SUPREME COURT OF YUKON

Citation: *Connective Support Society v Melew* 2025 YKSC 50

Date: 20250808
S.C. No. 24-A0036
Registry: Whitehorse

BETWEEN:

CONNECTIVE SUPPORT SOCIETY

PLAINTIFF

AND

YONIS MELEW

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff — Luke S. Faught

No one appearing for the Defendant

REASONS FOR DECISION
(Contempt order application)

Overview

[1] The defendant, Yonis Melew, was prevented by a court order dated April 9, 2024, from publishing or causing to be published any statement containing the words Black-hating/hater, racist, and/or phony, referring to Connective Support Society ("Connective") by name or some other identifying factor. He was further ordered to remove any posts on any social media he controls, including Facebook pages containing those same words in reference to Connective.

[2] Since April 9, 2024, the many Facebook posts containing these words in reference to Connective on the Canadiansforfairtreatment page, established and operated by the defendant, have remained on the page. Further, the defendant has continued to make new posts that the plaintiff says breach that order. The plaintiff applies for a declaration that the defendant is in contempt of the court order and that the Court issue a fine of $3,000 and award special costs to the plaintiff.

[3] The issues are:

a) Is the defendant in contempt of court by continuing to post on Facebook calling Connective Black-hating, racist or phony and not removing similar posts that were made before April 9, 2024?

b) If the defendant is guilty of contempt of court, what is the appropriate penalty?

Background

[4] Connective is a community-based social services non-profit organization that, among other things, manages and operates the emergency shelter in Whitehorse, providing temporary housing to those experiencing or at risk of homelessness, and other support services to vulnerable community members. Many employees of Connective in Whitehorse have diverse backgrounds and/or are members of the Black, Indigenous, and People of Colour Community ("BIPOC").

[5] The defendant is a Black man who was an employee of Connective, until his employment was terminated on July 17, 2023, for reasons unknown to the Court. In August 2023, he began posting on the Facebook page established and operated by

him, Canadiansforfairtreament, in which he described himself as a civil rights activist, advocating for the rights of Black and Indigenous people in the Yukon.

[6] The posts repeatedly described Connective as a Black-hater, cold-blooded racist and phony organization. The posts included names and photographs of senior executives at Connective. The posts continued through to April 2024, and despite the order of April 9, 2024 for an interlocutory injunction enjoining him from publishing such posts, he continued to do so in October 2024, November 2024, and twice in January 2025. These posts described Connective as racist and phony.

[7] This Court reviewed the law of defamation and the law of interlocutory injunction in the April 9, 2024 decision (*Connective Support Society v Melew*, 2024 YKSC 15) to grant the injunction. It concluded that the posts were defamatory, after considering potential defences that were canvassed by the plaintiff in the absence of the defendant. Although this was not necessary because the defendant did not appear, out of an abundance of caution, the plaintiff raised the potential defences and this Court considered them. For this reason, the words drug distribution centre were not included in the words considered to be manifestly defamatory, because of the possibility that Connective's practice of holding and distributing prescription medications for guests may provide a justification for that statement. All other potential defences were found to be inapplicable or inadequate. There were no specific factors to support the Court not exercising to issue an interlocutory injunction.

[8] The order granted was:

> 1. An interlocutory injunction is granted enjoining the defendant, Yonis Melew and his agents, servants or any others acting on his behalf from continuing to publish, publishing or causing to be published by any

> means, and from broadcasting or causing to be broadcast by any means, defamatory statements containing the words Black-hating/hater, racist, and/or phony, referring to Connective Support Society, its directors, employees or agents by name, pseudonym, address, photograph, reference to facilities they operate or work in or by any other means of identifying any or all of them.
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> 2. The defendant, Yonis Melew, shall remove from any social media pages he controls, including but not limited to Facebook pages, any defamatory statement containing the words Black-hating/hater, racist, and/or phony, referring to Connective Support Society, its directors, employees, or agents by name, pseudonym, address, photograph, reference to facilities they operate or work in or by any other means of identifying any or all of them.

