In the Court of Appeal of Alberta

Citation: Questor Technology Inc v Stagg, 2025 ABCA 271

Date: 20250801
Docket: 2401-0190AC;
2401-0249AC
Registry: Calgary

2025 ABCA 271 (CanLII)

Between:

Docket: 2401-0190AC

Questor Technology Inc.

Respondent

- and -

Richard Stagg, aka Ritchie Stagg, Jeffrey Nelson, aka Jeff Nelson, Justin Bouchard and Emission Rx Ltd.

Appellants

And Between:

Docket: 2401-0249AC

Questor Technology Inc.

Appellant

- and -

Richard Stagg, aka Ritchie Stagg, Jeffrey Nelson, aka Jeff Nelson, Justin Bouchard and Emission Rx Ltd.

Respondents

The Court:

The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Jane Fagnan
The Honourable Justice Karan Shaner

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice P.R. Jeffrey
Dated the 28th day of June, 2024
Filed on the 11th day of October, 2024
(2024 ABKB 377, Docket: 1801 11473)

2025 ABCA 271 (CanLII)

Memorandum of Judgment

2025 ABCA 271 (CanLII)

The Court:

Overview

[1] These related appeals arise out of a declaration of civil contempt of court against three defendants in ongoing litigation, in which Questor Technology Inc alleges three of its former employees breached duties owed to Questor by developing a competing technology while still in Questor's employ.

[2] The behaviour found to be contemptuous occurred during pre-trial processes in the lawsuit. The chambers justice found the individual defendants (Stagg, Nelson and Bouchard) offered intentionally false evidence in affidavits and during cross-examination under oath, intentionally withheld evidence when swearing their affidavits of records, and intentionally falsified and withheld evidence when swearing other affidavits. The chambers justice found the evidence in question related to issues which were relevant and material to the litigation. He was satisfied that the individual defendants collectively persisted in a "scheme to mislead, conceal and falsify", designed to downplay evidence of their actions and statements prior to their departure from their employment with Questor. He was satisfied that the requirements for civil contempt had been proved beyond a reasonable doubt.

[3] There are two related appeals from the decision of the chambers justice. The individual defendants appeal the finding of contempt against them. Questor appeals the chambers justice's decision not to find Emission Rx Ltd, the corporate defendant that was established by the individual defendants, also in civil contempt of court.

[4] For the reasons that follow, both appeals are dismissed.

Background

[5] Questor is an environmental technology company in the waste gas combustion business. In August 2018, Questor sued three former employees (the individual defendants) and the corporate defendant, Emission. The individual defendants all left their employment at Questor between April and June 2018. Questor's suit alleges that the individual defendants breached duties owed to Questor by developing a competing low-pressure burner technology for Emission, a company established by the individual defendants, while they were still employed by Questor. The individual defendants deny that they breached duties owed to Questor and deny that the Emission technology involves the use of any confidential or proprietary information belonging to Questor.

2025 ABCA 271 (CanLII)

[6] Questor brought several pre-trial applications, including for an interlocutory injunction to prevent Emission from competing against Questor, a preservation order requiring Emission to pay its profits into a trust pending trial, and an order compelling further production of documents. The individual defendants filed affidavits opposing the applications and were extensively cross-examined on those affidavits.

[7] The case management justice dismissed Questor's application for an interlocutory injunction: 2020 ABQB 3. In a later decision, the case management justice denied Questor's request to preserve Emission's profits by requiring they be paid into trust pending trial: 2021 ABQB 644.

[8] On September 8, 2022, the case management justice granted an order for further production, which required the defendants to produce additional records, including design information, correspondence, operating manuals, financial records, and customer lists. Among other directions, the production order mandated that Questor's independent experts have access to the personal email accounts of the defendants "to review emails and attachments dated between March 2018 and September 2018 for any correspondence related to the development of Emission Rx's designs": 2022 ABQB 578 at para 205 (the *Records Decision*).

[9] On November 7, 2022, counsel for the defendants sent a letter to the case management justice and Questor's counsel, advising of errors in evidence already given by the defendants in the litigation and correcting those errors. The letter read, in part, "[w]e have been instructed by the defendants to correct the evidentiary record including affidavit evidence, questioning transcripts and answers to undertakings". The letter attached a 16-page chart that identified corrections to sworn evidence given by each of the individual defendants on various occasions during the course of the litigation (the Admissions). The defendants also provided supplemental affidavits of records in November 2022 and further supplemental affidavits of records on January 24, 2023. In July 2023, the defendants filed correcting affidavits, in which they swore to the truth of the corrections.

[10] In July 2023, Questor applied to have the individual defendants and Emission cited in contempt of court. Questor alleged that, during the course of the lawsuit, the defendants knowingly provided false evidence, knowingly withheld evidence, and knowingly misled Questor and the court. The contempt application sought an order declaring each of the individual defendants and Emission in civil contempt of court on two bases: first, for engaging in conduct before the court that warrants a finding of civil contempt pursuant to rule 10.52(3)(a)(ii) of the *Alberta Rules of Court*, Alta Reg 2010/124 (the *Rules of Court*); and, second, for breaching orders of the case management justice arising from the *Records Decision* and, with respect to the defendant Nelson, a June 24, 2019 order compelling answers to undertakings, all contrary to rule 10.52(3)(a)(i).

