

CV 06447

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**RANBIR MANJ and RANBIR MANJ carrying on business  
under the firm name and style of  
"SAROJ SYSTEMS", and SANTOSH MANJ**

Plaintiffs

- and -

**ROHIT DHAMIJA, and ROHIT DHAMIJA carrying on  
business under the firm name and style of "INFONET"**

Defendants

**MEMORANDUM OF JUDGMENT**

This action involves a claim for payment of monies and return of property items resulting from the breakdown of business dealings between the Plaintiff, Ranbir Manj and the Defendant, Rohit Dhamija.

The Plaintiff has applied under Rules 703(1) and 704 for a declaration that the Defendant is in civil contempt for failure to attend at an examination for discovery and further, under Rule 705(1)(d)(iii) that the Defendant have judgment entered against him.

It is not disputed that a Notice of Appointment for Examination was taken out by counsel for the Plaintiff and properly served on counsel for the Defendant for an examination scheduled for November 21, 1996. The Defendant did not attend at the time and place appointed.

The Defendant's affidavit indicates that his counsel had advised counsel for the Plaintiff in mid-October that the Defendant was not available on November 21, 1996 and would not be available until the New Year of 1997. Counsel for the Plaintiff went ahead, however, and served the appointment for November 21.

Although the affidavit is not completely clear on this point, it appears that by November 21, the Defendant had left Canada for employment as a pilot in the Maldives. He now says that he will not be back in Yellowknife until the second week of January 1998.

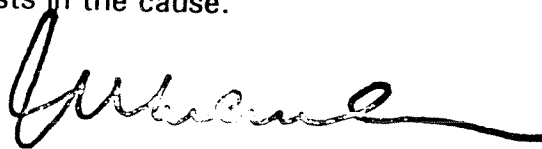
The power to cite in contempt is a sanction not lightly used. In *Kulyk v Wigmore* (1987), 53 Alta. L.R. (2d) 44, the Alberta Court of Appeal said that "a Court should proceed very prudently when asked to cite for contempt of court."

The Statement of Claim was filed in June of 1996. Examinations for discovery of the Plaintiffs took place in August of 1996. There is no evidence before me that any effort was made to examine the Defendant save for the November 21 date. So it appears that that was the first date scheduled. There is no evidence that any attempt was made to schedule an examination in the New Year, 1997, when the Defendant's counsel had said he would be available.

There is no evidence that the Defendant is trying to avoid being examined.  
His affidavit indicates that he is willing.

In all the circumstances, I decline to declare the Defendant in civil contempt.  
Instead, I order as follows:

1. The Defendant shall attend for examination for discovery while he is in Yellowknife in January of 1998 at a time and place to be scheduled by counsel for the Plaintiff;
2. Counsel for the Defendant shall, by no later than June 30, 1997, provide counsel for the Plaintiff with the dates in January of 1998 when the Defendant will be in Yellowknife;
3. Counsel for the Plaintiff shall take out an appointment for the examination and serve same on counsel for the Defendant not less than 60 days prior to the date scheduled for the examination;
4. The Plaintiff has leave to subject the Defendant to both the said oral examination and written questions and answers, pursuant to Rule 236(1);
5. Costs of the within application shall be costs in the cause.



V.A. Schuler,  
J.S.C.

Dated at Yellowknife this  
20th day of May 1997

Counsel for the Plaintiffs:  
Counsel for the Defendant:

K. Payne  
O. Rebeiro

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- and -

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Defendant:

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MEMORANDUM OF JUDGMENT  
HONOURABLE JUSTICE V.A. SCHULER

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