

Federal Court



Cour fédérale

Date: 20251023

Docket: T-724-21

Citation: 2025 FC 1713

Ottawa, Ontario, October 23, 2025

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

PLANET FITNESS INC.

Plaintiff / Defendant by Counterclaim

and

**PLANET FITNESS FRANCHISING LLC,
ALSO KNOWN AS PFIP, LLC**

Defendants / Plaintiffs by Counterclaim

and

SHAWN FREEBORN

Contemnor

ORDER AND REASONS

I. Introduction

[1] The Plaintiff Planet Fitness Inc and its director, Shawn Freeborn, have been found in contempt of Court (*Planet Fitness Inc v Planet Fitness Franchising LLC*, 2025 FC 840 [*Planet Fitness*]). These reasons address the penalty to be imposed upon the Plaintiff and Mr. Freeborn pursuant to Rule 472 of the *Federal Courts Rules*, SOR/98-106 [*Rules*].

II. Background

[2] The circumstances giving rise to the Court's finding of contempt are canvassed in *Planet Fitness*. Briefly, Mr. Freeborn improperly disclosed information he obtained in the course of a confidential mediation, in violation of an order or process of the Court.

[3] The mediation was convened at the Court's direction with a view to resolving the Plaintiff's action against Planet Fitness Franchising LLC and PFIP LLC [Defendants] for expungement of their 19 registered PLANET FITNESS trademarks, and damages for passing off. The Plaintiff claimed to be the owner of the unregistered trademark PLANET FITNESS, which it had used in connection with a gym in Red Deer, Alberta since at least 1992. The Defendants counterclaimed for infringement of their registered trademarks and depreciation of goodwill.

[4] The parties attended a mediation with Associate Judge Crinson on February 20, 2024, and again on March 25, 2024. Following both sessions, Mr. Freeborn posted videos on social media in which he disclosed information that had been conveyed to him in confidence during the

mediation. In the videos, he discussed particulars of the Defendants' settlement offers, Associate Judge Crinson's preliminary assessment of the merits of the case, and what expert and other witnesses would say if they were called to testify at trial. He also made disparaging and threatening remarks about the Defendants, their officers, and legal counsel.

[5] Once counsel for the Defendants discovered Mr. Freeborn's videos on social media, they alerted the Court and the parties. Mr. Freeborn immediately took down the videos. During the liability phase of the ensuing motion for contempt, Mr. Freeborn testified that he did not know the mediation was intended to be confidential, or that Associate Judge Crinson was a judge. His testimony was not accepted by the Court (*Planet Fitness* at paras 36-42).

[6] On May 7, 2025, the Court found the Plaintiff and Mr. Freeborn in contempt, holding as follows (at paras 49 & 54):

Mr. Freeborn's breach of the confidentiality necessary to ensure a viable mediation process was egregious. It undermined the parties' faith in the process, and resulted in the waste of scarce judicial resources. Mr. Freeborn's conduct was exacerbated by the personal threats included in his commentary, and his unsatisfactory testimony before this Court.

[...]

The Defendants have established, beyond a reasonable doubt, that Mr. Freeborn's disclosure of confidential information obtained in the course of the mediation was intentional, and sufficiently serious to warrant a finding of contempt.

[7] On September 8, 2025, the Defendants advised the Court that the underlying action and counterclaim had been discontinued, and they would take no position regarding the penalty phase

of the contempt motion. The Defendants subsequently informed the Court that they would not seek costs of either the mediation or the contempt motion.

III. Analysis

[8] In *United Nurses of Alberta v Alberta (Attorney General)*, 1992 CanLII 99 (SCC), [1992] 1 SCR 901, the Supreme Court of Canada (*per* McLachlin J, as she then was) said the following about the courts' power to punish for contempt (at p 931):

Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

[9] Civil contempt has both private and public aspects (*Professional Institute of the Public Service of Canada v Bremsak*, 2013 FCA 214 at para 66 [*Bremsak*]). As the Court of Appeal of Manitoba (*per* Kroft JA) explained in *Delichte v Rogers*, 2024 MBCA 31 [*Delichte*] at paragraph 5:

[...] On the private side, civil contempt is a mechanism for enforcing an order one litigant obtains against another. On the public side, civil contempt orders communicate to society that in a system committed to even-handed justice, courts cannot stand by when someone ignores, disobeys or defies an order simply because, in their view, it is right or opportune to do so.

[10] Where the underlying action no longer presents a live issue or where the parties have settled the dispute, the private dimension of civil contempt may be moot. However, the public dimension will persist (*Delichte* at para 6).

[11] Rule 472 governs the penalties that may be imposed for contempt.

Penalty

472 Where a person is found to be in contempt, a judge may order that

- (a) the person be imprisoned for a period of less than five years or until the person complies with the order;
- (b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;
- (c) the person pay a fine;
- (d) the person do or refrain from doing any act;
- (e) in respect of a person referred to in rule 429, the person's property be sequestered; and
- (f) the person pay costs.

Peine

472 Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :

- a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;
- b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
- c) qu'elle paie une amende;
- d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
- e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
- f) qu'elle soit condamnée aux dépens.

