

Court of King’s Bench of Alberta

Citation: Reddy v Saroya, 2026 ABKB 457

Date: 20260618
Docket: 1201 02096
Registry: Calgary

Between:

Neville Reddy

Applicant

- and -

Parminder Saroya, Jyoti Saroya, John Doe, Joseph B Amantea, and Warren Tettensor
Amantea LLP

Defendants

Reasons for Decision
of the
Associate Chief Justice
D.B. Nixon

I. Introduction

- [1] This decision follows my endorsement in *Reddy v Saroya*, 2024 ABKB 478 (*Contempt Decision*). In the *Contempt Decision*, I found that Parminder Saroya was in contempt regarding 32 undertakings that Neville Reddy had challenged. Four of those undertakings were subsequently resolved.
- [2] The *Contempt Decision* was then appealed as reported in *Reddy v Saroya*, 2025 ABCA 322 (*Appellate Decision*) with costs consequences dealt with in *Reddy v Saroya*, 2026 ABCA 20 (*Costs Decision*). The Court of Appeal determined that for ten of these contempt findings, the

test for contempt had not been established, and as such were reversed. I now must determine the appropriate sanction for the contempt findings on the remaining 18 undertakings which I found had not been appropriately responded to by Mr. Saroya.

[3] The other parties in the style of cause are not parties to this decision.

II. Background

A. The History

[4] This litigation has been ongoing since 2012. It initially involved a business venture between the parties to develop real estate projects in Alberta and the United States. The parties never wrote out the terms of the agreement regarding the business venture, and both parties have presented different versions of what was supposed to happen, including who would have what responsibility and obligation and how they were to be remunerated.

[5] This lack of detail led to the several undertaking requests and production orders over the years. In 2018, I directed that a referee report be prepared under *Rules* 6.45 and 6.46. This report was published under **Reddy v Saroya**, 2019 ABQB 441.

[6] Over 400 undertakings were given during questioning. As a result on the ongoing challenges over the years, I ruled on a significant number of those undertakings. The **Contempt Decision** only addressed a small subset of the undertakings on which I made determinations over the years.

[7] In the **Contempt Decision**, I determined that 32 of the undertaking requests were not properly responded to, out of the 35 undertakings that were the subject of the contempt application. Following the **Contempt Decision**, Mr. Saroya responded to four more undertakings, and contempt concerning those four matters was purged.

[8] In the **Appellate Decision**, the Court of Appeal considered the remaining 28 undertakings at issue. In a review of the test for contempt, the Court of Appeal determined that 10 of those undertaking requests that I found were not complied with did not meet the test for contempt and were set aside. Therefore, as mentioned above, I need to consider the appropriate sanction for the contempt findings on the remaining 18 undertakings.

[9] For a more fulsome description of the procedural and factual background of this case, it is summarized in paragraphs 7-36 of the **Contempt Decision** and paragraphs 4-16 of the **Appellate Decision**.

B. The Expert Witness Affidavit

[10] As a preliminary issue, there is an additional document to consider. In November of 2025, counsel for Mr. Saroya submitted a document referred to as an “Expert Witness Affidavit”. This document purports to be “an independent assessment and analysis of the financial and business affairs relating to this litigation” and a report summarizing the findings of Sarah Hawco. Counsel for Mr. Reddy strongly opposes that I consider this document and asserts that it is inappropriate arguing that it is undercutting the previous decision.

[11] Based on my review of the evidence and analysis of the law, I decided not to consider the document described as the “Expert Witness Affidavit” for purposes of my decision concerning the appropriate contempt sanction. My reasons for not considering this document are fourfold.

[12] First, it is not entirely clear in what form the document was intended to be provided. I acknowledged that the underlying affidavit refers to the document as an “expert report”. However, that does not make it so as an evidentiary matter. Certain rules must be followed and the tests satisfied when dealing with documents that are allegedly expert reports: see **R v Mohan**, 1994 CanLII 80 (SCC), [1994] 2 SCR 9; and **White Burgess Langille Inman v Abbott and Haliburton Co**, 2015 SCC 23. While there is reference to it being an “Expert Witness Affidavit” in the letter from Mr. Saroya’s counsel, I do not see the Form 25 document as set out in the *Alberta Rules of Court*, Alta Reg 124/2010 5.34. Since this Action is in the context of litigation, the *Rules of Court* must be followed: **Buckingham v Schledt**, 2011 ABQB 786 at paras 4 and 5; **Cornelson v Alliance Pipeline Ltd**, 2014 ABQB 436 at para 103, aff’d 2017 ABCA 13.

