

CITATION: G M Textiles v. Sidhu, 2016 ONSC 2055
COURT FILE NO.: CV-11-791
DATE: 2016-03-23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: G M TEXTILES INC., GURDEV SINGH GREWAL, and MOHINDER SINGH MATHAROO, Applicants

AND:

FATEH SINGH SIDHU, also known as FATEH SIDHU, 2119509 ONTARIO CORP. operating as "Popeyes", 2121325 ONTARIO LIMITED, operating as "Popeyes", 2209385 ONTARIO LTD. operating as "Popeyes", 2244485 ONTARIO LTD. operating as "Popeyes", 2178548 ONTARIO INC. operating as "Popeyes", 2136630 ONTARIO LTD. operating as "Popeyes", 2165077 ONTARIO CORP. operating as "Popeyes", 2168124 ONTARIO INC. operating as "Popeyes", AR-RAHEEM FOODS INC., and AR-RAZZAAQ FOODS INC., Respondents

BEFORE: The Honourable Mr. Justice Robert B. Reid

COUNSEL: M. Solmon, and F. Damji, Counsel, for the Applicants

M. Simaan, Counsel, for the Respondents

HEARD: September 30, 2013; January 2, 3 and 28, June 30, July 2, 3, and 4, 2014; April 13, 14, 16 and 30, 2015; January 26, March 1 and 9, 2016

SENTENCING ENDORSEMENT

- [1] In the two motions before the court, the applicants sought findings of contempt against the respondents, and in particular against the respondent Fateh Singh Sidhu as a result of his breaches of court orders. The respondents denied breaching the orders.
- [2] For the reasons and in the circumstances that I outlined on January 26, 2016, I found that Fateh Singh Sidhu was in contempt as a result of numerous failures to comply with multiple terms of six orders of this court.
- [3] Following the delivery of my reasons for decision, the matter was adjourned to March 1 and 9, 2016 for further evidence and submissions as to the appropriate penalty to be imposed. The applicants sought a penalty including imprisonment for five years less a day and full indemnity costs. The respondents proposed house arrest of Mr. Sidhu for six months.

Background facts:

- [4] To give context to my decision today, I will summarize the background facts which were set out in detail in my decision of January 26, 2016.
- [5] The court orders which were the subject of these motions arose during the course of litigation which resulted following loans and investments by the applicants in several Popeye's franchise businesses. The corporate respondents were the operating companies and companies which had leasehold interests in the businesses. Mr. Fateh Singh Sidhu was the principal of the companies and was in charge of running the businesses.
- [6] On June 14, 2012, all the legal proceedings were settled and Minutes of Settlement were executed. A final judgment was granted on July 20, 2012 for approximately \$1.7 million for the applicants against the respondents. Prior to the execution of the Minutes of Settlement, a number of court orders were made, some of which continued in force.
- [7] The initial contempt motion was dated November 16, 2012 and returnable November 30, 2012. After several adjournments, and after the failure of the respondent Mr. Sidhu to attend at a scheduled examination in aid of execution on August 2, 2013, a further adjournment was granted by order dated August 12, 2013. A term of the order adjourning the motion required Mr. Sidhu to attend a judgment debtor examination and pay \$10,000 into court towards costs.
- [8] The second contempt motion was made following Mr. Sidhu's failure to comply with the terms of the August 12, 2013 order.

Context of the litigation:

- [9] During the course of the litigation and continuing after final judgment, the applicants were concerned with protecting their interests in the eight ongoing franchise operations. The businesses were being operated under the control of Mr. Sidhu. The applicants understood that efforts were being made by Mr. Sidhu to sell the franchises.
- [10] Interim orders were made on December 2, 2011 and May 4, 2012 requiring Mr. Sidhu to provide documents, correspondence and information about the franchise operations including attempts to sell, the relationship of the franchisees with the franchisor and with the Canada Revenue Agency as well as details of the ongoing financial operation of the businesses. Pursuant to a further interim order of January 27, 2012, Mr. Sidhu was to make best efforts to provide office space at one of the restaurants for the applicants. Those orders were designed to allow the applicants access to information that could help them protect their investments in the context of the litigation.
- [11] By order, the respondents were not to further encumber the franchises.
- [12] The judgment of July 20, 2012 included terms requiring the respondents to provide updated information regarding the franchises previously ordered and proof of daily sales.