Preliminary Issue – Absence of the defendant at the hearing on February 17, 2025

[9] As noted in the decisions of the assessment of damages application in this action and in the summary trial brought by the individual employee plaintiffs, also heard on February 17, 2025, the defendant did not appear in court. All of the materials were provided to him by leaving them outside of his apartment door on January 22, 2025, after unsuccessful attempts to serve him personally on January 9, 11, 15, and 19, 2025. This was confirmed by affidavit and exhibits of Pushpinder Singh, an employee of the Commissionaires of Victoria, the Islands and Yukon, sworn January 29, 2025, and filed on February 12, 2025.

[10] I am satisfied that Mr. Melew was duly served with the materials, had an opportunity to respond, was aware of his filing dates and the date of hearing. He has chosen not to respond or to attend Court.

Analysis

a) Is the defendant in contempt of court?

Law of Contempt

[11] In *Spurvey v Melew*, 2024 YKSC 30 ("*Spurvey*"), I reviewed the law of contempt in some detail in paras. 16-26. I adopt that discussion here. For ease of reference:

> [16] The Ontario Superior Court in *Antoine v Antoine*, 2024 ONSC 1397 ("*Antoine*"), provided a comprehensive review of the law of contempt. I have drawn from that case in the following summary.
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> [17] The remedy of contempt of court comes from the common law (sometimes called judge-made law) and continues to evolve through case law (*Antoine* at para. 9). The Supreme Court of Canada in *United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 901 ("*United Nurses*") stated contempt of court is based on the power of the court to uphold its dignity and process: "[t]he rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect" (*United Nurse* at 931).
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> [18] The *Rules of Court* of the Supreme Court of Yukon (the "*Rules*") govern the court's jurisdiction for contempt motions. Rule 59 includes options for remedy and procedural requirements for bringing an application for contempt.
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> [19] Examples of contempt of court for conduct outside of the courtroom include wilful breach of a court order, fabrication of evidence, and breach of an undertaking to the court (*Antoine* at para. 11).
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> [20] There are two categories of contempt: criminal and civil. Examples of criminal contempt include bribing a juror or witness, or attempting to influence a judge – conduct that includes an element of public defiance of the court's process in a way that is calculated to reduce societal respect of the courts (*United Nurses* at 931). Its purpose of prohibiting conduct that undermines a strong and effective justice system is the public element aspect (*United Nurses*; *Fresno Pacific University Foundation v Grabski*, 2015 MBCA 70).

[21] Examples of civil contempt include breaching the rules of court in a civil proceeding or disobeying a court order or judgment. The civil contempt remedy exists to address private wrongs (*United Nurses*), to ensure a party complies with a court judgment or order. It is not intended to be punitive (*Chiang (Re)*, 2009 ONCA 3 at para. 11; *Carey v Laiken*, 2015 SCC 17 ("*Carey*") at para. 31), however, punishment and deterrence are relevant at the stage of remedy, to prevent future breaches of court orders and to repair damage to the administration of justice.

[22] Procedurally in the Yukon, the applicant must comply with the notice provisions in Rule 59 and the terms of the order must be operative at the time of the hearing.

[23] The test for civil contempt has two stages. The first stage requires the applicant to establish three elements (*Carey* at paras. 32-35). First, the order allegedly breached must state clearly and unequivocally what should and should not be done. Second, the party alleged to have breached the order must have had actual knowledge of it — and this can include knowledge that is inferred or if the party is wilfully blind. Third, the party allegedly in breach must have intentionally done the act the order prohibits, or failed to do an act the order compels. In other words, it is not necessary to prove the party intended to breach the order; it is only necessary to prove the party intentionally committed an act or failed to do an act which has the effect of breaching the order.

[24] Because civil contempt proceedings are quasi-criminal in nature, the following interpretive principles and parameters apply:

i) the evidence in support of the application must conform to the rules of admissibility at trial: no hearsay, opinion, or conclusions;

ii) the applicants have the onus to prove the elements of contempt beyond a reasonable doubt; and

iii) if the order in question is ambiguous, the person alleged to have breached it is entitled to its most favourable construction.

