

SUPREME COURT OF YUKON

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

Date: 20250106
S.C. No. 21-A0084
Registry: Whitehorse

BETWEEN:

CITY OF WHITEHORSE

PLAINTIFF

AND

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

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Nathan Lapper

Appearing on behalf of the Defendant

Richard Hunziker

REASONS FOR DECISION

Overview

[1] This application for civil contempt brought by the City of Whitehorse (the “City”) against Annie Lake Trucking Ltd. (“Annie Lake Trucking”) highlights the consequences of failures to comply with court orders. It is the second application by the City for a declaration that Annie Lake Trucking is in contempt of the consent order it entered into on March 22, 2022. This Court issued a contempt and enforcement order on October 13, 2022, and imposed a \$7,500 fine, to be divided equally amongst the three partners of Annie Lake Trucking.

[2] Since October 2022, despite efforts by the City to secure compliance with the consent order, Annie Lake Trucking has continued with its activities in violation of both the consent and contempt orders. The current application seeks a higher fine against each of the partners.

[3] One of the partners of Annie Lake Trucking, Richard Hunziker, appeared at the hearing on behalf of the defendant. No response or other materials had been filed by the defendant despite service of the application and materials on August 20, 2024, on him and Charlene Armstrong, and on November 27, 2024, substitutionally on Trevor Hunziker, due to his inability to be served earlier after multiple attempts. Counsel for the City received no communication from the defendant about this application until Richard Hunziker's appearance in Court on December 19, 2024. Richard Hunziker advised the Court he did not intend to file any materials and he was not seeking an adjournment. His submissions focussed on the unfairness of the original consent order; a plea for more time to comply with it; and the defendant's inability to pay a fine.

[4] The pattern of behaviour of Annie Lake Trucking and its partners since the lease termination effective August 2021 has shown a profound disregard for the administration of justice. This behaviour cannot be condoned and must be sanctioned. However, the primary objective of civil contempt orders is to secure compliance with the underlying court order, a consistently stated objective of the City as shown by their meetings over the past three years with the defendant, their patience before returning to court, and their forbearance in not requesting a penalty of imprisonment. The presence of Richard Hunziker in Court on December 19 demonstrated some engagement by the defendant with the court process. I have taken this into account in determining remedy.

[5] Annie Lake Trucking continues to be in contempt of court. The fine shall be increased to \$7,500 for each partner if after June 30, 2025, any of the Annie Lake Trucking equipment, structures, chattels, materials, refuse, buildings, mobile homes/trailers, and residential tenants, remain at the previously leased property.

[6] This is a case where imprisonment of the partners would be justified, given their flagrant disregard of the orders. However, the City specifically submitted at the hearing that imprisonment not be considered at this time. They reserved their right to request it in future if there is ongoing lack of compliance.

Background

[7] This Court's earlier decision dated October 13, 2022, *Whitehorse (City of) v Annie Lake Trucking Ltd*, 2022 YKSC 54 (the "October 13, 2022 decision") sets out the background up to that date in paras. 6-18. I will summarize the background and review the developments since that decision.

[8] Annie Lake Trucking is a registered partnership with three partners – Trevor Hunziker, Richard Hunziker, and Charlene Armstrong. Annie Lake Trucking leased lands owned by the City near Ear Lake (Lot 115303 Quad 105D/11, Plan 2014-0097, Whitehorse) beginning in November 2008 for the exclusive right to excavate for and remove gravel, sand, stone and associated products from the lands, and to crush, quarry and produce concrete from a concrete plant on the lands. The original lease expired and Annie Lake Trucking remained a legal monthly lessee from December 2016, until the City terminated the lease on 30 days' notice, effective August 23, 2021.

The primary reason for the lease termination was the introduction of a new Official Community Plan (“OCP”) that did not permit excavation or quarrying activities on the lands.

[9] Annie Lake Trucking continued their quarrying activities and maintained their equipment and mobile homes on the lands after the lawful lease termination, despite receiving repeated notices from the City to cease the activities and vacate the lands.

[10] The City then filed a statement of claim on October 28, 2021, alleging a breach of the lease and unlawful trespass. At the same time, the City brought an application for an interim injunction for an order to prevent Annie Lake Trucking from trespassing on or interfering with the lands. Discussions between counsel for the parties occurred during late 2021 and early 2022, culminating in a consent order signed by the City and counsel for Annie Lake Trucking, and entered on the court file on March 22, 2022. A filed copy was provided to legal counsel for the City by legal counsel for Annie Lake Trucking on March 23, 2022.

