

Federal Court



Cour fédérale

Date: 20250116

Docket: ITA-2367-23

Citation: 2025 FC 96

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 16, 2025

PRESENT: Mr. Justice McHaffie

IN THE MATTER OF the *Income Tax Act*, RSC 1985, c 1 (5th Supp)

and

IN THE MATTER OF an assessment or assessments made by the Minister of National Revenue under the *Income Tax Act*;

AGAINST:

CARFLEX DISTRIBUTION INC.

Judgment debtor

and

YVAN DRAPEAU

Third party

ORDER AND REASONS

I. Overview

[1] Carflex Distribution Inc [Carflex] and its directing mind, Yvan Drapeau, are charged with contempt of Court. His Majesty the King in right of Canada [His Majesty] alleges that Carflex

and Mr. Drapeau failed to comply with the order of this Court dated February 2, 2024 [Order of February 2, 2024], issued in this proceeding brought under the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA]. The Order of February 2, 2024, directs Mr. Drapeau, as an officer of Carflex, to submit to an oral examination about Carflex's assets by February 23, 2024. It also directs Carflex, through Mr. Drapeau, to produce documents for His Majesty by February 13, 2024.

[2] Mr. Drapeau did not appear for his examination on February 23, 2024, and Carflex did not produce any of the documents listed by February 13, 2024. His Majesty submits that the Order of February 2, 2024, is clear, that Mr. Drapeau and therefore Carflex were aware of this Order, and that Mr. Drapeau and Carflex intentionally failed to do the acts that the Order compels. He therefore asks that Mr. Drapeau and Carflex be found in contempt of Court.

[3] For the following reasons, I find Carflex and Mr. Drapeau not guilty of contempt of Court. In the particular circumstances of the case and in light of the evidence before me regarding service of the Order of February 2, 2024, and Mr. Drapeau's mental health, I have a reasonable doubt that Mr. Drapeau was actually aware of the Order. Because I have a reasonable doubt as to one of the elements necessary for demonstrating contempt of Court, I must acquit.

II. Civil contempt: principles and issues

[4] Under Rule 466(b) of the *Federal Courts Rules*, SOR/98-106, a person who disobeys an order of the Court is guilty of contempt of Court. In *Carey*, the Supreme Court of Canada held that civil contempt has three elements: *Carey v Laiken*, 2015 SCC 17 at paras 32–35. The first is that the order alleged to have been breached must state clearly and unequivocally what should

and should not be done. The second is that the party alleged to have breached the order must have had actual knowledge of it. The third is that the person allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

[5] This analysis applies to contempt of Court under Rule 466(b) in this Court: *Canadian Pacific Railway Company v Teamsters Canada Rail Conference*, 2024 FCA 136 at paras 8, 11, 22; *Bell Canada v Red Rhino Entertainment Inc*, 2019 FC 1460 at para 14 [*Red Rhino*].

[6] Each of these elements must be established beyond a reasonable doubt, and the accused benefits from the presumption of innocence: *Carey* at para 32; *Federal Courts Rules*, Rule 469; *Canadian Pacific* at para 22; *Canadian Standards Association v PS Knight Co Ltd*, 2021 FC 770 at para 23. This high standard of proof is an important part of the contempt analysis, ensuring that the potential penal consequences of a contempt finding ensue only in appropriate cases: *Carey* at para 32.

[7] In *Red Rhino*, a civil contempt case, Justice Norris clearly explained the nature of the “beyond a reasonable doubt” standard:

Unusually for a civil proceeding, the plaintiffs must establish the elements of contempt beyond a reasonable doubt before [the defendants] can be found guilty... . As is well-known from criminal proceedings, this is a demanding standard of proof. To meet their burden, the plaintiffs are not required to establish the elements of contempt to an absolute certainty or beyond any doubt. But they must establish them beyond a reasonable doubt. A reasonable doubt is not an imaginary or frivolous doubt or a mere hypothetical possibility. It is not based on sympathy for or prejudice against anyone involved in the proceedings. Rather, it is

a doubt that is based on reason and common sense. It is a doubt that is logically connected to the evidence or absence of evidence. Proof beyond a reasonable doubt is stronger than proof on a balance of probabilities. Indeed, if placed on a scale of standards of proof, proof beyond a reasonable doubt sits much closer to absolute certainty than to probable guilt. Thus, it is not sufficient for me to conclude merely that [the defendants] are probably guilty or likely guilty. If that is all the evidence establishes, they must be found not guilty. I may find [the defendants] guilty of contempt of Court only if no reasonable doubt remains and I am therefore sure they are guilty.

