

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
TG INDUSTRIES LTD. (Appellant)	- and -	ALFRED WILLIAMS (Respondent)
TG INDUSTRIES LTD., a body corporate (Appellant)	- and -	CLARKE INC., a body corporate (Respondent)
CA 169336 CA 168170	Halifax, N.S.	CROMWELL, J.A.

[Cite as: **TG Industries Ltd. v. Clarke Inc., 2001 NSCA 105**]

APPEAL HEARD: June 11, 2001

JUDGMENT DELIVERED:

SUBJECT: Enforcement of judgments and orders — execution orders — contempt

SUMMARY: TG was an unsatisfied judgment creditor of Williams. Williams was an independent driver for Clarke. Clarke was served with TG's execution order and although over \$8000 became due to Williams from Clarke, Clarke paid only about \$500 to the sheriff pursuant to the execution order. TG started an action against Clarke and applied to have Clarke cited for contempt. The statement of claim in the action was struck out as not disclosing a claim known to the law. The contempt application was dismissed because the judge found that Clarke did not intend to disobey the execution order and, in any event, the contempt power was not to be used to provide a remedy to a private litigant. TG appealed both the dismissal of its action and of its contempt application.

ISSUES:

1. Was the action against Clarke "obviously unsustainable"?
2. Did the judge err in finding that the intention to disobey the order was an essential element of civil contempt?
3. Did the judge err in finding that the contempt power should not be used to provide a remedy to TG?

RESULT: Appeals allowed. The action, while novel, was not obviously unsustainable. The elements of civil contempt are intentionally doing an act which is in fact prohibited by the order; intentional disobedience, in the sense of knowingly making the choice to deliberately disobey the order is not required. The purpose of the civil contempt power is to secure obedience to the court's orders and a

sanction may be imposed with the object of coercing the defaulting party to comply so that the party in whose favour the order was made receives its benefit.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 12 pages.