

Court of King's Bench of Alberta

Citation: Primerica Inc v Moukhaiber, 2024 ABKB 472

Date: 20240731
Docket: 2303 13143
Registry: Edmonton

Between:

**Primerica Inc., Primerica Life Insurance Company, Primerica Financial Services LLC,
PFSL Investments Canada Ltd., Primerica Life Insurance Company of Canada**

Plaintiffs

- and -

Marco Moukhaiber

Defendant

**Reasons for Judgment
of the
Honourable Justice M. J. Lema**

I. INTRODUCTION

[1] Did a consumer advocate's social-media posts breach an interim injunction barring (among other things) posts "that are defamatory with respect to Primerica in any way", "[concern] these proceedings", or "[concern] any participant in these proceedings"? Did he also fail to remove various postings and take other directed steps?

[2] Per Primerica, the answer is yes on all fronts.

[3] Per Mr. Moukhaiber, the answer is no on all.

[4] The answers are no breaches of the first three (prohibitory) provisions and unclear on the fourth (mandatory) one (given conflicting evidence) and thus no finding possible at this stage.

II. BACKGROUND

[5] Primerica is a financial services company. (I will use Primerica to refer collectively to all five plaintiffs.)

[6] Mr. Moukhaiber is a consumer advocate specializing in the exposure of financially risky multi-level-marketing operations. In his view, Primerica is one, leading to various social-media videos and other postings by him illuminating its perceived shortcomings.

[7] Primerica disputes that characterization. On July 21, 2023, it applied for and obtained an interim injunction obliging Mr. Moukhaiber to (among other things) remove various videos and posts about Primerica and refrain from posting materials in the above-noted categories.

[8] In Primerica's view, Mr. Moukhaiber has repeatedly breached the latter three (and other) aspects over the last year. It applied in May of this year for various relief including the removal of various new videos and postings and finding him in civil contempt for breach of the July 2023 order.

[9] I heard the application on June 13, 2024 and reserved my decision.

III. INTERIM INJUNCTION ORDER

[10] Here are the key parts of the order (from paragraph 5) on the new-postings front:

[Mr. Moukhaiber] is prohibited from directly or indirectly

(d) publishing, posting, creating, appearing in, or otherwise participating in any online or print material[s] that are **defamatory with respect to Primerica** in any way; and

(e) publishing or posting of any material **concerning these proceedings**, or cause to be published or posted any material concerning these proceedings, as well as any material (including images) or commentary **concerning any participant in these proceedings**, including but not restricted to any counsel, Court staff or members of the judiciary, but excluding himself provided that any publication or posting about himself is not connected in any way to these proceedings or is not otherwise subject to any ongoing injunction. [emphasis added]

[11] I start with the alleged breaches of para 5(d).

IV. "NO DEFAMATORY POSTINGS"

[12] Primerica asserted various post-injunction defamatory postings. Per its brief, they include:

- allegations of criminal behaviour, including suggestions that Primerica is or has engaged "paid assassins": "Do I [i.e. Mr. Moukhaiber] think that a primal company has paid assassins watching these lives [i.e. social-media broadcasts]?"; "The Assassins are watching everyone"; and referring to "assassination attempts" against him. Mr. Moukhaiber's followers have

interpreted this to mean that Primerica is harassing him, an impression that Mr. Moukhaiber has encouraged;

- posting a video stating that he was going to leave Canada due to harassment by “assassins” at his home, gym, and relative’s homes, which Mr. Moukhaiber’s followers have also interpreted to mean that Primerica is harassing [him]; [and]
- publishing the tag “Primerica” on a new YouTube video titled “When Presidents Promote Pyramid Schems.” [footnotes omitted]

[13] As for what is defamatory, I adopt the following definition from *Brown on Defamation: Canada, United Kingdom, New Zealand, United States* (2d ed. – looseleaf edition – 12/2021 (Rel. 5)):

A publication is defamatory if it lowers the reputation of the plaintiff in the estimation of persons in a substantial segment of the community, that is, if it has the tendency to or does injure, prejudice or disparage the plaintiff in the eyes of others, or lowers the good opinion, esteem or regard which others have for him, or causes him to be shunned and avoided, or exposes him to hatred, contempt or ridicule. [4:1, p 4-5] [footnote omitted]

[14] At the hearing, on this aspect Primerica emphasized the posting references to harassment by “assassins” i.e. that Primerica was harassing or bullying Mr. Moukhaiber and that Primerica is some kind of threat to him. It also referred to his use of “cult” or “cults” to refer to multi-level-marketing (MLM) businesses generally and (in thinly-veiled references) to Primerica itself.