[11] The contempt application was heard by a different chambers justice who was not the case management justice. The parties took no issue with that procedure.

2025 ABCA 271 (CanLII)

[12] The chambers justice rejected the defendants' argument that the evidentiary corrections set out in the Admissions were merely corrections made in accordance with rule 5.27. He found that the timing of the letter attaching the Admissions, coming as it did soon after the *Records Decision*, "belies the [defendants'] suggestion that this was simply normal course compliance with Rule 5.27". He found "the known errors were admitted only after the Individual Defendants concluded they would soon all be discovered as a consequence of the *Records Decision*", and that the individual defendants were "motivated by self-interest to correct the record without further delay once the effect of the *Records Decision* would reveal the errors": 2024 ABKB 377 (the *Contempt Decision*) at para 134.

[13] The chambers justice found the individual defendants in contempt based on the Admissions and the additional production that followed the *Records Decision*. He was satisfied beyond a reasonable doubt that the court required the individual defendants to be entirely truthful and that each of them knew that: *Contempt Decision* at para 84. He further found that each of the individual defendants intentionally withheld records and offered "distorted and falsified evidence" in affidavits and cross-examinations in a manner that was "collectively designed to downplay anything they did or said prior to their departure from Questor in respect of Emission or the New Technology": *Contempt Decision* at paras 121-122. The chambers justice was satisfied that the individual defendants acted intentionally, with "knowledge of the erroneous testimony and a conscious choice to perpetuate the deceptions": *Contempt Decision* at para 125.

[14] The written reasons for the contempt finding were silent with respect to the alleged contempt of court of the corporate defendant, Emission. Prior to the entry of the order, the parties reattended before the chambers justice and Questor sought clarification as to whether Emission had also been found in contempt. At that attendance, the chambers justice confirmed that he did not find Emission in contempt.

Issues on appeal

[15] There are two related appeals before this Court. The individual defendants appeal the finding of civil contempt of court made against them (Appeal No 2401-0190). Questor appeals the finding that Emission was not in contempt of court (Appeal No 2401-0249).

[16] The individual defendants raise several issues in their appeal of the contempt finding. Their primary submission is that the chambers justice erred in his identification and application of the mental element required to establish civil contempt where the alleged contemptuous conduct involves the giving of false evidence under oath. They also argue that the chambers justice erred in finding a breach of the *Rules of Court* sufficient to find civil contempt, and in finding the individual defendants committed contempt before the court under rule 10.52(3)(a)(ii). Finally, they submit that the chambers justice failed to consider and exercise his discretion as to whether to find contempt.

2025 ABCA 271 (CanLII)

[17] In its related appeal, Questor raises two issues: (1) whether the reasons of the chambers justice are sufficient to permit appellate review of the decision not to find Emission in contempt, and (2) whether the chambers justice misapplied his discretion in declining to find Emission in contempt.

Standard of review

[18] The standard of review for a finding of contempt of court varies with the issue. It was described in *Envacon Inc v 829693 Alberta Ltd*, 2018 ABCA 313 [*Envacon*] at para 7 (citing *Aberta v AUPE*, 2014 ABCA 197 at para 15):

> Where the appeal involves a question of law, the standard of review is correctness …. Where the issue relates to the exercise of discretion, the standard is one of reasonableness …. The findings of fact and inferences of fact underlying a finding of contempt are reviewed for palpable and overriding error …. The finding of contempt in a particular case involves the application of a legal standard to the facts, meaning it is a mixed question of fact and law and it is reviewable on the palpable and overriding error standard….

The finding of civil contempt against the individual defendants (Appeal No 2401-0190AC)

Issue 1: Did the chambers justice err in his description and application of the mental element to establish civil contempt where the alleged contemptuous conduct is giving false evidence under oath?

[19] Contempt of court rests on the "power of the court to uphold its dignity and process": *Carey v Laiken*, 2015 SCC 17 [*Carey*] at para 30. Two forms of contempt of court are recognized – criminal contempt and civil contempt – with the distinction resting on the "element of public defiance accompanying criminal contempt". The purpose of sentencing for civil contempt is primarily coercive, although there is an element of punishment for breaching a court order and to deter similar conduct by the contemnor and others: *Carey* at para 31.

[20] To establish civil contempt of court requires "proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice": *Carey* at para 38. In *Envacon*, this Court described the three elements that must be proven: (1) an existing requirement of the court; (2) notice of the requirement to the person alleged to be in contempt; and (3) an intentional act (or failure to act) that constitutes a breach of the requirement: *Envacon* at para 32; *Point on the Bow Development Ltd v William Kelly & Sons Plumbing Contractors Ltd*, 2006 ABQB 775 [*Point on the Bow (QB)*] at para 19.

