

SUPREME COURT OF YUKON

Citation: *Whitehorse (City of) v Annie Lake Trucking Ltd*,
2026 YKSC 76

Date: 20260821
S.C. No. 21-A0084
Registry: Whitehorse

BETWEEN

CITY OF WHITEHORSE

PLAINTIFF

AND

ANNIE LAKE TRUCKING LTD., also known as ANNIE LAKE TRUCKING 2021

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Nathan Lapper (by videoconference)

Appearing on behalf of the
Defendant

Richard Hunziker and
Trevor Hunziker

This decision was delivered in the form of Oral Reasons on August 21, 2026. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): This is the third application for civil contempt brought by the City of Whitehorse (the City) against Annie Lake Trucking, a family-owned business partnership. The City requests another contempt order and, instead of a fine, imprisonment of the partners for seven days. The City says Annie Lake Trucking has

intentionally breached a consent order they signed on March 22, 2022, as well as the second court order for contempt issued in January 2025.

[2] The March 2022 consent order confirmed:

- i. the termination of the lease between the City and Annie Lake Trucking for the City-owned property near Ear Lake (the land);
- ii. a prohibition on further quarrying or excavation of gravel for commercial use;
- iii. immediate removal of all items and materials stored or kept on the land; and
- iv. removal of all residential tenants and cessation of further residential use of the land by June 30, 2022.

[3] In July 2026, the City employees attending the site observed Richard Hunziker on site with a loader and two dump trucks removing gravel material. The City employees also observed an unoccupied mobile home, old appliances, junk vehicles, two abandoned campers, stockpiles of organic waste and waste asphalt, a recreational vehicle that appeared to be occupied, and a school bus that was likely occupied.

[4] Richard Hunziker and Trevor Hunziker appeared in court on August 14, without legal counsel, to respond to this application. They filed a response to the Notice of Application on November 26, 2025, in which they agreed that the fines of \$7,500, equally divided among the three partners ordered to be paid on October 13, 2022, remains unpaid. They objected to the other relief sought by the City. They wrote in their response that affidavits would be filed later but this did not happen. They advised they

have taken certain steps to comply with the order. At the hearing, they said they would need another year before it could be completed.

[5] I will first summarize the background to this matter and address whether Annie Lake Trucking is still in contempt of the March 22, 2022, consent order and of the second contempt order dated January 6, 2025. If I find that Annie Lake Trucking is in contempt, I will then address the penalty, taking into account the submissions of the Hunzikers. For both inquiries, I will review the applicable legal principles.

Background

[6] The background facts in this matter were set out in two previous decisions. I will not review them in detail here, but I will summarize them.

[7] From 2022, after the consent order was signed, to 2024, the City conducted numerous inspections of the land and held conversations with the Hunzikers. The inspections revealed that:

- Annie Lake Trucking continued to conduct a quarrying and excavation of gravel operation for commercial use on the land;
- they continued to store equipment and materials on the land;
- they continued to live in a mobile home on the land; and
- they continued to allow the caretaker to live on the land, despite agreeing to stop all of these activities in the consent order and being ordered by the court to do so in the consent order and the first contempt order.

[8] The January 2025 second contempt order gave Annie Lake Trucking until June 30, 2025, to remove all of the equipment, materials, structures, chattels, refuse,

mobile homes and trailers from the land, or be subject to another fine of \$7,500 for each partner (increased from \$2,500 for each partner from the first contempt order).

[9] The City has inspected the land on May 15, 2025; July 4, 2025; October 7, 2025; March 16, 2026; July 9, 2026; and July 31, 2026.

