

Federal Court



Cour fédérale

Date: 20210720

Docket: T-646-15

Citation: 2021 FC 770

Ottawa, Ontario, July 20, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

CANADIAN STANDARDS ASSOCIATION

Applicant

and

**P.S. KNIGHT CO. LTD.
AND GORDON KNIGHT**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] Canadian Standards Association (**CSA**) seeks an order finding the respondents, P.S. Knight Co. Ltd. (**Knight Co.**) and Mr. Gordon Knight, as well as a related company, PS Knight Americas Inc. (**Knight Americas**), in contempt of court. The alleged contemnors will be referred to as the **Knight Parties**.

[2] CSA alleges that each of the Knight Parties has breached, or alternatively has aided and abetted another Knight Party to breach, the terms of an Amended Judgment (*Canadian Standards Association v P.S. Knight Co Ltd*, 2016 FC 294) and a Supplemental Judgment (*Canadian Standards Association v P.S. Knight Co Ltd.*, 2016 FC 387) issued by Justice Manson of this Court in 2016 (collectively referred to as the **Judgment**). The Federal Court of Appeal affirmed the Judgment (*P.S. Knight Co Ltd v Canadian Standards Association*, 2018 FCA 222) and the Supreme Court of Canada dismissed the respondents' application for leave to appeal (*P.S. Knight Co Ltd et al v Canadian Standards Association*, 2019 CarswellNat 2072).

[3] The Judgment was issued in a copyright infringement proceeding, and declared that Knight Co. had infringed CSA's copyright in a 2015 edition of the *Canadian Electrical Code, Part I (2015 CSA Code)*. Knight Co. was ordered to deliver up to CSA all copies of its infringing publication (**Knight Code**). Knight Co., its officers, directors, employees, and any related companies under its control were permanently enjoined from reproducing, distributing, or selling the Knight Code, or otherwise doing any act to contravene CSA's copyright in the 2015 CSA Code, without CSA's express written permission. The Knight Parties are charged with three counts of contempt for disobeying these terms.

[4] In addition, Knight Co. was ordered to pay to CSA statutory damages in the amount of \$5,000 in respect of past acts of infringement and costs of the proceeding in the amount of \$96,336.

[5] CSA alleges that since October 2020, the respondents have resumed reproduction, distribution and sales of infringing Knight Code publications through a newly incorporated entity, Knight Americas, contrary to the terms of the Judgment. CSA alleges that the Knight Parties have deliberately disobeyed the injunction, and that they have engaged in a bad faith pattern of behaviour to evade their obligations under the Judgment, including attempting to avoid the jurisdiction of this Court by carrying on infringing activities through Knight Americas.

[6] The Knight Parties raise four points in defence:

- (i) the injunction is restricted to the 2015 edition of the Knight Code and does not enjoin later editions of the Knight Code;
- (ii) only Knight Co. was found liable for copyright infringement; therefore, Mr. Knight and Knight Americas cannot be held in contempt of the Judgment;
- (iii) the Knight Parties have not contravened CSA's copyright in the 2015 CSA Code without CSA's permission because: (a) the CSA Code has been incorporated into law and may be freely reproduced without infringing copyright; and (b) a written agreement between the respondents and CSA permits the Knight Parties to reproduce and sell copies of the CSA Code, or at least the 2018 edition of the CSA Code; and
- (iv) the Knight Code is now published by Knight Americas in the United States, which is beyond the jurisdiction of this Court and the Judgment.

[7] I find that the evidence establishes beyond a reasonable doubt that each of the Knight Parties knowingly breached the terms of the Judgment. The defences raised by the Knight Parties do not excuse the breach. For the reasons below, I find each of the Knight Parties guilty of contempt of court on all counts with which they are charged.

II. **Background**

A. *The parties*

[8] CSA is a not-for-profit organization that develops standards in various fields, including standards for the installation and maintenance of electrical equipment in Canada (**CSA Code**). The first edition of the CSA Code was published around 1927. New editions are published every three years.

[9] Knight Co. is a book publisher. Mr. Knight is the sole officer and director of Knight Co. and Knight Americas.

[10] Although the respondents were represented by counsel in the underlying copyright infringement proceeding (including the appeal), Mr. Knight represented himself in the contempt proceeding. Prior to the contempt hearing, Mr. Knight sought and was granted leave to represent Knight Co. and Knight Americas. At the hearing, Mr. Knight confirmed that he still wished to represent the corporate Knight Parties.

B. *Selected history of this proceeding and related proceedings*

[11] In 2012, CSA commenced an action for copyright infringement against the respondents, seeking to enjoin the sale of an annotated guide book to CSA's Code (Court file no. T-1178-12). During the course of the 2012 action, CSA learned that Knight Co. planned to publish a complete copy of CSA's 2015 edition of the CSA Code and offer it for sale to the public at a third of the price of CSA's publication. CSA then commenced this proceeding (Court File No. T-646-15), which resulted in the Judgment that is the subject of the contempt charges.