[21] In describing the requisite mental element for civil contempt in the context of an alleged breach of a court order, the Supreme Court in *Carey* emphasized that all that is required is proof

of an intentional act or omission that constitutes a breach. The Supreme Court rejected the suggestion that it is also necessary to establish "contumacious intent", being "the intent to interfere with the administration of justice" or "the intention to disobey, in the sense of desiring or knowingly choosing to disobey the order": *Carey* at paras 29 and 39.

[22] The chambers justice adopted the approach set out in *Carey*, describing the mental element for civil contempt as requiring proof only that the impugned conduct was volitional, in the sense that it was "knowingly and intentionally done, or knowingly and intentionally omitted from being done." He went on to note that "[p]roof of contumacious intent is not required.": *Contempt Decision* at para 55.

[23] The individual defendants take issue with that statement of the requisite mental element for civil contempt in the circumstances of this case. They say that where the allegedly contemptuous conduct involves an allegation of giving false evidence under oath, as opposed to the breach of a court order, it must also be shown that the contemnor had an intention to mislead the court, equivalent to the *mens rea* requirement for perjury.

[24] The chambers justice rejected that submission. He distinguished the mental element required to establish civil contempt for giving false evidence under oath from that required for the criminal offence of perjury. Section 131(1) of the *Criminal Code,* RSC, c C-46 expressly provides that a person "commits perjury who, *with intent to mislead*, makes ... a false statement under oath or solemn affirmation .... knowing that the statement is false" (emphasis added), cited in *Contempt Decision* at para 37. Intent to mislead is therefore an express requirement of the offence of perjury, pursuant to the *Criminal Code*.

[25] In contrast, in the view of the chambers justice, the courts in *Carey* and *Envacon* "are clear that intending to mislead the court ... is not an element of civil contempt": *Contempt Decision* at para 38. He stated that the Supreme Court in *Carey* "refers to this type of *mens rea* as 'contumacious intent'", and although its presence may be relevant to the sanction for civil contempt, "it is not a prerequisite to a court finding civil contempt": *Contempt Decision* at para 38.

[26] The chambers justice was not satisfied that a different two-part test applies to a finding of civil contempt where the allegedly contemptuous conduct involves giving false evidence under oath. That two-part test, as put forward by the individual defendants, would require that the contemnor (1) knowingly provided false evidence and (2) that the false evidence was provided with the deliberate intent to mislead or deceive. The chambers justice concluded that proof of a deliberate intent to mislead is an element of perjury, but not a requirement of civil contempt.

[27] On appeal, the individual defendants submit that the chambers justice confused "contumacious intent", described in *Carey* as the desired or knowing choice to disobey a court

2025 ABCA 271 (CanLII)

2025 ABCA 271 (CanLII)

order or the intent to interfere with the administration of justice, with "an intent to mislead", a required element of perjury. They acknowledge that *Carey* confirms that contumacious intent is not required to establish civil contempt for breach of a court order but say it would be an error to conclude that the decision holds an intention to mislead is not required to establish civil contempt for giving false evidence under oath.

[28] In support of this submission, the individual defendants argue that Canadian courts have applied the test for the criminal offence of perjury to adjudicate allegations of civil contempt for giving false evidence[1]. This argument was also made before and considered by the chambers justice, and we agree with his analysis of the cases relied upon by the individual defendants and his conclusion that they do not stand for the asserted proposition.

[29] As the chambers justice noted, none of the cited cases expressly states that the test for civil contempt involving lying under oath requires proof of contumacious intent, nor do they state that it is necessary to satisfy all the requisite elements of perjury in order to find civil contempt: see the discussion at paras 44 to 53 of the *Contempt Decision*. Moreover, all of the cases, with the exception of *Lessard-Gauvin v Canada (Attorney General)*, 2019 FC 979, affirmed 2019 FCA 233 [*Lessard-Gauvin*], were decided prior to the Supreme Court's decision in *Carey*. In *Lessard-Gauvin*, the Federal Court considered an application that a person be compelled to appear for contempt of court "for making a false statement or committing perjury": para 1. The decision does not mention *Carey*. In dismissing the application, the court relied on a previous decision of the Federal Court in *Orr v Fort McKay First Nation*, 2012 FC 1436 [*Orr*], in which it was said that for the court to be satisfied a *prima facie* case of contempt has been made, the party must show "a *prima facie* case of wilful and contumacious conduct on the part of the contemnor": para 14. *Orr* dealt with breach of a court order, not providing false evidence, and was decided pre-*Carey*. The court in *Lessard-Gauvin* also relied on *Kumar v The Queen*, 2004 TCC 521, which, as the chambers justice noted, involved a claim that the Minister of National Revenue or a CRA officer should be held in contempt for committing perjury but "does not say perjury and civil contempt are the same thing" or that "intent to deceive is an essential element of civil contempt but rather describes it as a requirement for perjury": *Contempt Decision* at para 48.

