Justice Saunders, they would have had to re-argue those issues on this application. Having been advised of Justice Saunders' result, and not knowing the reasoning for that result, counsel for Mr. Jones very appropriately declined to argue that issue and I have made it clear that, to the extent that there are changes in circumstances in the future that may impact on the appropriateness of any changes in the injunction terms, those will be taken from the starting point of Justice Saunders' decision. I accept that it was important to at the very least appropriate to reserve their rights in that respect.

[72] It is also true that Mr. Jones in his application response reiterated his previous submissions as to irreparable harm and balance of convenience. As I have noted, those submissions were not advanced at the hearing. As well, I am not satisfied that the plaintiffs, who were required to positively establish the need to extend the interim injunction in this case, were required to take any additional steps because of the inclusion of those submissions in the application response.

[73] To the extent there has been success on the one issue that was substantively argued – that being whether the injunction should be interlocutory or interim – success was that of Mr. Jones. At the same time, the plaintiffs have been successful in obtaining an extension of the injunction.

[74] I am of the view that there should be no order as to costs in the circumstances with respect to Mr. Jones.

[75] I recognized as I was hearing the final submissions today, and as I looked at the draft order that has been tendered, that the plaintiffs are also seeking costs against the two self-represented individuals who addressed the Court – Ever Vuxtafarkash and Marlene Simmons. In my view, each of them provided focused submissions that provided some enlightenment to the Court on the impact of the injunction on those who wish to simply observe and protest, and on members of the public generally. Despite their struggles to comply with the formalities, substantial

parts of their submissions were helpful to the Court. In my view, given that this is a matter in which there has been resort to the contempt power – and necessarily so – it is significant that people who are passionate about forest policy, and who are having their ability to exercise their rights to express their views constrained to varying degrees by the order of this court, are engaging with the court as to the injunction order that is made. This is particularly so given that they will be met, between now and the end of January 2028, with explanations that court orders are to be obeyed once made.

[76] I am concerned about establishing a price of entry for those who wish to address the court on matters that are of important public interest. I do not think it appropriate to order costs as against either of those individuals.

[77] I am thus going to order that all parties bear their own costs.

“Veenstra J.”