[12] As noted above, one of the Knight Parties' defences to the charges of contempt is that the CSA Code may be freely reproduced without infringing copyright because it has been incorporated into law. In the underlying proceeding the respondents had argued that because CSA is a government organization and the CSA Code is incorporated by reference into provincial laws, the Crown owns the copyright. The respondents had also argued that the CSA Code is in the public domain and cannot be the subject of copyright because it has been incorporated by reference into provincial laws. The Court did not accept the respondents' arguments.

[13] The respondents appealed the Judgment. The monetary terms of the Judgment were stayed pending disposition of the appeal; however, the injunction was not stayed.

[14] In March 2018, while the appeal was pending, CSA learned that Knight Co. had announced to the public that it would begin selling a complete copy of CSA's 2018 edition of the CSA Code. CSA commenced a third proceeding for copyright infringement (Court file no. T-577-18) and brought a motion for an interlocutory injunction in that proceeding. The motion in Court file no. T-577-18 was resolved through Minutes of Settlement (Exhibit A27), which effected a "stand still" agreement that permitted the respondents to sell the 2018 edition of the Knight Code pending the Federal Court of Appeal's decision, with all proceeds of sale to be held by the respondents in trust (**2018 Agreement**). The 2018 Agreement is raised as one of the Knight Parties' defences in this contempt proceeding. They argue that the 2018 Agreement allows them to reproduce and sell copies of the CSA Code, or at least the 2018 edition of the CSA Code.

[15] After the Federal Court of Appeal dismissed the respondents' appeal in December 2018, CSA requested confirmation that the respondents would cease all sales of the Knight Code and abide by the injunction as set out in the Judgment. When CSA did not receive confirmation, it brought a motion for a show cause order in this proceeding (Court file no. T-646-15) against Knight Co. and Gordon Knight. A show cause order issued on May 1, 2019 (**Prior Show Cause Order**).

[16] On May 23, 2019, the Supreme Court of Canada dismissed the respondents' application for leave to appeal the Federal Court of Appeal's decision. The respondents acknowledged the negative decision on their website and indicated they would abide by the Judgment. According to CSA, since the respondents had published the acknowledgement and since it appeared they had stopped selling the Knight Code, CSA discontinued Court file no. T-577-18 and took no steps in respect of the Prior Show Cause Order.

[17] Turning to the events that led to this contempt proceeding, CSA alleges that in October 2020 it learned that the respondents had resumed reproducing, offering to sell, selling, and distributing copies of the 2018 edition of the Knight Code through a newly-incorporated U.S. entity (Knight Americas). Mr. Knight published an online announcement that the Knight Code, "which the [Federal] Court ruled against, is happily available once again" and re-released through Knight Americas, which was said to be "outside the direct jurisdiction of the Federal Court." The announcement noted that CSA "forgot to register copyright over this document...so we did. As you read this, the Canadian Electrical Code is the private property of [Knight Americas] in the U.S." As a result, CSA commenced legal proceedings in the United States to

invalidate the U.S. copyright registration and enjoin the Knight Parties' activities in the U.S., and sought a show cause order in this proceeding, which was granted on January 8, 2021 (**Show Cause Order**).

III. **Issue**

[18] The issue in this contempt proceeding is whether one or more of the Knight Parties is in contempt of court for failing to abide by the terms of the Judgment. The three charges of contempt set out in the Show Cause Order are:

1. THAT Knight Co., Knight Americas, and Gordon Knight have reproduced, distributed to a prejudicial extent, sold and offered for sale their Knight Code publication, entitled "Knight's Canadian Electrical Code, Part One, 2018-2021, 24th Edition", or authorized others to do so, contrary to the Judgment and the rights of CSA in its 2015 Electrical Code under the *Copyright Act*.
2. THAT Knight Co., Knight Americas, and Gordon Knight have failed to deliver-up to CSA all copies of their Knight Code publication entitled "Knight's Canadian Electrical Code, Part One, 2018-2021, 24th Edition", produced since the date of the Judgment, and any plates or electronic files related thereto, contrary to the Judgment.
3. THAT Knight Americas has aided and abetted Knight Co. and Gordon Knight in carrying out the acts described in (1) and (2) above, contrary to the Judgment.

[19] Following the contempt hearing on liability, Mr. Knight filed a letter asking the Court generally, and the judges on this file specifically, to recuse themselves from the case. I issued a direction stating that a request for recusal must be made by way of motion, in accordance with the *Federal Courts Rules*, SOR/98-106 [*FC Rules*]. No motion was filed.