- [13] Eventually, none of the franchise businesses were sold. Instead, new purchasers entered into agreements directly with the landlords and the franchisor. Because the respondent businesses had no value, the applicants appear unlikely to recoup any portion of their judgment against the corporate respondents.
- [14] The applicants alleged that the deliberate noncompliance by the respondents and in particular Mr. Sidhu with the outstanding court orders frustrated their ability to preserve their investments and allowed Mr. Sidhu to surreptitiously take money out of the businesses, thereby depleting the value of the businesses to zero.
- [15] Mr. Sidhu denied the breaches of the court orders and responded that while he may have been a poor manager or may have been disorganized in the business operations, he did not enrich himself at the expense of the businesses or at the expense of the applicants.

Findings of contempt:

- [16] Court orders were made on December 2, 2011, January 27, May 4, July 20 and November 30, 2012 and on August 12, 2013. All the orders were made on consent. With the exception of the August 12, 2013 order, the respondents were represented by counsel at the time. With the exception of the final judgment dated July 20, 2012, all the orders were made in the context of adjournment requests by the respondents. In other words, the respondents continually sought to delay the court's consideration of the merits in exchange for promises to provide current and timely information to the applicants.
- [17] I found that the terms of the orders were plain and obvious and specific as to requirements imposed on the respondents controlled by Mr. Sidhu and the requirements against him personally. Many of them provided that the compliance was to be either "immediate" or "forthwith". Since the clear purpose of most of the orders was to provide the applicants with access to the financial affairs of the respondent corporations, timely compliance was critical. I was satisfied that in the case of each breach, Mr. Sidhu failed to comply intentionally in order to prevent the applicants from having current information about the ongoing business operation of the eight franchises. As I noted in my previous reasons, delay was Mr. Sidhu's standard method of operation. I was satisfied that contempt had been proven beyond reasonable doubt.
- [18] By way of summary of the findings made in my decision on this matter, I found that the respondents and in particular Mr. Sidhu were in contempt of court as follows:
- a. As to the December 2, 2011 order, in failing to disclose negotiations for purchase and sale of the franchise businesses, failing to provide copies of franchise agreements or correspondence with the franchise or as to the status of the franchises, details of cash transactions and copies of correspondence including statements of account from the Canada Revenue Agency.
 - b. As to the January 27, 2012 order, in failing to accommodate the applicant's request for additional office space at one of the franchise stores. In fact I found the evidence was to the contrary, that Mr. Sidhu ordered an existing office to be

demolished and that when a representative of the applicant came to the store, he should be given a hard time and treated disrespectfully by the store manager.

- c. As to the May 4, 2012 order, in failing to confirm the legal status of the eight franchises. In fact, the franchisor had provided written confirmation to the respondents that the eight franchises would be permitted to continue operating during a probationary period on terms. The detail of the settlement and probationary agreement between the franchisor and the respondents was not disclosed. The respondents failed to provide the applicants with copies of loan documents and similar correspondence as between the respondents and third parties despite the fact that the respondents secured new loans. Under the order, the respondents were to provide the applicants with copies of all notices of assessment, demands and similar correspondence from Canada Revenue Agency and other taxing authorities. They failed to do so despite the evidence that in March, 2012, approximately \$1.8 million was owed for GST. No proof of liability insurance was provided as required. The respondents were to provide the applicants with copies of cheques, bank statements and deposit slips for the eight franchises for a defined period. However, the respondents gave access to online banking for two of the respondent corporations and no copies of any documents.
- d. As to the final judgment dated July 20, 2012, in failing to provide the applicants with copies of bank deposits on ongoing basis and daily sales reports three times a week. Dozens of sales reports were never provided as required and many others, while sent, were late. On many occasions reports of cash deposits were not delivered as required. Although the respondents were required to provide updated franchise information, they did not give the applicants notice of the termination of the settlement and probationary agreement received from the franchisor or notice of an offer to purchase for three of the franchise stores, correspondence about a preapproved group of buyers or correspondence about the potential sale of several stores.
- e. As to the order of November 30, 2012, which was granted adjourning the first contempt motion, in failing to deliver releases to the applicants and their spouses as to any possible claims by the respondents as well as a declaration from Mr. Sidhu accepting his personal responsibility for tax claims and claims by the franchisor or others against the corporate respondents. As well, the respondents were to provide an indemnity agreement to the applicants and their spouses for third party claims against the respondent companies. No such documents were provided by Mr. Sidhu to the applicants until March 22, 2016.
- f. As to the August 12, 2013 order, in failing to attend at a judgment debtor examination on August 30, 2013 despite Mr. Sidhu having selected the date and agreeing to attend. No date was rescheduled and no examination has been held. Mr. Sidhu was required to pay \$10,000 into court towards costs with the said funds once deposited to be the sole property of the applicants. He failed to do so.