[13] Second, there was no application to qualify Ms. Hawco as an expert, other than a single page Curriculum Vitae attached to the affidavit. As mentioned above, this Action is in the context of litigation. Therefore, the rules must be followed and the tests met. Concerning the “Expert Witness Affidavit”, neither the Rules nor the tests were met: see **Balogun v Pandher**, 2021 ABCA 422 at paras 56-59.

[14] Third, outside of the issue of form, the purpose of an expert witness and expert report is to assist the Court. In my view, the Expert Witness Affidavit neither assists the Court in determining the matters at issue nor does it provide a specific expertise beyond that of the Court. The conclusions that the Expert Witness Affidavit appear to shift between, on one hand, the actual issues that had already been determined by the Court regarding contempt, such as determining that the answers provided by Mr. Saroya had actually responded to the undertaking request at issue, and, on the other hand, what appears to be conclusions of the issues for trial, such as noting that the investigation could not “identify any transactions that would suggest misappropriation of funds”. Even if Ms. Hawco had been qualified as an expert witness, the “Expert Witness Affidavit” would not be an appropriate form of expert report in any event because it either redetermines issues already decided by this court or attempts to determine issues that need to be decided at trial.

[15] Fourth, the sequencing of Ms. Hawco at this juncture of the case is not helpful. It does not appear that Ms. Hawco would be called in to testify during the trial because the determination of the Court on the contempt issue has already been made. At this stage, the issue is the appropriate sanction, not whether there was an issue with complying with the undertaking requests themselves.

[16] To reiterate the point stated above, I did not consider Ms. Hawco’s Expert Witness Affidavit in my determination of the appropriate sanction.

III. Issue

[17] What is the appropriate sanction for contempt in the present case?

IV. The Law

[18] The appropriate sanction for civil contempt of court falls within the general discretion of the judge. This requires the judge to act judicially and exercise discretion reasonably.

[19] The sanctions must be proportionate and reflect the gravity of the offence and the personal culpability of the contemnor: **Mella v 336239 Alberta Ltd (Dave's Diesel Repair)**, 2016 ABCA 226 at para 34. Rule 10.53 outlines potential punishments for civil contempt of Court as follows:

- 10.53(1) Every person declared to be in civil contempt of Court is liable to any one or more of the following penalties or sanctions in the discretion of a judge:
- (a) imprisonment until the person has purged the person's contempt;
 - (b) imprisonment for not more than 2 years;
 - (c) a fine and, in default of paying the fine, imprisonment for not more than 6 months;
 - (d) if the person is a party to an action, application or proceeding, an order that
 - (i) all or part of a commencement document, affidavit or pleading be struck out,
 - (ii) an action or an application be stayed,
 - (iii) a claim, action, defence, application or proceeding be dismissed, or judgment be entered or an order be made, or
 - (iv) a record or evidence be prohibited from being used or entered in an application, proceeding or at trial.
 - (2) The Court may also make a costs award against a person declared to be in civil contempt of Court.
 - (3) If a person declared to be in civil contempt of Court purges the person's contempt, the Court may waive or suspend any penalty or sanction.
 - (4) The judge who imposed a penalty or sanction for civil contempt may, on notice to the person concerned, increase, vary or remit the penalty or sanction.

[20] A fine under Rule 10.53(1) is not paid to the opposing party but instead to the clerk of the court: **Makis v Alberta Health Services**, 2020 ABCA 168 at para 66.

[21] When dealing with "civil contempt, where there is no element of public defiance, the matter is generally seen 'primarily as coercive rather than punitive'": **Carey v Laiken**, 2015 SCC 17 at para 31; see also Jeffrey Miller, *The Law of Contempt in Canada*, 3rd ed (Toronto, Ont: Thomson Reuters Canada 2023), § 12:1.

[22] Contempt of court is very serious and is not to be used as a matter of routine: **Carey** at paras 36-37; **Questor Technology Inc v Stagg**, 2025 ABCA 271. As such, the sanctions for contempt must also reflect this seriousness and be proportionate and fit to the issue at hand.

