

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Khalsa Diwan Society v. Doe*,
2024 BCSC 2072

Date: 20241031
Docket: S247416
Registry: Vancouver

Between:

Khalsa Diwan Society

Petitioner

And

**John Doe, Jane Doe, and Persons Unknown to the Petitioner Intending to
Protest the Consular Events Scheduled to Take Place on the Petitioner's
Property on November 2, 2024 and November 16, 2024**

Respondents

Before: The Honourable Justice Gropper

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

S. Turner
T. Xyyong (A/S)

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
October 31, 2024

Place and Date of Judgment:

Vancouver, B.C.
October 31, 2024

[1] **THE COURT:** This is an oral decision. Should it take a written form, I reserve the right to edit it, not to change it substantively.

[2] This is an application by the petitioner, the Khalsa Diwan Society (the “Society”), seeking an *ex parte* injunction.

[3] The reason for the *ex parte* application is that the petitioner does not know who the respondents are. They are individuals whose exact identities are unknown to the Society or its members who are intending to stage protests at or near the Ross Street Gurdwara on November 2 and 16, 2024.

[4] The Society is the oldest Sikh religious community in British Columbia and North America. It currently has approximately 10,000 members and is managed by a board of 16 volunteers who are long-standing members of the Sikh community in British Columbia.

[5] The Society owns, operates and manages several buildings on properties at 8000 and 8085 Ross Street in Vancouver. The buildings on the property include the Ross Street Gurdwara, the Amardass building located to the west of Ross Street, a seniors’ centre, a library, and the Komagata Maru Museum.

[6] The Ross Street Gurdwara is a place of worship and serves as an important gathering space for the members of the Sikh community, particularly senior citizens.

[7] The petition describes the buildings, the parking lots, and the points of access to the buildings. They are also set out in maps that are appended to the petition as Appendix A and B.

[8] As was done in previous years, the Society will be hosting events at the Gurdwara which are commonly referred to as consular camps, and they are scheduled to take place between 9:00 a.m. and 5:00 p.m. on Saturday, November 2, 2024 and Saturday, November 16, 2024.

[9] These camps are attended by consular officials from the Indian Consulate in Vancouver. The camps provide an opportunity for pensioners and seniors of Indian

descent to complete administrative tasks with the Government of India, primarily in relation to their pensions, without the need of attending in person at the Indian Consulate's office in downtown Vancouver.

[10] The Society has hosted similar consular camps regularly for 20 years. They are also held at other Sikh temples in British Columbia and across Canada.

[11] There are recent highly publicized events, including allegations by the RCMP, that the Indian consular officials have been involved in illegal activities in Canada that has led to the expulsion from Canada of six Indian diplomats on October 14, 2024.

[12] The Society expects that the consular camps scheduled for November 2 and 16, 2024 will draw intense protests from individuals who believe that all Indian consular offices should be shut down in Canada and that consular officials should not be allowed to enter the Ross Street Gurdwara in furtherance of official business on behalf of the Government of India.

[13] The Vancouver Police Department (VPD) has also advised the Society that it expects and intends to deploy significant resources for crowd and protest control at these events.

[14] In addition to the holding of the consular camps, weekends are typically busy at the Gurdwara. Hundreds of worshippers come and go. There are several religious events and programs that occur on the property. Some examples are prayers organized by families of a deceased after a funeral service or prayers organized by families in celebration of major life milestones and to commemorate historic events, holidays, and other dates which are of religious and cultural importance to Sikhs.

[15] Diwali, a major religious celebration, not only for Sikhs, but for other predominantly South Asian religious groups, falls on Thursday, October 31, 2024. As a result, the Society expects that there will be thousands of congregants attending the Gurdwara over the weekend of Saturday, November 2 and Sunday, November 3, 2024 to celebrate Diwali.

[16] The application for an injunction before anything occurs is based on past protests that have occurred in and around the Gurdwara. When the consular camps were held on November 19, 2023 it was protested by individuals who opposed the present Government of India.

