ONTARIO

SUPERIOR COURT OF JUSTICE

COUR SUPÉRIEURE DE JUSTICE

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January 10, 2018

Via Regular Mail

John David Ironside
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Thompson Law PC
Barristers and Solicitors
511 Welham Road, Unit 1, P.O. Box 696
Barrie, ON L4M 4Y5

Darren Adrian Roskam
13 Grove Street East
Barrie, Ontario L4M 2N6

RE: ***Ironside v. Roskam***
Barrie Court File # 17-888

On behalf of Mr. Justice DiTomaso, enclosed please find a copy of His Honour's Reasons for Decision in the above noted matter, together with his hand written endorsement, both of which are dated and released today.

Yours very truly,

Jennifer Beattie
SCJ Judicial Assistant
/jb
enclosures

Ironside and Roskam

Court File No. 17-888

Oct 31/17. Mr Thompson for appl.
Mr. Roskam in person.

The Ct moved for contempt against Mr Roskam. In my view this motion requires a viva voce hearing. It is adjourned to the Fall 2017 trial sittings for a 1 day hearing. Not to be called in the first week.

Dec 8/17 O Thompson for the Plaintiff (Applicant)
D. Roskam for Respondent Follows.
Contempt Motion heard. Decision reserved.
G.P. D. Tower

Jan 10/18 Motion granted for written Reasons delivered.
G.P. D. Tower

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BARRIE

FILED AT BARRIE / DÉPOSÉ À BARRIE
OCT 24 2017
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

Motion Record

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Owen Thompson (LSUC #32080S)
Lawyer for the Applicant

CITATION: Ironside v. Roskam, 2018 ONSC 247
BARRIE COURT FILE NO.: 17-888
DATE: 20180110

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
JOHN DAVID IRONSIDE	)	
	)	Owen Thompson, for the Applicant
Applicant	)	
	)	
– and –	)	
	)	
DARREN ADRIAN ROSKAM	)	Darren Adrian Roskam, Self-Represented
	)	
Respondent	)	
	)	
	)	
	)	
	)	**HEARD:** December 8, 2017

REASONS FOR DECISION

DiTOMASO J.

THE MOTION

[1] The Applicant, John David Ironside ("Mr. Ironside"), seeks an order that Darren Adrian Roskam ("Mr. Roskam"), is in contempt of the Order of Madam Justice Healey, dated August 4, 2017, which order was extended by the Orders of Mr. Justice deSa, dated August 15, 2017 and September 25, 2017.

BACKGROUND

[2] The dealings between Mr. Ironside and Mr. Roskam have been long and acrimonious. While I do not wish to engage in a detailed analysis of their long running disputes in and out of court, Mr. Roskam was found to be a vexatious litigant by Mr. Justice Boswell in 2010, at which time Mr. Roskam was the subject of a one-year "cooling off" period ordered by Mr. Justice Boswell. Mr. Ironside contends that after the one-year "cooling down" expired, Mr. Roskam resumed his offensive behaviour of sending long-winded emails with no relevance to procedural matters or the service of documents and attempted to justify his comments and statements as procedural in nature.

[3] By way of Notice of Application, dated June 12, 2017, Mr. Ironside once again sought a declaration that Mr. Roskam was a vexatious litigant.

[4] The Application came on for hearing on August 4, 2017 before Justice Healey, who adjourned the Application to August 15, 2017, but in doing so, granted interim relief against Mr. Roskam. By Order of August 4, 2017, Justice Healey ordered, amongst other things, the following at paragraph 4:

(a) Mr. Roskam shall not communicate directly or indirectly with Mr. Ironside;

(b) Mr. Roskam shall not communicate with Mr. Thompson or Ms. McDonnell other than to serve court documents and that communication shall be strictly limited to referring to procedural matters pertaining to the litigation;

(c) all actions and proceedings involving these parties are stayed; and,

(d) Mr. Roskam shall not commence any proceeding against Mr. Ironside, Mr. Thompson or Ms. McDonnell.