[Emphasis added; *Red Rhino* at para 15.]

[8] The Federal Court of Appeal recently noted, as has the Supreme Court, that the Court's contempt power is discretionary, and that the Court therefore retains discretion to not find a defendant in contempt of Court even when all three elements are established: *Canadian Pacific* at paras 44, 68–70, citing *Carey* at paras 36–37. The Court of Appeal also noted that the Court's contempt power is an enforcement power of last rather than first resort: *Canadian Pacific* at paras 22, 70, citing *Carey* at para 36.

[9] Therefore, the only issues are as follows:

- A. Has His Majesty proved, beyond a reasonable doubt, the three elements of contempt of Court with respect to the judgment debtor Carflex and/or the third party Yvan Drapeau?
- B. If he has, should the Court exercise its discretion to not make a finding of contempt despite the presence of all three elements?

III. Analysis

A. *His Majesty has failed to prove the three elements of contempt of Court*

(1) Background and Order of February 2, 2024

[10] This case arises in the context of efforts to collect from Carflex a tax debt estimated at approximately \$5 million under the provisions of the ITA. An overview of these efforts provides the background to this contempt motion.

[11] On April 19, 2023, in this matter, this Court registered a certificate under section 223 of the ITA certifying the amount payable by Carflex and issued an interim charging order. This order pierced Carflex's corporate veil, making Mr. Drapeau personally liable for the corporation's tax debt, and directed that an interim charge be imposed on a building in Montréal related to Mr. Drapeau. On the same day, this Court also made an order in T-808-23 authorizing the Minister of National Revenue to immediately carry out collection actions listed in paragraphs 225.1(1)(a) to (g) of the ITA.

[12] His Majesty encountered difficulties in serving the interim charging order on Mr. Drapeau, who did not have a known address in Quebec. Thus, in April 2023, His Majesty filed an *ex parte* motion in writing under Rule 139 of the *Federal Courts Rules* seeking an order allowing for documents to be served on Mr. Drapeau via email. His Majesty proposed serving documents via email to three electronic addresses: (i) the "info@carflex.ca" electronic address used by Carflex and found in the Canada Revenue Agency [CRA] system; (ii) the

“yvandrapeau@gmail.com” electronic address, said to have been found in the CRA’s system; and (iii) the electronic address for Vanna Vong, counsel for Mr. Drapeau. On May 1, 2023, the Court issued an order, as requested by His Majesty, allowing the documents to be served on Mr. Drapeau via email to those three electronic addresses.

[13] I pause to observe that the “yvandrapeau@gmail.com” electronic address that is part of His Majesty’s motion and the order of May 1, 2023, does not match the Gmail address that appears to have been in the CRA system referred to by His Majesty (see His Majesty’s record at 484). I note this fact parenthetically because this aspect of His Majesty’s record was before the Court but has not been entered into evidence for the purposes of the contempt hearing. Indeed, as discussed below, no evidence has been filed for the purposes of this contempt motion to establish that the “yvandrapeau@gmail.com” electronic address is valid or known to Mr. Drapeau. On the contrary, the evidence indicates that his personal electronic address differs (Exhibit P-18; Exhibit P-23 at 187, question 1109). I will come back to that issue later.

[14] On May 5, 2023, Mr. Vong wrote to counsel for His Majesty, Kloé Sévigny, regarding a request to examine Mr. Drapeau as an officer of Carflex. Among other things, Mr. Vong suggested that the examination be conducted in writing given Mr. Drapeau’s age and medical issues.