[17] The Indian government's alleged involvement in the murder in June 2023 of Hardeep Singh Nijjar, who was the president of the Guru Nanak Sikh Gurdwara in Surrey and a proponent of a non-binding referendum on the issue of Khalistan independence, has drawn widespread media attention. This has caused significant tension, not only in the Sikh community, but internationally.

[18] In 2023, the experience of the VPD was that there were approximately 100 protesters present at the Gurdwara. They placed flags and banners on sidewalks and in the front entrance of the Gurdwara. They attempted to block entrances and sidewalks. They occupied the south entrance of the Gurdwara parking lot. Protesters were very vocal and emotionally charged. The officers were required to secure the perimeter of the Ross Street Gurdwara and inside the building where the Indian Consulate staff were situated.

[19] Protesters also gathered around the east entrance. Some came onto Society property, including inside the Gurdwara, and officers identified these individuals and escorted them off the property. The protest grew larger through the course of the day and additional officers were required to be deployed.

[20] The members of the Society present in November 2023 observed that the protesters placed a very large Indian flag on the ground at the south entrance of the Gurdwara parking lot to prevent individuals and cars from entering the Society's property. Protesters verbally abused members of the Society, including seniors who were attending the 2023 consular camp. Protesters used a loud megaphone to project their speeches and chanting and sloganeering. This disrupted ongoing religious programs, including prayers following the funeral of a member of the community.

[21] The members of the Society say that in 2023 they were concerned about their personal safety and the potential for confrontation between protesters and Indian Consulate staff.

[22] Based on the activities of protesters in November 2023, and the fact that such protests against the Indian government have intensified since November 2023, the Society expects that pro-Khalistan groups of individuals will attempt to interfere with the upcoming consular camps, including by trespassing and entering onto the Society's property, including the Ross Street Gurdwara, particularly if Indian Consulate staff are present, blocking, interfering with, or hindering access to entrances and exits to the Ross Street Gurdwara, including the Gurdwara parking lot, the school parking lot, and the east entrance, and disrupting ongoing religious programs at the Gurdwara by making excessive noise.

[23] The Society is particularly concerned that one of the consular camps falls on Diwali, and the Society is concerned that protesters may disrupt religious programs.

[24] The petition seeks the imposition of a *quia timet* injunction. The petitioner must demonstrate that there is a serious issue to be tried; that it will suffer irreparable harm if the injunction is not granted; that the balance of convenience favours the granting of an injunction; and a high degree of probability that the alleged harm will, in fact, occur.

[25] The *quia timet* injunction has been described in various cases, particularly *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441 at paras. 34-35, where the Court referred to Professor Sharpe's book on *Injunctions and Specific Performance*, Toronto, Canada Law Book Ltd., 1983, and citing particularly pp. 30-31:

All injunctions are future looking in the sense that they are intended to prevent or avoid harm rather than compensate for an injury already suffered

Where the harm to the plaintiff has yet to occur the problems of prediction are encountered. Here, the plaintiff sues *quia timet* -- because he fears -- and the judgment as to the propriety of injunctive relief must be made without the advantage of actual evidence as to the nature of harm inflicted on the plaintiff. The court is asked to predict that harm will

occur in the future and that the harm is of a type that ought to be prevented by injunction.

- 35 The general principle with respect to such injunctions appears to be that "there must be a high degree of probability that the harm will in fact occur" ...

[26] If the proper case is made, the court should grant the *quia timet* injunction without hesitation, but the jurisdiction must be exercised sparingly and with caution.

[27] In respect of the first test of the injunction, the serious issue to be tried, the threshold is low. The petitioner must satisfy the court that the claim is not frivolous or vexatious. The court is not to embark on a prolonged examination of the merits.

[28] In this case, the petitioner is concerned about trespass; trespass in accordance with the *Trespass Act*, R.S.B.C. 2018, c. 3, s.2; and common law trespass where someone enters, remains on, or places any object on land in the owner's possession without lawful justification.