[12] In cases of civil contempt, the usual principles of sentencing developed in relation to criminal contempt apply (*Tremaine v Canada (Human Rights Commission)*, 2014 FCA 192 at para 19 [*Tremaine*]). The sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (*Bell Canada v Red Rhino Entertainment Inc*, 2021 FC

895 at para 10 [*Red Rhino*]). To determine a fit sentence, the Court must consider the range of sentences for similar offences, and adjust the sentence depending on the objectives of sentencing and any aggravating and mitigating factors (*Tremaine* at para 21).

[13] The objectives of sentencing for civil contempt include repairing the depreciation of the authority of the court, enforcing court orders, specific or general deterrence, denunciation or punishment, and compensation (*Bremsak* at para 66).

[14] Aggravating factors, which must be established beyond a reasonable doubt, include whether the offending conduct was prolonged, the scope or scale of the offending conduct, whether the offending conduct continued after it was found to constitute contempt, the offender's motivation, and whether the offender has previously been found in contempt (*Red Rhino* at para 13).

[15] Mitigating factors, which must be established on the balance of probabilities, include a genuine expression of remorse, acceptance of responsibility, taking steps towards rehabilitation, good faith efforts to comply with the order in question, and personal circumstances that reduce the offender's degree of responsibility (*Red Rhino* at para 13).

[16] A judge has wide discretion to determine the appropriate sanction for civil contempt (*Tremaine* at para 29; *Red Rhino* at para 9). Where the Court imposes a fine, it must be satisfied that the offender is able to pay it (*Red Rhino* at para 15).

[17] There appears to be no precedent for the imposition of a penalty for contempt arising from a breach of confidentiality in a court-ordered mediation. In *Bowdy's Tree Service Ltd v Theriault International Ltd*, 2020 FC 146, Justice Sylvie Roussel discussed 10 cases in which fines were levied for contempt in the range of \$500 to \$5,000, with court costs in the range of \$1,000 to almost \$15,000. Justice Roussel imposed a fine of \$2,000 on a contemnor for failing to produce documents at an examination in aid of execution. In the recent ruling of *Mitsui v Bi*, 2025 BCSC 868, Justice Ardith Walkem of the Supreme Court of British Columbia ordered a fine of \$2,000 for failing to attend an examination for discovery.

[18] The discontinuation of the underlying action and counterclaim, and the Defendants' confirmation that they are not seeking costs, is advantageous to the Plaintiff and Mr. Freeborn. Costs arising from contempt proceedings, which are often assessed on a solicitor-client basis, may result in awards of many thousands of dollars.

[19] Mr. Freeborn appeared before the Court at the penalty phase of this contempt motion without counsel. He said that he did not expect to address the Court. When given the opportunity to so, he gave an impassioned account of the financial, emotional and spiritual toll these legal proceedings have taken on him and his son. He described the underlying lawsuit as a nine-year battle that had destroyed him financially. He said he had always attempted to conduct himself with integrity and dignity, and he never intended to be untruthful.

[20] Mr. Freeborn expressed his abiding respect for the courts in Canada, and said that these proceedings had taught him a lesson. He said he wanted to rebuild his life, and was not in a

position to pay any kind of fine. However, he also advised the Court that the Plaintiff and Defendants had settled the underlying action and counterclaim on mutually acceptable terms.

[21] Mr. Freeborn's submissions to the Court are not evidence. Nor has he provided any documentary or other evidence to demonstrate that he is incapable of paying any kind of fine.

[22] The primary aggravating factor in this case is the scope and scale of the offending conduct. Mr. Freeborn posted several videos on social media that were available to the public at large. He disclosed many details of what had transpired during the confidential mediation, and he made disparaging comments and personal threats against the Defendants and their representatives. His self-serving testimony during the liability phase of the contempt motion was found by the Court to be unworthy of belief.

[23] The mitigating factors are Mr. Freeborn's prompt compliance with the Defendants' demand to remove the offending social media posts, his genuine expressions of remorse, and what the Court can infer from the evidence regarding his personal circumstances.

IV. Conclusion

[24] Having regard to all of the relevant factors, the Court considers a fine of \$1,000 to be appropriate. This is at the lower end of the range established by the jurisprudence, but nevertheless marks the gravity of the contempt.

[25] Mr. Freeborn is to be commended for his expressions of remorse and continued respect for the courts in Canada.

ORDER

THIS COURT ORDERS that:

1. The Plaintiff Planet Fitness Inc and Shawn Freeborn are jointly and severally liable to pay a fine in the amount of \$1,000.
2. The fine is payable to the Receiver General for Canada, and shall be remitted to the Federal Court Registry within thirty (30) days of the date of this Order.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-724-21

STYLE OF CAUSE: PLANET FITNESS INC. v PLANET FITNESS
FRANCHISING LLC, ALSO KNOWN AS PFIP, LLC
AND SHAWN FREEBORN

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 7, 2025

ORDER AND REASONS: FOTHERGILL J.

DATED: OCTOBER 23, 2025

APPEARANCES:

Shawn Freeborn
(on his own behalf)

FOR THE PLAINTIFF/
DEFENDANT BY COUNTERCLAIM