Applicable law:

- [19] As noted in my decision on contempt, the availability of that remedy is based on the need to enforce respect for the rule of law. When a court order is deliberately disobeyed, that conduct strikes at the very heart of the administration of justice. In my previous reasons, I quoted from the decision of Justice Cumming in *Sussex Group Ltd. v. Fangeat*¹ to that effect.
- [20] Rule 60.05 of the *Rules of Civil Procedure*² allows for enforcement of an order requiring a person to do an act other than the payment of money by contempt order.
- [21] Rule 60.11 specifically deals with a motion for a contempt order and provides in sub-rule 60.11(5) that in disposing of the motion for contempt:

the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- a. be imprisoned for such period and on such terms as are just;
- b. be imprisoned if the person fails to comply with a term of the order;
- c. pay a fine;
- d. do or refrain from doing an act;
- e. pay such costs as are just; and
- f. comply with any other order that the judge considers necessary.

and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

- [22] The objectives of the contempt order are typically twofold. The primary purpose is to enforce performance and to that extent, the sanction for contempt is coercive. A secondary purpose is punitive, that is to punish the offender and to deter others from similar conduct. Where it is not possible to coerce compliance, for example where the subject matter of the order no longer exists or, as in several of the orders in this case, where timely compliance was the crucial element, only the punitive sanction is relevant.

Positions of the parties:

The applicants:

- [23] The applicants allege that the failure to comply with orders by Mr. Sidhu and the companies that he controlled was as a result of greed. By the combination of delay and

¹ [2003] O.J. No. 3348, at para. 50 (S.C.)

² R.R.O. 1990, Reg. 194

failure to disclose relevant information, Mr. Sidhu was able to control the finances of the respondent corporations and take money for his own purposes. The applicants note that over \$1.8 million was not remitted by the respondents to the Canada Revenue Agency for GST, meaning that those funds were collected by the respondents and used for some other purpose.

- [24] The applicants also note the pattern of noncompliance and the very large number of occasions on which the orders required action but no action was taken, for example by failing to provide copies of daily sales reports and bank deposits three times per week.
- [25] Mr. Grewal testified at the sentencing hearing to the effect that the financial dealings with Mr. Sidhu have created a significant financial hardship for him as he approaches retirement. He has lost money in the investment and has incurred very substantial legal costs in pursuing Mr. Sidhu, both through the original litigation and subsequently through the contempt proceedings that have now consumed some 15 days of court time.
- [26] Although the applicants note that, at this stage, the respondents cannot effectively purge contempt for most of the breaches, they asked the court to make an order that contempt could be purged on the payment of the outstanding judgment plus costs but that otherwise a global period of imprisonment for a term of five years less one day is appropriate as a punitive sanction. Counsel seeks costs on a full indemnity basis.

The respondents:

- [27] On behalf of the respondents and in particular on behalf of Mr. Sidhu, counsel submits that a coercive sanction is not necessary or appropriate. The failure to comply is not subject to being corrected where timely disclosure was not provided and the respondent businesses have now closed. As to a punitive sanction, a long sentence is not required for deterrence.
- [28] Counsel submits that Mr. Sidhu was blinded by his anger directed against the applicants and in particular Mr. Grewal. That was his motivation in failing to comply with orders rather than an intention to be disrespectful to the court. There is no evidence that Mr. Sidhu has benefited financially from the situation or that any money is available which could be directed to payment of the judgment. Mr. Sidhu has already suffered the loss of his house as a result of separate collection proceedings undertaken by the applicants. His family has been embarrassed and he has lived on the charity of others. Imposing a period of imprisonment would further punish the family. A house arrest of a further six months would be a sufficient penalty. Counsel does not oppose an order for costs against Mr. Sidhu as a result of the contempt proceeding.

Circumstances of Mr. Sidhu:

- [29] Since the effect of any contempt order will be felt by Mr. Sidhu rather than by any of the respondent corporations, it is appropriate to consider the evidence of his personal circumstances.