[15] On May 9, 2023, His Majesty served via email to the three electronic addresses listed in the order of May 1, 2023, a summons to appear addressed to Mr. Drapeau, as an officer of Carflex. The summons required him to appear on May 26, 2023, for examination in aid of the

execution of the collection actions, and to provide documentation in this regard. The summons specifies in detail the documents to be produced, namely Carflex's corporate, financial, tax, contractual and transactional documents, as well as documents concerning Mr. Drapeau's assets.

[16] In May 2023, Mr. Vong wrote to Ms. Sévigny, indicating that his client was unfit to undergo examination because of health problems. He again suggested that the examination take place in writing or that it be postponed to another date, depending on the evolution of Mr. Drapeau's medical condition. He submitted a [TRANSLATION] "medical certificate of incapacity for work" attesting to Mr. Drapeau's inability to work between May 15 and June 25, 2023. The examination of May 26, 2023, was therefore postponed.

[17] On July 20, 2023, His Majesty served on Mr. Drapeau via email a new summons, requiring him to appear on July 28, 2023, and provide the same documents listed in the original summons to appear. Mr. Drapeau did not appear for examination on July 28, 2023, and did not provide any of the documents listed in the summons to appear. In an email sent on the afternoon of July 28, Mr. Vong stated that he had been on vacation since the previous week and that neither he nor Mr. Drapeau had been informed of the examination.

[18] On December 6, 2023, this Court issued an order allowing service on Carflex via email to one of the electronic addresses indicated in the order of May 1, 2023, namely "info@carflex.ca".

[19] On December 13, 2023, His Majesty filed a motion in writing to record Mr. Drapeau's failure to appear and to order him to appear, be examined and provide the same documents listed

in the original summons to appear. Carflex and Mr. Drapeau responded to that motion. In an affidavit, Mr. Drapeau stated that he had had and continued to have serious medical issues, including heart problems in November 2022, and that he had been taking medication for severe depression since spring 2023. He also attested that he was unable to undergo a four-hour oral examination in person. He attached to his affidavit a [TRANSLATION] “medical leave certificate” from a clinic, diagnosing his mental health condition and certifying that Mr. Drapeau [TRANSLATION] “will be off work/school” from December 13, 2023, to January 24, 2024. Mr. Drapeau proposed that he undergo a short examination by videoconference.

[20] In the Order of February 2, 2024, Justice Tsimberis of this Court granted His Majesty’s motion. She noted in her decision that Mr. Drapeau is the only natural person capable of being examined on behalf of Carflex and that he must do so. She also noted that the evidence provided regarding Mr. Drapeau’s health was insufficient to conclude that he was medically incapable of being examined. She then ordered that Mr. Drapeau submit to examination within 20 days of the order at the Federal Court in Montréal and that he produce the required documents no later than 10 days after the date of the order or at such other time as may be agreed between him and His Majesty. Justice Tsimberis confirmed in her order that failure to comply with the order could result in Carflex and Mr. Drapeau being found guilty of contempt of Court. The Order of February 2, 2024, was not appealed.

[21] After receiving the Order of February 2, 2024, counsel for His Majesty sent Mr. Vong an email on the same day confirming that the examination would take place on February 23, 2024, and that the documents listed in the order were to be forwarded by February 13, 2024. On

February 5, 2024, His Majesty served the Order of February 2, 2024, on Carflex via email to the “info@carflex.ca” electronic address and on Mr. Drapeau via email to the three electronic addresses indicated in the order of May 1, 2023.

[22] On February 23, 2024, Mr. Vong appeared at the Federal Court in Montréal, where he said that Mr. Drapeau had contacted him on the evening of February 22, 2024, to tell him that he was unable to attend for medical reasons. It is undisputed that Mr. Drapeau and Carflex provided no documents by February 13, 2024, and that Mr. Drapeau failed to appear for examination before February 23, 2024, as required by the Order of February 2, 2024.