[30] The individual defendants also rely on a series of English decisions that consider the case that must be made out to establish a party is in contempt of court by making a "false statement of truth" in court proceedings or swearing a false affidavit. Some of those decisions arise in the context of whether to grant permission to a party to bring a claim for contempt as being in the public interest under the relevant rules of procedure, which expressly provide for contempt

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[1] Citing *Lessard-Gauvin v Canada (Attorney General)*, 2019 FC 979, affirmed 2019 FCA 233; *TJL v AAL*, 2012 BCSC 1037; *Estate of Paul Penna*, 2012 ONSC 4730; *Kumar v R*, 2004 TCC 521, affirmed in 2005 FCA 222; *D M Zall Co v Transwest Helicopters (1965) Ltd*, 1986 CarswellBC 2759; *Berube v Wingrowich*, 1999 ABQB 698

proceedings for making a false statement in court proceedings[2]; others consider applications to commit the defendant to prison for contempt, permission to make that application having been given: see, eg, *AXA Insurance UK PLC v Rossiter*, [2013] EWHC 3805 (QB). The test was expressed as follows by the Court of Appeal of England and Wales in *Norman v Alder, Wilkinson*, [2023] EWCA Civ 785 [*Norman*] at para 39:

> … the practical starting point when considering permission to bring proceedings for contempt in the public interest is whether there is a strong case (capable of being proved to the criminal standard) that the alleged contemnor made a statement to the court knowing it to be untrue and *knowing that it would be relied upon by the court*.
> [emphasis added]

In the same decision, the court later noted "we were taken to no example of a case in which anything less than knowingly misleading the court has sufficed for a finding of contempt": at para 56. In some of the decisions, it is said that it must be shown the alleged contemnor knew the statements would, or were likely to, "interfere with the course of justice"[3].

[31] The Supreme Court of Canada in *Carey* clearly stated that, in Canada, "[c]ontumacy – the intent to interfere with the administration of justice – is not an element of civil contempt and lack of contumacy is therefore not a defence": para 29. The Supreme Court further clarified the Canadian law of civil contempt at para 38:

> It is well established in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice. [citations omitted] ... to require a contemnor to have intended to disobey the order would put the test "too high" and result in "mistakes of law [becoming] a defence to an allegation of civil contempt but not to a murder charge" ... Instead, contumacy or lack thereof goes to the penalty to be imposed following a finding of contempt.

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[2]See *The Civil Procedure Rules 1998*, 1998 No 3132 (L. 17), 32.14:

> (1) Proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in a document, prepared in anticipation of or during proceedings and verified by a statement of truth, without an honest belief in its truth.
>
> (3) Proceedings under this rule may be brought only – (a) by the Attorney General; or (b) with the permission of the court.

[3] See, eg, *Shelley v The Estate of Christopher Trevor Norman*, [2021] EWHC 975 (QN) at para 42 and generally the review of the law at paras 34 to 39 of *Norman*.

2025 ABCA 271 (CanLII)

2025 ABCA 271 (CanLII)

[32] The Supreme Court went on to consider the submission that in some situations, such as where the "alleged contemnor cannot 'purge' the contempt, is a lawyer or is a third party to the order, the intent to interfere with the administration of justice must be proved": para 39. That position was rejected:

> [41] I cannot accept this position. There is no principled reason to depart from the established elements of civil contempt in situations in which compliance has become impossible for either of the reasons referred to by the appellant. Where, as here, the person's own actions contrary to the terms of a court order make future compliance impossible, I fail to see the logic or justice of requiring proof of some higher degree of fault in order to establish contempt. The appellant's submission also overlooks the point that one of the purposes of the contempt power is to deter violations of court orders, thereby encouraging respect for the administration of justice. It undermines that purpose to treat with special charity people whose acts in violation of an order make subsequent compliance impossible. It seems to me that the existing discretion not to enter a contempt finding and the defence of impossibility of compliance provide better answers than a heightened degree of fault where a party is unable to purge his or her contempt for the reasons the appellant outlines: *Jackson*, at para. 14; *Sussex Group Ltd. v. Fangeat*, 42 C.P.C. (5th) 274 (Ont. S.C.J.), at para. 56.
>
> [42] The appellant correctly notes that civil contempt is quasi-criminal in nature, which he says justifies a higher fault element where contempt cannot be purged. *But civil contempt is always quasi-criminal, so this provides no justification for carving out a distinct mental element for particular types of civil contempt cases.*
> [emphasis added]

[33] To the extent that English law includes a requirement to establish contumacious intent as an element of civil contempt of court arising from the giving of false statements, we would decline to import that requirement into Canadian law. The statement in *Carey* is unequivocal that contumacy is not part of the mental element for proof of civil contempt of court in Canada.

[34] We are satisfied that the chambers justice was correct in his conclusion on the mental element for civil contempt when he said, "the intention that must be proven is only that the act or omission said to constitute contempt of court was volitional. The impugned conduct was knowingly and intentionally done or knowingly and intentionally omitted from being done. Proof of contumacious intent is not required": *Contempt Decision* at para 55.