[10] During those inspections, the City staff have noted:

- Annie Lake Trucking continues to store equipment, vehicles, materials, and refuse at the land in breach of the Consent Order;
- there was evidence of active and ongoing quarrying operations on the land, including the presence of an excavator and other equipment used for extraction of gravel;
- physical evidence from the land suggests that a significant amount of gravel has been extracted from the land since the inspection held in 2024;
- the caretaker residence on the land appeared occupied;
- the motorhome previously occupied by Mr. John Duell appeared occupied at the May 15 and July 4, 2025, site visits, and the motorhome remained on the land but it did not appear occupied at or after October 7, 2025, site visit; and
- a recreational vehicle and one or more school buses remain on the land, which appear to be occupied.

[11] The City staff confirmed in the two July 2026 visits that:

- the caretaker residence is now unoccupied;
- the recreational vehicle and the school bus are occupied;
- Richard Hunziker was still removing material; and

- significant refuse remained on the land.

[12] Richard Hunziker said to the City employees who visited the land on July 9th, that he had a deadline of August 15 (the day after this court hearing) to remove his belongings. The land development supervisor from the City told Richard Hunziker that day that he could not remove gravel from the site. Richard Hunziker ignored this and continued to remove materials as the City personnel left.

[13] Trevor Hunziker advised at the August 14 hearing that they have taken steps to relocate their operations, including:

- dismantling the shop;
- obtaining a permit to relocate it;
- engaging a contractor to move the shop and reassemble it at a new location; and
- applying for a permit to relocate the mobile home trailer.

It is not clear at this time if an application has been made and a permit obtained.

[14] He also confirmed that several items were now gone from the land: the shop, including the tresses; a trailer; and other structures and equipment of some monetary value. He confirmed he no longer lived on the land. John Duell, the caretaker invited by the Hunzikers' father to live on the land many years ago, has left. Trevor Hunziker admitted that garbage, refuse, other materials and equipment that is difficult to move (five to six pieces) remains on the land.

[15] Richard Hunziker said that the low-bed truck, tractor, and loader were to be moved the weekend of August 15.

[16] Both of the Hunzikers further said that excavated sand and gravel remained to be moved. They said this material had been excavated 10 years ago and royalties paid. Trevor Hunziker confirmed someone was living in the school bus on the property and someone else was living in a camper/recreational vehicle beside the old trailer. He said he did not know them, and they have not complied with his requests to leave.

Analysis

Contempt Order

Legal Principles for contempt order

[17] The test for contempt was reviewed in my last two decisions in this matter:

[28] The test for civil contempt has two stages. In the first stage, three elements must be established beyond a reasonable doubt:

- the order allegedly breached must state clearly and unequivocally what should and should not be done;
- the party alleged to have breached the order must have had actual knowledge of it, including knowledge that is inferred, or if the party is wilfully blind; and
- the party allegedly in breach must have intentionally done the act the order prohibits or failed to do any act the order requires. This does not require proof of an intention to breach the order, only proof of an intention to do or not do an act, the effect of which is a breach of the order. (citation omitted)

[29] The evidence in support of a contempt application must conform to the rules of admissibility at trial: no hearsay, opinion, or conclusions. If the order is ambiguous, the party allegedly in breach is entitled to the most favourable construction. (citation omitted)

[30] If these three elements are established beyond a reasonable doubt, the second stage occurs. In that stage, the court decides whether to exercise its discretion to decline

to make a contempt finding on the facts and circumstances of the specific case. It may decline to do so where it may result in an injustice in the circumstances of the case. (citation omitted)

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[18] The purpose of a contempt order has been described by the Supreme Court of Canada in *Carey v Laiken*, 2015 SCC 17 as follows:

[30] Contempt of court “rest[s] on the power of the court to uphold its dignity and process ... The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect”. It is well established that the purpose of a contempt order is “first and foremost a declaration that [the] party has acted in defiance of a court order”. (citations omitted)

Application to the Facts

[19] In this case, the three elements of civil contempt have been proved beyond a reasonable doubt. Affidavits filed by Kinden Kosick, land development supervisor for the City dated November 14, 2025; April 1, 2026; and August 7, 2026, detailed his observations at the site inspections and attached multiple photographs of each visit to substantiate the observations.

