

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

AHM TRANSPORT INC., AISHKA EXPRESS 2016 INC., AISHKA EXPRESS INC., AISHKA
RECYCLING INC. and TANUSH TRANSPORT INC.

Respondents

BOOK OF AUTHORITIES OF THE RECEIVER

(Receiver's Motion returnable May 4, 2026)

April 17, 2026

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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00728550-00CL DATE: December 13, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. et al**

BEFORE: **JUSTICE W.D. BLACK**

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ENDORSEMENT OF JUSTICE W.D. BLACK:

Overview

- [1] The Receiver was before me today seeking a contempt order against the following individuals and entities (the “Contemnors”) on the basis that they have intentionally defied clear and unambiguous orders of this court: (i) Canadian Motor Freight Ltd. (“CMF”); (ii) 2568403 Ontario Inc. (“256”, and, together with CMF, the “Debtors”); (iii) Imran Hussein, Satbir Singh Kahlon, and Sukhdeep Sing Arora (“Debtor Management”); (iv) United Group of Companies Ltd. (“United”); and (v) Makhan S. Bajwa, Dev Mangat and Taj Dhaliwal (“United Management”). All of the Contemnors, and their counsel, appeared in person.
- [2] More specifically, the Receiver asserts that the Contemnors have refused to comply with and have willfully breached my orders of November 5, 2024 (the “Receivership Order”) and December 2, 2024 (the “Asset Recovery Order” and, from time to time together with the Receivership Order, the “Orders”), within this receivership proceeding under the Bankruptcy and Insolvency Act (the “BIA”).
- [3] Under both Orders, the Contemnors were required to deliver to the possession of the Receiver all of the property and assets of the Debtors, without, as the Receiver puts it, “any strings attached.” In particular, the Contemnors were specifically and unequivocally ordered to facilitate the Receiver’s retrieval of vehicles and trailers belonging to the Debtors (the “Fleet Assets”) from premises operated by United (the “United Yard”).
- [4] Rather than complying with the Orders, the Receiver asserts, the Contemnors have stalled and delayed the release of the Fleet Assets to the Receiver, offering up insubstantial excuses why they could not or would not do so, even in the face of increasingly stern admonitions from this court that their cooperation was not just expected but unequivocally required.

Conclusion re Contempt

- [5] In the circumstances, as discussed below, I have no difficulty finding all of the Contemnors to be in contempt of this court’s orders. While the Receiver argued, as alternative positions, that findings of both Civil and Criminal contempt are available and appropriate on this record, I conclude that a finding of Civil contempt relative to each Contemnor is the appropriate disposition here.

Relevant Background

- [6] The Debtors are related Ontario corporations engaged in the freight trucking business. Their primary place of business and warehouse is located at 400 Brunel Road in Mississauga, Ontario (“400 Brunel”).
- [7] Messrs. Hussain, Kahlon and Arora (i.e. Debtor Management), are the directors, managers and shareholders of the Debtors.
- [8] United operates a freight trucking and vehicle and trailer storage business. Its registered office is in Brampton, but its principal place of business is located at the United Yard (at 1911 Eglinton Avenue East in Mississauga, Ontario).

- [9] Mr. Bajwa is the sole officer and director of United. Mr. Mangat and Mr. Dhaliwal are managers of United. Mr. Mangat is the Chief Executive Officer (“CEO”) and Mr. Dhaliwal holds the title of Manager, Operations & Logistics.
- [10] By August 28, 2024, the Debtors were in default of substantial secured loan repayment obligations to Canadian Western Bank (“CWB”). As a result, CWB applied for a receivership order under section 243(1) for the BIA, and on October 9, 2024, Justice Kimmel appointed Ernst & Young Inc. (“EY”) as interim receiver of the property, assets and undertaking of the Debtors.
- [11] On November 5, 2024, I appointed EY as Receiver (i.e. no longer interim receiver), effective November 15, 2024 (i.e. the Receivership Order). The effective date of the receivership was delayed, at the request of the parties, specifically for the purpose of giving the Debtor Management time to return the Fleet Assets back to 400 Brunell to allow the Receiver to take possession of them.
- [12] Although there are other assets subject to the receivership, the main assets at issue on this contempt motion are the Debtors’ Fleet Assets.
- [13] On November 15, 2024, the Receiver attended at 400 Brunel to meet with Debtor Management and to take possession of the Fleet Assets. Debtor Management advised that the Fleet Assets were no longer at 400 Brunel, and had instead been moved to the United Yard.
- [14] These facts form the basis of the Receiver’s request for a contempt order against the Debtors and Debtor Management.

Breaches of Receivership Order

- [15] The Receivership Order gives the Receiver the power to take possession of assets, including the Fleet Assets, without interference from any person. It also requires the Debtor and Debtor Management to advise the Receiver of the existence of any Property (as defined in the Receivership Order, and including the Fleet Assets) in their possession, and to grant immediate and continued access to such Property and to deliver it to the Receiver upon the Receiver’s request.
- [16] As noted, instead of allowing the Receiver to take possession of the Fleet Assets “without interference,” and delivering the Fleet Assets to the Receiver as required by the Receivership Order, Debtor Management instead sent the Fleet Assets to United and United Management.
- [17] I find that this was a clear breach of the Receivership Order.
- [18] Counsel for the Debtors and Debtor Management took the position before me today that, once they had transferred the Fleet Assets to United and United Management, the Fleet Assets were no longer under their control, and, implicitly, no longer their problem.
- [19] This misses the point. The Debtors and Debtor Management had no right to transfer the Fleet Assets in the face of the Receivership Order, and I find that to do so, intentionally and with specific knowledge of the Receivership Order and its requirements, was a clear breach.
- [20] The breaches by United and United Management are equally clear.

- [21] As noted, by November 15, 2024, when the Receiver attended at 400 Brunel to take possession of the Fleet Assets, those assets had already been transferred, without notice or authorization, to the United Yard.
- [22] The Receiver therefore went to the United Yard that same day, November 15, to confirm and take an inventory of the Fleet Assets that had been taken there.
- [23] On that day, the Receiver identified 50 Fleet Assets parked in the United Yard. The Receiver later confirmed the specific Fleet Assets at the United Yard by VIN searches, PPSA searches and information provided by third-party lessors of certain Fleet Assets.
- [24] On November 15, 2024, the Receiver met with Mr. Dhaliwal and Mr. Mangat at the United Yard, and provided them with a copy of the Receivership Order. The Receiver sought to negotiate a short-term arrangement with Mr. Dhaliwal and Mr. Mangat for the use of parking spots at the United Yard until the Receiver could coordinate the removal of the Fleet Assets.
- [25] There then followed, in the next few days, an exchange of proposed lease documents and provisions, during the course of which the Receiver sent United a cheque, despite no arrangement having been finalized, for the storage of Fleet Assets on a per diem basis. The Receiver explains in its evidence that although based on the clear language of the Receivership Order, it had no obligation to pay United (or anyone else), it did so as a good faith attempt to maintain a positive working relationship and arrangement with United.
- [26] On November 21, 2024, the Receiver re-attended at the United Yard to discuss again with Mr. Dhaliwal and Mr. Mangat the arrangements with respect to the Fleet Assets at the United Yard. On that day, the Receiver also arranged for one of the Debtors' third-party lessors to attend at the United Yard to remove 11 of the Fleet Assets, that had been leased to the Debtors.
- [27] The Receiver waited approximately six hours at the United Yard that day, accompanied for a period of that time by the third-party lessor, only to be advised by Mr. Dhaliwal that United would be denying the Receiver access to the United Yard, and that United would not release any Fleet Assets to the Receiver.
- [28] Communications between the Receiver and United Management continued for the next few days, during which the Receiver reiterated that pursuant to the Receivership Order, United was obliged to grant the Receiver full and immediate access to the United Yard so that the Receiver could take possession of the Fleet Assets, without interference.
- [29] United Management continued to stall, and to refuse the Receiver access to the United Yard and to the Fleet Assets, in clear violation of the Receivership Order.