[35] The mental element to establish civil contempt requires proof beyond reasonable doubt of an intention to do the impugned act, whether that act is breaching a court order or giving false evidence under oath; it does not require further proof of an intention to interfere with the

administration of justice. In other words, it is not necessary to establish the intention to knowingly choose to disobey a court order where that is the basis for the civil contempt; nor is it necessary to establish an intention to mislead the court in the case of civil contempt for knowingly providing false evidence under oath.

[36] In considering whether civil contempt of court was established against the individual defendants, the chambers justice considered the three elements set out in *Envacon*: (1) an existing requirement of the court, (2) notice of the requirement to the alleged contemnor, and (3) an intentional act that constitutes a breach of the requirement. With respect to the first two elements, the chambers justice was satisfied that (1) there was a requirement that the individual defendants be entirely truthful when giving sworn evidence to the court, and (2) each of the individual defendants was aware of that requirement: *Contempt Decision* at para 84. No issue is taken with respect to those conclusions.

[37] With respect to the third element, in the circumstances here it requires proof beyond a reasonable doubt that the alleged contemnor gave evidence under oath that was false and did so intentionally, knowing the evidence to be false at the time it was given.

[38] The chambers justice described the third element in slightly different terms: whether, at the time each of the individual defendants testified under oath, their impugned statements were in fact false and were "deliberately or recklessly uttered while known to be false": *Contempt Decision* at para 87. He went on to explain his use of the term recklessly in this context: "By recklessly is meant the possibility that the act would be disobedient must have been foreseen and ignored". The individual defendants submit that the chambers justice erred in suggesting that recklessness may be sufficient to establish the requisite intention for civil contempt for giving false evidence under oath.

[39] There are cases that suggest intent in civil contempt can be satisfied by evidence of deliberateness, recklessness or wilful blindness: see *Canadian Pacific Railway Company v Teamsters Canada Rail Conference*, 2024 FCA 136 [*Canadian Pacific v Teamsters Canada*] at para 35; *Doucette v Morin*, 2015 SKQB 259 at para 30. In this case the chambers justice did not rely on recklessness to establish civil contempt; it is not necessary for us to decide whether, in appropriate circumstances, it would be sufficient to show that an alleged contemnor was reckless as to whether their evidence was false when it was given.

[40] The chambers justice agreed with Questor's position that the matters falsified by the individual defendants were "relevant and material" to its claim: *Contempt Decision* at paras 75, 101, 113, 116 and 134. It is clear from the chambers justice's reasons that he was satisfied the individual defendants acted intentionally in giving evidence under oath that they knew to be false at the time it was given. These findings appear throughout his lengthy reasons, as the following examples illustrate:

2025 ABCA 271 (CanLII)

- The Admissions established that certain evidence was false when it was first given under oath. Questor must also prove beyond a reasonable doubt that the evidence was “known to be false at each of the times Stagg, Nelson and Bouchard swore their statements to be true”: para 90

- After reviewing examples of Bouchard falsifying evidence in his June 2019 cross-examination, the chambers justice concluded that he could “conceive of no reasonable alternate inference to draw from these responses than that the falsehoods were knowingly uttered under oath intentionally”: para 112

- The chambers justice found the individual defendants withheld evidence; based on the “volume of the withholding, the content of the information withheld, and that all three of them not just one of them withheld the information”, he could “conceive of no alternate reasonable inference to draw than that each did so intentionally”: para 114

- In his August 2019 affidavit, Bouchard falsified and withheld evidence of combustor design and fabrication in January and February 2018; this was admitted to be deficient in the Admissions, where it was disclosed that the individual defendants designed a combustor in January and February 2018. The chambers justice inferred “these falsehoods and selective withholding of evidence were intentional”: para 115

- Further examples of false evidence were said to increase the chambers justice’s confidence “in the intentionality of the Individual Defendants’ scheme to mislead, conceal and falsify”: para 118

- The chambers justice noted that the individual defendants each persisted in maintaining their erroneous evidence was true, in the face of questions and applications to compel more records. “The fact that the Individual Defendants each time affirmed what they now admit to have been in error, strongly and only implies intentionality. It strongly and only implies knowledge of the erroneous testimony and a conscious choice to perpetuate the deceptions”: para 125

- “By virtue of the common thread to the evidence of each Individual Defendant, each acting similarly to the other two, in all the circumstances of this case, it necessarily follows that they did so with intentionality”: para 126.

[41] The chambers justice’s focus on whether the individual defendants intentionally and knowingly provided false evidence is further demonstrated by his decision to dismiss certain allegations of contempt that did not meet that standard. For example, he dismissed allegations that

2025 ABCA 271 (CanLII)

2025 ABCA 271 (CanLII)

he found too imprecise and vague to persuade him "beyond a reasonable doubt that the affiants knowingly falsified this evidence" (para 93), or too subjective "to satisfy me beyond a reasonable doubt that the affiants were intentionally falsifying" evidence (para 94). He was also not satisfied beyond a reasonable doubt that Bouchard "was intentionally providing erroneous evidence about [the timing of his use of certain software licensed to Questor], not unintentionally mistaken as to timing…": para 120.

