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Contempt of Court: Protecting Public Resources and Upholding Court Orders

Whitehorse (City of) v Annie Lake Trucking Ltd., 2025 YKSC 1

The City of Whitehorse ("City") sought a civil contempt order against Annie Lake Trucking Ltd., a business owned and operated by three individuals ("Defendants") because the Defendants continued to operate their quarrying business on city-owned land despite a terminated lease agreement and a clear court order requiring cessation of activities. The City had originally granted the Defendants a lease to excavate gravel, sand, and stone for commercial purposes, but the City terminated the lease in August 2021 due to a new official community plan prohibiting excavation activities on the land. Thereafter, the City issued multiple notices to vacate and cease operations, culminating in a signed consent order between the parties in March 2022 which reaffirmed the termination of the lease and required the Defendants to vacate by June 2022. However, the Defendants continued quarrying operations. In response, the City filed a civil contempt application in August 2022 seeking a declaration of contempt for the Defendants' ongoing breach of the consent order.

HELD: Defendants in contempt of court.

DISCUSSION: The Court's analysis involved the two-prong test for civil contempt. The first prong required proving three elements beyond a reasonable doubt. First, the consent order was clear and unequivocal in its terms: which was established by requiring the Defendants to cease operations and vacate the property by a specific date. Second, the Defendants had actual knowledge of the order: which was established by the signed consent order and the Defendants' admission that they were aware of the terms. Third, the Defendants intentionally failed to comply with the order: which was established by continuing their quarrying activities and remaining on-site in mobile homes/trailers.

Having established these three elements, the Court moved to the second stage, where it exercised its discretion in determining whether to issue a contempt order, as contempt orders are generally reserved as a last resort. The Court highlighted the severity of the Defendants' actions when they continued quarrying activities and unauthorized extraction of public resources for commercial profit, despite the Court order. The Court emphasized that the unauthorized use of public resources could even be considered theft, further increasing the gravity of the contempt. The Defendants unsuccessfully argued financial hardship seeking more time to comply with the order, but the Court found these arguments insufficient. The City had acted reasonably by providing the Defendants with ample notice and opportunity to comply over the course of several years. The Court also highlighted the broader principle of maintaining the integrity of the legal process, stating that civil contempt orders serve not only to ensure compliance but also to deter future violations and protect the rule of law. In this case, the Court recognized that the Defendants' conduct was flagrant and justified issuing a contempt declaration. While the City did not immediately seek imprisonment, the Court retained the right to consider this remedy if non-compliance continues. The Defendants were ordered to cease operations and remove all equipment, materials, structures, and personal property from the land by June 30, 2025.

Granting Adjournments: Balancing Fair Trial with Late Disclosure

Chohan Carriers Ltd. v City of Maple Ridge, 2024 BCSC 2400

Chohan Carriers Ltd. ("Plaintiffs") filed an application against the City of Maple Ridge ("City") alleging misrepresentation and misuse of public office in relation to a property it purchased. The Plaintiffs claim that prior to the purchase, City representatives made certain representations regarding the conditions of the property, which included assurances about the ability to maintain operations. However, after the purchase, the City imposed weight restrictions on local roads, which then rendered operations unviable. The Plaintiffs sought approximately $27 million in damages for lost revenue, and the matter was set for trial. The City requested an adjournment to review 378 financial documents recently disclosed by the Plaintiffs, arguing that they had not had the chance to investigate these documents' potential impact on the defense regarding the quantum of damages. The Plaintiffs opposed the adjournment, asserting that the newly disclosed documents were irrelevant.

HELD: Trial adjourned.

DISCUSSION: The Court relied on the test for granting an adjournment, outlined in *Navarro v. Doig River First Nation, 2015 BCSC 2173*, which requires consideration of the expeditious resolution of matters, the reasonableness of the request, and potential prejudice to each party. The Court emphasized that the overriding goal is a fair trial on the merits of the case. The City argued that adjournments should be granted generously to allow for a fair decision on the merits, despite potential delays. The Court noted that while delays in civil cases are generally discouraged, they must be weighed against the need for fairness and thoroughness in resolving the matter. The Plaintiffs, in opposing the adjournment, focused on the delay caused by the City and its conduct in handling the case, emphasizing their right to a speedy resolution.

Despite the Plaintiffs' opposition, the Court was satisfied that the City had acted promptly upon receiving the documents and that the adjournment would not cause undue prejudice to the Plaintiffs. The Court also questioned the Plaintiffs' argument: if the documents were irrelevant why they were disclosed to the City, and if they were relevant why they were not included in the initial disclosure. The Court found that the interests of justice favored granting the adjournment to ensure a fair trial, particularly given the City's need to review the newly disclosed documents before

proceeding. Ultimately, the Court granted the adjournment, acknowledging the slight prejudice to the Plaintiffs but prioritizing the fairness of the trial and the proper administration of justice.

Council's Closed Meeting Breach: Ombudsman Finds Violation of the *Municipal Act, 2001*

Cornwall (City of) (Re), 2024 ONOMBUD 23

The Ombudsman received a complaint regarding a strategic planning session held as a closed special meeting by the City of Cornwall's Council ("City") on November 4, 2023. The complaint raised concerns that some discussions during the meeting did not fall under any of the exceptions to the open meeting requirements set out in the *Municipal Act, 2001.* The Ombudsman initiated an investigation into whether the Council's decision to close the meeting violated the *Act.*

HELD: City contravened the *Municipal Act, 2001*.