Receiver Advises it will Seek Further Order

- [30] On November 26, 2024, counsel for the Receiver delivered a letter to United that emphasized United's obligation to cooperate with and assist the Receiver under the Receivership Order, and advised that unless United granted the Receiver immediate access to the United Yard, the Receiver would seek a further order from the court compelling United to release the Fleet Assets.

- [31] Mr. Dhaliwal responded that day, saying that United would not release the Fleet Assets until the Receiver paid alleged outstanding lien invoices up to November 26, 2024. Not only was this purported condition never raised before November 26, but the Receiver has since confirmed that no such alleged liens exist.
- [32] On November 28, 2024, the Receiver advised United that a further hearing before this court had been scheduled for December 2, 2024, and that the Receiver would be seeking an order at that time compelling United to provide access to the United Yard to allow the Receiver to take possession of the Fleet Assets.
- [33] On November 29, 2024, the Receiver served United with its motion materials for the December 2, 2024 hearing.

The December 2 Motion and the Asset Recovery Order

- [34] I heard the Receiver's motion on December 2, 2024. Various interested parties attended before me, including Mr. Dhaliwal (by Zoom). I heard submissions from a number of those in attendance that day, including from a Mr. Surinder Singh Begda, a non-lawyer speaking on behalf of a company called IS Trucking Limited, which had an interest in the outcome of the motion. Mr. Dhaliwal made no submissions before me that day, and did not seek to do so. If he had, I would have heard any submissions he wished to make.
- [35] At the conclusion of the hearing on December 2, 2024, I issued the Asset Recovery Order, which the Receiver delivered on that same day to United, Mr. Dhaliwal and Mr. Mangat.
- [36] Still on the same day, after delivering the Asset Recovery Order, the Receiver contacted Mr. Dhaliwal (eventually reaching him late that day after a number of attempts). Mr. Dhaliwal, who was at that stage specifically aware of the Asset Recovery Order, told the Receiver that he understood that he had 72 hours to comply with the order, and that he needed time to consult with other representatives of United.
- [37] The Receiver advised Mr. Dhaliwal that this was a misinterpretation of the Asset Recovery Order, that there was no allowance for 72 hours to comply, and that in fact United and United Management were obliged immediately to comply with the Asset Recovery Order. The Receiver scheduled a call with Mr. Dhaliwal the next morning – December 3, 2024 – to discuss the arrangements for the Receiver to remove the Fleet Assets.
- [38] Also on December 2, 2024, the Receiver attended again at the United Yard, and observed that the Fleet Assets, or at least many of them, remained at the United Yard that day. The Receiver was unable to enter the United Yard to conduct a complete inventory to ensure that all 50 Fleet Assets were still present at the United Yard at that time, but did photograph some of the Fleet Assets that it could see and identify in the United Yard that day. Importantly, the Receiver filed in the record before me today date-stamped photographs taken that day to confirm the presence of Fleet Assets that the Receiver could see and photograph at that time.
- [39] On December 3, 2024, the Receiver had a call, as scheduled, with Mr. Dhaliwal and Mr. Mangat, in which the Receiver repeated that, under the terms of the Asset Recovery Order, United was required to provide the Receiver immediate access to the United Yard and to release the Fleet Assets to the Receiver.

Breaches of the Asset Recovery Order

- [40] Mr. Dhaliwal and Mr. Mangat told the Receiver that they were not prepared to comply with the Asset Recovery Order at that time, purportedly because they were not given an opportunity to speak during the December 2, 2024 motion before me, and because no arrangements had been made by the Receiver to pay United.
- [41] I note that neither of these suggestions bears any weight. As noted, Mr. Dhaliwal was present before me on December 2, 2024 at the hearing of the Receiver's motion and did not make, or to my recollection seek to make any submissions. Moreover, neither the Receivership Order or the Asset Recovery Order requires the Receiver to make any payments as a precondition of retrieving the Fleet Assets. Although the Receiver had discussed with United Management earlier on the possibility of compensating United for storing the Fleet Assets, and had even made one gratuitous payment in that regard, the Orders are clear that there is no obligation for the Receiver to do so, a fact that the Receiver made clear to United and United Management at various points.
- [42] Importantly, Mr. Dhaliwal and Mr. Mangat did not tell the Receiver, during the call on the morning of December 3, 2024, that, during the days leading up to the December 2 hearing, and following the December 2 hearing and their knowledge and receipt of the Asset Recovery Order, they and United had been surreptitiously moving the Fleet Assets away from the United Yard to undisclosed locations.
- [43] Also on December 3, 2024, the Receiver had a call with certain third-party lessors of certain Fleet Assets, one of which – Volvo – had tracking devices on certain Fleet Assets it leased to the Debtors. Volvo advised the Receiver that those tracking devices indicated that four of the Fleet Assets had been moved out of the United Yard, under cover of darkness, in the middle of the night on December 1, 2024, after United having received notice of the December 2, 2024 motion. The Volvo assets with tracking devices had been moved to 1625 Shawson Drive in Mississauga, Ontario (the "Matheson/King Yard").
- [44] As a result of learning from Volvo that certain Fleet Assets had been moved with notice or permission, the Receiver became concerned that other Fleet Assets had been moved to undisclosed locations beyond the reach of the Receiver and this court. The Receiver delivered to United on December 4, a letter dated December 3, 2024, advising that such conduct constituted a flagrant breach of the Orders, and requesting confirmation that United would comply with the Asset Recovery Order by 10:00 a.m. on December 4, 2024.
- [45] The Receiver received no response to this letter.
- [46] The Receiver conducted searches indicating that two businesses appear to occupy and operate at the Matheson/King Yard: (i) a business known as Matheson Collision; and (ii) a business known as King Towing. The Receiver also identified the officers and directors of 2488330 Ontario Inc. operating as Matheson Collision, and 2750726 Ontario Inc., which owns the land on which the Matheson/King Yard is situate. There are common directors and officers between the two entities.
- [47] The Matheson/King Yard is located reasonably close to the registered office of the Debtor CMF and to the United Yard.
- [48] King Towing appears to operate from the same premises as Matheson Collision, and its officers and directors also overlap with 2488330 Ontario Inc. and 2750726 Ontario Inc.

- [49] The Receiver was advised at a point before today's hearing before me, by counsel for United, that King Towing was the company that had towed the Fleet Assets from the United Yard.
- [50] On that note, when the Receiver attended the United Yard on December 5, 2024 to determine whether any additional Fleet Assets had been moved out of the United Yard, the Receiver could not identify any of the Fleet Assets. As subsequently confirmed in evidence filed before me by United, all of the Fleet Assets had in fact by then been moved out of the United Yard.
- [51] On that same date, December 5, the Receiver attended at the Matheson/King Yard, and saw at least one of the Fleet Assets there. However, a representative of Matheson Collision refused the Receiver access to the Matheson/King Yard, and advised that Matheson Collision would not provide any information to the Receiver about the Fleet Assets.
- [52] Similarly, and remarkably, during the Receiver's attendance at the United Yard that day, at which time the Receiver observed that all Fleet Assets had been moved, Mr. Dhaliwal also refused to provide any information to the Receiver about how and where the Fleet Assets had been moved.

December 6 (Ex Parte) Motion

- [53] In these circumstances the Receiver brought an ex parte motion before me on December 6, 2024, seeking an order to allow for substituted service on certain proposed responding parties, and seeking a hearing date for the contempt motion which was booked to proceed before me today.
- [54] As noted, the Debtors and Debtor Management, and United and United Management were all in attendance before me today and represented by counsel.
- [55] Both of these sets of responding parties had filed materials.