[20] As noted in the earlier decisions, the consent order was clear and unambiguous about what it obliged Annie Lake Trucking to do and when it was required to be done. It was a consent order signed by the lawyer at the time for Annie Lake Trucking. There is no indication Annie Lake Trucking through its partners did not have actual knowledge of the order. Richard Hunziker’s appearance at the hearing in December 2025 confirmed his knowledge, and Trevor and Richard Hunziker’s appearance at the hearing on August 14, 2026, further confirmed their knowledge.

[21] Trevor Hunziker said on August 14, 2026, that, while at the beginning he hoped to come to an agreement with the City, he did not have any fight in him anymore and he was “going to fold”. Both Hunzikers said however they needed another year to finish the process of leaving the site.

[22] They have intentionally failed to comply with the terms of the orders. They knew they had time deadlines (June 30, 2022, for the consent order; and June 30, 2025, for the second contempt order) but they have continued to disregard those deadlines and instead established their own timelines. This demonstrates an intentional failure to comply with the orders.

[23] Having found that all three elements have been proved beyond a reasonable doubt, the next step is to decide whether the Court should decline to issue a contempt order on a discretionary basis.

[24] While a contempt order is a tool of last resort and not to be used routinely as a compliance mechanism or a way to enforce orders, I have decided to issue a third contempt order. The City has shown forbearance and reasonableness in continuing to allow Annie Lake Trucking ample time to comply with the order to which they agreed in March 2022. Despite the City’s reasonableness in meeting with the Hunzikers, hearing their concerns, giving them extra time and notice before bringing court applications, the Hunzikers have continued to extract gravel contrary to the order and without a lease, continued to delay moving their materials off of the property, and continued to treat City personnel disrespectfully.

[25] As I said in my January 2025 decision, the reasonable and unsuccessful attempts by the City to obtain Annie Lake Trucking's compliance with the consent order have confirmed the ongoing need for a contempt order.

Penalty

[26] The next question is what the penalty should be. The City has abandoned its request for an additional fine, given Annie Lake Trucking's non-compliance with the two previous orders for payment of fines, and instead the City has asked for seven days' imprisonment of each of the Annie Lake Trucking partners. The City says they have taken every possible step to obtain voluntary compliance, and committal is the only remaining available avenue. While the City recognizes that some progress towards compliance has occurred, they do not agree that enough work has been done to support a purging of the contempt order or a lesser penalty.

Legal Principles for penalty

[27] The penalty for civil contempt orders is authorized by the inherent jurisdiction of the Court as a superior court. Rule 59 of the Supreme Court of Yukon *Rules of Court* sets out the power of the court to punish contempt, that it shall be exercised by imprisonment or by imposition of a fine or both (Rule 59(2)). Where a corporation has wilfully disobeyed a court order, a fine may be imposed against the corporation, and one or more directors or officers may be imprisoned or subject to a fine (Rule 59(3)). Here, Annie Lake Trucking is a partnership, not a corporation, and I have interpreted Rule 59(3) to extend to partners in a partnership.

[28] The objectives in sentencing for civil contempt were described by the Supreme Court of Canada in several earlier cases.

[29] The first one is *Vidéotron Ltée v Industries Microlec Produits Électroniques Inc.*, [1992] 2 SCR 1065 (*Vidéotron*) where the court described the purpose of a penalty for civil contempt as enforcing compliance with a court order and ensuring societal respect for the courts.

[30] Further, in a quote from *Boily v Carleton Condominium Corp.* 145, 2014 ONCA 574, the Court wrote at para. 79:

... the remedy for civil contempt is designed not only to enforce the rights of a private party, ... but also to enforce the efficacy of the court process itself. (citations omitted)

[31] The Supreme Court of Canada in *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 SCR 901 as well wrote:

... 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 dependent 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 (at 931).