[29] I find that the petitioner's concerns regarding trespass are neither frivolous, nor vexatious. There is a strong presumption in favour of granting injunctive relief where the owner complains about trespass or other interference with property rights. It is possible to grant an injunction based solely on the fact that there has been a trespass, even without considering the factors of irreparable harm and balance of convenience.

[30] Trespass did occur during the November 2023 protest and the protestors did not leave the Gurdwara property until the consular staff had left and the police had confirmed that they had left.

[31] The petitioners say there is a high degree of probability that the protestors will demand to enter the Gurdwara during the upcoming consular camps, trespass onto the Society property if they are denied entry, obstructing entrances and exits to and from the Ross Street Gurdwara, and disrupt ongoing programming by making excessive noise and engaging in intimidating behaviour.

[32] The petitioners also say that there is a real apprehension that protestors will engage in activities which constitute nuisance and intimidation. The courts have held that where the evidence is clear and specific that that conduct will take place and there is a high degree of probability that trespass will occur, those will constitute sufficient grounds to order a *quia timet* injunction.

[33] I find that the evidence regarding the expected protest is not vague. It is informed by what occurred in 2023 and pro-Khalistan supporters have issued public statements in the media about their intention to shut down any public appearances by the Indian Consulate staff throughout the protest.

[34] The second branch of the test for an injunction requires the court to consider the extent to which the petitioner will suffer irreparable harm if an injunction is not granted, and that is harm that cannot be quantified in monetary terms and cannot be cured.

[35] In its petition, the Society submits that it and its members will suffer irreparable harm if an injunction is not granted, by the violation of the Society's property rights to use its premises as it sees fit; loss and harm through the interference with the delivery of religious programming and other activities; and loss and harm to the senior citizens through interference with the consular camps.

[36] As the petitioners point out, disruption to religious services are intangible, irreparable, and time sensitive. They cannot be fairly remedied at a later date or compensated by monetary damages.

[37] The Society says that it decided to host the consular camps for the benefit of its members and senior citizens of Indian origin in the community, which is a lawful intended use of its property and one that should not be interfered with by protestors.

[38] The petitioner points out it is difficult to predict what will take place at the upcoming consular camps if the Society does not allow protestors on its property, suggesting that there is a high probability that protestors will block paths of entry to the Gurdwara, including the Gurdwara parking lot, and to deny entry to Indian

Consulate staff. Further, if the Indian Consulate staff successfully enter the Ross Street Gurdwara, protestors will also attempt to disrupt the consular camps. Additionally, as experienced in 2023, the protest would likely disrupt ongoing religious programs which are obviously magnified by the celebration of Diwali this year.

[39] I find that the balance of convenience favours this court ordering buffer zones near the Gurdwara parking lot on Ross Street and near the east entrance, which would restrict and prohibit protestors from trespassing onto the Society's property and otherwise putting up their demonstrations within 50 metres of the Ross Street Gurdwara.

[40] Courts in Canada have issued buffer zone injunctions in cases involving protests and blockades. I have asked the petitioners to ensure that the size of the buffer zone is kept to a minimum to not disrupt any lawful protests. They have complied by reducing the size of the proposed buffer zone in their amended appendices.

[41] The protestors will be free to set up their demonstrations outside those access zones and to engage in lawful protests.

[42] Accordingly, I will grant the order that is sought. Mr. Turner, you wanted to take me through that?

[43] CNSL S. TURNER: I have a clean version of it that was vetted downstairs.

[44] Thank you. I have reviewed it and I am prepared to grant the order. It departs from the petition by having any protests being prohibited from any of the following in the access zone between the hours of 8:30 a.m. and 5:30 p.m. on November 2, 2024 and November 16, 2024; namely, engaging in sidewalk interference protesting, physically interfering with any person who wishes to access the Society property, and intimidating or attempting to intimidate any person who wishes to access the Society property.

[45] I will also grant the order sought by the petitioners for the police enforcement clause referred to in paragraph 4.

[46] The respondents or any person who is affected by the order, including the petitioner, is at liberty to apply to the court to set aside or vary the order on not less than two business days' notice to the petitioner.

[47] Thank you. I will sign the order and return your binder.

“Gropper J.”