(2) Proceedings leading to this decision

[23] On May 30, 2024, His Majesty filed an *ex parte* motion for an order to appear for contempt of Court under Rule 467 of the *Federal Courts Rules*, on the basis of failure to comply with the Order of February 2, 2024. That motion was granted on June 12, 2024, by Justice Azmudeh of this Court, who found that the evidence demonstrated that Carflex and Mr. Drapeau had, *prima facie*, breached the Order of February 2, 2024. Justice Azmudeh ordered that Carflex and Mr. Drapeau appear in person before a judge of this Court in Montréal on July 11, 2024.

[24] On June 28, 2024, His Majesty served on Carflex and Mr. Drapeau via email Justice Azmudeh’s order along with other documents relevant to the hearing, including the motion record filed before Justice Azmudeh and further disclosure of evidence. On July 3, 2024, His Majesty filed these documents with the Court, along with proof of service.

[25] On the afternoon of July 10, 2024, the day before the hearing, Mr. Vong wrote to the Court indicating that he did not become aware of Justice Azmudeh's order until July 4, 2024, and that he had a scheduling conflict with another hearing before another Court. Mr. Vong, on behalf of his clients, requested that the hearing be postponed.

[26] On July 11, 2024, Mr. Drapeau appeared before the Court with Mr. Vong. The request for postponement was repeated orally at the beginning of the hearing. For the reasons expressed in my order of that date, the hearing was adjourned to August 22, 2024, on the condition that Carflex, through its officer Mr. Drapeau, produce the documents listed in the Order of February 2, 2024, by July 22, 2024, and that Mr. Drapeau submit to an oral examination on July 25, 2024.

[27] Mr. Drapeau's examination finally took place on July 25, 2024. On August 15, 2024, His Majesty filed yet another further disclosure of evidence, including the transcript of the examination and an update on Carflex's debt (as of August 12, 2024, this represented a total of approximately \$2.28 million after the application of amounts seized). On August 21, 2024, Mr. Drapeau filed an affidavit, attaching some medical documents.

[28] The contempt motion hearing began on August 22, 2024. Mr. Samy Ziada represented Carflex and Mr. Drapeau in lieu of his colleague, Mr. Vong. His Majesty presented as a witness Patrick Savage, CRA Resource Officer/Complex Case Officer involved in the Carflex case. Mr. Drapeau also gave his evidence. I granted the motion of Carflex and Mr. Drapeau to resume

the hearing on August 23, 2024, to allow Dr. Danielle Serra to give evidence. The parties presented closing arguments on August 26, 2024, by videoconference.

(3) The elements of contempt of Court

[29] His Majesty alleges that Mr. Drapeau is guilty of contempt of Court because he violated paragraph 1 of the Order of February 2, 2024, directing him to submit to oral examination, as an officer of Carflex, within 20 days of the Order. His Majesty alleges that Carflex is guilty of contempt of Court because it violated paragraph 2 of the Order of February 2, 2024, directing Carflex to produce certain documents within 10 days of the Order.

(a) *Clear and unequivocal order*

[30] His Majesty established beyond a reasonable doubt that the order alleged to have been breached clearly and unequivocally states what must be done: *Carey* at para 33. Carflex and Mr. Drapeau do not argue otherwise. Paragraph 1 of the Order of February 2, 2024, clearly specifies the nature, duration, location, and manner of the examination. Paragraph 2 specifies in detail the documents to be produced. What Mr. Drapeau and Carflex are ordered to do is quite clear and cannot be misunderstood.

(b) *Actual knowledge of the existence of the order*

[31] The second element of civil contempt is that the accused must have had actual knowledge of the order in question. As confirmed by the Supreme Court, it may be possible to infer knowledge of the order, or an alleged contemnor may attract liability on the basis of the wilful

blindness doctrine: *Carey* at para 34, citing *Bhatnager v Canada (Minister of Employment and Immigration)*, 1990 CanLII 120 (SCC) at 226 [*Bhatnager*] and *College of Optometrists of Ontario v SHS Optical Ltd*, 2008 ONCA 685 at para 71.