- [30] Mr. Sidhu is 44 years of age. He has been married to his spouse for 18 years and has three children, a daughter who is 18 years old, and two sons ages 14 and 10.
- [31] Mr. Sidhu stated that he has not been employed since the franchise stores closed in approximately December 2012 and has no other sources of income. He and his immediate family have lived off the charity of family and friends since that time. His spouse has never worked outside the home.
- [32] On behalf of Mr. Sidhu, evidence was provided by Mr. Girpal Singh that he is willing to hire Mr. Sidhu, whom he has known for five years in a personal relationship, to act as a sales manager for his transportation business. Mr. Sidhu would be paid commission for securing new business.
- [33] For his part, Mr. Sidhu apologized to the court in his testimony at the sentencing hearing. He indicated that it was not his intention to disrespect the court and he acknowledged that he should have been more focused on complying with the terms of the orders rather than on his dispute with Mr. Grewal.

Sentencing considerations:

- [34] The common law power of a court to impose sanctions for contempt derives from the need to enforce compliance with court orders. Those powers are codified for Ontario in the terms of rule 60.11(5) to which I have already referred.
- [35] This is not a case where a further order requiring Mr. Sidhu to do or refrain from doing certain things is appropriate nor is there any evidence that imposing a fine will have any salutary effect, based on Mr. Sidhu's apparent impoverished financial circumstances.
- [36] By way of analogy to the *Criminal Code of Canada*³, I accept that I should apply the following principles:
- a. unlawful conduct by way of breaching court orders should be denounced and the respondents and others should be deterred from such conduct;
 - b. a fit sentence must be proportionate to the gravity of the offense and the degree of responsibility of the offender;
 - c. a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the contempt or the offender;
 - d. a sentence should be similar to sentences imposed on similar contemnors for similar contempts committed in similar circumstances; and
 - e. available sanctions other than imprisonment that are reasonable in the circumstances should be considered.

³ R.S.C. 1985, c. C-46

- [37] I consider that denunciation and deterrence, both specific and general, are the main factors for my consideration in sentencing, bearing in mind the importance of the rule of law and the crucial element that obedience to court orders plays in supporting the rule of law.
- [38] Mitigating factors include Mr. Sidhu's lack of any known problems of a similar nature in his past, the fact that he is the only member of his family with a history of earning income and has three children and a wife who rely on him. He has offered an apology for his conduct in failing to comply with the orders, although for the reasons I will outline in a moment, I do not consider that apology to be of significant weight. There is no evidence that Mr. Sidhu has lived a lavish lifestyle or otherwise received significant benefits to which he was not entitled from the businesses. His family has suffered embarrassment, both by way of reduced financial well-being and loss of stature in their community, according to his evidence.
- [39] Aggravating factors include the extended period of non-compliance with orders, and the many occasions when the orders were not followed. I found multiple terms in six separate orders that were breached, several of which were on an on-going and repeated basis beginning in December 2011.
- [40] It is also an aggravating circumstance that, even though he was represented by counsel and consented to the terms of the orders, Mr. Sidhu claimed he did not understand them. This was notwithstanding the fact that he operated eight franchised restaurants with apparent success since about 2006, and that he was apparently well-regarded by the franchisor. His evidence during the contempt hearing was that he had insufficient ability to read the English language so as to understand the details of the court documents including orders and that he was simply disorganized and inefficient in the business operation. He testified that he did not mean to breach the orders in question. Then, after my decision was rendered, he testified under oath in the sentencing phase that he knowingly breached the orders, but did so because he was angry and in conflict with Mr. Grewal and deliberately refused to cooperate in a way that could have benefited Mr. Grewal.
- [41] Mr. Sidhu's conduct was consistent in his consenting to orders and then failing to comply. He did what he could to frustrate the applicants' attempts to monitor the business activities. Mr. Sidhu created delay whenever he could. He encouraged two witnesses not to testify against him in the contempt hearing. He ordered that the office in the Highway #10 store be demolished so that Mr. Grewal would not have a place to come to review the business records and monitor performance, despite the court order that he would make best efforts to provide office space, and he even told the store manager to be unpleasant towards Mr. Grewal. In my decision on contempt, I reviewed the circumstances of Mr. Sidhu failing to comply with a specific and detailed order made by me on January 28, 2014 as a further example of how he seemed incapable of doing what was required of him through court orders.
- [42] The evidence at the hearing was that a very substantial amount of money collected for GST in the range of \$1.8 million was not remitted to the Canada Revenue Agency as of

March, 2012, the corollary of which is that the money went somewhere else, presumably with Mr. Sidhu's knowledge and consent.