[42] In most cases it could be inferred from a finding of knowingly giving false evidence that it was done to mislead the court. To the extent there may be circumstances where that inference cannot be drawn, the court has the discretion not to find someone in contempt should that be appropriate. In any event, while there may be cases in which knowingly providing false evidence would not support the inference that it was done to mislead the Court, this is not one of them.

[43] We are satisfied that the chambers justice did not err in law with respect to the mental element required to establish civil contempt of court in the circumstances before him and we see no reviewable error in his conclusion that the impugned conduct constituted civil contempt. This ground of appeal is dismissed.

Issue 2: Did the chambers justice find that a breach of the Rules of Court is a sufficient basis for a contempt finding?

[44] The individual defendants submit that the chambers justice erred in holding them in civil contempt of court for inadequate production, which they characterize as simply a breach of the *Rules of Court*.

[45] A breach of the *Rules of Court*, on its own, is not sufficient to establish civil contempt: *Point on the Bow (QB)* at para 22, aff'd 2007 ABCA 204 at para 17. However, the chambers justice did not find the individual defendants in civil contempt for a mere failure to comply with the *Rules of Court*. He was satisfied that the individual defendants each intentionally gave false evidence under oath, knowing it to be false, when they provided their initial affidavits of records. In the circumstances, and for the reasons already given, we find no error in the chambers justice's conclusion that this conduct constituted civil contempt.

[46] This ground of appeal is dismissed.

Issue 3: Does the alleged conduct constitute contempt "before the court" contrary to rule 10.53(3)(a)(ii)?

[47] The individual defendants note that Questor applied for a declaration that they be held in contempt of court for conduct engaged in while "before the Court", pursuant to Rule 10.53(3)(a)(ii). They say that none of the instances for which they were found in contempt were "before the court" and that the chambers justice erred in making the contempt declaration.

2025 ABCA 271 (CanLII)

[48] This issue is raised for the first time on appeal. Parties are generally not permitted to raise new arguments on appeal, due in part to the potential "prejudice to the other side caused by the lack of opportunity to respond and adduce evidence at trial": *R v Hoefman*, 2023 ABCA 207 at para 32. If the individual defendants had raised any concerns before the chambers justice about the scope of relief sought in the contempt application, Questor could have applied to amend the application to seek an order for contempt at common law or pursuant to the court's inherent jurisdiction, had that been necessary. We also note rule 10.55, which provides that nothing in the *Rules of Court* prevents the court from exercising its inherent power to cite in contempt and punish those "who disobey the Court's lawful orders or who otherwise display contempt for its process".

[49] It is clear that the court has the authority, whether pursuant to the *Rules of Court* or its inherent power, to cite in contempt a party that has filed false evidence. In this case, the application gave the individual defendants ample notice of the conduct in respect of which the finding of contempt was sought and ultimately granted. They were not taken by surprise, and they have not alleged that they suffered any prejudice.

[50] This ground of appeal is dismissed.

Issue 4: Did the chambers justice fail to consider his discretion to find contempt?

[51] The individual defendants submit that the chambers justice erred because, after concluding the three elements of civil contempt had been established, he failed to consider his discretion whether to make a finding of contempt.

[52] The chambers justice was well aware that he possessed such discretion. He said, at para 70:

> … though a moving party may prove beyond a reasonable doubt all three elements of civil contempt, and the absence of any reasonable excuse, finding a party in civil contempt is still discretionary. Rule 10.52(3), above, uses the words "may declare". The Court is not to use its contempt power routinely to obtain compliance, but rather cautiously. 'It is an enforcement power of last rather than first resort': *Carey* at para 36.

[53] The chambers justice concluded that all three elements of civil contempt had been established beyond a reasonable doubt. He then went on to find that Questor had established the absence of any reasonable excuse and stated that he had "not been presented with any basis for finding reasonable doubt that finding civil contempt here would work an injustice", citing *Envacon* at para 40.

[54] The individual defendants take the position that, while the chambers justice acknowledged his discretion to find civil contempt, he failed to consider whether or not to exercise that discretion.

2025 ABCA 271 (CanLII)

[55] The discretionary nature of the contempt power was described by Cromwell J in *Carey,* who pointed out that "courts have consistently discouraged its routine use to obtain compliance with court orders": para 36. He went on to state:

> If contempt is found too easily, "a court's outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect" …. As this Court has affirmed, "contempt of court cannot be reduced to a mere means of enforcing judgments" ... Rather, it should be used "cautiously and with great restraint" ... It is an enforcement power of last rather than first resort. [citations omitted]

[56] In *Centre commercial Les Rivières ltée c. Jean bleu inc.*, 2012 QCCA 1663 [*Les Rivières*] at para 7 (quoted by Cromwell J in *Carey*, above), Kasirer JA (as he then was) observed that "contempt of court is an exceptional proceeding to which courts should turn only 'sparingly' and as a 'last resort'". In addition to noting that overuse of the contempt power might "cheapen the role and authority" of that power, he explained that a position of restraint reflects "the seriousness of the charge of contempt and the reality that the contemnor is potentially exposed to the rare sanction of imprisonment in civil matters".