Discussion of Positions taken today by Contemnors

- [56] As noted above, the position set out in the materials filed by the Debtors and Debtor Management, and echoed in their counsel's submissions, was that once the Debtors had transferred the Fleet Assets to United on November 15, 2024, the Debtors and Debtor Management no longer had any responsibility for the Fleet Assets.
- [57] Also as noted above, I disagree, and find that the steps taken by the Debtors and Debtor Management to move the Fleet Assets without notice to or authorization from the Receiver constitute a breach of the Receivership Order.
- [58] United, and United Management, in their materials, actually confirm, again remarkably, that during the period November 25, 2024 to December 1, 2024, they arranged for the Fleet Assets to be removed from the United Yard and taken to the Matheson/King Yard and elsewhere. The materials filed by United gave no details concerning the current location of the Fleet Assets.
- [59] Those materials also contain a number of demonstrably false statements. For example, and troublingly, the materials represent, as set out above, that all of the Fleet Assets were gone from the United Yard by December 1. In fact, as also set out above, there is photographic evidence that the Receiver filed in the record before me showing definitively that in fact at least some of the Fleet Assets remained in the

United Yard on December 2, 2024, and were obviously removed at some point following the Receiver's attendance at the United Yard that day.

- [60] I suspect that the representation in the materials filed by United and United Management that all Fleet Assets had been removed from the United Yard by December 1, was an attempt to avoid the significant concerns associated with United continuing to transfer the Fleet Assets after being specifically aware of the Asset Recovery Order that I made on December 2, 2024.
- [61] In his submissions before me, counsel for United and United Management purported to say that the Orders, and the Receiver's conduct and representations, somehow created confusion on the part of United and United Management as to what their obligations were.
- [62] I reject these submissions entirely. The Orders are clear on their face, and were explained by the Receiver on multiple occasions. I find that the respondents were intent on playing a shell game with the Fleet Assets, and were in no way confused as to what the Orders required of them. They simply and patently chose to ignore those obligations.
- [63] In fact, it is evident that United continued to move Fleet Assets following, and in direct contradiction to the Asset Recovery Order, and I find that this was a flagrant and intentional breach of the Asset Recovery Order.
- [64] I also find that the movement of the Fleet Assets even before December 2 (inasmuch as it appears that some of the Fleet Assets were moved before December 2 and some after), was also a flagrant and intentional breach of the Receivership Order.
- [65] In fact I find that United's conduct throughout, and that of United Management, has been in the nature of "thumbing its nose" at this court and its process, characterized by an ongoing attempt to shake down the Receiver for payments to which United is not entitled, and by way of a deliberate strategy to shield and hide the Fleet Assets from the Receiver, again in flagrant breach of the Orders.
- [66] In the circumstances as described, I easily find the Debtors, Debtor Management, United and United Management to be in contempt of this court and its orders.

Receiver's Argument in Support of Contempt Orders Sought

- [67] As noted, the Receiver seeks findings of criminal and/or civil contempt against the responding party Contemnors.
- [68] They reference and rely on McLachlin C.J. (as she then was) in the Supreme Court of Canada's decision in *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC), in which she wrote:

"Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect."

- [69] On the basis that a receivership differs from an ordinary civil proceeding between two private parties, and takes place under the auspices of the BIA, which by its nature engages the public interest in the

administration of justice of an orderly insolvency regime involving a substantial number of stakeholders, the Receiver argues that the circumstances in this case meet the test for a criminal contempt order (and the Receiver sets out a persuasive analysis under relevant law showing that both the *actus reus* and *mens rea* for criminal contempt are made out on these facts).

[70] In its submissions, the Receiver also cites the decision of Conway J. in *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC, 4006, in which, in part, Her Honour reviewed the elements of criminal contempt that must be proved beyond a reasonable doubt to make such a finding.

[71] The Receiver fairly notes that, in order to show criminal contempt, it must be demonstrated in the context of the *actus reus* that “the accused defied or disobeyed a court order in a public way,” and, for the *mens rea*, that “the accused’s public defiance or disobedience of the court order was done with intent, knowledge, or recklessness as to the fact that the public disobedience will tend to deprecate the authority of the court.”

[72] While it is a close call, I do not find beyond a reasonable doubt that the Contemnors’ conduct involves the level of public defiance described in Conway J.’s decision in *Castillo* (and elsewhere). I appreciate that the “public” requirement here does not literally require open defiance in the public square, but in the case before me I find that, albeit that the conduct was intentionally in defiance of the Orders, it was also largely surreptitious and deceitful. In my view, the “public” nature of the BIA proceedings does not transform this surreptitious conduct – albeit disgraceful – into a public defiance of the court in the way contemplated in the case law relative to criminal contempt.

[73] However, civil contempt is another matter.

[74] The familiar test for civil contempt is set out in the Supreme Court of Canada’s decision in *Carey v. Laiken*, 2015 SCC 17. It requires that:

- (a) The order alleged to have been breached must state clearly and unequivocally what should and should not be done;
- (b) The party alleged to have breached the order must have had actual knowledge of it; and,
- (c) The party allegedly in breach of the order must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

Finding Contempt

[75] I find that the Receiver has proved each of the required elements of the test for civil contempt beyond a reasonable doubt.

[76] As set out above, I find that the terms of the Orders that have been breached by the Contemnors are clear and unequivocal, and I do not accept the submissions, in particular on behalf of United and United Management, that the Contemnors somehow did not understand these clear terms.

[77] The language of the Orders is straightforward and unambiguous. There can be no uncertainty about the power of the Receiver under the Orders to “take possession and exercise control over” the relevant property and assets “without interference from any other Person.” I note that the Debtors and Debtor Management have been represented by counsel at all material times, and that United and

United Management have had counsel at least since just after the Asset Recover Order. It is simply not credible that the Contemnors did not understand the Receiver's mandate and power under the Orders.

- [78] Likewise there can be no confusion as to the obligation "to grant immediate and continued access to the Property to the Receiver, and [to] deliver all such Property to the Receiver upon the Receiver's request." There is no ambiguity in this language, and no scope for the Contemnors' purported interpretation that it gave them license to negotiate and delay. This is particularly so inasmuch as the Receiver and its counsel explained on multiple occasions, including in writing, the clear obligations of the Contemnors.
- [79] There is also no doubt that the Contemnors had actual knowledge of the Orders. As noted, the Debtors and Debtor Management have been represented by counsel throughout. Their counsel attended at the motion at which I granted the Receivership Order, and at the motion at which I granted the Asset Recovery Order.
- [80] The United Group and United Management met with the Receiver on November 15, 2024, and received a copy of the Receivership Order that day. As noted, Mr. Dhaliwal attended at the December 2, 2024 hearing at which I granted the Asset Recovery Order, and United and United Management had a call with the Receiver on December 3 during which the Receiver explained and emphasized the need for compliance with the Orders. United and United Management engaged counsel then or soon thereafter, and so, again, there is no basis for any legitimate suggestion that they did not understand what the Orders required.
- [81] In terms of the "intent" element of civil contempt, the Castillo decision confirms that "All that is required is the intentional commission (or omission) of an act that is in fact prohibited (or required) by the order. As Cromwell J.A. explained in *TG Industries*, '[t]he required intention relates to the act itself, not to the disobedience'."
- [82] It is inescapable in the evidence that the Contemnors have intentionally breached the Orders. They were aware of the Orders at material times, received specific and clear explanations of the requirements of the Orders (which were in any event unambiguous) and made decisions not only to ignore their obligations under the Orders, but to take active steps to thwart the Receiver's executions of its duties thereunder.
- [83] It appears that the Contemnors did so based on a misguided apprehension that doing so would give them leverage to negotiate payments from the Receiver; again the clear language of the Orders shows that this was not an interpretation that was open to them.
- [84] In sum, as stated, I am easily satisfied that the Contemnors are in contempt of the Orders.
- [85] Rule 60.11(6) permits the court to hold the Debtors' directors and officers liable for the civil contempt of the Debtors in their corporate capacities. They are also liable directly for civil contempt of the court as individuals, including because the Receivership Order compels "all other individuals...having notice of this Order" to "deliver [the Debtors'] Property to the Receiver."
- [86] Given their intentional conduct in delivering the Fleet Assets to United instead of the Receiver, Debtor Management is liable in their capacities as individuals for civil contempt of court.
- [87] With respect to United Management, Mr. Bajwa is liable for civil contempt of court in his capacity as director and officer of United, and Mr. Mangat is liable as an officer (in his case CEO) of United under

Rule 60.11(6). In addition, all of United Management are liable for civil contempt of court as individuals as a result of their breach of the Asset Recovery Order. That Order was issued against each of them individually.