- [43] Despite the fact that there were interested buyers for the franchises, Mr. Sidhu did not disclose that to the applicants as ordered, allowing him more time to control the cash-flow of the businesses to the point where they were no longer viable and had no value.
- [44] Although there was no proof of Mr. Sidhu taking money for his own uses, there is no cogent reason to explain why the eight successful businesses lost all their value. Nor is there a reason to justify why, at the same time, Mr. Sidhu kept the applicants in the dark about the business operation despite orders to the contrary.
- [45] In short, the evidence indicates that Mr. Sidhu would do or say anything to achieve his objective of preventing any third party oversight of the businesses. He used delay and non-compliance with orders to prevent control being taken by others. He said what he needed to in court to attempt to justify his actions, even though his excuses were inconsistent over time. In the end, he simply offered an apology and suggests that doing so should be sufficient, subject to a short period of house arrest.
- [46] While the amount of losses to the applicants that flowed from Mr. Sidhu's breaches of the court orders cannot be known specifically, it is reasonable to consider that they have been substantial. They may or may not be in the full amount of the consent judgment. Cumulatively, the breaches are significant and the full responsibility lies squarely with Mr. Sidhu. The financial losses are an aggravating factor although it is the seriousness of the disrespect for the court orders not the harm done that is the basis for the court's punitive sanction.
- [47] Prior to March 22, 2016, it appeared that with two exceptions, Mr. Sidhu's contempt could not be purged. The required disclosure was time-sensitive, and the businesses have now all ceased operation. They have no value, although their value may well have been capable of preservation had the orders been complied with and proper steps taken by Mr. Sidhu in conjunction with the applicants.
- [48] One of the two exceptions was the requirement for Mr. Sidhu and his spouse to sign and deliver releases, declarations and indemnities pursuant to the order of November 30, 2012. Those documents were sent to him on September 22, 2014 and discussed again during the contempt hearing. At that time, Mr. Sidhu indicated his willingness to comply, but only after securing legal advice. They have now been signed and were delivered on March 22. Mr. Sidhu's delay as regards completion of those documents is completely consistent with his general approach to the consent orders: he indicates willingness to agree and co-operate, but then fails to comply.
- [49] The second exception is the requirement to attend at an examination in aid of execution, pursuant to the order of August 12, 2013. At the time, having selected the date, Mr. Sidhu hired a new lawyer at the last minute. The lawyer was not available, so Mr. Sidhu chose not to attend. For the last 2 ½ years, Mr. Sidhu could have offered to re-attend and

purge his contempt, but chose not to do so. Once again, this is consistent with his making no effort to comply, despite his initial expressed willingness.

- [50] The parity principle is more difficult to apply in matters of civil contempt than in the criminal convictions. This is because, as it should be, there are relatively few instances where contempt proceedings are required. Within the group of those cases, most feature punishments that are primarily coercive and, in the most serious of those cases, where the refusal to comply is continuous, despite the contemnor's ability to comply.
- [51] Where jail terms are imposed for primarily punitive rather than coercive purposes, they tend to be in the range of 2 to 4 months for single instances of contempt in situations where the contempt was not a repeat offense.
- [52] The Ontario Court of Appeal, in *Chiang (Trustee of) v. Chiang*⁴, described that case as "one of the worst cases of civil contempt to come before this court." The plaintiff obtained judgments in Ontario to enforce California judgments but the defendants filed for bankruptcy. Contempt occurred when the defendants deliberately breached court orders while transferring millions of dollars out of the province for the sole purpose of frustrating the plaintiff's ability to collect on its debt. Notwithstanding the bankruptcy and affidavits setting out their impecuniosity, the defendants continued to maintain a lavish lifestyle. The defendants continuously refused to purge their contempt despite the fact that they were in a position to do so. The trial judge ordered that one of the defendants be imprisoned for one year, and the other for eight months.

Conclusion:

- [53] I have already identified that the two elements of sanctions for contempt of court are to coerce compliance and to penalize.
- [54] I have considered the available options for sentencing and as noted above do not consider that a fine is appropriate. As well, there is no point in requiring that Mr. Sidhu do or refrain from doing anything by way of further orders at this point.
- [55] As a result, some form of imprisonment is required for sentencing, in addition to the award of costs which is set out below.
- [56] I have also considered a conditional sentence with the possibility of house arrest and the potential for suspending the imposition of a sentence, coupled with probation.
- [57] I conclude that actual jail time is the only realistic option in this case. It is completely unacceptable that the court process and its orders be deliberately, blatantly and continuously flouted as Mr. Sidhu has done. An exemplary custodial sentence should have the effect of deterring Mr. Sidhu specifically and also members of the public as a matter of general deterrence. Those who might be inclined to breach court orders, regardless of whether the orders are made within a matter of commercial litigation, or in a

⁴ [2009] O.J. No. 41,

family or estate dispute or otherwise must realize that showing such disregard for the law and the court will not be tolerated. Likewise, it would be completely inappropriate for parties subject to court orders to assume that the penalty for a breach will be dealt with in some lenient way so as to give what amounts to a license for disobedience.