[5] The Application proceeded on August 15, 2017 and September 25, 2017 before Justice deSa, who on both occasions, extended the Order of Justice Healey. In addition to extending Justice Healey's order, he also ordered that Mr. Roskam was precluded from having any further communication directly or indirectly with Ms. McDonnell. This additional term was contained in Justice deSa's orders of August 15 and September 25, 2017 respectively.

[6] The evidence discloses that Mr. Roskam was present in court on each hearing date and was provided with copies of the endorsements of Justice Healey and Justice deSa at the conclusion of the matter. Further, it is admitted by Mr. Roskam that he heard the endorsements read by each Justice on the occasions when he was before them. There is no dispute as to Mr. Roskam being fully aware of the existence of these orders.

[7] Also, there is no dispute that despite these orders that he not commence any proceedings against Mr. Ironside, Mr. Thompson or Ms. McDonnell, on August 14, 2017 Mr. Roskam filed a complaint against Ms. McDonnell with the Law Society of Upper Canada (the "Law Society"), thereby triggering a formal process whereby the Law Society investigated the complaint of Mr. Roskam. Ms. McDonnell is a paralegal and also a law clerk who is employed by Thompson Law Professional Corporation, the law firm representing Mr. Ironside.

[8] Subsequent to Justice deSa reserving his decision of September 25, 2017, there were a number of communications between Mr. Roskam and Mr. Thompson. Those communications were set out in the Motion Record and Supplementary Motion Record of Mr. Ironside (Exhibits 1 and 2) as well as contained in the Supplemental Responding Motion Record of Mr. Roskam (Exhibit 4).

[9] After Justice deSa reserved his decision on September 25, 2017, Mr. Roskam, on Sunday October 15, 2017, communicated with Mr. Thompson by delivering a letter to the mailbox of Thompson Law PC and by email, in which he chose:

(a) to express his opinions that the offices of Thompson Law PC were "in an ugly and inconvenient industrial park";

(b) that it had been more than a decade since Mr. Thompson had acted for another party sued unsuccessfully by Mr. Roskam; and,

(c) that Mr. Thompson "twisted the meaning and lied" to the court about an email previously sent by Mr. Roskam to Mr. Thompson.

[10] On October 16, 2017, Mr. Thompson advised Mr. Roskam that the proceeding he referred to for Tuesday October 17, 2017, was stayed and would not be proceeding.

[11] He also advised Mr. Roskam that these other elements of his communication had nothing to do with communicating about procedural matters and were, in Mr. Thompson's opinion, in contempt of Justice Healey's order, as extended by Justice deSa.

[12] Mr. Roskam responded on October 16, 2017, with a longer email in which he:

(a) failed to acknowledge that Mr. Thompson had responded to him advising him that due to the stay of proceedings the matter scheduled for Tuesday October 17, 2017 would not be proceeding;

(b) provided excessive details about how the mail delivery process works between himself and his landlord;

(c) replied to his own email that he had sent to Mr. Thompson and which was filed with the Court for the hearing of the Application and again expressed his opinion that Mr. Thomson twists and misrepresents things to the Court;

(d) accused Mr. Thompson of sending pointless emails and taunted him about citing Mr. Roskam for contempt;

(e) re-affirmed his opinion that the offices of Thompson Law PC are in an ugly building devoid of any architectural beauty and the industrial park is far away from the city's main area of business and is inconvenient. These opinions he expressed as the "truth" made in "passing";

(f) went on about why he has to communicate with Mr. Thompson despite the fact that pending the decision of Justice deSa, all matters are stayed;

(g) expressed his opinion that there were no insults as an office has no feelings and is not a person;

(h) accused Mr. Thompson of refusing to answer simple questions when Mr. Thompson had already answered that the matters were stayed and the matter would not be proceeding pending a decision of Justice deSa.

[13] This motion first came before the court on October 31, 2017. At that time, it was adjourned to the Fall 2017 trial sittings. This motion came before me on December 8, 2017, at which time the motion was heard and my decision was reserved.

[14] After I heard this matter, Justice deSa delivered reasons on December 14, 2017, where he declared Mr. Roskam a vexatious litigant under s.140 of the *Courts of Justice Act* for written reasons delivered on that date. These are my reasons.