- [88] United Management, and each of them, failed to give the Receiver access to the United Yard, and failed to assist the Receiver in taking possession of the Fleet Assets, and on that basis, and by their continued and ongoing deliberate efforts to frustrate the Receiver's efforts, each member of United Management is liable for civil contempt of court. The Receiver also notes in this regard that Ontario courts have held employees of corporate entities accountable for breaches of court orders committed on behalf of corporate entities (see, e.g. *Goldcorp Inc. v. Globush*, 1997 CarswellOnt 5333 (Ont. Ct. Justice)).
- [89] Having found each of the Contemnors to be in civil contempt of court, it remains to address the remedy or remedies to be imposed.

Role and Position of Matheson Collision and King Towing

- [90] Before turning to that discussion, I note that at the hearing of this motion, counsel on behalf of Matheson Collision and King Towing, Ms. Singh, attended before me.
- [91] In fact, at a point in the proceedings, Ms. Singh requested a break so that she could discuss with counsel for the Receiver (and counsel for the Contemnors) what she advised was a possible resolution to the question of recovery of the Fleet Assets. I allowed a break for that discussion to take place.
- [92] Following the break, both Ms. Singh and counsel for the Receiver expressly waived any privilege that would otherwise potentially attach to their discussion, and made submissions about what had been discussed.
- [93] In short, it appears that Ms. Singh's clients, not surprisingly, know where the Fleet Assets are located, and were offering to provide information in that regard to the Receiver, but only at a price.
- [94] There was no motion before me seeking to hold Ms. Singh's clients in contempt. There was, however, a motion seeking an order for substituted service on those parties by service on Ms. Singh. Ms. Singh confirmed her willingness to receive service on their behalf, and it is clear that her clients, through Ms. Singh and otherwise, are well aware of the status and details of these proceedings, and, as noted, are in fact purporting to negotiate concerning aspects thereof.
- [95] I advised Ms. Singh that orders of this court are non-negotiable, and that I expect any parties having knowledge of the Orders to comply with their terms.

Post-Hearing Exchange of Emails

- [96] Subsequent to the hearing, I received an email from Receiver's counsel with details of ongoing discussions, essentially to the effect that the Fleet Assets have been moved to various locations, some of which, apparently, are not nearby the Matheson/King Yard, such that, as a condition for providing the Fleet Assets, Matheson Collision and King Towing are demanding that the Receiver either pay certain charges, or incur the expense of retrieving the Fleet Assets from the as yet unspecified locations to which Matheson Collision and/King Towing have taken them.

[97] In response to this email, Ms. Singh asked for a brief period to respond with an email of her own, which I granted. In fact Ms. Singh ended up sending me an email co-authored with counsel for United. That email purports, among other things, to justify the conduct of United (and King Towing), repeats United's evidence about the events at issue -which I find to be largely inaccurate and contradicted by aspects of the evidence before me - and actually goes further to allege that the Receiver and its counsel have acted in bad faith in these proceedings. The response also doubles down on the suggestion, that I have rejected, that the terms of the Orders or the Receiver's explanations of them were somehow confusing.

Conclusion re Emails

[98] I categorically reject those allegations.

[99] I find no basis to support any suggestion that the Receiver has acted other than in good faith. In fact I find that the Receiver and its counsel have acted diligently and in good faith at all times.

[100] The email from Ms. Singh and Mr. Atcha astonishingly purports to demand a payment of \$279,670.00 from the Receiver, allegedly comprised of amounts incurred by and/or owing to United and King Towing for actions taken by United and King Towing as "innocent third parties."

[101] I find no basis whatsoever for any such payments. The maneuvers undertaken by the Debtors, United, and King Towing were all of their own doing and at their own behest. It stretches credibility beyond breaking to suggest, as the email from Ms. Singh and Mr. Atcha does, that somehow the Receiver necessitated these actions.

[102] As set out above, I find that the conduct in question was part of the Contemnors' intentional effort to thwart the Receiver's legitimate court-ordered effort to retrieve the Fleet Assets. To seek compensation for such deceitful maneuvers is simply beyond the pale.

Overall Conclusions and Next Steps

[103] Accordingly, and in conclusion:

- (a) I find the Contemnors, and each of them, to be in civil contempt of this court's Orders;
- (b) Sentencing in respect of these findings of contempt is to take place on a date to be fixed in the week of January 6, 2025;
- (c) In the meantime, the Contemnors will have the opportunity, and are encouraged, to purge their contempt. Specifically, to the extent that the Contemnors take active steps to comply with the Orders at their own expense by the time I next see them, that is conduct that I will take into account in determining the appropriate sentences and remedies to impose. The Contemnors are not entitled to any compensation in these circumstances, and any attempt on their part to exact such compensation will not be viewed favourably;
- (d) In the case of Matheson Collision and King Towing, I grant the order for substituted service, and specifically confirm that service on Ms. Singh by email will constitute service on these parties;

- (e) To the extent that the Receiver seeks relief, including potentially contempt findings, as against Matheson Collision and King Towing, the motion for such relief is to be scheduled at the same time and date as the contempt penalty proceedings against the Contemnors in early January;
- (f) At that time, I will consider such steps as Matheson Collision and King Towing take, between now and then, to ensure compliance with the Orders. In that regard, I reiterate that the Orders of this court are not negotiable, and are expected to be followed to the letter of their terms. I reiterate that I find no basis on which the Receiver owes any payment to these parties; it may be that they have claims against United, but I do not have sufficient information to make a determination in that regard.

[104] I will also reserve the matter of costs to be dealt with on the return of these matters in early January of 2025.

A handwritten signature in blue ink, appearing to read "W.D. Black", is written over a horizontal line.

W.D. BLACK J.

DATED: December 13, 2024

Tab 2

KeyCite treatment

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council](#) | 2006 CarswellOnt 7812, 240 O.A.C. 119, 154 A.C.W.S. (3d) 183, 36 C.P.C. (6th) 199, 277 D.L.R. (4th) 274, 73 W.C.B. (2d) 469, [2006] O.J. No. 4790, 82 O.R. (3d) 721 | (Ont. C.A., Dec 14, 2006)

1953 CarswellBC 3

Supreme Court of Canada

Canada Transport Co. v. Alsbury

1953 CarswellBC 3, [1953] 1 S.C.R. 516, [1953] 2 D.L.R. 785, [1953]

S.C.J. No. 25, 105 C.C.C. 311, 17 C.R. 176, 53 C.L.L.C. 15,055

Poje et al. v. Attorney General of British Columbia

Rinfret C.J.C., Kerwin, Rand, Kellock and Estey JJ.

Judgment: April 28, 1953

Docket: None given

Counsel: *R.J. McMaster* and *A.B. MacDonald*, for the appellants.

D.M. Gordon Q.C., for the respondent.