IV. Analysis

A. *General principles*

[20] A person who disobeys a process or order of the Court, or who acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the Court, is guilty of contempt of Court: Rules 466(b) and (c) of the *FC Rules*.

[21] A finding of civil contempt requires that three elements be established: the order alleged to have been breached must state clearly and unequivocally what should and should not be done; the alleged contemnor must have had knowledge of the order; and the alleged contemnor must have intentionally carried out the act that the order prohibits or failed to carry out the act that the order requires: *Carey v Laiken*, 2015 SCC 17 at paras 33-35 [*Carey*].

[22] It is not necessary to show that the alleged contemnor intended, by doing the act, to “interfere with the orderly administration of justice or to impair the authority or dignity of the Court”. It is sufficient to find that the order was “clear and that the alleged contemnor knowingly committed the prohibited act”: *Apotex Inc v Merck & Co Inc*, 2003 FCA 234 at para 60.

[23] Contempt of court is criminal or quasi-criminal in nature. Therefore, the elements of contempt must be established to the criminal standard of proof, beyond a reasonable doubt: Rule 469 of the *FC Rules*. The alleged contemnor is presumed to be innocent, and the burden of proving contempt rests with the accuser and never shifts to the accused: *R v Lifchus*, [1997] 3

SCR 320 at para 36 [*Lifchus*]; *Sweda Farms Ltd v Ontario Egg Producers*, 2011 ONSC 3650 at paras 24-25 [*Sweda Farms*] (aff'd 2012 ONCA 337).

[24] The approach to credibility findings in respect of disputed evidence, on the elements of contempt and any defences raised, requires that I acquit if I believe the accused parties' exculpatory evidence, or if I do not believe the exculpatory evidence but it leaves me with a reasonable doubt about where the truth of the matter lies, or if the evidence that I accept does not convince me, beyond a reasonable doubt, that the accused parties are in contempt: *Sweda Farms* at para 25. A reasonable doubt must be based upon reason and common sense, and must be logically connected to the evidence or the absence of evidence. It does not involve proof to an absolute certainty: *Lifchus* at para 36. An alleged contemnor is not compelled to testify "but, if he chooses to testify his evidence is subject to full scrutiny, and the court may draw adverse inferences from his evidence": *Sweda Farms* at para 24.

[25] The Court's contempt powers are discretionary and should be exercised as a measure of last resort and only where necessary to safeguard the administration of justice: *Carey* at para 36; *Morasse v Nadeau-Dubois*, 2016 SCC 44 at para 21.

B. *Evidence and Findings*

[26] The evidence in this contempt proceeding was delivered orally: Rule 470(1) of the *FC Rules*.

[27] CSA called two witnesses, George Douglas (Doug) Morton and Junior Williams. Mr. Morton is employed by CSA. He was involved in the underlying copyright infringement proceeding against the respondents (he was CSA's principal affiant) and in other proceedings against the respondents. Mr. Morton gave evidence about the history of the proceedings between the parties and the Knight Parties' activities in resuming sales of the Knight Code. He was cross-examined. Mr. Williams is a private investigator who purchased the Knight Code from within Canada, and he gave evidence about the online store, his purchase, and related events. He was not cross-examined.

[28] Mr. Knight chose to testify, but limited his testimony in chief to introducing documentary exhibits and explaining their relevance, some of which were ruled inadmissible. He was cross-examined.

(1) Clear and unequivocal order

[29] As noted above, the first element required to support a finding of contempt is that the order alleged to have been breached—in the present case, the Judgment—must clearly and unequivocally state what a party is to do or to refrain from doing: *Carey* at para 33; *Canada (Human Rights Commission) v Warman*, 2011 FCA 297 at paras 88-89.

[30] The Court can find that an order is unclear if, for example, it is missing an essential detail about where, when, or to whom it applies; if it incorporates overly broad language; if external circumstances have obscured its meaning; or if the order is merely declaratory: *Carey* at para 33; *Telecommunications Workers Union v Telus Mobility*, 2004 FCA 59 at para 4.

[31] Justice Manson found the corporate respondent, Knight Co., had infringed copyright in the 2015 CSA Code. The terms of the Judgment that are at issue in this contempt proceeding read as follows:

2. [Knight Co.], its officers, directors, employees and any related companies under its control, are hereby enjoined from any reproduction, distribution, sale of the Knight Code, or any other act that contravenes the CSA's copyright in the 2015 CSA Code, without the express written permission of the CSA;

3. [Knight Co.] shall deliver up to CSA all copies of the Knight Code produced to the date of this judgment or hereafter, and any plates or electronic files of the Knight Code;

[32] There is no question that the Judgment was in force at the time of the alleged acts of contempt in 2020. The Judgment was final, had been upheld on appeal to the Federal Court of Appeal, and the Supreme Court of Canada had denied leave to appeal in May 2019 (Exhibits A9 and A12).