[32] As I indicated, His Majesty served the Order of February 2, 2024, on Carflex via email to “info@carflex.ca” and on Mr. Drapeau via email to the three electronic addresses indicated in the order of May 1, 2023, namely “info@carflex.ca”, “yvandrapeau@gmail.com”, and Mr. Vong’s electronic address. Mr. Vong confirmed his receipt and knowledge of the Order of February 2, 2024. During the brief sitting of February 23, 2023, at the Federal Court in Montréal, he also confirmed that he had [TRANSLATION] “communicated” the Order of February 2, 2024, to his clients.

[33] His Majesty relies on these facts to establish that Mr. Drapeau, and therefore Carflex, had actual knowledge of the Order of February 2, 2024. He submits that Mr. Vong’s knowledge should mean that his clients, Mr. Drapeau and Carflex, also had that knowledge and that, in any event, they had been served in the manner authorized by this Court.

[34] It is important to note in this regard that the second element of contempt is *actual knowledge* of the order, not merely its valid service in accordance with procedural rules or an order of the Court: *Bhatnager* at 224–226. In this regard, Justice Sopinka confirmed in *Bhatnager* that valid service of an order on counsel does not give rise to a presumption of knowledge of the order by the client: *Bhatnager* at 226. He even explicitly confirmed that the *Federal Courts Rules* in effect at the time define what is effective service, but “they do not

purport to detract from the elements necessary to establish contempt”: *Bhatnager* at 228. On the contrary, the party alleging contempt has the strict requirement at common law to prove actual knowledge on the part of the alleged contemnor: *Bhatnager* at 226; *Carey* at para 34. As the Supreme Court has indicated, the Court may infer knowledge in the circumstances, but valid service does not in and of itself prove actual knowledge or give rise to a presumption of such: *Carey* at para 34.

[35] As His Majesty points out, *Bhatnager* concerned the finding that two ministers of the Crown were in contempt of Court for breaching an order served on their counsel. In that context, the issue of the Ministers’ actual knowledge following service on their counsel was at stake. However, the principles set out in *Bhatnager* generally apply and the fact that they were applied in a given factual context in the decision does not undermine their application in other contexts.

[36] In the present case, in light of the evidence before me, including the medical evidence that was not before Justice Tsimberis or Justice Azmudeh, I have a reasonable doubt as to Mr. Drapeau’s—and therefore Carflex’s—actual knowledge of the Order of February 2, 2024. I reach this conclusion for the reasons that follow.

[37] First, I find that I cannot conclude in the current circumstances that service of the Order of February 2, 2024, via email to “info@carflex.ca” and “yvandrapeau@gmail.com” resulted in Mr. Drapeau having actual knowledge of that Order. As noted above, there is no evidence before me demonstrating that “yvandrapeau@gmail.com” is a valid electronic address belonging to Mr. Drapeau, even if it contains his name. His Majesty has offered no evidence or documentation

establishing that the electronic address actually belongs to Mr. Drapeau. On the contrary, Mr. Vong wrote to Ms. Sévigny in February 2024 that [TRANSLATION] “Mr. Drapeau reiterates that the yvandrapeau@gmail.com address is unknown to him” and Mr. Drapeau himself provided another electronic address during his examination on July 25, 2024. In this context, the fact that the Court ordered service of the documents using that electronic address does not establish beyond a reasonable doubt that the electronic address is Mr. Drapeau’s.

[38] With respect to the “info@carflex.ca” electronic address, His Majesty has also not established that it belongs to Carflex or that Mr. Drapeau had, or still has, access to it. Mr. Savage did not testify in this regard, no document was filed to establish this fact, and His Majesty did not ask Mr. Drapeau any questions to confirm it. Given that the burden of proof remains on His Majesty to establish the elements of contempt of Court, and given that the issue is not valid service in accordance with the orders of the Court but actual knowledge of the order in question, I cannot conclude that His Majesty has established that the transmittal of the Order of February 2, 2024, to “info@carflex.ca” resulted in either Carflex or Mr. Drapeau having actual knowledge of the Order.