Subject: Civil Practice and Procedure; Criminal; Labour

Related Abridgment Classifications

Civil practice and procedure

[XXII](#) Judgments and orders

[XXII.2](#) Nature and characteristics

[XXII.2.b](#) Orders

Judges and courts

[XIX](#) Contempt of court

[XIX.2](#) Civil and criminal contempt defined

Judges and courts

[XIX](#) Contempt of court

[XIX.4](#) Forms of contempt

[XIX.4.c](#) Disobedience of court

[XIX.4.c.i](#) Injunctions

[XIX.4.c.i.E](#) Liability of third persons

Judges and courts

[XIX](#) Contempt of court

[XIX.4](#) Forms of contempt

[XIX.4.c](#) Disobedience of court

[XIX.4.c.i](#) Injunctions

[XIX.4.c.i.F](#) Miscellaneous

Labour and employment law

[I](#) Labour law

[I.4](#) Industrial disputes

[I.4.a](#) Strike

[I.4.a.ix](#) Prosecution and contempt proceedings

[I.4.a.ix.B](#) Breach of injunction

Headnote**Judges and Courts --- Contempt of Court — Nature of offence — Civil and criminal contempt defined**

Contempt of court — Distinction between civil and criminal contempt — Disobedience of injunction — Jurisdiction and practice of the courts with respect to contempt — Conduct of accused entirely criminal in character — Punitive sentence where the act of accused has passed beyond the realm of purely civil matters.

A ship arrived at a government dock for the purpose of loading lumber piled on the dock. A strike of members of a union was then in progress but it was not the members of that union but longshoremen who were required for the purpose of loading the ship. However, the union had established a "picket line" at the entrance to the bridge leading to the dock and the longshoremen were unable to load the ship. The union had no interest in the actual lumber on the dock to be loaded nor in the ship nor its crew. An application was made to a Supreme Court judge for an injunction restraining the union from picketing the bridge and other premises and an injunction was granted. The injunction was served on P. and a copy posted on the bridgehead. The picketing continued and the sheriff accompanied the longshoremen to the bridge to proceed to load the ship. The sheriff found 150 men assembled at the bridgehead and along the roads leading to it with P. in charge. The sheriff read the injunction order aloud and told those present to disperse. The pickets refused to disperse. Subsequently an application was made by the union to set aside the injunction and on the following day an application was made to the Court to commit those who had disobeyed the injunction. The application for committal and the application to set aside the injunction came before Sloan C.J.B.C. At the hearing the parties to the civil action decided to discontinue the action as they had settled the differences arising from the actions of the union. The Chief Justice indicated however that there had been a contempt of the Court itself and the Court would take notice of it. The case was adjourned for a full report from the sheriff, and the Court decided to initiate contempt proceedings of its own motion. The sheriff was called and deposed to the facts and writs of attachment were issued and subsequently P. was committed for contempt. An appeal was taken to the Court of Appeal and this appeal was dismissed. An appeal was then taken to the Supreme Court of Canada against the dismissal of the appeal of P. and others.

Held, the appeal should be dismissed.

1. It was idle to suggest that on the evidence the presence of large numbers of men blocking the entrance to the bridge was intended merely for the purpose of communicating information. That had been very efficiently done for a considerable time by six pickets with their signs and cards and the notices on the bridgehead. The congregation of the large numbers of men at the times that the longshoremen were to arrive had no other object or effect than to present force.
2. The context in which these incidents occurred, the large numbers of men involved and the public nature of the defiance of the order of the Court transferred the conduct in question from mere civil contempt into a public depreciation of the authority of the Court tending to bring the administration of justice into scorn.
3. The nuisance created brought P. and others within the scope of [s. 501 of The Criminal Code](#) (see *Reners v. The King*, [1926] S.C.R. 499, 46 C.C.C. 14, [1926] 3 D.L.R. 669, 34 Can. Abr. 1039). [Section 165](#) as well as [s. 573](#) were also infringed. There was no doubt that P. and those associated with him were acting in concert. Their conduct was thus entirely criminal in character in so far as these specific offences were concerned. Over and above these offences, however, the character of the conduct involved a public injury amounting to a criminal contempt.

Practice Note:

"Contempt of court". Generally speaking the law in regard to contempt of court is based on (1) common law principles; and (2) statutory enactments. In *Re Gerson*, 3 C.R. 111 (annotated), [1946] S.C.R. 547, 87 C.C.C. 143, 1946 Can. Abr. 124, the Supreme Court of Canada upheld the common law right to punish for contempt as a necessary incident of every Superior Court of Justice. It was pointed out that the right persists and has not been abrogated by either [s. 165](#) or [s. 180 of The Criminal Code](#). In the case of *Poje et al.* a question was raised as to the distinction between proceedings that are civil in character and those that are criminal. It will be noted that the contempt proceedings were taken in a superior court of justice and that the matter came before the Chief Justice of British Columbia. In speaking as to this Kellock J. said: "It is plain, I think, that so far as the learned Chief Justice was concerned, he considered that the facts before him amounted to a criminal contempt of court", and he was of the opinion that the Chief Justice of the British Columbia Court had jurisdiction to deal with the matter. There is a review of a number of cases on contempt which should be noted as they carry the matter of contempt down from the earliest of times to the present day. There is another matter in the *Poje* case which should not be overlooked. It deals with the questions of appeal in cases of criminal contempt and in this regard Kellock J. said: "In these circumstances, I think the order of the learned Chief Justice was properly made, and as the proceeding was a criminal proceeding, an appeal to the Court of Appeal was not

competent: *Re Storgoff*, [1945] S.C.R. 526, 84 C.C.C. 1, [1945] 3 D.L.R. 673, Abr. Can. 3279. It follows that the rules of court are inapplicable as they apply only in civil proceedings".

Appeal from the judgment of the Court of Appeal for British Columbia 7 W.W.R. (N.S.) 49 (sub nom. *Canadian Transport Ltd. v. Alsbury et al.*), 105 C.C.C. 20, [1953] 1 D.L.R. 385, 1952 Can. Abr. 114, 115, 139, 390, 429, affirming, O'Halloran J.A. dissenting, a committal order, 6 W.W.R. (N.S.) 473, for breach of an ex parte labour injunction.

Kellock J. (Rinfret C.J.C. and Rand J. concurring):

1 The question which lies at the threshold of this appeal is one as to the jurisdiction and practice of the Court with respect to contempt in circumstances such as are here involved.

2 The Court of Chancery has for centuries enforced its orders by contempt proceedings, but it is well settled that such orders, when made merely in aid of execution of process for the benefit of a party, are to be regarded as purely civil in nature. It is equally well settled that conduct which renders appropriate contempt proceedings in aid of execution may have a criminal aspect as well.

3 In *Wellesley v. Duke of Beaufort* (1831), 2 Russ. & My. 639, 39 E.R. 538, Lord Brougham had occasion to deal with the matter in a case of the clandestine removal from the proper custody of a ward of court. In holding that the contempt there in question was criminal and not civil and that no privilege attached to a member of parliament in such cases, the Lord Chancellor said at p. 665:

The line, then, which I draw is this — that against all civil process privilege protects; but that against contempt for not obeying civil process, if that contempt is in its nature or by its incidents criminal, privilege protects not.

4 There are many statements in the books that contempt proceedings for breach of an injunction are civil process, but it is obvious that conduct which is a violation of an injunction may, in addition to its civil aspect, possess all the features of criminal contempt of court. In case of a breach of a purely civil nature, the requirements of the situation from the standpoint of enforcement of the rights of the opposite party constitute the criterion upon which the Court acts. But a punitive sentence is called for where the act of violation has passed beyond the realm of the purely civil.