[11] The consent order confirmed that the lease was terminated, that Annie Lake Trucking was restrained and enjoined from any further commercial activities, including quarrying or excavation, on the lands, that they would make best efforts to remove from the lands any subtenants, sublicensees, or others invited on to the lands, and that they would fully vacate the lands, including removal of residential tenants, equipment, buildings, structures, chattels, refuse, and materials, by June 30, 2022. They further agreed to pay to the City any royalty and rehabilitation fees on any material extracted to the date of the consent order.

[12] During July and August 2022, the City inspected the lands many times and observed ongoing quarrying and excavation activities by Annie Lake Trucking, as well as the continued presence on the lands of their equipment, materials, and residential trailers. By that time, Annie Lake Trucking was no longer represented by legal counsel.

[13] The City brought an application for civil contempt on August 22, 2022. At the hearing of that contempt application, no one from the defendant appeared, despite being properly served. This Court found on October 13, 2022, that Annie Lake Trucking was in contempt of court and ordered fines of \$2,500 against each of the three partners to be paid to the Territorial treasurer, and payment of special costs to the City. As well the Court ordered, after clarification, effective August 24, 2023, enforcement of the terms of the consent order by the RCMP. As of the date of the hearing of this application, the Annie Lake Trucking partners have not paid the fines or special costs, and the RCMP have not enforced the order.

[14] Between October 2022 and April 2024, Doug Spencer, the City Manager of Land and Building Services, and other City staff inspected the previously leased lands regularly. They confirmed:

- Annie Lake Trucking continued to store equipment and material on the lands;
- Annie Lake Trucking continued to conduct a quarrying and extraction operation for commercial purposes on the lands;
- Trevor Hunziker, one of the partners, continued to live in a mobile home on the lands, and John Duell, described as a 'caretaker' of the lands, lived in a mobile home on the lands.

[15] On June 23, 2023, the City met with Trevor and Richard Hunziker to discuss their failure to comply with the court orders. The Hunzikers confirmed they were continuing to carry out quarrying and extraction activities on the lands and that Trevor Hunziker continued to live in a trailer on the lands. They also provided the City with a letter dated June 23, 2023, from the other partner, Charlene Armstrong, stating that Annie Lake Trucking had removed 2,350 cubic metres of material from the lands in 2022. The City reviewed the terms of the consent order and explained the new OCP did not permit them to re-enter a lease with Annie Lake Trucking or approve their commercial quarrying activities. The City further advised they would provide formal notice to Annie Lake Trucking of their intention to enforce the consent order, to give them an opportunity to comply and vacate the lands.

[16] As promised, on August 23, 2023, the City delivered a letter to Annie Lake Trucking, and posted a copy at the lands, stating that the City would attend at the lands on October 13, 2023, with the RCMP. The letter noted that anyone using the lands or living on the lands at that time would be subject to arrest and removal by the RCMP in accordance with the enforcement order.

[17] On October 13, 2023, Doug Spencer and other City staff attended at the lands with the RCMP. They noted evidence of ongoing quarrying activity on the lands, through the presence of extraction equipment in the gravel pit, the continuing presence of vehicles, equipment and refuse on the lands, and the continued presence of the trailers housing Trevor Hunziker and John Duell. The City posted no trespassing signs on the lands and intended to barricade the entrances but chose not to because of the negative

impact on John Duell who would have been blocked in or out. (Trevor Hunziker's trailer had another access point).

[18] During that visit, Trevor Hunziker evaded notice by the RCMP and confronted Doug Spencer and other City staff with expletives and abusive comments about their presence on the lands to enforce the consent order. Unfortunately, no enforcement action was taken by the RCMP.

[19] On November 27, 2023, Doug Spencer on behalf of the City sent a letter to Trevor Hunziker advising his abusive conduct would not be tolerated, that failure of Annie Lake Trucking to comply with the consent order and purge the contempt order would result in further enforcement steps by the City, including a further contempt order, more fines, and possible imprisonment. The City received no response to this letter.

[20] On March 26, 2024, Doug Spencer conducted another site inspection and noted no change from the observations during the October 13, 2023 visit, except for new piles of gravel and other newly extracted material from the lands.