[23] The Court of Appeal in **Law Society of Alberta v Beaver**, 2021 ABCA 163 lays out the considerations for the Court to take into account when determining an appropriate sanction. Those judicial guidelines are as follows: **Beaver** at paras 78-79.

The purpose of contempt proceedings is twofold. The primary purpose is to ensure compliance with court orders and a second purpose is to punish the contemnor: **Ouellet v BM**, 2010 ABCA 240, para 60, 323 DLR (4th) 745; **Builders Energy Services Ltd v Paddock**, 2009 ABCA 153, para 13, 457 AR 266.

The factors which the court should take into account include the proportionality of the sentence to the wrongdoing, the presence of aggravating and mitigating factors, deterrence, reasonableness of a fine and appropriateness of incarceration: **Builders Energy**, para 13.

We add to this list of factors, consideration of the concept sometimes (imprecisely) referred to as the “jump principle”, also called the “step principle” or “laddering.”: see **R v Cardinal**, 2017 ABCA 396, paras 24-25, 42 CR (7th) 234; **R v Souvie**, 2018 ABCA 148, paras 42-43, 72 Alta LR (6th) 217. This is a concept because it is not an expression of a broad norm but exists as a consideration that may in some instances serve one or more principles.

[24] That this is failure to comply with a production order does not limit the seriousness of the issue. This point is noted by the Court of Appeal in **Envacon Inc v 829693 Alberta Ltd**, 2018 ABCA 313 at para 64:

Failure to comply with a production order is serious and even imprisonment may be appropriate. This court has said that resort to its power of contempt in civil proceedings can be both coercive and punitive even as to an issue involving production of documents required by court order [citations omitted]

V. Analysis

[25] As mentioned above, the sole issue for me to determine is the appropriate sanction that should be applied to Mr. Saroya.

A. Positions of the parties

[26] As discussed above, the primary purpose of contempt sanctions, particularly in the context of civil contempt of court, is coercive. Punishment and deterrence serve a secondary purpose.

[27] This is complicated in the present case because the material that has yet to be produced will likely never be forthcoming. This will cause difficulty for the trial, if any. Mr. Reddy has argued that undertakings 14, 34, 106, 168, 177, 309, 312, 399, 400, 447 and 453 are critically important concerning his ability to prove his case. Undertaking 91 is important but not critical. Undertakings 107, 128 and 255 are important for context. Undertaking 459 is important for a response to counterclaim.

[28] Mr. Reddy argues that the only appropriate outcome in the present case is to strike Mr. Saroya’s pleadings. He notes that these critical documents, which are no longer available, are necessary to prove his case. Further, he argues that striking Mr. Saroya’s pleadings would properly denounce Mr. Saroya’s litigation behaviour and would deter similar behaviour in other cases.

[29] In contrast, Mr. Saroya argues that there is still the option of adverse inference at trial. As such, he infers that the parties can continue to trial without the missing information. He argues that striking pleadings would be far too extreme a sanction in the present case.

B. Determining the appropriate sanction

[30] As noted in the *Appellate Decision*, it is difficult to conform the usual civil contempt of court approach with the present issue of production orders.

[31] Following the *Appellate Decision* there are still 18 undertaking requests that were not properly complied with by Mr. Saroya. Of these, I agree with Mr. Reddy that 11 of them are critically important to prove his case.

[32] Turning to the potential sanctions, I first note incarceration. Incarceration is potentially appropriate when failing to comply with a production order: *Envacon* at para 64. This is most appropriate when the direct intent of the contempt was directed at the Court itself or broadly harmful to the public. I do not consider incarceration appropriate in the present circumstances and distinguish it from other cases where detention was ordered following contempt: see for example *Beaver* at para 86.

[33] Striking the pleadings, specifically Mr. Saroya's Statement of Defence, is the remedy sought by Mr. Reddy. This is an understandable request. This litigation has been ongoing for years; it has been very high conflict and now the important documents necessary to support the Plaintiff's case are no longer available. If this case proceeds to trial, the missing documents will make the case far more difficult to prove. That being the case, however, I am not satisfied that this has reached such a level that Mr. Saroya should be prevented from being able to present a defence. This would, as noted by Justice Jeffrey in *Questor Technology Inc v Stagg*, 2026 ABKB 47 at para 29, have the effect of denying audience to Mr. Saroya. Striking the pleadings (being Mr. Saroya's Statement of Defence) is an extreme result and, in the circumstances, as frustrating and worthy of denunciation as they are, I am not satisfied that this is the appropriate situation in which to proceed to that remedy.