[39] That said, I am satisfied that despite these deficiencies in His Majesty’s evidence, the Order of February 2, 2024, was sent to Mr. Drapeau, by his own counsel, to at least one valid electronic address. The Order of February 2, 2024, was sent by the Court and served by His Majesty on Mr. Vong, who confirmed receipt of the Order to the Court on February 8, 2024, after an absence from the country. During the brief sitting of February 23, 2023, Mr. Vong confirmed that he had [TRANSLATION] “communicated” the Order of February 2, 2024, to

Mr. Drapeau. The evidence before me suggests that this was done via email. One must assume that Mr. Drapeau's counsel had his correct electronic address, even if His Majesty did not have it. I therefore find that the Order of February 2, 2024, was served on Mr. Vong and that he emailed it to Mr. Drapeau, at least shortly after he confirmed receipt of the Court's email on February 8, 2024.

[40] As His Majesty points out, a finding of knowledge on the part of the client may in some circumstances be inferred from the fact that counsel was informed of an order, and "in the ordinary case in which a party is involved in isolated pieces of litigation, the inference may readily be drawn": *Bhatnager* at 226. I find, however, that this is not an "ordinary case". Despite receipt of the Order of February 2, 2024, and its communication to Mr. Drapeau via email, and even though there was evidence that at least one of the "info@carflex.ca" and "yvandrapeau@gmail.com" electronic addresses was valid and accessible to Mr. Drapeau, I have a reasonable doubt as to his actual knowledge of the Order of February 2, 2024.

[41] Mr. Drapeau testified that he did not receive the Order of February 2, 2024, and that he only learned that an examination was scheduled for February 23, 2024, when he spoke with Mr. Vong on the phone on the evening of February 22, 2024. He testified that during the months of December 2023, January 2024 and February 2024, he was in a sometimes violent state of depression, in which he feared taking his own life. He said that during that time, he did not open or respond to his emails and he did not take any phone calls, even from his own counsel. Mr. Drapeau's mental health issues appear to have started around May 2023, when Carflex's situation apparently made the news in Quebec. Mr. Drapeau testified that since that time, he has

seen several doctors, received a referral to see a psychiatrist, undergone a psychiatric examination, and been prescribed antipsychotics.

[42] Mr. Drapeau's testimony about his mental state was consistent with that of Dr. Serra. Dr. Serra has been working in the field of family medicine at the clinic that has been treating Mr. Drapeau since October 2023. She is not a psychiatrist, but throughout her career she has worked with patients with mental health conditions such as depression. She was characterized, without objection from His Majesty, as an expert witness in family medicine and as one of Mr. Drapeau's attending physicians. Dr. Serra's opinion was based on her review of Mr. Drapeau's medical records, including psychiatric reports prepared by other health professionals, and at least two meetings with Mr. Drapeau.

[43] Dr. Serra prepared a brief report indicating, among other things, that Mr. Drapeau had been receiving care at the clinic for mental health conditions since October 16, 2023. Not wanting too much medical information to be repeated in this judgment, Dr. Serra described his symptoms and his two psychiatric assessments of April and July 2024. She concluded that it could be said that, from at least October 2023 to the date of the report in August 2024, Mr. Drapeau was incapable of adequately tending to his affairs, including the legal proceedings he was involved in, and even his personal activities, because of his mental health disorders. Dr. Serra confirmed and explained this view in her testimony. She testified, among other things, that previous attempts at drug treatment had been unsuccessful, but that Mr. Drapeau's mental state had improved since starting a new drug regimen in July 2024.

[44] Generally speaking, Dr. Serra's opinion was not significantly undermined in cross-examination. There were certainly aspects of the medical evidence that were not ideal. For example, the psychiatric reports referred to in Dr. Serra's report were not entered into evidence. Dr. Serra also concluded that Mr. Drapeau was still unfit to tend to his affairs until August 2024, unaware that he had appeared for examination in July 2024. That said, I am not obliged to decide the issue of Mr. Drapeau's legal capacity to be examined, particularly in the months of July and August 2024. I need only determine whether there is a reasonable doubt that Mr. Drapeau had actual knowledge of the Order of February 2, 2024. In this regard, Dr. Serra's testimony provided context and a medical basis for Mr. Drapeau's testimony that he did not open emails or answer the phone because of his depression.