[21] Richard Hunziker did not deny during the hearing of this application that Annie Lake Trucking was still carrying on quarrying activities for commercial purposes on the lands, that their equipment, buildings, structures, chattels, refuse, and materials remained on the lands, and that John Duell and Trevor Hunziker still lived on mobile homes/trailers on the lands.

[22] Richard Hunziker protested the original consent order, saying they were forced unfairly into signing something with which they did not agree. He said he did not understand why the City could not let them stay until all the resource material was excavated, saying there is approximately two more years of excavation possible. He

noted it was better quality gravel than that in a nearby quarry. He did not deny, however, that the former lawyer for Annie Lake Trucking signed the order on their behalf.

[23] He noted they were a 35-year-old small family business. He pleaded financial hardship as at least a partial reason for their failure to comply with the consent order. They have acquired property in another location where they are building a heated shop (as they built on the lands) necessary for storage of their equipment, which is used for Richard Hunziker's snow removal business during the winter months. This is a costly endeavour. He requested until the end of the summer 2025 to move the equipment, buildings, chattels, structures, refuse, and materials, and to move the trailer belonging to Trevor Hunziker. He said he did not object to the removal of John Duell from the property immediately: his now deceased father, Bud Hunziker, had invited Mr. Duell on the property as a caretaker years ago and now there was no further need for his services.

[24] Counsel for the City advised they have heard many of these requests and arguments expressed by the partners before.

Issues

- A. Is Annie Lake Trucking continuing to be in contempt of the consent order?
- B. Should any imposed penalty be increased?
- C. Costs

Issue A – Annie Lake Trucking continues to be in contempt of the consent order*Law*

[25] I rely on the description of the law of civil contempt set out in the October 13, 2022 decision at paras. 20-25. I also add further insights from the decision of *Spurvey v Melew*, 2024 YKSC 30 (“*Spurvey*”) at paras. 17-26.

[26] Contempt orders are authorized by the inherent jurisdiction of the court and Rule 59 of the *Rules of Court* of the Supreme Court of Yukon which sets out procedural requirements and remedial options.

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

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

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

to do or not do an act, the effect of which is a breach of the order (*Carey* at paras. 32-35)

[29] The evidence in support of a contempt application must conform to the rules of admissibility at trial: no hearsay, opinion, or conclusions. If the order is ambiguous, the party allegedly in breach is entitled to the most favourable construction (*Peel Financial Holdings Ltd. v Western Delta Lands Partnership*, 2003 BCCA 551 at para. 18).

[30] If these three elements are established beyond a reasonable doubt, the second stage occurs. In that stage, the court decides whether to exercise its discretion to decline to make a contempt finding on the facts and circumstances of the specific case. It may decline to do so where it may result in an injustice in the circumstances of the case. (*Carey* at paras. 37).

[31] The purpose of civil contempt orders was well-described by the Court in *Antoine v Antoine*, 2024 ONSC 1397 at para. 14:

The remedy of civil contempt of a court order is a mechanism designed to emphasize that orders cannot be ignored or disobeyed. It is founded on the fundamental principle that a court order stands binding and conclusive unless it is set aside at first instance or on appeal or is lawfully quashed ... The remedy reinforces the point that any wilful disobedience of court orders is a very serious matter that strikes at the very heart of the justice system ...
[citations omitted]

Analysis

[32] It is clear from the material filed, including the consent order and affidavit evidence provided by Doug Spencer and other City staff that the three elements of the first stage of civil contempt were proved beyond a reasonable doubt. The admissions of

Richard Hunziker through his submissions at the hearing also confirmed this. The evidence conforms to the admissibility rules.

[33] First, as noted above in para. 11, the consent order was clear and unambiguous about what it obliged the defendant to do and by when it was required to be done.

[34] Second, the order in question was a consent order, signed by counsel for the City and for Annie Lake Trucking. The Annie Lake Trucking lawyer filed the signed order with the Court and sent a filed copy to the lawyer for the City the day after it was signed. There is no indication from Annie Lake Trucking that they did not have actual knowledge of the order. Further, Richard Hunziker's submissions at the hearing of this application, including his request for additional time to comply with its terms, shows their actual knowledge of the terms of the order.

