

SUPERIOR COURT OF JUSTICE

B E T W E E N :

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

Applicant

- and -

EVE STEWART

Respondent

E X C E R P T   O F   R E A S O N S  
F O R   J U D G M E N T

BEFORE THE HONOURABLE JUSTICE G. TOSCANO ROCCAMO  
on August 14, 2018, at OTTAWA, Ontario

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APPEARANCES:

L. Cader

For the Applicant

E. Stewart

Self-Represented Respondent

(i)  
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Tuesday, August 14, 2018

E X C E R P T   O F  
R E A S O N S   F O R   J U D G M E N T

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TOSCANO ROCCAMO, J. (Orally):

THE COURT: The College of Physicians and Surgeons pursues this motion today for:

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(1) an order only holding Eve Stewart in contempt of the order of Justice Roger dated June 5, 2017;

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(2) an order requiring her to take immediate steps to purge her contempt and to provide proof of this within 14 days;

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(3) scheduling a penalty hearing after that to give Miss Stewart the further opportunity to purge her contempt and collect evidence relevant to penalty;

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(4) and finally, for partial indemnity costs for today's motion and attendance.

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First, it should be noted that at no times has Miss Stewart ever sought to set aside, vary, or challenge the orders of this court, including that of Justice Hackland dated May 22, 2014, or the order of Justice Roger dated June 5<sup>th</sup>, 2017 in issue.

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Secondly, Miss Stewart never asked for nor received approval from the College to administer injections to herself or others since the orders were made.

On June 5, 2017, Justice Roger found Miss Stewart in contempt of the 2014 order of Justice Hackland by intentionally breaching the terms of that order. He also set forth terms of the penalty resulting from the finding of contempt. His order required Miss Stewart to:

(a) pay a fine in the amount of \$2,500, \$500 of which shall be paid within 45 days of the date of this order, and the remaining \$2,000 shall be paid at the rate of no less than \$25 per month thereafter. This fine shall be payable by cheque to the Ministry of Finance, 161 Elgin Street, Ottawa, Ontario, K2P 2P1, and the respondent is to provide proof to the College upon request confirming these payments, including copies of receipts. The College may contact the Ministry of Finance to confirm payment has been received and processed;

(b) immediately and permanently post a prominent sign in the procedures rooms and the waiting rooms in each and every location where she provided aesthetic services, including Eve's Laser Clinic, in a form attached hereto as Schedule A, notifying the public of the conditions of the 2014 order;

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5 (c) run a prominent notice in the Ottawa Citizen online to be at least once a week for four weeks starting the month that this order is made in a form attached hereto as Schedule A;

10 (d) immediately and permanently refrain from advertising or communicating in any form to the public in such a way as to lead the public to believe that she can offer services that contravene the 2014 order, and any advertisement shall contain a specific prominent statement regarding the conditions of the 2014 order;

15 (e) permanently advise the College of each and every location and new location in Canada where she provides aesthetic services within one week of commencing her provision of such services at each and every new location;

20 (f) permanently advise the College on an annual basis commencing from the date of this order of all services offered or conducted at each and every location in Canada where she provides aesthetic services;

25 (g) permanently grant the College access to unannounced visits at every location in Canada where she provides aesthetic services up to four times annually per location commencing from the date of this order for the purpose of the College ascertaining her compliance with the 2014 order and the present order.

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In order to justify an order in contempt and resulting penalties, the College bears the onus to satisfy me beyond a reasonable doubt that it meets each of three elements underpinning the legal test for contempt as expressed by the Supreme Court in *Carey v. Laiken* 2015 SCC 17.

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The test requires that the evidence proffered by the College establishes beyond reasonable doubt that the terms of Justice Roger's contempt order are:

(1) clear and unequivocal;

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(2) that Miss Stewart had actual knowledge of the order, and;

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(3) that Miss Stewart intentionally breached the order either directly or indirectly.