[33] The Knight Parties, however, assert that their activities do not fall within the scope of the Judgment. They advance two arguments in this regard: (i) since only Knight Co. was found liable for copyright infringement, Mr. Knight and Knight Americas cannot be held in contempt for breaching the terms of Judgment; and (ii) the Judgment is restricted to the 2015 edition of the Knight Code, and does not enjoin the reproduction, distribution, or sale of later editions of the Knight Code. Therefore, under this first element of the test for contempt, I have considered whether I am left with a reasonable doubt as to whether the Judgment is insufficiently clear about whether it applies to parties other than Knight Co. and to editions other than the 2015 Knight Code.

[34] CSA submits that paragraphs 2 and 3 of the Judgment are clear and do not suffer from the kind of defect or problem that would raise a reasonable doubt about whether the Knight Parties' activities fall within the scope of the Judgment.

[35] First, CSA submits that the Judgment expressly binds not only Knight Co. but also its officers, directors, employees, and any related companies under its control. CSA introduced Government of Alberta corporate profile reports obtained in September 2020 and March 2021, listing Mr. Knight as the director of Knight Co. (Exhibit A2). No other officers or directors are listed. CSA also introduced State of Texas corporate records for Knight Americas (Exhibit A15) listing one director, Mr. Knight. CSA points out that Justice Manson found that Mr. Knight was the sole directing mind of Knight Co. At the contempt hearing, Mr. Knight testified that he has operated a business through Knight Co. since about 2009 or 2010, and he incorporated Knight Americas. Mr. Knight also testified that he is responsible for writing the content on the website at <www.restorecsa.com> (**Restore CSA Website**). CSA introduced a printout of an October 18, 2020 announcement published on the Restore CSA Website, titled "Knight's Code is Back!" (Exhibit A14), and stating:

So how can we re-release Knight's Code now?

Well, first "we," (that's me), incorporated a new entity in the US and transferred assets to that new entity. Knight's Code is re-released by PS Knight Americas Inc, from the US, and outside the direct jurisdiction of the Federal Court and Manson's Law.

[36] I find that the evidence establishes beyond a reasonable doubt that Mr. Knight is a director of Knight Co. and Knight Americas is a related company. In addition to Knight Co., which is specifically named, the Judgment expressly applies to officers, directors, employees,

and any related companies of Knight Co. I am satisfied beyond a reasonable doubt that the Judgment clearly applies to all three Knight Parties.

[37] Furthermore, even a party who is not specifically bound according to the terms of the injunction can be found guilty of contempt where that party, knowing of the injunction, contravenes its terms: *Baxter Travenol Laboratories of Canada Ltd v Cutter (Canada) Ltd*, [1983] 2 SCR 388 at paras 10-12. Where a corporation is found in contempt, responsible officers who have aided and abetted the breach may be found in contempt: *Manufacturers Life Insurance Co. v Guaranteed Estate Bond Corp* (2000), 95 ACWS (3d) 352 (FCTD) at para 15 [*MLI v GEB*]; *Telus Mobility v TWU*, 2002 FCT 656 at para 16 [*Telus Mobility*]; *Setanta Sports Canada Ltd v 1053007 Ontario Inc*, 2011 FC 99 at para 14 [*Setanta Sports*]. These principles provide additional justification for my finding that the Judgment applies to all three Knight Parties.

[38] Second, CSA submits that the Judgment is clearly not limited to the 2015 edition of the Knight Code and prohibits any act that contravenes CSA's copyright in the 2015 CSA Code. CSA points out that Mr. Knight and Knight Co. did not argue on appeal that the terms of the injunction are unclear in any way (Exhibit A8 – Notices of Appeal, Federal Court of Appeal File Nos. A-90-16, A-121-16) and the Knight Parties did not bring a motion for clarification of the terms. CSA submits the Knight Parties' conduct demonstrates that they have always understood the terms of Judgment. For example, Mr. Knight testified that he stopped selling a 2018 edition of the Knight Code after the Supreme Court of Canada denied leave to appeal. Also, Mr. Knight published statements on the Restore CSA Website that are inconsistent with a belief that the

Judgment is limited to the 2015 edition of the Knight Code, including (with my notes in square brackets):

- (a) *Exhibit A7 (March 10, 2016 post)*: If this verdict [the Judgment] is affirmed on appeal then it will be illegal for us to refer to privately owned electrical laws in our publications and that, of course, would be the end of our fifty-year old family business.
- (b) *Exhibit A13 (May 26, 2019 post) [Knight Co. was selling the 2018 edition of the Knight Code at this time]*: ...[T]he Supreme Court issued a Decision to dismiss our appeal of Manson's law [the Judgment]. We lost this one. Bigly. The Supreme Court was the last chance to overturn Manson's law...So here's where we stand: First, PS Knight's authorized reproduction of electrical law, known as Knight's Code, is no longer authorized. Knight's Code will be unavailable until Manson's Law has been legislatively corrected.
- (c) *Exhibit A14 (October 18, 2020 post)*: Knight's Code is back. That's right folks, our release of the 2018-2021 Canadian Electrical Code, which the Court Ruled against, is happily available once again.