- [58] In this case, the many breaches of the six orders were detailed by me in my contempt decision. I will not repeat them here. There will be consecutive sentences for Mr. Sidhu as follows as regards contempt that is not capable of being purged:
- a. for breach of the December 2, 2011 order: four months imprisonment;
 - b. for breach of the January 27, 2012 order: four months imprisonment;
 - c. for breach of the May 4, 2012 order: four months imprisonment;
 - d. for breach of the July 20, 2012 judgment: four months imprisonment;
- [59] As to breaches of the order of November 30, 2012 there will be a sentence of one month, consecutive. As to the breach of the order of August 12, 2013, there will be a sentence of four months less one day, consecutive to the previous sentences. The second of those two sentences will be commuted to one month if Mr. Sidhu provides to the court a written confirmation from Melvyn Solmon that Mr. Sidhu has attended at an examination in aid of execution and cooperated in answering relevant questions. The one month residual period to be served even if contempt is purged is reflective of the principle that while late compliance is better than no compliance, there must be some punitive consequence to the lengthy and unwarranted delay.
- [60] The sentences are to commence on Monday, May 2, 2016. Mr. Sidhu is to surrender himself to the Peel Regional Police in Brampton, Ontario on that day with a copy of the formal order that will be prepared and provided by Mr. Solmon as well as a copy of the written confirmation as to compliance the order of August 12, 2013 if his contempt has been purged. Should Mr. Sidhu fail to attend and surrender himself as required, a warrant will be issued for his arrest.
- [61] There will also be an order that, on or before May 2, 2017, Mr. Sidhu will appear before me while in custody and on notice to the applicants to advise the court of any steps that may have been taken in further compliance with any outstanding court orders including this order and including outstanding orders as to costs.
- [62] On a global basis, the sentences total between 18 months and 21 months, less one day. I consider that to be in the upper range for contempt where, for the most part, compliance is no longer possible and the original purpose of the orders has become moot. Based on the factors that I have outlined, including the numerous orders violated, the extended period of time during which the contempt continued, and the other actions of Mr. Sidhu which show his continuous disregard for court orders and the court process, I am satisfied that a sentence in the upper range is warranted.

Costs:

- [63] The applicants seek substantial indemnity costs and the respondents acknowledge that some costs order against them is appropriate.
- [64] It is not unusual for substantial indemnity costs to follow a contempt order. However, it is also appropriate to consider what is fair and reasonable in the circumstances and the reasonable expectations of the parties. This is in keeping with the discretionary factors set out in rule 57.01.
- [65] Here, the applicants were successful in securing the contempt orders sought. The issues were of importance to both parties and the factual matrix was somewhat complex.
- [66] In addition to the applicable rule 57.01 factors, and based on the facts as I have found them, the contempt itself and the conduct of the contempt trial has evinced a deliberate and ongoing attempt on the part of Mr. Sidhu to frustrate the series of consent orders and delay the ultimate conclusion of the litigation. For example, I noted in my reasons for decision on the contempt motion the delay caused by Mr. Sidhu's failure to attend on January 28, 2014, ostensibly for health reasons, immediately upon discharging his lawyer. Mr. Sidhu never complied with my very specific order to provide medical justification.
- [67] As a result, I am satisfied that this is a case that justifies an order for substantial indemnity costs. The applicants would not have been put to the expense at all had the orders been followed as is normally anticipated.
- [68] Counsel for the applicants has provided a costs outline and in submissions indicated that there is a contingency fee agreement in place which provides for a significant increase in the billed hourly rate in the event of success. However, that contingency fee agreement has not been approved in advance by the court. I do not consider it appropriate to impose that obligation on the respondents.
- [69] As to quantum, I am satisfied that the lengthy proceedings required the extensive and complex documentary evidence provided in support of the applicants' case, and the significant number of hours identified as having been spent on preparation and attendance. The respondents have not raised objections to the amount claimed.
- [70] Therefore, there will be an order of costs of the contempt proceedings payable by the respondents to the applicants calculated on a substantial indemnity basis fixed in the amount of \$369,644.26 inclusive of HST and disbursements.



Reid J.

Date: March 23, 2016