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I have considered the affidavits filed by the College, notably that of Rita van der Heiden, sworn June 21, 2018; those of the College investigators, Heather Carroll, sworn June 25, 2018; Lindsay Turnbull, sworn June 20, 2018; Corinne Bellon, sworn June 20, 2018; the affidavit of Jeff Fuzzon from Finance and Operations Department of the College, sworn June 25<sup>th</sup>, 2018; and finally, the supplementary affidavit of Rita van der Heiden, sworn July 9, 2018.

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5 I have also considered the evidence filed by Miss Stewart, including the affidavit of Walid el Kadim, sworn August 9, 2018; the affidavits of Eve Stewart and Elliott Stewart, sworn August 7, 2018; and a videotape which, on viewing, reflects that it was "cropped" on 08/06/2018 at 3:33 p.m. I examined it on several occasions, and note that it was of poor quality, and sound and voices were at times muffled.

10 The video captures no act of aggression by any party, nor a request that the investigators, Miss Carroll and Miss Bellon, remove their footwear at the unannounced visit they made to the last address of Miss Stewart's laser clinic in January of this year. A male voice simply stated they are "still in their shoes".

15 The video depicts Miss Carroll asking Miss Stewart not to touch anything while she examined items in a fridge. Miss Stewart told her a vial of Botox was from an old prescription, and offered to help her inspect items.

20 Items were seized and subsequently photographed, as appears from Exhibits E through H of Miss Carroll's affidavit of June 25, 2018. These items give rise to an inference in support of a finding that Miss Stewart continued to breach the terms of Justice Hackland's order, as well as the order of Justice Roger after June 5, 2017.

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5 The memoranda of Miss Carroll and Miss Bellon, made contemporaneously and soon after the visit, establish that Miss Carroll went to the fridge twice, including once after Miss Stewart had a conversation with a police dispatcher. It does not rule out the evidence both investigators attested to that Miss Stewart obstructed entry to the fridge.

10 After considering all of the evidence, I am left in no reasonable doubt that the College has established ongoing contempt of Justice Roger's court orders by Miss Stewart. All three elements of the legal test are made out as follows:

15 (1) I find the order was clear and unequivocal. The contempt order of Justice Roger set forth specific directions in a specified form with clear specifications about the terms of payment of a fine, the rate and method of payment, and the fact that proof of payment was required, and today, 20 Miss Stewart admits she forgot that part of the order. The order was specific about the public postings of the contempt order and conditions of the 2014 order at every location where she provides services. 25

30 Miss Stewart was further directed to post an online notice in the Citizen for four weeks in a form specified by Justice Roger's order. It was only after this motion was set down that any evidence was furnished about as yet unfulfilled

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attempts to post the notice online at the Citizen, and payment of the portion of the fine, that is \$950 out of the \$2,500 ordered.

5 No amount has been paid towards costs ordered against Miss Stewart in 2017, and she advised the College investigators she had no intention or ability to pay it. As I noted early on in these reasons, no attempts were made to vary the order on consent or otherwise.

10 I further find that Miss Stewart demonstrated an understanding of the requirements of the contempt order that also included a grant of authority to the College for unannounced visits by the College's investigators who attended unimpeded in October of 2017 to make an inspection of the premises.

15 The visit of January 2018 was another matter. It appears from the affidavit and video evidence surrounding that visit that Miss Carroll and Miss Bellon were allowed entry, but Miss Bellon alleges she was assaulted as she followed Miss Carroll towards a living/dining room area where a fridge was located. The assault charges are still pending.

20 Miss Stewart alleges she was also assaulted by Miss Bellon, although the affidavits of Mr. Elliott and Mr. el Kadim fail to express that they clearly witnessed anything more than Mr. el Kadim

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noting that Miss Stewart's shoulder was nudged by Miss Carroll as she walked past her, and that Mr. Elliott witnessed shouting as between Miss Bellon and Miss Stewart. He did not witness the alleged assault of Miss Bellon, and came on to the scene only after he heard Miss Bellon shout, and I quote, "back off lady", presumably to Miss Stewart. After a verbal exchange, Mr. Elliott says the tall woman I surmise to be Miss Bellon physically shoved Miss Stewart out of her path and against the wall.