[57] From a practical perspective, the Canadian Judicial Council has pointed out that it is "highly desirable to avoid contempt proceedings because, *inter alia*, they embroil the court in distracting collateral issues, and they start the court down a road which is not its regular circuit": Canadian Judicial Council, *Some Guidelines on the Use of Contempt Powers* (2001) at p 34.

[58] Both before and after *Carey*, numerous courts have recognized that civil contempt is a power that should be used sparingly: see, eg, *Sutherland Estate v Murphy*, 2025 ONCA 227 at paras 46-47; *Airside Event Spaces Inc v Langley (Township)*, 2022 BCCA 393 at paras 27-30; *Morasse v Nadeau-Dubois*, 2016 SCC 44 at para 21; *Constructions Louisbourg ltée v Société Radio-Canada*, 2014 QCCA 155 at para 26; *Hefkey v Hefkey*, 2013 ONCA 44 at para. 3; *St. Elizabeth Home Society v Hamilton (City)*, 2008 ONCA 182 at paras 41-42.

[59] The reasons for the exercise of discretion not to make a contempt order are varied. In *Carey*, Cromwell J cited as an example the situation where "an alleged contemnor acted in good faith in taking reasonable steps to comply with the order", but declined "to delineate the full scope of this discretion" and left open "the possibility that a judge may properly exercise his or her discretion to decline to impose a contempt finding where it would work an injustice in the circumstances of the case": *Carey* at para 37.

[60] In addition to considering whether the contemnor made good faith efforts to comply (see, eg, *Envacon* at paras 38-39; *North Elgin Centre Inc v McDonald's Restaurants of Canada Limited*, 2021 ONCA 173 at para 45; *TG Industries Ltd v Williams*, 2001 NSCA 105 at para 38), courts

have considered: whether there is an alternate remedy that could adequately address the conduct (*Les Rivières* at paras 46, 73; *Constructions Louisbourg ltee* at para 26; *Airside Event Spaces Inc* at paras 39-40); whether the conduct was the sort of egregious behaviour that threatens the authority of the court and therefore merits sanction (*Les Rivières* at paras 67, 74; G*(JD) v G(SL)*, 2017 MBCA 117 at para 76); whether a contempt order may exacerbate a high conflict situation where the parties are involved in contentious personal litigation (*Chong v Donnelly*, 2019 ONCA 799; *Ruffolo v David*, 2019 ONCA 385 at para 19); and, fundamentally, whether it is in the best interests of justice to make a formal contempt order (*Carey* at para 37). In many instances where the elements of contempt have been established it will be appropriate for a judge to decline to find contempt for these and similar reasons, to avoid the concerns expressed in *Carey* and *Les Rivières*.

2025 ABCA 271 (CanLII)

[61] In this case, the chambers justice was aware of the discretionary nature of the contempt power and was satisfied that finding civil contempt would not be unjust in the circumstances. In reviewing that decision, we are mindful that the false evidence has been corrected and there appears to be no further need to compel behaviour, and that other meaningful remedies, such as an award of costs or the ability to use the Admissions in assessing credibility at trial, were available.

[62] Nevertheless, we are satisfied that the decision of the chambers justice to find civil contempt does not disclose reviewable error in these circumstances. The chambers justice acknowledged that the false evidence had been corrected but found those corrections to have been "motivated by self-interest to correct the record without further delay once the effect of the *Records Decision* would reveal the errors. They were mitigating the fallout of their conduct once having been found out": *Contempt Decision* at para 134. The chambers justice expressly rejected the suggestion that the individual defendants should not be held in contempt because the record had been corrected. He also rejected the proposition that "compliance with Rule 5.27 absolves a contemnor for earlier lying to the Court", holding that "[s]uch an approach is sure to invite proliferation of such civil contempt by all litigants, with impunity and with disastrous consequences for the efficacy of the system.": *Contempt Decision* at para 135. He was clearly of the view that the conduct of the individual defendants, which he described as a "scheme to mislead, conceal and falsify" (*Contempt Decision* at para 118), was egregious, threatened the authority of the court, and warranted sanction for civil contempt. These findings were available to him on the record and we see no error in his decision to exercise his discretion to find contempt.

[63] This ground of appeal is dismissed.

Conclusion on the appeal of the individual defendants

[64] For the foregoing reasons, the appeal of the individual defendants is dismissed.

2025 ABCA 271 (CanLII)

Questor's appeal of the decision not to find the corporate defendant, Emission, in contempt (Appeal 2401-0249AC)

[65] The contempt application filed by Questor sought to have each of the individual defendants, as well as Emission, the corporation created by them, cited in civil contempt of court. In his written reasons for judgment, the chambers justice found each of the individual defendants in contempt but did not expressly address the allegation of contempt against Emission.

