SUPREME COURT OF NOVA SCOTIA
Citation: *Terris v. Meisner*, 2019 NSSC 252

Date: 20190815
Docket: 463235
Registry: Halifax

Between:

Kimberley Terris

Plaintiff

v.

Tracey Meisner

Defendant

Decision on Plaintiff's Contempt Motion

Judge: The Honourable Justice Peter P. Rosinski

Heard: July 2, July 26, and August 2, 2019, in Halifax, Nova Scotia

Counsel: Laura Veniot and Alanah Josey, for the Plaintiff
Tracey Meisner, for the Defendant

By the Court:

Introduction

[1] Kimberley Terris is a Registered Nurse, employed by the Nova Scotia Health Authority (NSHA). In September 2016 she worked at Emerald Hall, a unit of the Nova Scotia Hospital providing care for adults with intellectual disabilities. Tracey Meisner's son resided there and was under the care of Kimberley Terris. Tracey Meisner alleged that her son had been abused by Kimberley Terris and

posted a photograph of Kimberley Terris's face on a public social media page with commentary that Kimberley Terris alleges is defamatory. Tracey Meisner also spoke to the media on several occasions and made further derogatory postings on social media and encouraged her social media contacts to share Kimberley Terris's image and Tracey Meisner's commentary. Kimberley Terris has sued Tracey Meisner alleging defamation regarding the incident with Tracey Meisner's son.

[2] Kimberley Terris's counsel directly and indirectly obtained witness statements, in support of Kimberley Terris, and regarding relevant general matters, respectively. These were provided by way of Affidavit Disclosing Documents (ADD) to Tracey Meisner's then counsel Ian Joyce. The statements included those from Debbie Holmans, Stacey Burgess, Dave Campbell, Deborah MacLeod, and Matt Steylen.

[3] Kimberley Terris has made a motion that the court find Tracey Meisner in contempt of court, based on Kimberley Terris's allegation that Tracey Meisner "repeatedly violated the implied undertaking rule by using documents disclosed to [her] in this proceeding for collateral purposes, despite a warning to cease and desist immediately."

[4] The question for the court in this motion is whether a contempt has been made out (including whether a breach of the 'implied undertaking rule' can

constitute contempt per Civil Procedure Rule – CPR 89)[1] and if so, what remedy is appropriate.

[5] It is of most importance to understand the basic nature of the "implied undertaking rule". The rule "*imposes on the parties to civil litigation an undertaking to the court* not to use the documents or answers they give for any purpose other than securing justice in the civil proceedings in which the answers were compelled (whether or not such documents or answers were in their origin confidential or incriminatory in nature) per Binnie J in *Juman v. Doucette, 2008 SCC 9*, at para 27.

[My italicization added]

[6] Our CPR 14.03 reads in part:

> (1) Nothing in Part 5 diminishes the application of the implied undertaking not to use information disclosed or discovered in a proceeding for a purpose outside the proceeding, without the permission of a judge.
>
> (2) The implied undertaking extends to each of the following, unless a judge orders otherwise:

[1] The jurisprudence would appear to suggest so*: Colby Physioclinic Ltd. v Ruiz*, 2005 NSSC 287 per Goodfellow J; and *Sezerman v Youle*, 1996 NSCA 92 per Chipman JA; and *Randall v. Caldwell First Nation of Point Pelee*, 2002 FCT 31 at paras. 4 and 27 – whether the rule is common-law based (cited with approval by Fichaud JA in *L&B Electric Ltd. v. Oickle*, 2004 NSCA 42 at para. 12); or expressly contained within the Civil Procedure Rules as in Nova Scotia which equivalent to legislation – see CPR 94.01.

(a) documentation used in administering the test, such as test documents supplied to and completed by a psychologist;

(b) all notes and other records of an expert;

(c) anything disclosed or produced for a settlement conference.

[7] I conclude that there is credible (honest and reliable) proof beyond a reasonable doubt that Tracey Meisner has committed a contempt of court as alleged by Kimberley Terris.[2]

Background

[8] Kimberley Terris alleges that Tracey Meisner committed a contempt of court when she "retaliated" against a number of the statement-making witnesses by providing those written statements to their employers and claiming *inter alia*, that by providing them to Ms. Terris' counsel they had breached the privacy rights of Tracey Meisner's son.

[9] On or about July 18, 2018, Tracey Meisner's counsel was advised in writing that Tracey Meisner had thereby committed a breach of the implied undertaking rule, and Tracey Meisner must cease and desist immediately from using documents provided by Kimberley Terris in her ADD for purposes "outside the proceeding".