THE EVIDENCE

[15] Before me on the hearing of the contempt motion, Mr. Ironside filed the Motion Record (Exhibit 1), Supplemental Motion Record (Exhibit 2), a Factum and Book of Authorities.

[16] Mr. Roskam, representing himself, filed a responding Motion Record (Exhibit 3), Supplemental Responding Motion Record (Exhibit 4), a Factum and Book of Authorities.

[17] In addition, on behalf of Mr. Ironside, I heard *viva voce* evidence of John David Ironside and Katherine McDonnell. I also heard *viva voce* evidence from Darren Adrian Roskam. I also heard submissions on behalf of Mr. Ironside and Mr. Roskam.

Evidence of John David Ironside

[18] Materials filed on behalf of Mr. Ironside were his Affidavit contained in his Motion Record, as well as his Supplemental Motion Record, which contained the Affidavit of Tiffany Matthews and various exhibits.

[19] He affirmed the contents of his Affidavit and went through the various exhibits including the Court Orders of Justice Healey and Justice deSa. He identified the interim Order of Justice Healey contained in paragraph 4a, b, c, and d of her Order, dated August 4, 2017. That Order was was further extended by the Orders of Justice deSa on August 15, 2017 and September 25, 2017. The Orders of Justice deSa also included a term which precluded Mr. Roskam from having any further communications directly or indirectly with Ms. McDonnell.

[20] Mr. Ironside was taken through and confirmed the various emails between Mr. Roskam and Mr. Thompson contained in the Motion Record and Supplemental Motion Record. It was his evidence that these communications from Mr. Roskam breached the Order of Justice Healey, extended by the Orders of Justice deSa, as Mr. Roskam's communications were not strictly limited to referring to procedural matters pertaining to the litigation.

[21] In addition, there was evidence that Mr. Roskam had instituted a complaint with the Law Society against Ms. McDonnell. Mr. Ironside disagreed that the complaint filed by Mr. Roskam was different from a proceeding contemplated by the Order of Justice Healey, where it was ordered that Mr. Roskam shall not commence any proceeding against Mr. Ironside, Mr. Thompson or Ms. McDonnell. Mr. Ironside also testified that Mr. Roskam was playing some kind of a game by placing "poutine" stickers on various envelopes sent to Mr. Thompson. He testified that Mr. Roskam did not take court proceedings seriously and offered a self-serving apology.

Evidence of Katherine McDonnell

[22] Katherine McDonnell is a paralegal and has represented Mr. Ironside in a number of Small Claims Court proceedings involving Mr. Roskam. She is also a law clerk at Mr. Thompson's law firm. She has attended all prior proceedings. She was in attendance before Justice Healey on August 4, 2017 and before Justice deSa on August 15, 2017 and September 25, 2017. It was her incontrovertible evidence as to how Justice Healey came to order Mr. Roskam not to commence any proceeding against Mr. Ironside, Mr. Thompson or Ms. McDonnell (see: Order of Justice Healey, dated August 4, 2017 at paragraph 4(d)). She testified that there was a discussion before Justice Healey that Mr. Roskam likes to complain about lawyers and paralegals to the Law Society and he likes to commence proceedings against them. On August 4, 2017, Mr. Roskam advised Justice Healey that he was going to lodge a complaint with the Law Society against Ms. McDonnell. Knowing Mr. Roskam's intention, Justice Healey included a term at paragraph 4(d) of her Order that Mr. Roskam was prohibited from commencing any proceeding against Mr. Ironside, Mr. Thompson or Ms. McDonnell. It is noteworthy that Ms. McDonnell was specifically identified in this Order for this very reason.

[23] Ms. McDonnell further identified the Orders of Justice deSa where he not only extended the Order of Justice Healey, but also included an additional term precluding Mr. Roskam from having any further communication directly or indirectly with Ms. McDonnell. She testified that this further term was included in the Orders of Justice deSa because Mr. Roskam had made a complaint to the Law Society. Ms. McDonnell had confirmed that he had done so which compelled her to respond. She identified the letter from the Law Society, dated August 30, 2017, which acknowledged receipt of Mr. Roskam's complaint on August 14, 2017, together with additional materials and Ms. McDonnell's response. The Law Society indicated that it closed its file.