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I find from the evidence about the visit that Miss Stewart was not fully compliant with the clear authority of the investigators to carry out an inspection at her home until after the conversation with the police dispatcher.

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As revealed by the exhibits to Miss Carroll's affidavit, the fridge contained Botox, Forever Young serum, Juvaderm ultra syringes, a number of empty syringes, scalpels, and discarded needle packages, among other things found.

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I do not accept Miss Stewart's position in her materials that Justice Roger's order left any doubt about whether she could inject herself, let alone others, whether for her stated trauma condition or otherwise. The order by clear terms prohibits this, without written confirmation of prior approval by the College, and the supplementary affidavit of Miss van der Heiden, as

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I noted previously, establishes that Miss Stewart neither sought nor received this permission.

5 I find the College has met the onus upon it to persuade me there was no issue about the clarity of Justice Roger's order.

10 As to the second element of the legal test, the College has established beyond reasonable doubt that Miss Stewart had actual knowledge of the order, was present when the contempt order was made, and was provided with a copy of the order. I find Miss Stewart also demonstrated actual  
15 knowledge by her conduct. I have no reservation in saying so, although today Miss Stewart cannot recall being consulted by Justice Roger about the amount of installments towards penalty and costs. The order speaks for itself very clearly.

20 Finally, as to the third element of the legal test, I am satisfied beyond a reasonable doubt that Miss Stewart demonstrated intention to breach the content of the order by direct or indirect means as follows:

25 (1) she failed on repeated requests until July 2018, after this motion was filed, to furnish any proof of partial payment of the fine;

30 (2) she failed to post any signs, choosing to interpret the order that she had no cause to do so if she was no longer providing services, although

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5 the evidence went unchallenged that she could not recall when she stopped doing so. I infer from the failure to post signage, coupled with items found at her home clinic, that she continued to engage in controlled acts she was permanently enjoined from doing, either on herself or on others or both.

10 Thirdly, Miss Stewart failed to run the notice in the Ottawa Citizen, and failed to furnish any proof of her attempts to do so until after the motion was filed.

15 Fourthly, in July 2018, she told the investigators on the unannounced visit that they were entitled to only two visits a year, while the order clearly says four. I accept the evidence of Miss Carroll that Miss Stewart initially tried to prevent her from examining the contents of the fridge, then told her the Botox was an old vial. Miss Stewart admits today and confirms the College's evidence that the Botox was good until 2019.

25 The contents of her Sharpies disposal container satisfied me that Miss Stewart continued to perform injections on herself or others or both. Her failure to post the notices would help explain why the contents of her Sharpies disposal container and the fridge were still present in  
30 January 2018.

Finally, Miss Stewart initially lied about posting

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5 the Citizen ad, and clearly told Miss van der Heiden she had no intention to pay the court order awarding costs of \$10,391.48, nor has she furnished proof of any installments paid at the rate of \$50 per month, although I accept Miss Cader's submissions today that the amount due is less than \$10,391.48, and rather something in the order of \$9,200, by reason of the fact that HST is not collectible by the College.

10 I accordingly grant the order finding Miss Stewart in contempt of Justice Roger's order of June 5<sup>th</sup>, 2017, and order Miss Stewart to purge her contempt as invited by the College as follows:

15 Eve Stewart shall, within 14 days, provide proof to the College that she has made payments to the Ministry of Finance in respect of the \$2,500 fine as set out in the June 5<sup>th</sup>, 2017 order of Justice Roger if further proof is required;

20 (2) Eve Stewart shall immediately post signs in the waiting room and procedure areas in her home clinic in the form prescribed by the contempt order;

25 (3) Eve Stewart shall, within 14 days, run a notice online in the Ottawa Citizen in the form prescribed by the contempt order, and provide proof to the College that she has done so;

30 (4) Eve Stewart shall, within 14 days, commence

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making monthly payments of \$50 to the College in respect of the costs award of the 2017 contempt proceeding, as ordered by Justice Roger, and;

5 (5) Eve Stewart shall refrain from obstructing any future unannounced visits at her clinic conducted by the College under the authority of the June 5, 2017 order of Justice Roger.