[2] The matter of penalty will be addressed at a separate hearing.

[10] As Debbie Holmans stated in her affidavit herein:

> "On October 16, 2018, I was terminated from my job as a Registered Nurse with the Nova Scotia Health Authority. I was fired, in part, because TRACEY MEISNER shared some of the statements I made with my employer. My employer was of the view that I breached a patient's confidentiality and privacy. My termination letter states that I shared my statements "with another third-party legal counsel", which I believe references Ms. [Laura] Veinot [Kimberley Terris's counsel]."

[11] Debbie Holmans' termination was grieved. By decision dated April 15, 2019, Arbitrator Augustus M. Richardson, QC, determined that the Employer [NSHA] is not entitled to rely on the three statements made by Debbie Holmans listed in its termination letter as grounds justifying any kind of discipline. He retained jurisdiction, in the event that there were other grounds for discipline that the parties wished him to consider.

[12] On April 15, 2019, Tracey Meisner filed a CPR 34 Personal Representation Form certifying that she is acting on her own in these legal proceedings at this time. She remains self-represented.

[13] On May 16, 2019, it is alleged that a further contempt of court occurred: namely, while Tracey Meisner was aware of Kimberley Terris's position that Tracey Meisner's distribution of such statements was a breach of the implied undertaking rule, she included the statements of Dave Campbell, Debbie Holmans and Stacey Burgess, which had been included in the ADD sent to Tracey Meisner's

counsel, Ian Joyce, when she later made a complaint to the College of Registered Nurses against Kimberley Terris.

Position of the parties

Kimberley Terris

[14] Kimberley Terris relies upon her own affidavits as well as those of Debbie Holmans.[3]

[15] Kimberley Terris says Tracey Meisner only could have acquired access to and copies of the statements of Dave Campbell, Debbie Holmans, and Stacey Burgess as a result of Kimberley Terris having provided her ADD to Tracey Meisner.

[16] Kimberley Terris has received an opinion from the College of Registered Nurses, that Tracey Meisner's complaint regarding Kimberley Terris should *not* be provided to the court because it would be in violation of section 132(1) of the *Nursing Act*, SNS 1989, c. 8. Although Kimberley Terris is of the view that section

[3] Including the testimony of the subpoenaed witnesses NSHA staff, Lee Mailman and Karen Hornberger. Rule 23.13 only allows a prothonotary to issue a subpoena for attendance at a hearing of a motion with permission of a judge. Generally speaking, subpoenas should only exceptionally be authorized and where: witnesses are expected to provide necessary and material evidence, (and in relation to a subpoena *duces tecum*, that they likely have custody, control or access to relevant documentary materials)– *Foley v Gares*, [1989] S.J. No. 641 (CA)- see also para 115 in *R v LRF*, 2007 NSCA at para. 32. As a courtesy to the prospective witnesses, and to avoid delays in the matter proceeding to a hearing, those seeking the issuance of a subpoena should provide the court with representations or evidence that confirms the witnesses are in fact available to attend on the date in question.

130 (h) of the Act provides an exception, she wishes to err on the side of caution, and has not provided those materials. She notes that the Court nevertheless has direct evidence that Tracey Meisner has filed a complaint against her based on the statements received in Kimberley Terris's ADD regarding the incident circumstances involving Tracey Meisner's son.

[17] Kimberley Terris says that breach of the "implied undertaking rule"[4] can constitute contempt of court, and that in this case, while Tracey Meisner had the benefit of counsel, in July 2018 she disclosed the witness statements in breach of that Rule to the NSHA, and that while she was unrepresented yet clearly aware of her obligation not to do so, in May 2019 she disclosed several statements to the College of Nurses.

Tracey Meisner

[18] To ensure that Tracey Meisner understood the nature of the proceedings and the manner of presenting evidence, given her status as a self-represented litigant,

[4] The rationales for, and definition of, the Rule were specifically addressed in *Juman v Doucette*, 2008 SCC 8.At paras.23-28 two rationales are referenced: 1) to the extent that pre-trial discovery is an invasion of a private right to be left alone, the public interest in getting at the truth in a civil action outweighs the examinee's privacy interest, but the latter is nevertheless entitled to a measure of protection; and 2) litigants who have some assurance that the documents and answers they give will not be used for a purpose collateral or ulterior to the proceedings in which they are demanded will be encouraged to provide a more complete and candid disclosure and discovery.

the court outlined these matters on repeated occasions, and provided ample opportunity to allow her to consider how to best conduct her case.