5 In *Ambard v. Attorney-General of Trinidad and Tobago*, [1936] 2 W.W.R. 252, [1936] A.C. 322, [1936] 1 All E.R. 704, Abr. Con. 1125, not an injunction case, Lord Atkin at p. 255 (W.W.R.) said:

Everyone will recognize the importance of maintaining the authority of the Courts in restraining and punishing interferences with the administration of justice, whether they be interferences in particular civil or criminal cases or take the form of attempts to depreciate the authority of the Courts themselves. It is sufficient to say that such interferences when they amount to contempt of Court are *quasi*-criminal acts, and orders punishing them, should, generally speaking, be treated as orders in criminal cases, ...

6 In *Izuora v. The Queen*, [1953] 1 All E.R. 827 at 829, Lord Tucker, in delivering the judgment of the Privy Council, uses the following language:

It is clear that the appellant's conduct was treated by the judge as being contempt of a criminal kind, viz.: 'any act done ... calculated to bring a court or a judge of the court into contempt or to lower his authority' or something 'calculated to obstruct or interfere with the due course of justice or the lawful process of the courts': see *R. v. Gray*, [1900] 2 Q.B. 40.

7 In *In re Armstrong*, [1892] 1 Q.B. 327, Vaughan Williams J., as he then was, indicated the distinction between the two classes of contempts at p. 329 as follows:

But I do not think in the present case there is any element of personal contempt, or any offence committed for which Mr. Isaacson could be sent to prison as a punishment. I think that any imprisonment ordered in the present case would be by way of civil process, and would determine *ex debito justitiae* as soon as the person committed yielded obedience to the order of the Court and paid the costs.

8 The question arises as to the characteristics of criminal contempt of court as distinguished from mere disobedience of process. Halsbury, vol. 7, 2nd ed., p. 2, treats the subject thus:

Contempt of court is either (1) criminal contempt, consisting of words or acts obstructing, or tending to obstruct, the administration of justice, or (2) contempt in procedure, consisting of disobedience to the judgments, orders, or other process of the Court, and involving private injury.

9 That this division is not, in the view of the editors, a mutually exclusive one, is clear from the following appearing on p. 24:

Contempt in procedure, unaccompanied by circumstances of misconduct, ... is a contempt in theory only, ... In circumstances involving misconduct, contempt in procedure partakes to some extent of a criminal nature, and then bears a twofold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the Court in the public interest.

10 Reference is made in support of the text last quoted to the judgment of Lindley L.J. in *Seaward v. Paterson*, [1897] 1 Ch. 545 at 555.

11 The statement in the note to the text quoted from p. 2 that:

"The distinction between criminal contempt and contempt in procedure appears *in some cases* to be a narrow one; *e.g.*, if a party to an action disobeys a prohibitory order, such disobedience, even though wilful, is contempt in procedure, whereas persons who aid and abet such disobedience, and are not parties to the action, are guilty of criminal contempt ... The true distinction seems to be that one offender is seeking, though under a mistaken view, to enforce his rights, while the other is simply obstructing the course of justice," is, therefore, not to be read without keeping in mind that "contempt in procedure" may itself be criminal if accompanied by "circumstances involving misconduct."

13 It does not therefore follow from the statement in the note that, even in the view of the editors, disobedience by a party to a prohibitory order, can never be more than a civil contempt.

14 In *Seaward v. Paterson* an injunction had been granted restraining the use of certain premises in a particular manner. The appellant was not a party to the proceedings but was aware that the injunction had been granted. It was held by the Court of Appeal that although not bound by the injunction any more than any other member of the public, the appellant was, like other members of the public, bound "not to interfere with and not to obstruct, the course of justice."

15 In his judgment in *Scott v. Scott*, [1913] A.C. 417, the question in the case being whether the conduct there in question amounted to criminal contempt, if so, there being no right of appeal, Lord Atkinson reiterates that mere disobedience to an order of the court, even though wilful, does not amount to criminal contempt. In his view the conduct of the appellant in question in *Seaward's* case was purely civil contempt. Lord Atkinson criticized the judgment of Lindley L.J., in that case at pp. 555-6 with respect to disobedience to an injunction by a person not a party to the proceedings. He regards the language of Lindley L.J., which he quoted, as failing to "grapple with the absurdity" of considering conduct on the part of a non-party as criminal while considering the same conduct by a party as civil. He said at p. 459:

It is difficult to conceive that a judge of Lord Lindley's well-known knowledge, ability and acuteness of mind would have gone through this long analysis of the subject without ever suggesting that either, or both, of the kinds of contempt of Court with which he dealt was *necessarily* criminal, if he had so regarded it.

16 All that Lord Atkinson is insisting on is that *mere* disobedience, whether by a party or a stranger, is not *necessarily* criminal. But it may be so, depending upon the nature and quality of the conduct involved. At p. 461 he repeats (in speaking of *In re Freston* (1883), 11 Q.B.D. 545, a case involving the authority of the court to discipline its officers) that "this case, so far from being an authority that disobedience *per se* of an order of Court, irrespective of the nature of the thing ordered to be done, is a criminal offence, is an authority to the contrary."

17 I think, however, having regard not only to the judgments in *Seaward's* case, but to the position taken by counsel for the appellant, that both Court and counsel considered they were dealing with a case of criminal contempt.

18 At p. 554, Lindley L.J., points out that it was argued for the appellant that "the only course to pursue would be to proceed against him by *indictment*."

19 This, of course, is not language appropriate to civil contempts, although no objection to entertainment of the appeal was raised by the respondent. A similar situation had occurred in *Regina v. Jordan* (1888), 36 W.R. 797, as Lindley L.J. himself had pointed out in *O'Shea v. O'Shea* (1890), 15 P.D. 59 at 64.

20 The judgments in *Seaward's* case are relevant to the case at bar only from the point of view that conduct in the face of an injunction, while not *necessarily* criminal, is not necessarily purely civil either. It may be either, depending upon the nature and quality of the conduct in question in any particular case.

21 At p. 555, Lindley L.J. said:

A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of Court, not because he is bound by the injunction by being a party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing. The difference is very marked. In the one case the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the Court for the benefit of the person who got it. In the other case the Court will not allow its process to be set at naught and treated with contempt. In the one case the person who is interested in enforcing the order enforces it for his own benefit; in the other case, if the order of the Court has been contumaciously set at naught the offender cannot square it with the person who has obtained the order and save himself from the consequences of his act. The distinction between the two kinds of contempt is perfectly well known, although in some cases there may be a little difficulty in saying on which side of the line a case falls.

22 While the contrast Lord Lindley draws is between contempt proceedings as mere process against a party for the purpose of compelling obedience to an order of the Court in the interests of the party obtaining it and proceedings against a person not a party who has "contumaciously set at naught" the order, and while he does not indicate that in the latter case the contempt again may be either civil or criminal, I think the apparent omission is explained by the fact, already pointed out, that the Court was in fact dealing with conduct which all concerned regarded as criminal. Lord Lindley, at p. 553, said that he regarded the case as "not anywhere near the line. It seems to me a plain straight forward case."

23 At p. 558, Rigby L.J. said:

I will only say a few words on the argument of Mr. Seward Brice with reference to the jurisdiction of the Court in matters of contempt of Court with relation to injunctions. Unless I entirely misapprehended that argument, it went so far as this, that the Court has no jurisdiction to commit for contempt *by way of punishment*; but that the jurisdiction is an ancillary or subsidiary jurisdiction in order to secure that the plaintiff in a suit shall have his rights. I do not think that that can be for a moment maintained ... That there is a jurisdiction to punish for contempt of Court is undoubted. It has been exercised for a very long time ... and it is a punitive jurisdiction founded upon this, that it is for the good, not of the plaintiff or of any party to the action, but of the public, that the orders of the Court should not be disregarded, and that people should not be permitted to assist in the breach of those orders in what is properly called contempt of Court.