[24] Ms. McDonnell refuted Mr. Roskam's position that his complaint to the Law Society was not a proceeding in breach of any of the Court Orders referred to. Somehow there was a distinction made on his part between a court proceeding and a complaint before the Law Society. Ms. McDonnell considered the filing of a complaint with the Law Society as a proceeding regarding which she was compelled to respond. She considered the matter to be an extremely serious matter. She had never been subject of a complaint before. She was a licensee of the Law Society, who could regulate her conduct. In this case, Mr. Roskam sought to have her found guilty of professional misconduct.

[25] She went through the various orders made by Justice Healey and Justice deSa and confirmed that each of the judges read their endorsements in court with Mr. Roskam present and each of the judges provided Mr. Roskam with a copy of their endorsements. Mr. Roskam was aware of each and every order.

[26] In cross-examination, Ms. McDonnell testified that Mr. Roskam had not contacted her directly or indirectly. However, in re-examination, she testified that the complaint to the Law Society against her was an indirect communication and was not procedural in nature.

Evidence of Darren Adrian Roskam

[27] Mr. Roskam testified that he had not breached paragraph 4(b) of Justice Healey's order, as he had not commenced any new proceedings against Mr. Thompson or Ms. McDonnell and his communications were strictly limited to procedural matters.

[28] He further testified that his complaint against Ms. McDonnell to the Law Society was not in the nature of the proceeding, but a complaint which was something totally different. He testified that his actions were in good faith, that he tried to avoid contacting Ms. McDonnell and that he had no contact with her at all. He testified that the complaint was not a proceeding and because the complaint was not part of this court action, he was not in breach of the Order of Justice Healey. He apologized for his comments about Mr. Thompson's building and testified that no such comments would happen again. He also apologized to Mr. Ironside, Mr. Thompson, Ms. McDonnell and would post an apology on the Internet if they wanted.

[29] In cross-examination, it was established that Mr. Roskam was in court before Justice Healey on August 4, 2017. He heard her read her endorsement and had received a copy of her endorsement as well. He did not ask for clarification in respect of paragraphs 4(b) and 4(d) He was also in court before Justice deSa on August 15 and August 25, 2017. Neither did he ask for clarification of any of his orders. He heard Justice deSa read his endorsements and also received a copy of those endorsements.

[30] When he attended before Justice deSa on September 25, 2017 on the hearing of the Application to have Mr. Roskam declared as a vexatious litigant, he did not ask for clarification of any of the previous orders.

[31] Mr. Roskam testified in cross-examination that he had filed a complaint with the Law Society on August 14, 2017 against Ms. McDonnell. He testified that in filing the complaint, he wanted redress against her. He agreed that he had intended to send emails to Mr. Thompson of October 15, 16 and 25, 2017. He typed these emails and intended to send them. These were not accidental emails. He also sent to Mr. Thompson the email, dated September 27, 2107, wherein Mr. Thompson was accused of uttering lies in court. It was Mr. Roskam's intention to send this email as well. Mr. Roskam also intended to utilize the process of filing a complaint with the Law Society against Ms. McDonnell.

[32] In cross-examination, Mr. Roskam testified that he was not impecunious and could pay court costs or a fine. He did confirm that there were outstanding costs orders against him and that he was the subject of one judgment against him as well.

POSITIONS OF THE PARTIES

Position of the Moving Party, Ironside

[33] Mr. Ironside submits that Mr. Roskam is in breach of the orders of Justice Healey, dated August 4, 2017, and Justice deSa, dated August 15, 2017 and September 25, 2017. It is submitted that Mr. Roskam's communications were not procedural in nature and were not restricted or limited to procedural matters pertaining to the litigation. Further, Mr. Roskam breached the orders

by commencing a proceeding against Ms. McDonnell by registering a complaint against her with the Law Society. He did so with the full knowledge that he was prohibited from taking this step.