[45] This testimony is also consistent with His Majesty's reports concerning service prepared by a bailiff. It should be noted that the report related to Mr. Vong's email states not only that the email was [TRANSLATION] "received by the sending platform" and, two seconds later, [TRANSLATION] "delivered to and served on the recipient", but also that it was [TRANSLATION] "opened on Google's server" (Mr. Vong uses a Gmail address) and [TRANSLATION] "opened on Apple's server". The report does not indicate that the email was [TRANSLATION] "opened by the recipient", possibly because it was prepared on February 5, 2024, whereas Mr. Vong did not confirm its receipt to the Court until February 8, 2024, after returning to Canada.

[46] In contrast, the reports concerning service for emails sent to "info@carflex.ca" indicate only that they were [TRANSLATION] "received by the sending platform" and, two seconds later, [TRANSLATION] "delivered to and served on the recipient", with no indication that they were

opened. As for the email sent to “yvandrapeau@gmail.com”, the report simply states that it was [TRANSLATION] “delivered and served on the recipient”. As Mr. Savage confirmed in cross-examination, these reports indicate that the emails sent to those electronic addresses were merely delivered but not opened.

[47] Obviously, the issue of not opening one’s emails raises that of wilful blindness. As the Supreme Court confirmed, an alleged contemnor may attract liability on the basis of the wilful blindness doctrine: *Carey* at para 34; *Bhatnager* at 226. Wilful blindness, or wilful ignorance, arises where a person who has become aware of the need for some inquiry declines to make the inquiry because the person does not wish to know the truth, preferring to remain ignorant: *Sansregret v The Queen*, 1985 CanLII 79 (SCC) at para 22. There is no question that, as a general rule, a party cannot avoid the consequences of an order of the Court or avoid the consequences of non-compliance with such an order simply by deliberately ignoring it.

[48] In the present case, there is no doubt that Mr. Drapeau had some knowledge of the legal proceedings before this Court, having, among other things, given an affidavit in January 2024 in opposition to His Majesty’s motion. Nevertheless, I retain a reasonable doubt as to wilful blindness with respect to his knowledge of the Order of February 2, 2024. The evidence does not establish that Mr. Drapeau voluntarily avoided opening his emails because he did not want to know the truth or because he preferred to stay in the dark regarding the Court’s orders. Rather, the evidence indicates—or, at least, raises a reasonable doubt—that Mr. Drapeau did not open his emails (all of his emails, not just those from bailiffs or his lawyer) and did not answer the

phone because he was not in a mental state that would allow him to tend to his affairs, including personal activities.

[49] This brings me to the fact that, on the evening of February 22, 2024, Mr. Drapeau knew that his examination was scheduled for the next day. Mr. Drapeau's evidence, which is consistent with Mr. Vong's statements at the sitting of February 23, 2024, is that he finally answered Mr. Vong's multiple phone calls on the evening of February 22, 2024. Mr. Vong told Mr. Drapeau that he had to be examined the next morning, and he replied that that would not be possible because he was not able to answer anything. Mr. Vong stated that Mr. Drapeau contacted him on the evening of February 22 to tell him [TRANSLATION] "that he was unable to attend today, that he takes 12 medications a day, that he . . . was not in a mental state conducive to being examined".

[50] It is therefore clear that Mr. Drapeau knew, prior to February 23, 2024, that he was required to appear for examination. I accept that "actual knowledge" of an order of the Court can include knowledge of its existence and its contents and need not necessarily include the act of receiving or reading the order itself. However, the evidence raises a reasonable doubt that Mr. Drapeau understood that it was an order of the Court and that he therefore had actual knowledge of the Order of February 2, 2024, or of its contents with regard to either the examination or the production of documents.