24 Rigby L.J. was not speaking, and did not find it necessary to speak, of civil contempt. It would appear that North J., the judge of first instance, had also regarded the appellant's contempt as criminal. The actual committal was for a definite term. This is punishment as opposed to an order of the civil type exemplified in *Avery v. Andrews* (1882), 30 W.R. 564.

25 The authorities make it plain that a party and a non-party are on exactly the same footing so far as contempt of court is concerned. In *Wellesley v. The Earl of Mornington* (1848), 11 Beav. 180, 50 E.R. 785, the Court refused to commit a servant

of the defendant, who was not a defendant, for breach of an injunction but, as appears at p. 181, on a motion to commit him for contempt the Court did so. Again, as pointed out by Lord Atkinson, the view taken as to the nature of the contempt does not appear from the report and that is not important from the standpoint of the case at bar. *Avery v. Andrews*, *supra*, may also be referred to.

26 In *Re Eede* (1890), 25 Q.B.D. 228, the appellant had been struck off the roll of solicitors for having permitted his name to be made use of in an action by an unqualified person. The Court of Appeal held that an appeal lay as the order was not made in a criminal cause. Lord Esher referred to the pertinent section of The Attorneys and Solicitors Act, 1843, which authorized the striking off and also authorized the unqualified person to be committed to prison. He pointed out that the section recognized that in dealing with a solicitor the Court was merely exercising its disciplinary powers but that "it is easy to see that that punishment inflicted on the unqualified person must be in a criminal matter; but the Act obviously draws a clear distinction between the two cases."

27 In *re Freston*, *supra*, is an example of the first class of case.

28 In my opinion the statement in Oswald, 3rd ed., p. 36, correctly distinguishes between civil and criminal contempts:

And, generally, the distinction between contempts criminal and not criminal seems to be that contempts which tend to bring the administration of justice into scorn, or which tend to interfere with the due course of justice, are criminal in their nature; but that contempt in disregarding orders or judgments of a Civil Court, or in not doing something ordered to be done in a cause, is not criminal in its nature. In other words, where contempt involves a *public* injury or offence, it is criminal in its nature, and the proper remedy is committal — but where the contempt involves a private injury only it is not criminal in its nature.

29 It is with this distinction in mind that the judgment of Chitty J., in *Harvey v. Harvey* (1884), 26 Ch. D. 644 at 654, is, I think, to be read. The learned judge there said:

Interference with a ward of Court, interfering with the due administration of justice, as by intimidating witnesses, or ill-treating a process server, and breaches of an injunction, were and still are all alike treated as in the nature of offences punishable by committal.

30 Interference with a ward of Court, *Wellesley v. Duke of Beaufort*, *supra*; intimidation of witnesses, *Rex v. Steventon* (1802), 2 East 362, 102 E.R. 407; ill-treating a process server, *Lewis v. Owen*, [1894] 1 Q.B. 102; are all criminal contempts.

31 It should be said that the conduct in question in *Scott v. Scott*, *supra*, involved nothing in the nature of a "public" injury if it could be considered to be contempt at all. In the view of Viscount Haldane and of Lord Shaw, the order for hearing *in camera* was *ultra vires* and therefore there could be no contempt of that order at all. Earl Loreburn considered that the publication "in good faith" of the evidence by the petitioner could not be treated as in contempt of an order she had herself obtained "for her protection". Lord Atkinson arrived at the same result as Viscount Haldane, but considered the order for hearing *in camera* to have been "spent when the case terminated."

32 In the case at bar the plaintiff's ship had arrived at the government dock in Nanaimo on the 7th July 1951, for the purpose of loading lumber then piled upon the dock. It appears that a strike of members of a union, known as The International Wood Workers of America, was then in progress but it was not the members of that union but longshoremen who were required for the purpose of loading the ship on its arrival. It appears, however, that the woodworkers had established a "picket line" at the entrance to the bridge leading to the government dock, by reason of which the plaintiff company was unable to have the loading continued, the longshoremen refusing to cross. So far as the evidence shows, the Woodworkers Union had no interest in the actual lumber on the dock to be loaded nor in the ship nor its crew.

33 In this situation the plaintiff applied *ex parte* to Clyne J., and obtained an injunction restraining the defendants, their servants and agents, from

(a) "watching or besetting, or causing to be watched or beset, the M.S. *Vedby* at the government assembly dock in the City of Nanaimo and the approaches thereto by land or sea,"

(b) "from preventing or interfering with the loading of the said M.S. *Vedby*,"

(c) "and from preventing access to and from the said ship by any persons seeking to embark or depart from the said ship."

34 This order was served upon the appellant Tony Poje on the 15th July and a copy was posted on the bridgehead in the presence of Poje and six pickets. On the following day, 16th July, the Sheriff returned at noon and found at approximately 12.25 p.m., 150 men at or near the landward end of the bridge and another 30 at its end nearest the ship. The bridge is some 40 or 50 feet wide and its landward end was completely blocked. The legend "I.W.A. is on Strike for Better Wages and Conditions" was displayed on posters being carried and was also posted on the railing of the bridgehead as well as chalked on the asphalt road.

35 The Sheriff informed the men at the bridgehead that longshoremen would report to load the ship at approximately 12.30 p.m., and shortly before that, when the pickets showed no sign of dispersing, he announced to the men at both ends of the bridge that he was the Sheriff of the county and read the material parts of the order of Clyne J., informing them that he considered them all to be in contempt of court but the pickets paid no attention to him. Shortly after this several cars carrying longshoremen entered the area, one driving directly to the bridge. The occupants of this car were interrogated by the appellant Tony Poje as to who they were. On being informed that they were longshoremen and being asked if they were to load, Poje replied in the negative. Matters remained in this situation until about 2.15 when the Sheriff left, the longshoremen remaining in the area outside the picket line.

36 On returning at 4.30 p.m., the Sheriff found the situation the same, with the longshoremen still waiting. On returning at 7 p.m. he found no longshoremen and six pickets only.

37 On 18th and 19th July the Sheriff went to the locality on a number of occasions and found on each occasion only six pickets patrolling the bridgehead. He found none on Sunday, 20th July. On the following day he again attended on a number of occasions throughout the day and found only six pickets at the bridgehead.

38 On 22nd July, at 8.30 a.m. the situation was the same. Later in the morning the Sheriff was instructed that longshoremen would be reporting for work at 1 p.m. At 10 a.m. on going to the area, he found 16 pickets there, and at 12.15, he found 50 men assembled at the bridgehead and along the roads leading to it with the appellant Tony Poje apparently in charge. At approximately 12.30 p.m. the number of men at the bridgehead increased to approximately 70. The Sheriff again read the operative parts of the injunction order, told those present they must disperse, but that did not occur, there being some "snickers" at the Sheriff's statement. On this occasion all of the appellants were in the group. At this time the longshoremen were present on the other side of the street opposite the bridgehead.

39 On 22nd July the defendants served notice of motion for an order setting aside the order of Clyne J., and on the following day the plaintiff moved to commit those concerned for disobedience to the said order. These motions were returnable on the 24th July, but on that day the parties to the action settled their differences, it being agreed that the plaintiff would discontinue his action and the motion to commit, and that the motion would be spoken to on the 29th.

40 On the last mentioned day the matter came before the learned Chief Justice of British Columbia, who was informed by counsel of the position. The learned Chief Justice indicated to counsel, however, that on the material, it appeared that there might have been a contempt of which the Court should take notice. He, therefore, adjourned the matter to the 8th September, informing counsel that the Sheriff would be asked to report and that the Court might decide to initiate contempt proceedings of its own motion.

41 On the 8th September, the Sheriff was called and deposed to the facts set out above, and the learned Chief Justice then announced that he proposed to direct the issue of writs of attachment, directed to the appellants and others, under which they would be taken into custody and brought before the Court on 15th September, but that they would be allowed to remain in the

custody of counsel for the appellant upon his undertaking that they would be brought before the Court on that day, or they might be permitted to enter into their own recognizance.