[39] The Knight Parties' written submissions in this proceeding are also inconsistent with a belief that the Judgment only enjoined the reproduction and sale of the 2015 edition of the Knight Code, for example (with my notes in square brackets):

In January 2018, the Civil Service [CSA] released the 2018 - 2021 iteration of electrical law.

The Defendants accepted that Manson's Law applied to all legislation but were of the view that the Federal Court of Appeal would surely correct what was considered an aberrant and compromised Ruling...

[40] At one point during his oral submissions at the contempt hearing, Mr. Knight conceded that "Manson's law ruling"—that is, the Judgment—applies to all editions of the Canadian electrical code.

[41] I find that the terms of the Judgment are clearly not limited to the 2015 edition of the Knight Code. The Judgment does not define the term Knight Code in a way that limits it to the 2015 edition specifically. The order to deliver up and the injunction are not limited to the 2015 edition of the Knight Code, and the terms of Judgment cover other editions or versions of the Knight Code that would violate CSA's copyright in the 2015 CSA Code. Indeed, the injunction generally prohibits "any other act that contravenes the CSA's copyright in the 2015 CSA Code", meaning it enjoins any act that would be prohibited under the *Copyright Act*, RSC 1985, c C-42 [*Copyright Act*], whether in respect of the Knight Code or some other publication that infringes the 2015 CSA Code.

[42] The Knight Parties are charged with contempt in respect of "Knight's Canadian Electrical Code, Part One, 2018-2021, 24th Edition." I am satisfied beyond a reasonable doubt that the Judgment clearly applies to this publication.

(2) Knowledge of the order

[43] A party alleging contempt must prove actual knowledge of the order allegedly breached. Knowledge may be inferred from conduct, for example, an appeal of the order that could only have been taken on the alleged contemnor's instructions: *Apple Computer Inc v Minitronics of Canada Ltd*, [1988] 2 FC 265.

[44] The Knight Parties do not contest that they had actual knowledge of the Judgment at all material times. Of course, Knight Co. and Mr. Knight were directly involved in the underlying copyright infringement proceeding and appeals. Mr. Knight published multiple posts about the

Judgment on the Restore CSA Website and he was clearly aware of its terms. Mr. Knight is the sole directing mind of Knight Co. and Knight Americas, which he incorporated in June 2020 for the purpose of attempting to evade the Judgment. I am satisfied beyond a reasonable doubt that all three Knight Parties had knowledge of the Judgment at all material times, including at the time they engaged in acts that contravened its terms.

[45] Mr. Knight asserts that Knight Americas was not properly served with the Show Cause Order. I disagree. The Show Cause Order dispensed with a requirement for personal service, and stated that service on all three alleged contemnors was to be effected by sending a copy of the Show Cause Order by email (to sales@psknight.com) and courier (to a Calgary address). The Show Cause Order was served in this manner, and there is no question that it came to Mr. Knight's attention.

(3) Intentionally carried out the prohibited act or failed to carry out compelled act

[46] The third element requires proof that an alleged contemnor has intentionally done the act that the order prohibits or failed to do the act that the order compels: *Carey* at paras 32-35. It is not necessary to establish that an alleged contemnor intended to disobey the order—a lack of intent to interfere with the orderly administration of justice or to act with contempt is not a defence to a finding of contempt: *Burberry Ltd v Ramjaun (Laguna Trading)*, 2016 FC 1188 at paras 17-19.

[47] CSA alleges that the Knight Parties have sold 2018 and 2021 editions of the Knight Code to Canadian customers, contrary to the terms of the Judgment. While I agree with CSA that the

2021 Knight Code reproduces a substantial part of the 2015 CSA Code, the 2021 publication post-dates the Show Cause Order. The charges of contempt relate to the 2018 edition of the Knight Code, and my findings of contempt are based on the 2018 edition of the Knight Code referred to in the Show Cause Order.

[48] On the facts of this case, proof beyond a reasonable doubt that the Knight Parties intentionally committed the acts of contempt with which they are charged requires proof that: (i) the Knight Parties have reproduced, distributed and/or sold the 2018 edition of the Knight Code and/or failed to deliver up to CSA all copies of that edition, and (ii) the 2018 edition of the Knight Code violates CSA's copyright in the 2015 CSA Code.