[51] Mr. Vong's statements do not indicate that he explained during the phone call of February 22, 2024, that they were talking about a Court order. It is true that Mr. Drapeau said,

during his cross-examination, that he did not know of the Order of February 2, 2024, before the evening of February 22, 2024, a statement that could be taken to indicate that he knew at that time that it was an order of the Court. However, his evidence in chief was simply that he knew that he had a summons for February 23, 2024.

[52] Considering the applicable standard of proof, and having heard the entirety of Mr. Drapeau's testimony as well as that of Dr. Serra, I have a reasonable doubt, following my assessment of the evidence, that Mr. Drapeau knew before February 23, 2024, or even in the months that followed, that there was an order requiring him to appear for examination and requiring his company to produce documents. I reach the same conclusion with respect to Carflex, given that Mr. Drapeau is the directing mind of the corporation, and His Majesty's allegations about Carflex's actual knowledge are also related to Mr. Drapeau's actual knowledge.

[53] Since I conclude that there is a reasonable doubt regarding the second element of contempt of Court, His Majesty has not established contempt on the applicable standard. I find Carflex and Mr. Drapeau not guilty of contempt of Court, without having to consider the third element regarding intentional failure to do an act as compelled.

B. *Residual discretion of the Court*

[54] Considering that I find that the elements of contempt of Court have not been established beyond a reasonable doubt, I need not rule on the issue of the Court's residual discretion to decline to find Carflex and/or Mr. Drapeau in contempt even if all three elements had been established: *Canadian Pacific* at paras 44, 68–70; *Carey* at paras 36–37. That said, I note briefly

that this case appears to be one in which such discretion could have been exercised. The particular circumstances of the case and Mr. Drapeau's mental health clearly had a fairly strong impact on his ability to participate effectively in this dispute, at least for a certain period of time.

[55] One may well wonder why more information regarding Mr. Drapeau's mental state was not submitted to His Majesty or to the Court before this contempt of Court hearing. As Justice Tsimberis noted, the only evidence Carflex provided regarding Mr. Drapeau's health was a brief medical letter, a certificate of incapacity for work, and a medical leave certificate. Justice Tsimberis found that these documents were insufficient to establish Mr. Drapeau's incapacity to be examined. Therefore, His Majesty cannot be faulted for proceeding as he did.

[56] That said, the issue of contempt of Court, including the Court's discretion, must be determined in light of the admissible evidence adduced at the contempt hearing. It is for this reason that the *Federal Courts Rules* require that a hearing be called and an opportunity to present a defence be provided before a person can be found in contempt of Court. The evidence adduced before me contained more information regarding Mr. Drapeau's mental health issues and their impact. The Court would have seriously considered these factors had it been called upon to exercise its contempt of Court discretion in this case.

IV. Conclusion

[57] For these reasons, the Court finds Carflex and Mr. Drapeau not guilty of contempt of Court and dismisses His Majesty's motion. In all circumstances, including the late submission of medical evidence by Carflex and Mr. Drapeau, no costs are awarded.

ORDER in ITA-2367-23

THIS COURT’S JUDGMENT is as follows:

1. The motion of His Majesty the King in right of Canada seeking an order finding Carflex Distribution Inc and Yvan Drapeau in contempt of Court is dismissed, without costs.

“Nicholas McHaffie”

Judge

Certified true translation
Melissa Paquette, Senior Jurilinguist

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: ITA-2367-23

STYLE OF CAUSE: CANADA REVENUE AGENCY v CARFLEX
DISTRIBUTION INC ET AL

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATES OF HEARING: AUGUST 22, 23, 26, 2024

**JUDGMENT AND REASONS
BY:** MCHAFFIE J

DATED: JANUARY 16, 2025

APPEARANCES:

Kloé Sévigny
Arianne Gauthier

FOR THE APPLICANT

Samy Ziada

FOR THE JUDGMENT DEBTOR AND THIRD
PARTY

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE APPLICANT

ZS Avocats
Montréal, Quebec

FOR THE JUDGMENT DEBTOR AND THIRD
PARTY