[34] On behalf of Mr. Ironside, it is submitted that Mr. Roskam breached paragraphs 4(b) and 4(d) of Justice Healey's order, dated August 4, 2017, together with breaching the orders of Justice deSa, dated August 14 and September 25, 2017. By way of penalty, a period of incarceration was sought. In the alternative, a fine in the amount of $5,000.00 was sought against Mr. Roskam, together with a costs order in the amount of $5,000.00.

Position of the Respondent, Roskam

[35] Mr. Roskam takes the position that he did not breach any of the court orders. He submitted that there was nothing in the court orders specifically prohibiting him from lodging a complaint with the Law Society against Ms. McDonnell. He submits that the complaint to the Law Society was not a proceeding and therefore there was no breach of any of the court orders. While he did not ask for clarification of any of the orders, he submits that if he were advised not to make a complaint, then he would have complied. He believed that he was entitled to complain to the Law Society against Ms. McDonnell.

[36] Further, the communications that he had with Mr. Thompson were communications about the proceedings, which did not contravene the orders of Justice Healey and Justice deSa.

[37] By way of penalty, he submits that incarceration is not an appropriate disposition. Jail would be a last resort. If fined, he has a job and he would ask his family to help him pay the fine.

ANALYSIS

[38] Civil contempt proceedings are governed by Rules 60.05 and 60.11 of the *Rules of Civil Procedure*. Under Rule 60.11, a party may move to obtain a contempt order: Rule 60.11(1). A judge, in dealing such a motion can, "make such an order as is just" and, following "a finding" of contempt, he or she may order the contemnor to be imprisoned, pay a fine, do or refrain from doing an act, pay just costs, and comply with any other order the judge considers necessary: Rule 60.11(5). Upon motion, "a judge may discharge, set aside, vary or give directions in respect of an order under sub-rule (5)...and may grant such other relief and make such other order as is just": Rule 60.11(8). (See: *Carey v. Laiken*, 2015 SCC 17 (CanLII) at paragraph 17.)

[39] In *Carey*, the Supreme Court of Canada held that as a general rule, contempt proceedings are bifurcated into a liability phase, and if liability is established, a separate penalty phase. In contempt proceedings, liability and penalty are discrete issues. (See: *Carey v. Laiken, supra* at paragraph 18.)

[40] The test for civil contempt is set out in *Carey*. Civil contempt has three elements which must be established beyond a reasonable doubt. These three elements, coupled with the heightened standard of proof, help to ensure that the potential penal consequences of contempt findings ensue only in appropriate cases. A party seeking to establish civil contempt must prove that: (a) the order alleged to have been breached states clearly and unequivocally what should and should not have been done; (b) the party alleged to have breached the order had actual knowledge of it; and (c) the

party allegedly in breach intentionally did the act the order prohibits or intentionally failed to do the act the order compels. (See: *Carey v. Laiken*, *supra*, paragraphs 32 to 35 inclusive.)

Findings

[41] For the following reasons, I find Mr. Roskam in contempt as he has breached the order of Justice Healey, dated August 4, 2017, and the orders of Justice deSa, dated August 15 and September 25, 2017. I am satisfied beyond a reasonable doubt that the orders clearly and unequivocally stated what should and should not have been done. Mr. Roskam was in attendance on each of the dates where Justice Healey and Justice deSa made their orders. He heard the orders read and was provided with copies of the endorsements containing the terms of their orders. He did not seek clarification of any of the terms of the orders from any of the presiding judges. I reject his submissions that their orders ought to have been more specific, particularly where any of the orders ought to have stated that he was specifically prohibited from launching a complaint against the Law Society. I reject Mr. Roskam's argument as being totally false and without any merit whatsoever. The very reason that Justice Healey included the term found at paragraph 4(d) of her order was because Mr. Roskam expressed his intention to lodge a complaint with the Law Society against Ms. McDonnell. *Any proceeding* against her was specifically prohibited by Justice Healey (emphasis added) particularly when Mr. Roskam declared his intention to go to the Law Society and register a complaint against her.