[19] Tracey Meisner did take the opportunity to cross-examine some of the witnesses presented by Kimberley Terris.

[20] No affidavit evidence was filed by Tracey Meisner. While the court indicated it would consider *viva voce* testimony from witnesses on her behalf, she declined that invitation. No written legal argument was received from Tracey Meisner – nor was any oral argument made when the opportunity presented itself.

The law of contempt in Nova Scotia[5]

[21] CPR 89 provides procedures for starting and conducting a contempt citation (by a judge), motion (by a party in an existing proceeding) or application (were no proceeding exists to permit a complainant to bring the alleged contempt before a court).

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[5] There are two categories of contempt: civil and criminal. The difference is that the concept of public defiance is required to make a civil contempt (which seeks as its primary (coercive) objective to secure compliance with the law), criminal (which seeks as its primary (punitive) objective to affirm the court's authority and deter others from flouting it): *United Nurses of Alberta v Alberta (Atty. Gen.)*, [1992] 1 SCR 901 at paras. 49 – 51 per McLachlin J (as she then was); *TG Industries Ltd., 2001 NSCA 105* per Cromwell JA (as he then was) at paras. 13 – 14 and 35; *Carey v Laiken*, 2015 SCC 17 per Cromwell J at paras. 30 – 38; *Pintea v Johns*, 2017 SCC 23. The general principles were earlier set out by Justice Saunders in *Godin v Godin*, 2012 NSCA 54 at para. 47. A helpful recent summary of the law in the context of self-represented contemnors can be found in *CDJ v RIJ*, 2018 ABQB 287 per Graesser J. See also Justice Arnold's comprehensive helpful offence and penalty decisions in *Mutual Transportation Services Inc. v Saarloos*, 2016 NSSC 164 and 2017 NSSC 26.

[22] 89.01 confirms that as a result of its quasi-criminal nature, contempt proceedings must be considered contextually in accordance with the Canadian Charter of Rights and Freedoms. Moreover, as Justice Saunders reiterated in *Godin* at para. 71: "… A strict adherence to procedure, standards and burdens of proof, and the rules of evidence is required".

[23] An example is contained in the amended Notice of Motion document served upon Tracey Meisner. Its wording includes:

> "Your rights
>
> You are presumed innocent, unless the contrary is proved beyond reasonable doubt. You have the right to retain and instruct counsel and to be represented by counsel at the hearing. You may file affidavits in accordance with Civil Procedure Rules that will be evidence on the hearing, call witnesses at the hearing, require that witnesses against you be present at the hearing for cross-examination by you, and make submissions."

[24] I note that CPR 89.05 [Notice of motion for contempt order] sets out what the notice of motion must contain. CPR 89.05 (c) states that it must include:

> "the same information a Judge provides for a citation about the presumption of innocence, right to counsel, and participation in the hearing;"

[25] CPR 89.05 is therefore informed by the additional requirements of CPR 89.03 (4):

> (a) the person is presumed innocent unless the contrary is proved beyond a reasonable doubt, is not required to give evidence, and is entitled to rely on the presumption of innocence whether or not the person gives evidence;

(b) the judge will preside at the hearing and determine whether the person is guilty of contempt, unless the judge decides that another judge should do so;

(c) if contempt in the face of the court is alleged and the judge is to determine the contempt proceeding, the judge's knowledge of what took place is part of the evidence;

(d) the person has the right to retain and instruct counsel and to be represented by counsel at the hearing;

(e) a person who cannot afford counsel may apply to Nova Scotia Legal Aid, and court staff will provide contact information;

(f) the person may choose to present no evidence, to present evidence by filing an affidavit before the hearing, or to present evidence after all of the evidence against the person is heard and cross-examination is complete;

(g) the person is required to attend the hearing and failure to attend may result in arrest.

[26] CPR 89.09 deals with disclosure and the right to silence:

> "A person against whom a contempt proceeding is started is entitled to the same disclosure, and to exercise the same right to remain silent, as a person against whom an information is laid under the Criminal Code."