[66] The reasons directed the parties to schedule a return attendance before the chambers justice. At that appearance, Questor raised the issue of whether Emission had also been found in contempt of court. The chambers justice stated:

> So, to the extent any party reached the conclusion that I did not find Emission Rx in contempt, they would be correct. I did not. I realize now I should have contemplated that it would be needed for the judgment rule [sic], the decision order, and so I apologize for not saying that expressly. This is the second thing, it was a conscious decision, since I was not persuaded to exercise my restrained discretion to find contempt, in this case against the corporation, because of the contempt of its corporate representative in this case. So, being careful in that wording to not say it can never to done against a corporation, I did struggle with that contempt when the actions that impugned related to actions of its human representative.

[67] Emission submits that we should have no regard to the comments made by the chambers justice at the subsequent hearing because they were "at best *obiter dicta* but more accurately are judicial commentary on a prior decision provided to assist to confirm the content of a form of order". We disagree. The comments made by the chambers justice at the subsequent appearance preceded any order being taken out. He was not *functus* and the comments are properly considered when the reasons for his contempt decision are assessed.

[68] Questor appeals the chamber justice's decision not to find Emission in contempt. Questor argues, first, that the chambers justice was "apparently satisfied that it was appropriate to impute contempt" to Emission but misapplied his discretion in declining to find Emission in contempt. When the chambers justice's comments at the subsequent appearance are read as a whole and in context, they do not support that characterization. Rather, his comments demonstrate the chambers justice's consideration of whether it was appropriate to find Emission in civil contempt for the actions of its human representatives. This requirement for holding a corporation in civil contempt was not expressly addressed before the chambers justice during the initial contempt hearing, although it did arise in the arguments on appeal.

[69] For the reasons given above with respect to the submission of the individual defendants regarding rule 10.53(3)(a)(ii), we have concerns about dealing with this issue for the first time on

2025 ABCA 271 (CanLII)

appeal. However, we make the following brief comments to explain why, in the circumstances of this case, we would not give effect to this ground of appeal.

[70] A corporation can be held in civil contempt if all the elements of contempt, including the requisite intention, are established as against the corporation. The Supreme Court of Canada reviewed the approach to criminal intent in a corporate entity in *Canadian Dredge & Dock Co v The Queen*, [1985] 1 SCR 662, 1985 CanLII 32 (SCC) [*Canadian Dredge*]. The doctrine of directing mind permits criminal conduct, including state of mind, of an employee or agent to be attributed to a corporation so long as the individual represents its “directing mind”: *Canadian Dredge* at para 13. The directing mind doctrine has been described as a “middle ground” between vicarious liability, imposing blanket liability for criminal acts of agents acting within the scope of their employment, and a principle of no criminal liability unless the acts were directed by the board of directors: *Canadian Pacific v Teamsters Canada* at para 51, citing *Canadian Dredge*.

[71] As the Federal Court of Appeal noted in *Canadian Pacific v Teamsters Canada*, the directing mind doctrine has been applied to corporations in the context of civil contempt, “usually in the context of closely held corporations”: para 52. The requisite intent for civil contempt may be relatively simple to establish for a closely held corporation because “the person who committed the act that breached the order will often necessarily be the directing mind of the corporation”: *Canadian Pacific v Teamsters Canada* at para 53. However, it is not sufficient to argue simply that the analysis should be perfunctory, without more, as Questor does on appeal.

[72] An applicant seeking to hold a corporation in civil contempt must prove beyond a reasonable doubt that the directing mind doctrine applies, and that the corporation is responsible for the alleged contempt because the impugned acts were committed by a person who represented the directing mind of the corporation. Although Questor applied to have all of the individual defendants and Emission held in civil contempt, it made no submissions to that effect at the contempt hearing, or as to any basis on which Emission should be held in contempt for the acts of the individual defendants.

[73] Questor submits that the reasons of the chambers justice on this point are insufficient. We disagree. When an appellant argues that reasons for decision are insufficient, the appellate court is not to "finely parse the trial judge's reasons in search for error", but must "assess whether the reasons, read in context and as a whole, in light of the live issues at trial, explain what the trial judge decided and why they decided that way in a manner that permits effective appellate review". The question is whether the foundation of the judge's decision is "discernable, when looked at in the context of the evidence, the submissions of counsel and the history of how the trial unfolded": *R v GF*, 2021 SCC 20 at para 69.

[74] While the chambers justice did not expressly address the application to hold Emission in contempt in his written reasons for decision, he clarified those reasons orally at the subsequent

appearance, before a formal order was taken out, by stating his concern with finding the corporation in contempt "because of the contempt of its corporate representative". Questor says there was no evidence differentiating Emission from the individual defendants and therefore no basis on which to decline to find Emission in contempt. But the point is that there was no argument before the chambers justice with respect to the basis on which Emission should be found in contempt for the actions of its human representatives. There was therefore no issue to be addressed, beyond the bare allegation in the contempt application.

2025 ABCA 271 (CanLII)

Conclusion on Questor's appeal

[75] The Questor appeal is dismissed.

Appeals heard on April 14, 2025

Memorandum filed at Calgary, Alberta
this 1st day of August, 2025

Strekaf J.A.

Authorized to sign for: Fagnan J.A.

Authorized to sign for: Shaner J.A.

2025 ABCA 271 (CanLII)

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