[35] Third, the evidence of Doug Spencer showing the ongoing quarrying and excavation activities on the lands, the continuing presence of equipment, buildings, structures, materials, chattels, refuse, and of mobile home/trailers housing John Duell and Trevor Hunziker on the lands, demonstrates their failure to comply with the terms of the order, resulting in its breach. The admissions of Richard Hunziker at the hearing and the previous admissions of the Hunzikers during the meeting with the City of June 23, 2023, also confirm this.

[36] Having concluded that the three elements have been proved beyond a reasonable doubt, the Court moves to the second stage of whether it should exercise its discretion in favour of declining to issue a contempt order.

[37] The Supreme Court of Canada has urged courts to invoke the tool of a contempt order cautiously, with great restraint, and as an enforcement power of last resort to

address matters that are not trifling. A contempt order is not to be used routinely as a compliance mechanism, or as a way to enforce orders (*Carey* at para. 36).

[38] There are a number of considerations in this case that influence my decision to issue an order confirming ongoing contempt, understanding it is a remedy of last resort.

They are:

- the order breached was a consent order, signed by then counsel for Annie Lake Trucking. Richard Hunziker's protestations that it was unfairly imposed are too late – Annie Lake Trucking did not seek to set the order aside;
- Annie Lake Trucking did not respond nor appear in October 2022 at the hearing of the first application for contempt order;
- the City has acted reasonably over the last approximately three years, giving Annie Lake Trucking ample notice, time and opportunity to comply first with the lease termination and then with the consent order. They have provided notice of their intentions to obtain the order, enforce the order, and of the contempt applications. They have met with the partners of Annie Lake Trucking to hear their concerns and to explain their position and intentions. They have waited over two years before proceeding with this second application for civil contempt;
- Richard Hunziker did appear at the hearing of this application, but without any response, materials, or advance notice of his intention to appear;
- Trevor Hunziker proved difficult to serve with this application, resulting in the need for a substitutional service order;

- Trevor Hunziker was verbally abusive and disrespectful of City staff on at least one occasion during their attempt to enforce the order;
- Annie Lake Trucking did not participate in any of the discussions or consultation exercises leading up to the amended OCP to express their views about the proposed changes to the lands, nor did they attempt to apply for a zoning change, or to negotiate with the City some other legal solution; and
- the ongoing extraction of gravel and other resource material from the lands for commercial profit, without a lease, without payment of rehabilitation or royalty fees, and without legal authority to carry out the activities is at the least unauthorized use of public resources and may arguably be considered theft of public resources.

[39] The many reasonable and unsuccessful attempts by the City to obtain Annie Lake Trucking's compliance with the consent order have confirmed the ongoing need for a contempt order with an increased penalty. The submissions of Richard Hunziker have been considered in the assessment of penalty, set out below.

Issue B– Should the imposed penalty be increased?

Law

[40] As noted in para. 26 of the October 13, 2022 decision, the purpose of a penalty for contempt is to ensure societal respect for the courts and to enforce compliance with the underlying court order. Rule 59 permits fine, imprisonment, or both.

[41] Many authorities have applied the factors to be considered in determining an appropriate penalty for civil contempt as set out in *Health Care Corp of St John's v*

Newfoundland and Labrador Assn of Public and Private Employees, [2001] N.J. No 17 (Nfld TD) and adopted by the Court of Appeal of British Columbia in *Langford (City) v dos Reis*, 2016 BCCA 460 at paras. 16 and 17. The relevant factors for this case are as follows:

[16] ...

1. The inherent jurisdiction of the court, as a superior court, allows for the imposition of wide range of penalties for civil and criminal contempt;
2. Deterrence, both general and specific, but especially general deterrence, as well as denunciation, are the most important factors to be considered in the imposition of penalties for civil ... contempt;
3. The impact that the contemptuous act has had on the general public, particularly in relation to health and safety matters, is a relevant consideration in determining the level of penalty;
4. It is the defiance of the court order, and not the illegality of any actions which led to the granting of the court order in the first place, which must be the focus of the contempt penalty;
5. Imprisonment is normally not an appropriate penalty for a civil contempt where there is no evidence of active public defiance (such as public declarations of contempt; obstructive picketing; and violence) and no repeated unrepentant acts of contempt;
6. Where a fine is to be imposed, the level of the fine may appropriately be graduated to reflect the degree of seriousness of the failure to comply with the court order;

....

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

...