DISCUSSION: Under the *Municipal Act, 2001* all meetings of council, local boards, and committees must be open to the public, except where the subject matter falls within the specific exceptions outlined in section 239. The City invoked several exceptions to have a close meeting, including security, personal matters, land acquisition, and labour relations. However, the Ombudsman's investigation found that these exceptions did not apply to the nature of the discussions held during the closed meeting. Although councillors discussed acquiring property to support the City's strategic goals, the Ombudsman determined this did not meet the exception for land acquisition exception because the discussion involved general ideas about potential properties and was not about actual land transactions or pending acquisitions. Further, the Ombudsman was not satisfied that the labour relations exception applied, finding that only some councillors briefly discussed staffing and recruitment challenges, such as increasing compensation and offering remote work to attract candidates. However, the Ombudsman found that these general comments did not meet the criteria for the labour relations exception, which applies only to specific discussions about the municipality's relationship with employees.

Additionally, the Ombudsman pointed out that the purpose of the closed session was not to provide training or education on strategic planning, which could potentially be covered under an exception for education or training, but to discuss substantive elements of the City's strategic plan. These discussions formed the basis for a public report. The Ombudsman concluded that the council's decision to close the meeting violated the *Municipal Act, 2001*, as the discussions did not fall within any of the allowed exceptions. The Ombudsman recommended that the City take steps to ensure future compliance with the Act by only holding closed sessions when clearly warranted by the statutory exceptions and by focusing discussions on defined issues.

Court Dismisses City's Case Due to Inordinate Delay

Edmonton (City) v Clara Industrial Services Limited, 2024 ABCA 416

In 2006, the City of Edmonton ("City") contracted the Clara Industrial Services Limited ("Respondent") to paint the Low Level Bridge, with a five-year warranty. Two years later, the City observed significant deterioration and sought to enforce the warranty. The Respondent denied

liability, asserting it had followed the specifications and refused to repair the paint failure. The City filed a statement of claim in 2013 and served it in 2014 but took no further action until 2018 when it requested the Respondent file a statement of defence. After years of inactivity, the Respondent applied for summary dismissal, arguing the claim was barred by the limitation period. The applications judge denied the request, but on appeal, the chambers judge ruled in favour of the Respondent, dismissing the action for prejudicial delay. The City appealed the decision.

HELD: Dismissal upheld.

DISCUSSION: The crux of the matter for the Court of Appeal ("Court") was whether the City's delay against the Respondent amounted to an abuse of process. The Court considered the factors under Rule 4.33 of the *Alberta Rules of Court*, which permits dismissal for inordinate delay in the prosecution of a case. The Court highlighted the significant time lapse despite the claim being filed as the City did not serve the statement of claim on the defendants until 2014, and thereafter made little attempt to move the case forward until 2018. The City's justification for the delay was that it was waiting for expert reports, but the Court was not persuaded that this was a sufficient reason to explain a lack of progress.

Legal principles regarding prejudice that were raised by the Respondent were also pivotal. The Respondent argued that the case against it had become increasingly difficult to defend due to the loss of the witness and the aging of the other evidence. The Court found that the delay had caused significant prejudice, notably through the loss of evidence and the death of a key witness. The City's inability to act expeditiously resulted in the claim being effectively dormant for a prolonged period, leading the Court to conclude that the Respondent was deprived of a fair opportunity to defend itself. The Court emphasized that the integrity of the judicial process requires timely prosecution of claims, especially when the delay threatens the fairness of the proceedings. As a result, the Court upheld the original dismissal, reinforcing the principle that delays in legal proceedings, when unreasonable, can result in a complete loss of the action.

No Abuse of Process: Court Denies Stay in Ongoing Litigation

Blackstone Paving and Construction Limited v. Newmarket (Town), 2025 ONSC 171

Blackstone Paving and Construction Limited ("Plaintiff") brought an action against the Town of Newmarket ("Town") for failing to pay amounts allegedly outstanding from a contract. This prompted the Town to commence a third-party claim against R.V. Anderson ("RVA") for contribution and indemnity for any amount which the Town is held liable to pay the Plaintiff. The Town and RVA entered into a settlement, to which RVA paid the Town an identified sum in exchange for a full and final release of the third-party claim. The Town disclosed the minutes of settlement and the full and final release with redactions. Despite being provided the minutes, the Plaintiff brought a motion seeking an order from the Court staying the Town's counterclaim. The Plaintiff argued that the Town failed to immediately disclose the settlement agreement, which significantly altered the litigation dynamics and amounted to an abuse of process.

HELD: Application dismissed.

DISCUSSION: The Plaintiff's claim was that the settlement agreement between the Town and RVA should be disclosed immediately, as it potentially altered the dynamics of the litigation, thus warranting a stay. The Court disagreed. The Court held that the failure to disclose did not meet the threshold for abuse of process. Essentially, the settlement did not materially affect the outcome of

the litigation or alter the litigation strategy in a manner that would justify staying the City's counterclaim. The Court's decision highlights that the mere existence of a settlement, even with provisions for cooperation, does not automatically necessitate a stay of proceedings. The litigation's trajectory and the relationship between the parties remained unchanged in the Court's view. Furthermore, the fact that the settlement was not immediately disclosed did not rise to the level of procedural misconduct that would justify halting the proceedings. Finally, the Court reserved costs, indicating that the question of legal fees would be addressed based on the trial's final outcome. Application dismissed.