> (*Peel Financial Holdings Ltd v Western Delta Lands Partnership*, 2003 BCCA 551 at para. 18,)
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> [25] The second stage occurs only if the applicant establishes all of the essential elements beyond a reasonable doubt. If they do not, the inquiry is at an end and the court must dismiss the application. At the second stage, the court decides whether to exercise its discretion to decline to make a contempt finding based on the facts and circumstances of the case at hand; and if it declines to do so, whether it should order a less severe remedy for the moving party (*Carey* at paras. 31-32; *Fiorito v. Wiggins*, 2015 ONCA 729 at para. 17).
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> [26] The court in *Antoine* summarized the purpose of civil contempt orders well at para. 14:
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> > The remedy of civil contempt of a court order is a mechanism designed to emphasize that orders cannot be ignored or disobeyed. It is founded on the fundamental principle that a court order stands binding and conclusive unless it is set aside at first instance or on appeal or is lawfully quashed. … The remedy reinforces the point that any wilful disobedience of court orders is a very serious matter that strikes at the very heart of the justice system. … (citations omitted)

[12] In this case, notice of this application as required by Rule 59 of the *Rules of Court* of the Supreme Court of Yukon was provided to the defendant and the Notice of Application clearly set out the facts on which the application is based, including the reason for the contempt application and the original order. That court order of April 9, 2024, was operative at the time of the hearing and continues to be operative.

[13] The following addresses how the elements of the test of civil contempt have been satisfied.

Order must state clearly and unequivocally what should and should not be done

[14] The order is clear – see the precise wording above in para. 8 of this decision. It requires the defendant to remove any Facebook posts identifying Connective and calling them Black-hating/hater, racist, phony. It also prevents the defendant from making additional posts identifying Connective or its employees and using these words.

Actual knowledge or wilful blindness of the terms of the order

[15] Plaintiff's counsel emailed a copy of the injunction order on April 22, 2024. The email address was provided by the defendant to plaintiff's counsel at the time an order for substituted service was sought. The defendant has sent and received messages from that same email address in legal proceedings involving Connective.

[16] Previously, the defendant was provided with all of the materials for the interlocutory injunction and the order for substitutional service by email. As well, hard copies of those materials were left at his apartment door. He had notice of the plaintiff's intention to obtain the injunction and was given the opportunity to respond.

[17] From all of this, the defendant either had actual knowledge of or was wilfully blind to the terms of the order.

Intentionally done the act or failed to do the act that resulted in a breach of the order

[18] The defendant continued to post new defamatory posts on his Facebook page after the order for interlocutory injunction was issued on April 9, 2024. The evidence is from the affidavit of the paralegal from the plaintiff's law firm, who accessed the defendant's Facebook page without the need of a Facebook account, and who provided screen shots of the new posts. There were posts in July, August, September, October, November 2024 and in January 2025, identifying Connective, and repeatedly calling and describing them as phony and racist.

[19] Further there is no evidence that the earlier Facebook posts, giving rise to the application for interlocutory injunction, have been removed from the Canadiansforfairtreatment page.

Discretion to decline to make a contempt finding

[20] Since all of the required elements for a civil contempt order have been proven beyond a reasonable doubt, the second stage is to determine whether the Court should exercise discretion to decline to make a finding.

[21] The Supreme Court of Canada has urged that a contempt order not be used routinely as a compliance mechanism (*Carey v Laiken*, 2015 SCC 17), and only as an enforcement power of last resort. The attempt to use a contempt order in this way could provide a rationale for the court to exercise its discretion not to grant a contempt order.

[22] In this case, similar to the findings in *Spurvey*, the defendant's disregard of the court order of the interlocutory injunction is consistent with the pattern of behaviour he has demonstrated throughout this proceeding and the related ones. He has made it difficult, unsafe, or impossible to serve him personally, requiring a substitutional service order by email; he has failed to respond to the materials filed; and he has failed to appear in Court without explanation. The purpose of the underlying actions and applications for interlocutory orders is to stop the publication of the prohibited material.