[42] The order of Justice Healey was clear and unequivocal that Mr. Roskam shall not communicate with Mr. Thompson or Ms. McDonnell, other than to serve court documents, and that communication shall be strictly limited to referring to procedural matters pertaining to the litigation. (See: paragraph 4(b) Order of Healey J., dated August 4, 2017) It is clear and obvious that Mr. Roskam's communications with Mr. Thompson extended far beyond procedural matters pertaining to the litigation. To the contrary, it is evident to any reader that these communications were abusive and insulting. They were of the same kind of communications regarding which Mr. Roskam had been sanctioned prior by the Court. He was told what he should not do by the Court and he disregarded this prohibition. Mr. Roskam has no problem with the English language. He knew what the court orders said and what they meant. He never sought any clarification in respect of any of the terms of any of the orders. He cannot say that the orders ought to have been more specific and if they were so specific, he most certainly would have complied with them. This submission is totally without merit.

[43] I also find that the moving party has proven beyond a reasonable doubt that Mr. Roskam had actual knowledge of the court orders. Again, he was in attendance on every occasion before Justice Healey and Justice deSa when they made their orders. He heard the orders read by the Judges in court and he received a copy of their endorsements.

[44] I further find beyond a reasonable doubt that Mr. Roskam intentionally did the acts the orders prohibited or intentionally failed to do the acts the orders compelled.

[45] On Mr. Roskam's own evidence, he intended to send the communications that he sent in the manner and form on which they were sent. He knew what he was doing and he had every intention to say what he said. The emails were not sent by accident, nor were the emails sent because of some honest mistake.

[46] Further, Mr. Roskam intended to commence a proceeding against Ms. McDonnell by lodging a complaint with the Law Society. I completely reject Mr. Roskam's distinction between a proceeding and a complaint and that somehow one is different from the other in this case. He was expressly prohibited by Justice Healey from commencing any proceeding against Mr. Ironside, Mr. Thompson or Ms. McDonnell. (emphasis added)

[47] Justice Healey's order was made on August 4, 2017. Within ten days, Mr. Roskam lodged his complaint with the Law Society. He did not make any inquiries whether he could do so in the face of Justice Healey's Order. I accept the evidence of Ms. McDonnell that this step against her was taken seriously by her and created problems for her with the Law Society, which governing body regulates paralegals such as herself. Further, it was very clear what Mr. Roskam was intending to do, which was to have the Law Society discipline Ms. McDonnell for professional misconduct. By letter, dated August 30, 2017, the Law Society advised that it was closing its file.

[48] In *Chirico v. Szalas*, the Ontario Court of Appeal held that a party subject to an order must comply with both the letter and the spirit of the order. That party cannot be permitted to hide behind a restrictive and literal interpretation to circumvent the order and make a mockery of it and the administration of justice. (See: *Chirico v. Szalas*, (2016), 132 O.R. (3d) 738 (C.A.).) I find that Mr. Roskam's interpretation of paragraph 4(d) of Justice Healey's order is disingenuous. It neither complies with the letter nor the spirit of the order. To say that the order should have been more specific and should have specified that he was prohibited from commencing any proceeding against Ms. McDonnell before the Law Society is totally rejected. I say this especially when this very issue came before Justice Healey and was the basis for her including the prohibition found at paragraph 4(d) of her order. Mr. Roskam's use of the complaints process triggered a formal response by the Law Society against Ms. McDonnell which was what he intended. The improper use of this process was undertaken by Mr. Roskam with the full knowledge of the terms of Justice Healey's order which he breached beyond a reasonable doubt.

Procedure Upon a Finding of Contempt

[49] Having found Mr. Roskam in contempt, we now come to the penalty stage. The procedure for a contempt hearing is in the discretion of the presiding judge. Generally, a contempt proceeding has two distinct stages: contempt and penalty. The moving party makes its case for a contempt finding and the responding party offers its defence. If a contempt finding is made, the contemnor is given the opportunity to purge the contempt, and the matter is adjourned to a hearing to address sentence. The two stage procedure gives the contemnor an opportunity to purge the contempt, which can be a mitigating factor in sentencing. However, a bifurcated hearing is not required in all cases. If the nature of the contempt has already occurred and cannot be purged, a bifurcated hearing does not serve any purpose since the evidence needed to determine the contempt and penalty is already before the court. (See: *Echostar Communications Corporation et al v. Steven Rodgers et al*, 2010 ONSC 2164 (CanLII) at paragraphs 34 to 36 inclusive).