[32] The Supreme Court of British Columbia in *Transportation Lease Systems Inc. v Viridi*, 2009 BCSC 695 also described the purpose at para. 14 as follows:

... There can be no doubt of the importance that this Court places on the rule of law and the need for the obedience of its orders. It is not one person's deliberate disobedience of a court order that brings the judicial process into disrepute. It is the apparent inability of courts to enforce their orders that does that.

[33] Finally, a relevant comment was made in a 1952 Nova Scotia decision by then Chief Justice Farris (*Canadian Transport Company Limited v Alsbury et al*, 1952 CanLII 430 (BC SC)):

... Once our laws are flouted and orders of our [court] treated with contempt the whole fabric of our freedom is

destroyed. We can then only revert to conditions of the dark ages [where] the only law recognized was that of might. One law broken and the breach thereof ignored is but an invitation to ignore further laws and this, if continued, can only result in the breakdown of the freedom under the law which we so greatly prize ... (at 478)

[34] Deterrence is part of the consideration for penalties for civil contempt - both to deter the individual subject to the order and to deter others from similar conduct. In

Larkin v Glase, 2009 BCCA 321, the Court wrote:

[51] ... Remorse is relevant to deterrence. A party who recognizes the error of disobedience and acts on it signals to society at large respect for court orders. Lack of remorse conveys the opposite message.

[35] Other factors relevant in this case for the sentencing of civil contempt were identified by the court in *Health Care Corp. of St. John's v. Newfoundland and Labrador Assn. of Public and Private Employees* (2001), 102 ACWS (3d) 545 (Nfld SC (TD)). At para. 2, the Court wrote:

4. It is the defiance of the court order and not the illegality of any actions which led to the granting of the court order... which must be the focus of the contempt penalty;

5. 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;

...

9. In setting the overall level of penalty, the court may take into account the level of penalty imposed in similar cases in the past and may adjust the penalty upwards or downwards, depending on the court's assessment as to whether previous levels of penalty have had an effective general deterrent effect.

[36] I am also aware of the general approach of courts considering penalties for civil contempt: the power to punish for contempt must be used sparingly and

[24] ... Every opportunity must be given in appropriate circumstances for individuals who are found in contempt of court to purge that contempt. Penalties short of incarceration must always be considered. (*Law Society of BC v Dempsey*, 2007 BCSC 442)

Application to the Facts

[37] In this case, I have considered the history of this matter, including the fact that it has been difficult for Richard and Trevor Hunziker to accept that their family business started almost 40 years ago by their father, Bud Hunziker, who passed away recently — and my condolences to you for that — can no longer operate in the Ear Lake pit. I have also noted that some progress has occurred since the last court appearance in January 2025, as evidenced by the photos from the City and the submissions of Trevor and Richard Hunziker about what has been removed, including the shop and some equipment, and I recognize that this has cost time and money.

[38] I note that neither Trevor Hunziker nor John Duell are living on the land, and Trevor Hunziker has said that in his past encounters with the City “emotions were very high” and now he is “not that guy” and he “does not have the fight” in him.

[39] However, the following factors have persuaded me that incarceration is necessary to demonstrate to the Hunzikers that court orders must be respected.

- the original order of March of 2022 was agreed to by Annie Lake Trucking through its lawyer.
- four and a half years later, it has not been complied with despite conversations between the Hunzikers and the City; despite long periods of

time where the City could have taken legal action but did not; and despite two contempt orders, the second of which gave additional time for Annie Lake Trucking to comply, Annie Lake Trucking continued to disregard them.

- while some work towards compliance with the order has occurred, the evidence from the City is (which I accept) that extraction of gravel for commercial use is still occurring; that much refuse, garbage, and equipment still remains on the land; and that at least two people are residing on the land — all contrary to the orders.
- the Hunzikers have not apologized to the City or the Court, have not shown remorse, have not provided any reason for non-compliance with orders other than it will cost a lot of time and money, and they are upset because their family business of almost 40 years is being forced to relocate.
- the Hunzikers could have advocated against the official community plan amendment which prompted the termination of the lease, but they did not; they could have applied to set aside the consent order, but they did not.
- the Hunzikers have set their own timelines rather than following the consent order and court order deadlines, demonstrating a sense of entitlement to remain on the land and continuing to operate their business on the land.

