

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

GEORGINA BASE

Plaintiff

- and -

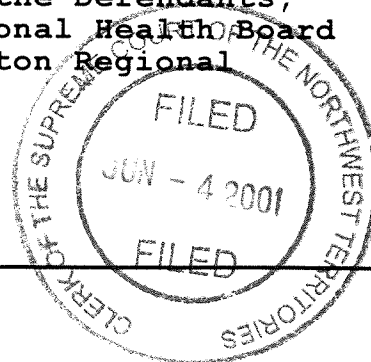
DR. DONALD HADLEY, DR. CLARENCE MOISEY, STANTON
REGIONAL HEALTH BOARD and THE STANTON REGIONAL HOSPITAL

Defendants

Transcript of the Oral Decision given by The Honourable
Justice C.S. Brooker, sitting in Yellowknife, in the
Northwest Territories, on the 31st day of May, A.D. 2001.

APPEARANCES:

Ms. G. Base:	Appeared for herself
Mr. A. von Kursell: (Agent for Mr. J. Rossall)	Counsel for the Defendants, Drs. Hadley and Moisey
Mr. G. Malakoe: (Agent for Mr. P. Gibson)	Counsel for the Defendants, Stanton Regional Health Board and The Stanton Regional Hospital



1 THE COURT: This is in respect of Action
2 Number CV 07483, Georgina Base versus Dr. Donald
3 Hadley, Dr. Clarence Moisey, Stanton Regional Health
4 Board, and the Stanton Regional Hospital.

5 This is an application to show cause why the
6 Plaintiff should not be found guilty of civil contempt
7 for failing to comply with various orders and
8 directions made by this court.

9 This application was brought on the motion of the
10 case management judge pursuant to the provisions of
11 Rule 288 and Rule 703 of our Rules of Court.

12 The direction for this motion and the particulars
13 of the defaults are set out in the Case Management
14 Memo Number 6, filed May 7th, 2001, and served on the
15 Plaintiff's counsel, Tracey Foster, that same day.

16 It appears from the court file that some of the
17 paragraphs in the orders of January 31st, 2001, as
18 well as some of the directions made under Case
19 Management Memos 3 and 5, were done by the judge
20 pursuant to his jurisdiction under Rule 284 as he was
21 the case management judge. Subsections (d), (f), (g),
22 and (m) are clearly applicable. There may be other
23 subsections which also apply. In addition, paragraph
24 1 of the order of January 31, 2001, is made pursuant
25 to Rule 226. Rule 233 states that "Where a party
26 fails to comply with an order for production or
27 inspection, the party is liable to be held in civil

1 contempt."

2 The Plaintiff appeared personally at this
3 application. Mr. McNiven, as agent for service,
4 appeared. He advised that the Plaintiff's solicitor
5 of record, Miss Foster, knew of these proceedings
6 today, but that he had no instructions to act as her
7 agent for this application and she (that is,
8 Miss Foster) did not intend to appear herself. The
9 defendants were represented by their counsel,
10 Mr. Malakoe and Mr. von Kursell.

11 The Plaintiff spoke. She said she had a letter
12 which Miss Foster had prepared and told her to read to
13 the Court. She had copies of this letter, which was
14 introduced and marked as Exhibit 1. Exhibit 1
15 purports to provide excuses and argument for the
16 failure to comply with various orders and directions.
17 It also purports to give an excuse of ill health on
18 the part of Miss Foster, but it is not specific as to
19 dates or details, nor is there any evidence put
20 forward by affidavit regarding any special
21 circumstances.

22 Counsel for the defendants advised that they
23 received via fax yesterday, May 30th, an unfiled
24 further Affidavit of Documents in what appears to be a
25 belated attempt by Miss Foster to purge the contempt
26 regarding the January 31st order. However, even a
27 cursory review of that document shows it does not set

1 out the specific bases for claims of privilege with
2 respect to each document for which a privilege is
3 claimed, and is deficient also in respect of other
4 matters as well in respect of Schedule 2, and also in
5 failing to name an address in the Northwest
6 Territories where the producible documents might be
7 viewed.

8 I am satisfied from my review of the court file
9 and from the argument of counsel, Ms. Base, as well as
10 Exhibit 1, that the Plaintiff, or her counsel, has
11 failed to comply with the following Court orders in
12 the following particulars:

13
14 - With respect to Case Management Memorandum Number
15 3, failure to provide the available dates of
16 Plaintiff's counsel with respect to when the
17 application referred to in that case management order
18 could be heard.

19
20 - With respect to Case Management Memorandum Number
21 5, failure on the part of Miss Foster to provide a
22 written memorandum on or before May the 4th, 2001,
23 regarding each party's compliance with the
24 January 31st order, as well as her proposed next
25 steps.