[27] CPR 89.12 deals with the conduct of the hearing, whereas 89.13 gives the court wide discretion in crafting penalties for contempt.[6]

[6] CPR 88.02 permits the court to consider remedies for abuse of process, if it "is satisfied that a process of the court is abused [and] may provide a remedy that is likely to control the abuse…". Notably, if a contempt finding is made, generally the matter is adjourned to provide the contemnor an opportunity to purge that contempt (if possible) and prepare for the sentencing portion of the process. Any action undertaken by contemnor to purge the contempt may serve as a mitigating factor in sentencing- *Boily v Carleton Condominium Corporation*, 2014 ONCA 574 at paras. 121-122. Halsbury's Laws of Canada – Civil Procedure (Online) 2017 Re-issue at HCV-334 describes purging contempt as: "it is customary (and quite probably obligatory) for the court to offer a person subject to a contempt motion an opportunity to purge his or her contempt, before any punishment is imposed. To 'purge' contempt is to make good the act of contempt to the extent that this is possible, as by submitting to the order of the court. The purging of contempt does not deprive the court of the power to punish for the contempt that has already occurred.

[28] Generally speaking, contempt proceedings should be bifurcated into a liability phase – where the case on liability proceeds and a defence (if any) is offered- and, if liability is established, a penalty phase.[7]

[29] CPR 89.14 permits a judge to discharge or vary a contempt order.[8]

The essential elements that must be proved beyond a reasonable doubt before a contempt finding may be made[9]

1. *the terms* of the order *must be clear and unambiguous as to what should and should not be done* (in this case, the contempt is based upon a violation of the implied undertaking rule *expressly* referenced in CPR 14.03);

2. proper notice must be given to the contemnor of the terms of the order (in this case, the moving party must prove that Tracey Meisner *had*

Genuine purging of contempt must, however be taken into account in assessing the penalty to be imposed upon that person."

[7] *Carey* at para. 18; *Boily*, at para. 122; *Sleigh v McLean*, 2017 NSSC 28.

[8] The rationales for, and definition of, the rule were specifically addressed in *Juman v Doucette*, 2008 SCC 8.

[9] In *Carey*, Justice Cromwell helpfully and succinctly outlined the essential elements at paras. 32-38. He also stated at paras. 36- 37: "The contempt power is discretionary and courts have consistently discouraged its routine use to obtain compliance with court orders… It is an enforcement power of last, rather than first, resort… For example, where an alleged contemnor acted in good faith in taking reasonable steps to comply with the order, the judge entertaining a contempt motion generally retains some discretion to decline to make a finding of contempt… While I prefer not to delineate the full scope of this discretion, given that the issue was not argued before us, I wish to leave 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."; See also paras. 10-11 in *Architectural Institute of British Columbia v Halarewicz,* 2019 BCCA 146, and Justice Arnold's comments in *Saarloos* at paras. 105-106.

actual knowledge[10] *of the obligations imposed on her* by the implied undertaking rule.);

3. clear proof that the contemnor *intentionally committed an act which is in fact prohibited* by the terms of the order (in this case, the moving party must prove that Tracey Meisner intentionally communicated the material information she received via the ADD to persons or entities that were not parties to the litigation).[11]

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[10] As Justice Cromwell (as he then was) pointed out in *TG Industries Ltd.* at para. 11, civil contempt may be found in the absence of proof that the alleged contemnor *intended* to disobey the order/breach the Rule. Moreover, therefore mistakes of law are not a defence to civil contempt. Justice Cromwell stated in *Carey* at para. 34: "It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine (*ibid.*).". Interestingly, in *United Nurses of Alberta v. Alberta (Att. Gen)*, [1992] 1 SCR 901 which involved criminal contempt, Justice McLachlin (as she then was) characterized the *mens rea* for *criminal* contempt at para. 55 as: "To establish criminal contempt the Crown must prove that the accused defied or disobeyed a court order in a public way (the *actus reus*), *with intent, knowledge or recklessness* as to the fact that the public disobedience will tend to depreciate the authority of the court (the *mens rea*)." In *Pintea*, 2017 SCC 23, the court's brief reasons only reference a requirement for "actual knowledge".