[40] The Hunzikers have had ample time to respect these orders. The City has tried everything, short of incarceration to obtain compliance. The Hunzikers have

demonstrated repeated and unrepentant acts of contempt and are not taking the court orders seriously.

[41] As the Court wrote in *Arnouse v August-Sjodin*, 2020 BCSC 983, incarceration is the only penalty that reflects the seriousness of these breaches and of your conduct and shows you “and others that deliberate disobedience of court orders out of a sense of entitlement ... or for retaliation ... is unacceptable conduct” (at para. 20).

[42] It seems to me that the Hunzikers’ way of coping with their sense of frustration, loss, anger, and grief at not being able to renew the lease for their business, like their father was able to do for many years, has been to assert an unfounded entitlement to the land and resources and to resist anyone trying to take it away from them.

[43] While the level and intensity of that resistance has decreased — as to their credit, they have found alternative sites and ways to carry on their business — they have deliberately disregarded the court orders, and they have told this Court that they plan to continue to disregard the orders by taking another year to move everything out — and presumably by continuing to excavate sand and gravel for commercial use.

[44] They cannot amend a court order unilaterally. They have had four and a half years to comply, have not done so, and expressed their intention to keep defying the order. Almost 13 months have passed since they were required by the second contempt order to have everything completed.

[45] I conclude that an appropriate proportional penalty for the finding of contempt is five days’ incarceration. I note that this is at the low end of the range, as the penalties for contempt, cited in *Transportation Lease Systems*, range from 13 days to four

months. The City has asked for seven days; I have reduced it to five days in recognition of some progress made over the last year or so.

[DISCUSSIONS RE SERVING SENTENCE]

[46] I will extend that to the end of the year. I recognize it is going into winter, but I think things can still be moved in winter and often we do not get snow until December, so I will give Annie Lake Trucking until December 31, 2026, to complete your move out.

[47] The order will go, then, that:

- (a) The Court declares that the Defendant, Annie Lake Trucking, is in contempt of the Consent Order entered on March 22, 2022, and the Contempt Order of this Court entered on January 6, 2025.
- (b) The Court orders a committal of five days be imposed against Richard Hunziker and Trevor Hunziker of the Defendant.
- (c) The Court orders that the fine of \$7,500, in total, equally divided among each of the three partners of Annie Lake Trucking and ordered by the Court to be paid on October 13, 2022, remains payable to the Territorial treasurer.
- (d) The Court orders that the fine of \$7,500, for each of the partners of Annie Lake Trucking ordered to be paid on January 6, 2025, remains payable by each of the partners of Annie Lake Trucking to the Territorial treasurer.
- (e) Annie Lake Trucking shall remove all equipment, materials, structures, chattels, refuse, mobile homes/trailers at the latest by December 31, 2026, from the land.

[DISCUSSIONS RE SPECIAL COSTS]

[48] Yes, special costs to the City.

[DISCUSSIONS RE DEFERRAL OF SENTENCE]

[49] Since Mr. Lapper has not indicated great objection to your request for this to be deferred for one week and since you have said that you are long-time residents of the Yukon and there is unlikely to be a flight risk and that you are honest and say you will comply, then I will grant your request to defer this for one week. So, that would be August 28, Friday, and you should report directly to the Whitehorse Correctional Centre, both of you, at 5:00 p.m.

[DISCUSSIONS RE DEFERRAL OF SENTENCE]

[50] It will be five days, though. They will calculate when the five days starts and when the five days ends.

[DISCUSSIONS RE DEFERRAL OF SENTENCE]

DUNCAN C.J.