[49] Turning first to whether the evidence establishes beyond a reasonable doubt that the 2018 Knight Code violates CSA's copyright in the 2015 CSA Code, the Judgment, affirmed on appeal, includes findings that copyright subsists in the 2015 CSA Code and that CSA is the copyright owner. CSA introduced a copy of the 2015 CSA Code into evidence (Exhibit A1). Mr. Morton testified that CSA releases updates to the CSA Code every three years when a new edition is published.

[50] CSA also introduced the copy of the 2018 edition of the Knight Code purchased by Mr. Williams (Exhibit A18) and a printout from an online store at www.psknight.com (**Knight Website**) stating the following about the 2018 edition of the Knight Code (Exhibit A17):

Knight's Canadian Electrical Code contains the full Code, plus minor annotations to highlight changes from previous Code editions. As an authorized reprinting of electrical law, all

illustrations, explanations and descriptions therein are presented entirely and exactly as enacted by Governments.

[51] Since each edition of the CSA Code and the Knight Code is hundreds of pages long, CSA introduced demonstrative exhibits to show the similarities between the 2015 CSA Code and the 2018 Knight Code (Exhibit A23) and between the 2015 CSA Code and the 2021 Knight Code (Exhibit A24). Mr. Morton testified that he compared the passages to confirm their accuracy. I reviewed Exhibits A23 and A24 and I also compared the full versions of these publications directly.

[52] The Knight Parties state that the 2018 and 2021 Knight Code publications are not an “exact copy or colourable imitation” of the 2015 CSA Code. They submit that the formatting of the Knight Code is very different. Also, the Knight Parties rely on the fact that CSA took the position on a motion (decision marked as Exhibit A26) that there are 180 errors in the Knight Code (I note that the motions judge found the errors to be minor differences).

[53] It is trite law that copyright infringement does not require that the infringing publication be an exact copy or colourable imitation of a copyright-protected work. Liability for copyright infringement is established where “the work or any substantial part thereof in any material form” is reproduced: sections 3 and 27 of the *Copyright Act*.

[54] As I understand the Knight Parties’ arguments, they do not seriously contest that the 2018 and 2021 editions of the Knight Code reproduce a substantial part of the 2015 CSA Code—they did not provide evidence or explain in their written or oral submissions why the Knight Code

publications are not substantially similar to the 2015 CSA Code. Indeed, the Knight Parties state in their written argument that, “The actual text of electrical law of course, cannot be legally amended by the Defendants.” Instead, the Knight Parties’ defence in respect of this element of the test for contempt is that they have not contravened CSA’s copyright in the 2015 CSA Code without CSA’s permission because: (a) the CSA Code has been incorporated into law, and may be freely reproduced without infringing copyright; and (b) the 2018 Agreement permits the Knight Parties to reproduce and sell copies of the CSA Code, or at least the 2018 edition of the CSA Code.

[55] As noted above, the argument that the CSA Code may be freely reproduced because it has been incorporated into law was raised and rejected in the underlying copyright infringement proceeding. The Court found that “it would be contrary to a purposive construction of the *Copyright Act* to strip the CSA of its rights in the 2015 CSA Code simply because certain provinces have incorporated it into law.” The “incorporated into law” argument was also a key issue on appeal. The Federal Court of Appeal dismissed the respondents’ appeal, finding that laws and regulations may be the subject of copyright in Canada. The Knight Parties’ “incorporated into law” argument constitutes an impermissible, collateral attack on the Judgment in the context of a contempt hearing. As a valid order, a violation of the terms of Judgment constitutes contempt: *Canada (Human Rights Commission) v Canadian Liberty Net*, [1998] 1 SCR 626 at para 51 [*Liberty Net*].

[56] Similarly, the defence that the Knight Parties’ actions are permitted by the 2018 Agreement signed after the date of the Judgment must fail. The 2018 Agreement settled CSA’s

motion for an interlocutory injunction. When they engaged in the activities in question in 2020, the Knight Parties understood that the 2018 Agreement did not apply. The Knight Parties' written representations in the contempt proceeding describe the 2018 Agreement as an agreement that "upheld the status-quo, pending the Federal Court of Appeal Ruling on Defendant's appeal of Manson's Law" (my emphasis). Also, the respondents ceased sales of the 2018 Knight Code in 2019, acknowledging in an online post that "reproduction of electrical law, known as Knight's Code, is no longer authorized." Indeed, Mr. Knight incorporated Knight Americas to sell the 2018 Knights Code because he believed the Judgment "ruled against" selling or offering the 2018 edition in Canada.

[57] Based on the foregoing, I am satisfied beyond a reasonable doubt that the 2018 Knight Code reproduces a substantial part of the 2015 CSA Code, contrary to sections 3 and 27 of the *Copyright Act*. Such reproduction was not permitted or authorized as a result of the CSA Code having been incorporated into law, or a grant of permission under the 2018 Agreement.