26
27 - With respect to the order of January 31st, 2001,

1 failure on the part of the Plaintiff to file and serve
2 a further and better Statement of Documents, within 30
3 days of the making of that order, setting out the
4 various details required pursuant to the provisions of
5 that order. Further, failure to provide a proper
6 endorsement pursuant to Rule 221(2)(c), and, as well,
7 failure to provide the information under Rule
8 221(2)(d)(ii) in respect to the producible documents.
9 Also, a failure on the part of the Plaintiff to file
10 and serve an application and documents pursuant to
11 Rule 231 regarding Dr. Sabourin within 30 days of the
12 date of that order; and, similarly, a failure with
13 respect to the same sort of particulars with respect
14 to Gary Nienstien.

15 Accordingly, I am satisfied that the Plaintiff is
16 guilty of civil contempt.

17 Rule 288 sets out various powers of the Court
18 when a party, or a party's solicitor, fails to obey
19 orders made under the specific Rules set out therein.
20 In addition, Rule 703 provides specifically for
21 penalties for civil contempt.

22 This case is somewhat unique in that although it
23 was the Plaintiff specifically who was ordered to
24 attend personally or by counsel to show cause why she
25 should not be declared to be in civil contempt, some
26 of the directions, in particular those with respect to
27 the case management orders 3 and 5, were made to

1 Plaintiff's counsel specifically. Moreover, it is
2 obvious from the defaults that all of them were really
3 the defaults of the Plaintiff's counsel, Miss Foster,
4 not the Plaintiff herself personally. Indeed, on the
5 state of the evidence present before me, were
6 Miss Foster to have been given notice to show cause
7 why she shouldn't be held in civil contempt, it would
8 be difficult not to find her so.

9 In my opinion, therefore, it would be unjust to
10 dismiss the Plaintiff's action for the civil contempt
11 because of the failure of her counsel to comply with
12 the Court orders. Rather, I believe that any penalty
13 or sanction imposed in respect of the Plaintiff and
14 her counsel's failure to comply with the Court orders
15 and directions should be the responsibility of, and be
16 visited upon, the Plaintiff's counsel, Miss Foster.

17 In this case, there is an obvious overlap in that
18 some of the directions or orders which were
19 disregarded were made under Rule 226 and may be
20 punished under Rule 233. Other directions were made
21 under Rule 284 and give rise to penalties under Rule
22 288. My finding of civil contempt is in respect of
23 all of the defaults previously outlined. Under Rule
24 705, there may be limited flexibility regarding
25 penalties for civil contempt. However, under Rule
26 288(a), this Court "may make such order with respect
27 to the failure as the judge considers just, including

1 any order in the nature of civil contempt." I have
2 decided, therefore, in the circumstances of this case,
3 to assess a penalty for the Plaintiff's civil contempt
4 in the sum of \$1,000 pursuant to Rule 288(a). I order
5 that that fine, or penalty, be paid personally by the
6 Plaintiff's solicitor, Miss Tracey Foster.

7 In closing, I wish to say that counsel always has
8 the option on a case management order to seek an
9 amendment of an order or an extension if circumstances
10 change. Counsel does not have the option of simply
11 ignoring such orders and directions. It is absolutely
12 essential to our system of justice and the rule of law
13 that the Court orders be respected and obeyed. The
14 failure of a party, personally or through counsel, to
15 comply with a Court order is a very serious matter.
16 It is even more egregious when counsel ignores the
17 Court's directions to counsel. Miss Foster is an
18 officer of the Court. She has not complied with a
19 number of case management directions; she has not
20 given, even through Exhibit 1, a satisfactory
21 explanation for her non-compliance.

22 I direct that a transcript of these Reasons be
23 prepared and a copy sent to the Executive Director of
24 the Law Society of the Northwest Territories for his
25 or her information.

26 Anything else?

27 MR. MALAKOE: Sir, as far as the order, do you

1 want us to prepare it or should a transcript be
2 provided to Miss Foster?

3 THE COURT: Obviously Miss Foster will no
4 doubt get a copy of the transcript. An order should
5 be prepared, and if you're volunteering to prepare it,
6 that would be wonderful.

7 MR. MALAKOE: Thank you, Sir. So I would get
8 Mr. von Kursell's consent to the form and content, but
9 not Miss Foster's presumably.

10 THE COURT: Well, I think you have to send it
11 to her because she's counsel of record, and I think
12 you have to get her to approve it as to form and
13 content as being the order given, and I would suggest
14 an extra copy of the Reasons be obtained to be sent
15 along with it so that she will have no difficulty in
16 understanding what I have ordered.

17 MR. MALAKOE: Thank you, Sir.


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20 Certified Pursuant to Rule 723
21 of the Rules of Court

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Jane Romanowich, CSR(A)
Court Reporter

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