[50] In the case at bar, Mr. Roskam has already engaged in the activity that contravenes the court orders of Justice Healey and Justice deSa. I find that he cannot purge this contempt. He had sent communications not limited to strictly procedural matters and he had initiated a complaint against Ms. McDonnell pursuant to which she was required to respond to the Law Society. A

bifurcated hearing would not serve any purpose in our case, since the evidence needed to determine the contempt and penalty is already before the court.

[51] Before addressing penalty, I asked Mr. Roskam and counsel for Mr. Ironside, if they were prepared to make submissions regarding penalty if a finding of contempt was determined by the court. Both counsel and Mr. Roskam were prepared to make those submissions and they did so.

[52] I will now consider the available sanctions and the appropriate penalty in this case.

[53] Rule 60.11 of the *Rules of Civil Procedure* provides for the various orders that a judge may make in disposing of a motion for civil contempt. Those orders range from imprisonment to the payment of a fine, to performing or refraining from doing an act, the payment of costs as are just and complying with any order that the judge considers necessary.

[54] The following factors are relevant to a determination of the appropriate sentence for civil contempt:

(a) the proportionality of the sentence to the wrong doing;

(b) the presence of mitigating factors;

(c) the presence of aggravating factors;

(d) deterrence and denunciation;

(e) the available sentences in like circumstances;

(f) the reasonableness of a fine; and,

(g) the reasonableness of incarceration.

Echostar v Rodgers, supra, at paragraph 41

[55] In considering proportionality, the Court should consider whether the contempt was blatant and whether the responding party was truly contemptuous. (See: *Echostar v. Rodgers, supra,* at paragraph 43.)

[56] On behalf of Mr. Ironside, it is submitted that Mr. Roskam's actions in filing the complaint and in communicating matters that were not procedural were blatant and truly contemptuous of the existing orders. It is submitted that there are no mitigating factors present and that Mr. Roskam has willingly engaged in his actions and has affirmed them in subsequent communications. He has made no effort to purge his contempt nor to apologize for same. It is submitted that any attempts to apologize are entirely self-serving. With respect to aggravating factors, it is submitted that the past order declaring Mr. Roskam a vexatious litigant for a one year cooling off period in 2010, based on his offensive and abusive communications, ought to be considered. It is admitted that Mr. Roskam ought to be specifically deterred from his ongoing abusive and offensive communication styles. The previous declaration of Mr. Roskam as a vexatious litigant has not deterred him. A period of incarceration is sought. It is further submitted that a fine would be

inappropriate. Mr. Roskam has numerous unpaid costs awards and at least one judgment against him that remains unpaid. He is indebted to the moving party for various costs orders issued against him in respect of the proceedings.

[57] The very fundamental purpose of Justice Healey's order was to strictly limit Mr. Roskam's correspondence to procedural matters and to prevent him from initiating new proceedings or carrying on with his offensive and abusive communications. In this context, it is submitted that his conduct is egregious. It is submitted that prior court orders and proceedings have not deterred him. Also, it is submitted that Mr. Roskam is impecunious to costs awards and fines.

[58] Mr. Roskam submits that incarceration is not an appropriate penalty in the circumstances. He is fifty years of age and has no criminal history. He likens this matter to a first offence and that jail would be a last resort. He is not impecunious and has a part time job. If a fine were imposed, he would look to his job earnings and any financial help from his family to pay the fine. He submitted that he is not putting up any more videos on the Internet or on websites regarding Mr. Ironside, Mr. Thompson and Ms. McDonnell. He has submitted that he would take down these videos and websites that he has posted on the Internet and that he will not put up any more. Also, he would transfer his domain name to Mr. Ironside at his own expense.