10 I further order that a penalty hearing be scheduled on a date to be set by the trial co-ordinator in consultation with counsel and Miss Stewart. If Miss Stewart does not co-operate with the scheduling of the penalty hearing, but I anticipate that she will, a date shall be fixed in  
15 any event without her consent.

Regarding the matter of costs, Miss Cader, do you have the costs outline and a bill of costs?

20 MS. CADER: We don't because we were going to put that evidence forward when it came to the penalty order, so I don't have one today.

THE COURT: Assuming that you agree on penalty and obviate the need for a penalty hearing, and  
25 assuming that Miss Stewart purges the contempt in the way that I have ordered today within the 14 days I've just spelled out, what would your proposal be with respect to costs?

MS. CADER: For today's appearance?

30 THE COURT: Yes.

MS. CADER: Nothing.

THE COURT: You are waiving costs for today's

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app....

5 MS. CADER: We would forego costs if she purges her contempt on these other things because she already has, from the 2014 order and the 2017 order, outstanding costs which we believe are sufficient.

10 THE COURT: I couldn't agree with you more, and I think that that is a very fair way of proceeding, Miss Cader, although I should add that I was prepared to make an order for partial indemnity costs today, so I do commend you, Miss Cader, for waiving costs of preparing and attending today's proceedings.

15 MS. CADER: If we have to attend at a penalty order, then - sorry, at a penalty hearing, then there may be costs for that attendance, if we can't avoid it.

20 THE COURT: So to be clear, for Miss Stewart's benefit, if you are required to go to another court attendance, you would only be seeking the costs related to that court attendance, or are you saying you would be asking for today's preparation and attendance as well?

25 MS. CADER: No. It would only be for the costs of the penalty hearing.

30 THE COURT: So that is quite a large encouragement on the part of the College, Miss Stewart, to purge the contempt within the next 14 days. And if there's any confusion about that at all, Miss Cader has taken detailed notes. My transcription might be available within the 14 days, but it's difficult to know because I'm sure Madam Reporter

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has other transcripts to type, and I'm not sure how soon she could get it done for us.

5 But if there's any doubt in your mind at all, I would tell you, just to assist you, that paragraph 65 sub paragraph (c) of the factum, if you go to page 25 of the factum, Miss Stewart - the factum is the legal argument and reference to the case law.

10 MS. CADER: You're looking at the right page.

THE COURT: So if you go to page 25, paragraph (c) spells out the terms of my order made today as to how you should purge the contempt. The only change I made to it was with respect to the first paragraph insofar as proof of payment to the College if a fine is made. I've said, "If the College should require any more proof", that you continue to make the payment.

15 So that, to be clear, it's incumbent upon the College to ask you first for anything more in relation to the fine, okay? If you don't - I would suggest if there's any doubt about what I've ordered you to do today after the finding of contempt, you go to page 25, and you look at sub paragraph (c) of paragraph 65 of that factum.

20 MS. STEWART: Okay.

25 EXCERPT CONCLUDED.

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

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I, Melanie E. Antflick, B.A., CVR, court reporter, certify that  
this document is a true and accurate transcript of the recording  
of **College of Physicians and Surgeons of Ontario v. Eve Stewart**,  
10 in the Superior Court of Justice, held at Ottawa, Ontario, on  
August 14, 2018, taken from Recording No. 0411-CR32-20180814-  
133033-10-ROCCAMG, which recording has been certified by  
Katherine Park in Form 1.

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September 4, 2018

(Date)

Melanie Antflick

Melanie E. Antflick  
Court Reporter

(Signature of authorized person)

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30 Melanie Antflick, Court Reporter, **IN BLUE INK**, and accordingly  
are in direct violation of Ontario Regulation 587/91, Courts of  
Justice Act, R.S.O. 1990.