[11] Moldaver J stated for the majority in *R v Barton*, 2019 SCC 33 regarding the defence of "accident" at paras.186-191: "But the term has a more specialized meaning in the criminal law context. In particular, in this context, the term "accident" is used to signal one or both of the following: (1) that the act in question was involuntary (i.e., non-volitional), thereby negating the *actus reus* of the offence; or (2) that the accused did not have the requisite *mens rea [citations omitted]*. With respect to the latter scenario, in assessing whether a claim of "accident" may negate *mens rea* in any particular case, it is obviously essential to consider what the relevant *mens rea* requirement is in the first place. In carrying out this inquiry, it must be kept in mind that *mens rea* requirements vary and include, for example: (1) a subjective intention to bring about a prohibited *consequence*; (2) a subjective awareness of prohibited *circumstances*; and (3) objective fault… By contrast, where the offence only requires a subjective awareness of particular circumstances, an accused's claim that the consequences of his act (such as injury to another) were unintentional and unexpected, making those consequences a mere "accident", is naturally of no assistance. In other words, where the offence charged does not require proof of subjective intent to bring about any consequences in the first place, the "accidental" nature of the consequences is legally irrelevant." I would characterize the intentional commission of a prohibited act underlying a contempt motion as in the second category – a subjective awareness of prohibited circumstances. Therefore, a claim of "accident" in breaching the implied undertaking rule, as with mistakes of law, cannot be a good defence here, if Tracey Meisner knowingly intended to communicate the material information to persons or entities not parties to the litigation.

4. *mens rea* must be proven, which means that while it is not necessary to prove a specific intent to bring the court into disrepute by flouting a court order or interfering with the due course of justice (as required for criminal contempt), it is essential to prove *an intention to knowingly and wilfully do some act which is contrary to a court order* (in this case, the moving party must prove that Tracey Meisner knowingly and wilfully did an act which was prohibited by the implied undertaking rule).[12]

[30] Regarding alleged breaches of the implied undertaking rule, the following cases have addressed this in the context of a contempt allegation: *L & B Electric Ltd. v Oickle*, 2004 NSCA 42. Therein, Justice Fichaud, in the context of addressing the issue, "Does a Supreme Court judge have inherent jurisdiction to fine someone who has not committed an offence or contempt of court?" stated:

> 12 Contempt: The chambers justice dismissed the contempt application on the basis that Mr. Oickle had no direct knowledge that he was breaching the implied undertaking rule. That aspect of the decision has not been appealed. For that reason, I make no comment on the chambers justice's conclusion. But I note that there is authority in other jurisdictions that actual knowledge of the implied

[12] Justice Cromwell in *Carey* at para 38 summarized it as follows: "it is well-settled 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 a in breach of a clear order of which the alleged contemnor has notice." He also added at para. 44 that: "as the Court of Appeal recognized, reliance on legal advice does not shield the party from a finding of contempt… Still less should the law permit lawyers to escape a finding of contempt because they have, in effect, relied on their own legal advice."

undertaking rule by the person in breach of that rule, is not required for a finding of contempt. In this respect, the breach of the implied undertaking has been distinguished from breach of a court order on the basis that the implied undertaking rule is part of the general law of which ignorance is no excuse: see, for example W. Williston and R.J. Rolls *The Law of Civil Procedure* (1970) Vol. II at p. 941; Reichmann v. Toronto Life Publishing, [1988] O.J. No. 961 (Ont. H.Ct.); *Randall v. Caldwell First Nation of Point Pelee*, [2002] F.C.J. No. 39 (T.D.); Jeffrey Miller *The Law of Contempt in Canada* (1997), p. 124.

13 In *T.G. Industries Limited v. Williams*, 2001 NSCA 105, (2001), 196 N.S.R. (2d) 35 (C.A.) which was cited to the chambers justice in this case, the court distinguished criminal and civil contempt, civil contempt being the applicable standard in the present case. Justice Cromwell (paras. 13, 17, 19-31) stated that civil contempt for disobedience of a court order requires that the contemnor be aware of the order and intend to commit the act which constitutes breach of the order, but that the contemnor need not know that his act was illegal and need not intend to disobey. Justice Cromwell (paras. 25 and 31) did not consider any Charter issues involved with the mental element for contempt, as those matters had not been argued, but stated that a due diligence defence would answer a Charter challenge.

14 Nothing in these reasons should be taken to alter the principles which this Court outlined in *T.G. Industries*. The chambers justice ruled that Mr. Oickle had not committed contempt. This has not been appealed. So, I will proceed on the basis that there has been no contempt.

…

28 Summary: For these reasons, in my view, the chambers justice did not have the inherent power to levy a fine without contempt of court. The chambers justice erred in law, which is reviewable under the standard of review. I would set aside the fine.