[17] [E]nsuring the proportionality of the sentence to the wrongdoing, the presence or absence of any aggravating or mitigating circumstance, and reasonableness are to be considered in determining the appropriate sentence In addition, the contemnor's ability to pay is relevant to ensure the penalty is neither trivial nor unduly punitive [*Boily v Carleton Condominium Corporation*, 145, 2014 ONCA 574 paras. 90 and 133].

[42] In this case, but for the forbearance of the City in declining to request imprisonment as a penalty at this time, I would consider ordering it. While there has been minimal evidence of public defiance other than the Whitehorse Star newspaper article in 2022 after the consent order was signed, and the abusive comments made to City staff by Trevor Hunziker in 2022 and 2023, Annie Lake Trucking has continued to engage in "repeated unrepentant acts of contempt". Their admitted and observed ongoing quarrying and extraction activities on the lands, and refusal to vacate the lands confirms this. In addition, their apparent failure to pay the \$7,500 fine ordered as part of the relief in the first contempt application is a continuation of the contempt of court.

[43] At the time of the October 13, 2022 decision, the only other reported civil contempt decision in this jurisdiction was *Gwich'in Development Corporation v Alliance Sonic Drilling Inc et al*, 2009 YKSC 19, where a fine of \$1,000 was imposed. In British Columbia, the range of fines for civil contempt was between \$1,500 and \$7,500. In the

recent decision of *Spurvey*, this Court ordered a fine of \$1,500, with a further fine of \$1,500 if compliance with the court order was not achieved within six weeks of the contempt order, for a total of \$3,000.

[44] The ongoing flagrant disregard of the court orders by Annie Lake Trucking requires an additional sanction to convey the seriousness of such defiance, to deter their ongoing behaviour, and to deter others from similar conduct. The unauthorized use of and profit from a public resource is a factor increasing the gravity of the offence. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect (*United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 901 at 931). This principle must be balanced against the accepted principle that securing compliance with the court's order and not punishment is the primary objective of civil contempt. In this case, while the City has requested a substantial increase of the fine amount, from \$2,500 to \$15,000 against each partner, their counsel has also said that their preferred outcome is compliance with the order by ceasing the activities and leaving the property.

[45] Richard Hunziker's appearance in court at the hearing of this application, his willingness to proceed without an adjournment, and his request for time to comply showed some attempt by Annie Lake Trucking to address the issues. His submissions indicating their building of a heated shop in a nearby location to store their equipment now on the lands shows some effort to comply with the requirement to vacate the property. He promised to move Trevor Hunziker's trailer off the property by the summer of 2025 and was indifferent at best to the removal of John Duell's trailer from the property at any time. However, his request for another two years to continue with

quarrying and extraction activities was the same assertion he made in written correspondence with the City two years earlier. Annie Lake Trucking has been able to profit from the resources on the lands, without a lease, without authorization, in breach of a court order to which they consented, and without paying any fees, for an additional three years after the lawful termination of the lease of the lands. To allow Annie Lake Trucking to continue their activities is not only impossible because of the court order in place but it would also constitute a breach of the new OCP and would be an explicit condonation of their disobedience of the court order.

[46] Given the primary objective of compliance with the order, and Richard Hunziker's submissions, I will order as follows:

1. a declaration that Annie Lake Trucking continues to be in contempt of the consent order of March 22, 2022.
2. the fine of \$7,500, equally divided among each of the three partners, and ordered to be paid on October 13, 2022, remains payable to the Territorial treasurer.
3. the enforcement order of August 23, 2023, remains in place.
4. Annie Lake Trucking shall remove all equipment, materials, structures, chattels, refuse, mobile homes/trailers at the latest by June 30, 2025, from the lands. If anything belonging to Annie Lake Trucking, or any of its partners, or anything belonging to someone invited onto the lands by Annie Lake Trucking, specifically the mobile home and vehicles of John Duell, remains on the lands as of July 1, 2025, each partner is

immediately ordered to pay a fine of \$7,500 each, for a total of \$22,500, to the Territorial treasurer.

[47] the City has the right to return to court to request a penalty of imprisonment of any or all of the partners of Annie Lake Trucking if they fail to comply with this order.

Issue C – Costs

[48] An award of special costs to the successful applicant in a civil contempt proceeding is a long-standing practice. As noted by this Court in the October 13, 2022 decision at para. 35 “[a] person who obtains an order from the court is entitled to have it obeyed without further expense to himself. ...”. The City is entitled to special costs of this application.

DUNCAN C.J.