42 Writs of attachment were accordingly issued and the matter came before Court again on the 15th September. The appellants were represented by counsel, the Sheriff repeated the evidence he had given on the previous occasion. He was cross-examined and counsel for the appellants on this occasion admitted that the Sheriff's "evidence" as to the congregation of men on the various occasions was in accordance with the fact. The orders here in question were made on the following day.

43 It is plain, I think, that so far as the learned Chief Justice was concerned, he considered that the facts before him amounted to a criminal contempt of court. So far as the immediate parties to the action were concerned, all matters in question between them had been adjusted. The plaintiff was no longer interested in enforcement of the injunction and had agreed to drop the proceedings for enforcement by way of committal. It was the Court which at that point stepped in, the proceedings from then on being purely punitive. In my opinion the learned Chief Justice had jurisdiction so to deal with the matter.

44 It is idle to suggest that on the evidence the presence of these large numbers of men blocking the entrance to the bridge was intended merely for the purpose of communicating information. That had been very efficiently done for a considerable time by the six pickets with their signs or cards, and the notices at the bridgehead. The congregation of the large numbers of men at the times that the longshoremen were to arrive had no other object or effect than to present force.

45 The context in which these incidents occurred, the large numbers of men involved and the *public* nature of the defiance of the order of the Court transfer the conduct here in question from the realm of a mere civil contempt, such as an ordinary breach of injunction with respect to private rights in a patent or trade-mark, for example, into the realm of a public depreciation of the authority of the Court tending to bring the administration of justice into scorn. It is to be observed that the nuisance created by the incidents referred to brought the appellants within the scope of s. 501 of The Criminal Code; *Reners v. The King*, [1926] S.C.R. 499, 46 C.C.C. 14, [1926] 3 D.L.R. 669, 34 Can. Abr. 1039. Section 165 as well as s. 543 were also infringed. There is no doubt that the appellants and those associated with them were acting in concert. Their conduct was thus entirely criminal in character in so far as these specific offences are concerned. Over and above these offences, however, the character of the conduct involved a public injury amounting to criminal contempt.

46 In these circumstances, I think the order of the learned Chief Justice was properly made, and as the proceeding was a criminal proceeding, an appeal to the Court of Appeal was not competent: *Re Storgoff*, [1945] S.C.R. 526, 84 C.C.C. 1, [1945] 3 D.L.R. 673, Abr. Con. 3279. It follows that the rules of court are inapplicable as they apply only in civil proceedings.

47 It is immaterial by what means the appellants were in Court. The Court had jurisdiction to deal with them when there: *Regina v. Hughes* (1879), 4 Q.B.D. 614. Nor do I think the order of Clyne J., may be treated as in any sense a nullity. There is no application before us for leave to appeal directly to this Court from the order of the learned judge of first instance under s. 41 of The Supreme Court Act, but having regard to my view as above expressed, I would not, in any event, be inclined to grant such leave.

48 The appeal should be dismissed.

Kerwin J.:

49 I am unable to discover any substance in the objections raised by the appellants to what are in my opinion mere matters of procedure so far as concerns the order of Mr. Justice Clyne granting an injunction. Furthermore, on any view of the matter, Chief Justice Farris had jurisdiction, sitting in a Court of record, to hear the application for attachment or committal for the alleged contempt in failing to obey that injunction, and I can find no merit in any of the objections raised to the procedure adopted by the Chief Justice. There was evidence sufficient to warrant the finding of contempt and I am unwilling to interfere with the orders made by him with respect to the various appellants. Without expressing any opinion as to the other matters argued, I would dismiss the appeal without costs.

Estey J.:

50 I agree the appeal should be dismissed. The learned Chief Justice in my opinion, upon this record had jurisdiction to hear the motion. I am in respectful agreement with the conclusions of the majority of the learned judges in the Court of Appeal, both with respect to the objections taken to the order as made by Mr. Justice Clyde and the findings of the learned Chief Justice. In view of the foregoing it is unnecessary to determine the nature and character of the contempt.

Appeal dismissed with costs.

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Tab 3

1993 CarswellOnt 216
Ontario Court of Justice (General Division)

Bank of America Canada v. Willann Investments Ltd.

1993 CarswellOnt 216, [1993] O.J. No. 1647, 17 C.P.C. (3d) 296, 20 C.B.R. (3d) 223, 41 A.C.W.S. (3d) 662

**BANK OF AMERICA CANADA v. WILLANN INVESTMENTS
LIMITED and CRANBERRY VILLAGE, COLLINGWOOD INC.**

Farley J.

Judgment: June 28, 1993

Docket: Doc. B22/91

Counsel: *Harry Underwood*, for receiver, Coopers & Lybrand Ltd.

Stephen Schwartz, for Prenor Trust Co. of Canada.

Frank Bennett and John Spencer, for Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario.

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

Headnote

Receivers --- Conduct and liability of receiver — General conduct of receiver

Receivers — Jurisdiction of court to approve activities and fees — Jurisdiction not requiring specific authorization in order establishing receivership — Court having inherent jurisdiction to review activities and fees of receiver.

Costs — Award of costs — Costs awarded against Crown for wasting court time with repeated adjournment requests and for failing to give advance notice of proposed jurisdiction challenge.

A receiver brought a motion for approval of its activities and fees as set out in two reports. The Crown raised an objection to the court's jurisdiction to hear the motion, arguing that there was nothing in the original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. The Crown argued that the court had jurisdiction only to pass the accounts and approve the fees of the receiver.

Held:

The receiver's activities and fees were approved.

The approval of the activities of a receiver, a court appointee and officer of the court, does not require specific words of authorization in the original order. The court has inherent jurisdiction to review and either approve or disapprove of the activities of a court-appointed receiver.

Creditors who take a reasonable position should not be punished by costs in the event they do not succeed. However, given the Crown's repeated requests for adjournments and resulting time wasted, the failure to give advance notice of the jurisdiction challenge and the late filings, an award of costs against the Crown was appropriate in this case.

Table of Authorities

Cases considered:

80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd., [1972] 2 O.R. 280, 25 D.L.R. (3d) 386 (C.A.) — referred to

Motion for order approving receiver's activities and fees.

Farley J.:

1 This was a motion for an order approving the receiver's activities and fees (including the fees of its counsel) as set out in the receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid-morning today with no advance notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J.'s original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

2 I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993: see pp. 16-18). I again note that Mr. Bennett in his own text: F. Bennett, *Receiverships* (Carswell: Toronto, 1985), said at p. 297:

One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

3 It does not seem to me that approval of the activities of the receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however, such approval (if given) would be to the extent that the reports accurately summarized the material activities of the receiver. As to inherent jurisdiction, see *80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd.* (1972), 25 D.L.R. (3d) 386 (Ont. C.A.), at pp. 389-390.

4 I pause to note that it would be unusual and illogical that the receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

5 It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

6 I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

7 Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust, which will ultimately bear the cost, was supportive of the receiver. While "expensive", I found the fees in line with the complications and protraction of this receivership.

8 Costs were asked for in this instance. Mr. Bennett submitted that a cost award against the Crown would discourage creditors in general from appealing and objecting. That should of course be avoided where creditors have taken a reasonable position; in

other words, the mere fact that a creditor is not successful in persuading a court of the rightness of its position should not subject that creditor to a costs sanction. However, I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project.) Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions' request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time. Costs are awarded against the Crown payable forthwith to the receiver in the amount of \$1500 and Prenor Trust \$500.

Order accordingly.

ROYAL BANK OF CANADA
Applicant

v.

AHM TRANSPORT INC., et al.
Respondents

Court File No. CV-24-00725055-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

BOOK OF AUTHORITIES OF THE RECEIVER

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