[34] In my view, this is an appropriate case in which to sanction Mr. Saroya with a fine. There is a necessity to recognize the importance of the complying with production orders. Bearing in mind the caution by the Court of Appeal that when dealing with disclosure and undertaking requests it can be difficult to apply the contempt regime over such a situation, I find that in these circumstances an appropriate fine is \$8,000 payable to the clerk of the Court. This follows alongside the harsh public censure of a contempt finding: *0678786 BC Ltd v Bennett Jones LLP*, 2023 ABKB 470 at para 50.

[35] In addition to the fine described above, I now consider costs as a potential sanction.

[36] Mr. Reddy argues that costs are not a sanction in and of themselves. This is not entirely accurate. As noted by the Court of Appeal in *Demb v Valhalla Group Ltd*, 2017 ABCA 340 at para 9:

It is generally fit to make the contemnor pay the costs of contempt proceedings, both as a form of sanction, and because the innocent party should not have to bear the costs of enforcing court orders.

[37] Further, as noted in *Rule 10.53(2)*, costs may be awarded against someone found in contempt, and the Court of Appeal has substituted costs where the lower court's sanction was determined to be inappropriate: see *Envacon* at para 69.

[38] In the present case, I find that this is an appropriate case in which to order that Mr. Saroya also pay the reasonable solicitor-client costs of the third contempt application, filed on

May 1, 2023, being in the amount of \$69,977.00, as well as the Schedule C, Division 2, Column 5 amounts for the first two contempt applications, those being \$5,400 and \$10,800 respectively, as well as the taxable disbursements and fees claimed for all three plus GST on the total amount. I make this determination as I am not convinced that the full solicitor-client costs for the first two contempt applications are appropriate at this juncture.

[39] Finally, I want to emphasize the comments made in the *Appellate Decision*, that the contempt remedy should not be routinely turned to as a way of resolving disputes. As described at para 70:

The result in this case should not be taken as encouragement for parties or courts to routinely turn to the contempt remedy as a way of resolving disputes about the sufficiency of answers to undertakings. First, the routine use of the contempt power is always discouraged: *Questor* at para 55; *Carey* at para 36. Second, answering undertakings is often dealt with on a “reasonable efforts” or “best efforts” basis; a party may be in “compliance” even if they are unable to provide a response or the response is not particularly useful. As demonstrated in this case, it is easy to lose sight of the distinction between a failure to provide existing information and a failure to reliably record or keep the information in the first place. These features, along with the often detailed and voluminous nature of undertakings, can lead to challenges in applying contempt in the context of answers to undertakings. Moreover, as set out in *Questor* at paragraph 60, the existence of an adequate alternate remedy is a relevant consideration when deciding whether to make a contempt declaration, even if the three elements of contempt are established. In cases such as this, relevant considerations include the potential for the alleged contemnor to be forced to trial without the missing information or for a trial judge to draw an adverse inference.

[40] This matter, as noted by the Court of Appeal in the *Appellate Decision*, has to move onto trial because it has been caught in the litigation for far too long. Further, it involves a dispute over an oral agreement which means that the more time passes, the harder it is for a resolution to occur. In my view, this would be an appropriate situation for the trial judge hearing the matter to draw an adverse inference. This, however, will ultimately depend on the discretion of the trial judge.

VI. Conclusions

[41] Turning to the issue I framed above, I find that the appropriate sanction for Mr. Saroya is that I order him to pay to the Clerk of the Court a fine of \$8,000. Further, he is to pay the reasonable solicitor client costs included in the letter of February 10, 2026 being in the amount of \$69,977.00 for the third contempt application as well as the costs under Schedule C, Column 5 for the first two contempt applications, being \$5,400 and \$10,800, respectively, and the disbursements and other charges claimed for those three applications.

VII. Costs

[42] Costs concerning this component of the litigation may be spoken to if the parties cannot otherwise agree.

Dated at the City of Calgary, Alberta this 18th day of June 2026.

D.B. Nixon
A.C.J.C.K.B.A.

Appearances:

Ivan Ioudine of Hajduk LLP
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