Costs

29 In *Conrad v. Snair* (1996), 150 N.S.R. (2d) 214 (C.A.) Justice Flinn stated (para. 5):

> Since orders as to costs are always in the discretion of the trial judge, this appeal is subject to a clearly defined standard of review. This Court has repeatedly stated that it will not interfere in a trial judge's exercise of

> discretion unless wrong principles of law have been applied, or the decision is so clearly wrong as to amount to a manifest injustice. [citations omitted]
>
> 30 The chambers justice described the costs of $3,000 as a "wake up call" to admonish a party who has breached the implied undertaking against disclosure of documents obtained on discovery.
>
> 31 Rule 63.02(1)(a) authorizes the Court to award a lump sum instead of taxed costs. Rule 63.04(2) paras. (c), (d), (e), (f) and (j) permit the Court to consider the inappropriate conduct of the unsuccessful party. In *353903 Ontario Ltd v. Black & MacDonald Ltd.* (2000), 187 N.S.R. (2d) 323 (C.A.), 2000 NSCA 45, Justice Bateman stated:
>
> > While costs are generally intended for indemnification, in appropriate circumstances costs can serve to censure improper behaviour by a litigant.
>
> The costs were an appropriate "wake up call" to censure Mr. Oickle and deter a further breach.
>
> 32 *Mr. Oickle breached the implied undertaking and the chambers justice properly enjoined further breaches*. In my view, the chambers justice was within his discretion in fixing costs and the appeal against costs should be dismissed.

[my italicization added]

The application of the law to the facts in this case

[31] The evidence was presented by way of affidavits of: Kimberley Terris - sworn June 14, 17, and July 19, 2019; and Debbie Holmans sworn June 14, and July 19, 2019; and *viva voce* evidence from “Lee” Mailman and Karen Hornberger.

[32] I am satisfied beyond a reasonable doubt that Tracey Meisner committed a contempt of court based on the credible (ie. honest and reliable) evidence I have available, as well as any absence of evidence.[13]

[13] I do rely upon reasonable factual influences that I have made as well – as to their operation in the criminal context see *R. v. Villaroman*, 2016 SCC 33 per Cromwell J.

[33] Based on direct and indirect evidence, it is an inescapable conclusion that Tracey Meisner had access to, and copies of, the statements of various individuals that had provided them in support of Kimberley Terris, who was suing Tracey Meisner for defamation. These statements were provided by Kimberley Terris as part of her ADD. They were subject to the implied undertaking Rule contained in CPR 14.03 (1): which creates an obligation "not to use information disclosed or discovered in a proceeding for a purpose outside the proceeding, without the permission of a judge."

[34] It is further proved beyond a reasonable doubt that Tracey Meisner provided "information disclosed or discovered in a proceeding for a purpose outside the proceeding without the permission of a judge."

[35] Firstly, she effected this by orally communicating this to persons such as Lee Mailman, and Karen Hornberger of the Nova Scotia Health Authority. She effected this by providing the statements in question to staff of the NSHA between April 5 and September 27, 2018 (See Exhibits 1,2,3,4 and the associated testimony from Lee Mailman, Karen Hornberger, and references in the affidavits and testimony of Kimberley Terris and Debbie Holmans).

[36] Kimberley Terris's counsel sent a "cease and desist" letter to Tracey Meisner's lawyer on or about July 18, 2018 – Kimberley Terris's affidavit paras. 15-18.

[37] Secondly, she effected this (as a self -represented individual having filed documentation to that effect April 15, 2019) by using information she received in the ADD from Kimberley Terris, in support of her complaint to the then College of Registered Nurses of Nova Scotia (since June 4, 2019, the new legislation refers to it as the "Nova Scotia College of Nursing") on or about May 16, 2019- paras. 21-30 of Kimberley Terris's affidavit.

[38] I am also satisfied beyond a reasonable doubt of the remaining elements of the offence of contempt, as outlined herein- i.e. that:

1. the implied undertaking rule is clear (unambiguous) as to what should and should not be done;

2. Tracey Meisner had proper notice of the implied undertaking rule since she is presumed to have actual knowledge of the Rules of the court, as much as the legislation of Nova Scotia (there is certainly no doubt that after the "cease and desist" letter was sent by a Kimberley Terris's counsel to Ian Joyce, Tracey Meisner's counsel, on or about July 18, 2018, she clearly knew the restrictions imposed on her as a

litigant by the implied undertaking rule, but nevertheless went ahead to violate it once more in the following year);

3. Tracey Meisner intentionally used information disclosed or discovered in a proceeding for a purpose outside the proceeding without the permission of a judge;

4. Tracey Meisner wilfully did these acts, knowing they were prohibited by the implied undertaking Rule.

Conclusion

[39] I find Tracey Meisner guilty of contempt beyond a reasonable doubt.

[40] The matter of penalty, and costs, will be dealt with on a subsequent occasion.

Rosinski, J.