[58] Furthermore, I am satisfied beyond a reasonable doubt that the Knight Parties reproduced the 2018 edition of the Knight Code and sold and distributed it in Canada, and that they did not deliver up all copies, electronic or otherwise, of the 2018 Knight Code. Mr. Williams' testimony and the documentary exhibits that he introduced establish the following:

- in October 2020, the 2018 edition of the Knight Code was offered for sale through the Knight Website; Mr. Williams accessed the Knight Website from a computer in Canada;
- on October 20, 2020, Mr. Williams (using an alias) purchased the 2018 Knight Code in Canada, from the Knight Website;

- Mr. Williams received an order confirmation email from sales@psknight.com, attaching an invoice issued by Knight Americas with an address in Martinsville, Indiana; the invoice reflects the price for the publication and shipping fees in Canadian dollars, indicates “bill to” and “ship to” addresses in Canada, references a “GST No.” and charges GST at 5%;
- on October 30, 2020 Mr. Williams received a courier package containing a copy of the 2018 Knight Code, which had been delivered to an address in Toronto, Ontario;
- the shipping label affixed to the courier package indicates a ship date of October 22, 2020, and identifies the sender as “GEK, P.S. Knight Americas Inc.” with a Calgary, Alberta address;
- a pre-printed return address label affixed to the courier package indicates “PS Knight Americas Inc.” with a second Calgary, Alberta address; and
- the inside cover of the 2018 Knight Code publication indicates that it was published in Canada in 2018 by Knight Co., shows the same address for Knight Co. as shown on Knight Americas’ return address label (i.e., the second Calgary address), and the same Knight Website at www.psknight.com.

[59] The Knight Parties did not introduce evidence that raises a reasonable doubt about whether one or more of them carried out the acts described above. Based on the evidence, I am satisfied beyond a reasonable doubt that each of the Knight Parties carried out at least one of the acts of “reproducing, distributing and/or selling” the 2018 Knight Code, contrary to the terms of the Judgment. I also am satisfied beyond a reasonable doubt that each of the Knight Parties failed to deliver up all copies of the 2018 Knight Code, as the Judgment required.

[60] The Knight Parties have not avoided the terms of the Judgment or the jurisdiction of this Court by their attempts to shield their activities through Knight Americas.

[61] Mr. Knight admitted on cross examination that sales of the Knight Code publication through the Knight Website are not geographically restricted, and the publications offered

through the site can be purchased from and shipped to Canada. He also admitted that in October 2020, Knight Americas began taking reservations for a 2021 edition of the Knight Code. As with sales of the 2018 edition of the Knight Code, reservations for the 2021 edition were not geographically restricted. Mr. Williams testified that he reserved, and later purchased and received, a copy of the 2021 edition of the Knight Code. He purchased the 2021 edition from within Canada and received it at an address in Toronto, Ontario.

[62] On cross-examination, Mr. Knight refused to answer questions about the shipper's addresses displayed on the courier package delivered to Mr. Williams, including a question asking whether one of the Calgary addresses on the package is Mr. Knight's home address. I draw a negative inference from Mr. Knight's refusal to testify about the Calgary addresses. As CSA points out, Mr. Knight's initials are "GEK" and Mr. Knight is the only director listed for both Knight Co. and Knight Americas. I am satisfied that the online order for the 2018 Knight Code was completed in Canada and the product was shipped from Alberta to Ontario at Mr. Knight's direction. Both the shipping label and the return address label affixed to the courier package indicate that the U.S. company, Knight Americas, runs at least part of its operations from Calgary. As noted above, the copy of the 2018 Knight Code delivered to Mr. Williams indicates that it was published by Knight Co. and that the volume was printed in Canada.

[63] I find these words of Justice Bastarache from the Supreme Court of Canada's decision in *Liberty Net* (at paras 52-53) to be applicable to the matter before me:

52 The appellants' second ground of attack is that the contempt order is inapplicable because it seeks to restrain conduct taking place outside of Canada, and, therefore, beyond the territorial jurisdiction of the Federal Court of Canada. This argument is

misguided...As long as at least part of an offence has taken place in Canada, Canadian courts are competent to exert jurisdiction. As La Forest J. articulates the principle in *R. v. Libman*, [1985] 2 S.C.R. 178 (S.C.C.), at pp. 212-13:

As I see it, all that is necessary to make an offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada. As it is put by modern academics, it is sufficient that there be a "real and substantial link" between an offence and this country, a test well-known in public and private international law...

This case does not even test the outer limits of that principle. There was here an advertisement for a message which violated the terms of the order, and that advertisement was made in Canada, on the very phone line where the offending messages had formerly been available, and this advertisement was done with knowledge of the content of those messages and with knowledge that that content violated the terms of the order of Muldoon J.

53 The defendants knowingly violated the order of Muldoon J. and were properly found to be in contempt of court by Teitelbaum J.