[59] I have considered what would be an appropriate sentence for civil contempt in this case. I have considered all of the relevant factors and I have also considered the principle of proportionality for the gravity of this contempt. I find that Mr. Roskam fully intended to disregard the orders of Justice Healey and Justice deSa. In this regard, he sent the abusive and insulting communications that he did. He further attempted to circumvent Justice Healey's order not to commence any proceedings against Ms. McDonnell by filing a complaint with the Law Society within ten days of her order not to do so. I find that the general and specific term of deterrence ought to be driven home in this case. Mr. Roskam's behaviour must be denounced and punished in an appropriate way so as to deter others from doing so as well. Court orders must be obeyed. The aggravating factors in this case far outweigh the mitigating factors.

[60] The issue on sentencing is whether incarceration, even for the very short time submitted by the Applicant (3 to 7 days) as opposed to a fine is appropriate. In the alternative, Mr. Ironside seeks payment of a fine by Mr. Roskam in the amount of $5,000.00.

[61] I am of the view that incarceration would be a measure of last resort in this case. I have come to this conclusion after considering whether Mr. Roskam has come to an appreciation that he must stop his unacceptable conduct and his abusive behaviour. I am of the view that he understands that court orders are meant to be obeyed, both to the letter and in the spirit of those orders. I find that incarceration would not be appropriate in the context of this motion. Further, I have had the benefit of reviewing Justice de Sa's Reasons for Decision, dated December 14, 2017, wherein he declared Mr. Roskam a vexatious litigant. Useful in those reasons are Justice deSa's comments and disposition as to what should happen regarding Mr. Roskam and Mr. Ironside in future. Putting Mr. Roskam in jail for 3 to 7 days, in this case, would not be appropriate in all the circumstances.

[62] I find Mr. Roskam's offer to remove from the Internet the videos and websites which he posted against Mr. Ironside, his businesses, Mr. Thompson, his law firm and Ms. McDonnell as a

mitigating factor. This Court accepts his offer to do so. He also offered to transfer his domain name to Mr. Ironside at his own expense. This is another mitigating factor. This Court also accepts this offer. He also advised the court that he has stopped posting any further communications on the Internet about them. As for his apology, I take a different view. I found it to be self-serving and insincere.

[63] Having considered all of the evidence and factors relevant to a determination of the appropriate sentence for Mr. Roskam's contempt, I hereby fine Mr. Roskam in the amount of $2,500 payable to Mr. Ironside within the next 90 days. I find such a penalty to be proportionate in these circumstances.

[64] As for costs, the moving party was totally successful on this motion. Mr. Ironside is entitled to costs on a partial indemnity scale, which I fix in the amount of $2,500, also payable by Mr. Roskam to him within the next 90 days.

[65] In addition, Mr. Roskam shall immediately transfer his domain name to Mr. Ironside, refrain from posting on the Internet any further emails, videos or electronic communications of any sort involving or relating to Mr. Ironside, his businesses, Mr. Thompson, his law firm and Ms. McDonnell and remove any and all electronic communication from the Internet involving or relating to them.

CONCLUSION

[66] For the above reasons, I am satisfied beyond a reasonable doubt that Mr. Roskam is in contempt as he has breached the court orders of Justice Healey and Justice deSa. By way of penalty, he shall pay a fine in the amount of $2,500 payable within the next 90 days to Mr. Ironside. In addition, I have fixed costs in the amount of $2,500 for this motion, payable by Mr. Roskam to Mr. Ironside, as well, within the next 90 days. Further, Mr. Roskam shall immediately transfer his domain name (known to himself and Mr. Thompson) to Mr. Ironside. Mr. Roskam shall also refrain from posting on the Internet any communications of any kind involving or relating to John David Ironside, his businesses, Owen Thompson, his law firm, Thompson Law Professional Corporation and Katherine McDonnell.

[67] Lastly, Mr. Roskam shall immediately remove from the Internet any communication of any kind involving or relating to each and every one of them.

G. P. DiTomaso

DiTomaso J.

Released: January 10, 2018