[23] For these reasons, a contempt finding is appropriate.

b) What is the appropriate penalty for contempt?

[24] The main objective of the remedy for civil contempt orders is compliance, not punishment, and to ensure respect for court processes.

[25] Factors set out in cases that thoroughly canvassed the considerations in deciding on a sentence or penalty for contempt of court (*Health Care Corp of St John's v Newfoundland and Labrador Assn of Public and Private Employees*, [2001] NJ No 17 (Nfld TD), cited in *Langford (City) v dos Reis*, 2016 BCCA 460 ("*Langford*") at para 16) are:

> 1. the inherent jurisdiction of the court, as a superior court, allows for the imposition of a wide range of penalties for civil and criminal contempt;
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> 2. deterrence, both general and specific — but especially general deterrence — as well as denunciation are the most important factors to be considered in the imposition of penalties for civil, as well as criminal, contempt;
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> 3. it is the defiance of the court order and not the illegality of any actions which led to the granting of the court order in the first place, which must be the focus of the contempt penalty;
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> 4. imprisonment is normally not an appropriate penalty for civil contempt where there is no evidence of active public defiance (such as public declarations of contempt; obstructive picketing; and violence) and no repeated unrepentant acts of contempt; and
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> 5. where a fine is to be imposed, the level of the fine may appropriately be graduated to reflect the degree of seriousness of the failure to comply with the court order.

[26] The plaintiff argues that at the time of filing the defendant meets the threshold for imprisonment, given the continued publicly accessible presence of the posts on the page, as well as his disregard of the court order to stop the publication. The plaintiff notes this is also the second instance of a contempt finding against the defendant. In the alternative, the plaintiff requests a fine of $3,000.

[27] The fines issued for contempt in the Yukon have ranged between $1,000 (*Gwich'in Development Corporation v Alliance Sonic Drilling Inc et al*, 2009 YKSC 19 –

a private commercial dispute) and $1,500 (*Spurvey*, plus an additional $1,500 if posts were not removed by a certain date), to $2,500 against each one of three partners for a total of $7,500 (*Whitehorse (City of) v Annie Lake Trucking Ltd*. 2022 YKSC 54 - breach of a consent order to cease commercial operations and vacate the land by a certain date).

[28] In British Columbia, the range of fines reviewed by the Court in *Langford* was $1,500-$7,500.

[29] While the defendant has demonstrated no respect for the court order, and none for court processes, an order of imprisonment at this stage would seem to have punishment as its objective, rather than compliance. Further, while his posts are publicly accessible, there is no evidence of how widespread they are, and no evidence of any other public protests.

[30] I agree with counsel for the plaintiff that an increase to the fine amount issued in *Spurvey* is warranted, given the ongoing defiance by the defendant. I will order that an amount of $2,500 be paid to the Territorial Treasurer, as contempt is an offence against the authority of the Court and the administration of justice and is a matter between the entity or person in contempt and the court, not between the litigants.

[31] The plaintiff shall also be awarded special costs, to which they are entitled under Rule 59(4) and at common law. In *Langford*, the court stated at para. 28, quoting from *North Vancouver (District) v Sorrenti*, 2004 BCCA 316:

> [28] It is axiomatic that contempt of a court order is reprehensible conduct, the signal feature of a special costs award. Such an award also serves to indemnify a party who is required to bring contempt proceedings to have an order obeyed. Therefore, such an award should be concomitant to

> a finding of contempt. I refer to this Court's disposition in *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316:
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> > [20] In her able submissions, however, Ms. Marzari referred us to the comments of Southin J.A. for the Court in *Everywoman's Health Centre Society (1988) v. Bridges* (1991) 54 B.C.L.R. (2d) 294, where she observed that it is a long-standing practice to award solicitor-client costs to the successful applicant in a civil contempt proceeding. She added that "[t]he practice is sound. A person who obtains an order from the court is entitled to have it obeyed without further expense to himself." …

Conclusion

[32] The defendant is found in contempt of court. He is ordered to pay a fine of $2,500. The plaintiff is entitled to special costs of these proceedings.

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DUNCAN C.J.