[64] The decision to resume sales of the 2018 edition of the Knight Code in October 2020, and the failure to deliver up all copies of that publication, were clearly deliberate acts. While there is no requirement to establish "contumacious" intent, that is to say, an intention to disobey in the sense of desiring or knowingly choosing to disobey the order or judgment in question (*ASICS Corporation v 9153-2267 Québec Inc*, 2017 FC 5 at para 33, citing *Carey* at paras 39-42, 47), in my view, the Knight Parties have chosen to disobey the Judgment. It is clear from the content of Mr. Knight's online posts that were introduced into evidence, and Mr. Knight's behaviour toward CSA and the Court at the contempt hearing, that Mr. Knight's strong disagreement with the Judgment has crossed a line, and demonstrates disrespect.

[65] In summary, the Knight Parties have intentionally carried out acts prohibited by the Judgment, and they have intentionally failed to carry out acts compelled by the Judgment. Their activities are caught by the terms of the Judgment, and it is within the jurisdiction of this Court to find them in contempt. The evidence establishes, beyond a reasonable doubt, that each of the Knight Parties is in contempt of court and the Knight Parties have led no evidence that would raise a reasonable doubt in this regard.

[66] The evidence establishes that both Knight Co. and Knight Americas are essentially extensions of Mr. Knight himself, and he is the sole directing mind. In addition to contravening the Judgment directly, I find Mr. Knight to be in contempt as the responsible officer who aided and abetted a breach of the Judgment by Knight Co. and Knight Americas: *MLI v GEB* at para 15; *Telus Mobility* at para 16; *Setanta Sports* at para 14.

[67] While I find that Knight Americas has contravened the Judgment directly, and this is sufficient to find Knight Americas in contempt, I also find that Knight Americas has aided and abetted Knight Co. and Mr. Knight in acting contrary to the Judgment.

V. **Conclusion**

[68] For the foregoing reasons, I find that the Knight Parties are guilty of contempt as charged. Knight Americas is guilty of contempt on all three counts. Knight Co. is guilty of contempt on counts 1 and 2. Mr. Knight is guilty of contempt on all three counts, both in his personal capacity (counts 1 and 2) and as the directing mind of Knight Co. and Knight Americas (all counts).

[69] Having found the Knight Parties in contempt, this proceeding will advance to the next stage, the hearing regarding penalty: *Winniki v Canada (Human Rights Commission)*, 2007 FCA 52 at paras 12-16.

[70] The hearing may be set down on one of the following dates: September 3, 13, 15, 16, October 4-7, October 18-21. Within five days, CSA shall file a letter with the Court, copying Mr. Knight by email, indicating the proposed hearing dates when CSA is not available and setting out a proposed schedule for filing deadlines and any procedural matters in advance of the hearing, expressed in days before the hearing. Within five days of CSA's letter, Mr. Knight shall file a letter with the Court, copying CSA's counsel by email, indicating the proposed hearing dates when he is not available and providing any response to CSA's proposed schedule. After considering the parties' availability and their positions on a proposed schedule, the Court will issue a direction setting the hearing date and schedule.

[71] A party may request directions or a case management conference in the event they wish to propose an alternative procedure for the next stage.

[72] Costs of both stages of this contempt proceeding as well as the motion for the Show Cause Order will be determined as part of the penalty stage.

JUDGMENT IN T-646-15

THIS COURT'S JUDGMENT is that:

1. P.S. Knight Co. Ltd., Mr. Gordon Knight, and PS Knight Americas Inc. are guilty of contempt for disobeying the terms of the Judgment.
2. This contempt proceeding will advance to the next stage, the hearing regarding penalty.
3. Within five days, CSA shall file a letter with the Court, copying Mr. Knight by email, indicating the proposed hearing dates when CSA is not available and setting out a proposed schedule for filing deadlines and any procedural matters in advance of the hearing, expressed in days before the hearing.
4. Within five days of CSA's letter, Mr. Knight shall file a letter with the Court, copying CSA's counsel by email, indicating the proposed hearing dates when he is not available and providing any response to CSA's proposed schedule.
5. After considering the parties' availability and their positions on a proposed schedule, the Court will issue a direction setting the hearing date and schedule.

6. Costs of the liability and penalty stages of the contempt proceeding and costs of the motion for the Show Cause Order are reserved, and will be addressed at the penalty stage.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-646-15

STYLE OF CAUSE: CANADIAN STANDARDS ASSOCIATION v P.S.
KNIGHT CO. LTD. AND GORDON KNIGHT

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 17, 2021

JUDGMENT AND REASONS: PALLOTTA J.

DATED: JULY 20, 2021

APPEARANCES:

Kevin Sartorio
James Green
Harvey Lim

FOR THE APPLICANT

Gordon Knight

FOR THE RESPONDENTS AND
PS KNIGHT AMERICAS INC.

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