[15] Mr. Moukhaiber responded first that he has investigated and reported on many other MLM businesses and that the impugned postings (or some of them) relate to reactions from one or more of those other businesses (i.e. not Primerica). Second, and in any case, the postings are not defamatory i.e. even if they relate to or can be reasonably understood as relating to Primerica.

[16] Primerica responded that, for timing and other reasons, Mr. Moukhaiber’s followers would have understood these postings as referring exclusively to Primerica or at least as including it.

[17] I find that at least some of these references were unmistakably about, and would only reasonably be understood as referring to, Primerica. For example, the first one cited by Primerica: “Do I think that a primal company has paid assassins watch these [live broadcasts]?”

[18] Here I reject Mr. Moukhaiber’s assertion that his references to “a primal company” and similar formulations (e.g. “primarily an American company”, “Prime Americans that shall not be named”, “a company that’s in America primarily”, “a girl named Erica ... in her Prime”, etc.) are not to Primerica. Any reasonable onlooker, knowing of his previous postings about Primerica, would so understand these thinly-if-not-almost-invisibly-veiled labels.

[19] I turn then to the “**paid assassins**” aspect. Per Mr. Moukhaiber:

The term “paid assassins” is a comedic device I have used in my live-streams dating back several years. It is a sarcastic means of describing anything that poses even a minor inconvenience to me. It is an example of hyperbole being

used for the purpose of humor. What I refer to specifically is the knowledge that I have certain public detractors of my work watch my content. ...

[20] Primerica did not assert that Mr. Moukhaiber's viewers actually understood or would understand that term to refer to actual assassins i.e. that Primerica has retained one or more persons to kill Mr. Moukhaiber. However, as noted, it urged a "generally threatening or bullying" reading.

[21] The key here is the on-the-ground behaviour of such "assassins" as described by Mr. Moukhaiber. Per the comment above, it was simply watching his livestreams. Same per another comment, which I also read, in the context of Mr. Mr. Moukhaiber's overall postings here as referring to Primerica: "... I've made videos about another insurance-themed MLM company whose name I shant say. The Assassins are watching everyone. The Assassins are in the chat, they're in the Discord, I have to be very, very careful." And same again, with another obviously aimed-at-Primerica comment: "So to all of the assassins that are watching, and to Erica if you're watching, don't be cackling and rubbing your hands together"

[22] Given the benign behaviour cited here (watching livestreams), no suggestions that these "paid assassins" represented any physical or other danger to Mr. Moukhaiber or others, his not-contradicted evidence of a history of using this term as a comedic device, and its obvious hyperbole in the circumstances here, I reject Primerica's characterization of the "assassins" comments as defamatory.

[23] Primerica also complained about **other allegations of threatening or harassing behaviour** by them or their agents, for example, in part of this posting:

In gambling, the house always wins, in lawsuits the lawyers always win so what should the content creator do? ... Well, one way around this is to find a lawyer who is willing to take the case on a contingency basis Well, if that happens, the cult can just resort to one of their many other strategies like ... **hiring private investigators to follow you and film you and harass you in person** or just having current cult members who are happily ... willing to do it for free. **All of those things that I have just mentioned and described are things that I have either dealt with before or am dealing with currently.** Through the legal process they have **found my address and I've had multiple instances of people showing up at my home looking for me, they have found the address of relatives of mine and gone to their houses looking for me, they have followed me and waited for me outside my gym with video cameras,** they have gone through my Instagram following to **try to find other relatives of mines and send them horrible and threatening messages.** It has reached the point of Scientology-level cult information control and harassment, **that is what I am dealing with right now**, all of this to intimidate me and get me to fold. The process is the punishment. [excerpt from January 4, 2024 YouTube video]
[emphasis added]

[24] Here references to Primerica, if any, are not as clear, given the generalized comments about other enterprises and the reference to "things that I have either dealt with before or am dealing with currently." Significantly, the comment about "what I am dealing with right now", even if reasonably understood, in the overall context here, as referring to Primerica's actions, is

not particularized i.e. beyond "... information control and harassment." That is, the earlier references to being tracked, etc. were not incorporated into the "right now" description.

[25] In any case, the described "tracking" activities are, as described, benign. – effectively, "they have been trying to find me." Given the explicit references to legal process, such searching might be reasonably understood as for service-of-documents or other lawful purposes.

[26] The reference to "trying to find other relatives ... and send them ... messages", even if fairly read as referring to Primerica, is framed as perceived *attempted* behaviour for perceived *speculative* purposes i.e. with no references to relatives actually found or messages actually sent or even composed.

[27] Even if Mr. Moukhaiber had bluntly said "Primerica is harassing me", the lack of specifics, including the on-the-ground impact on him, materially undercut whatever sting might be associated with that word.

[28] I find that these last-noted comments are not defamatory or at least are not proved as such beyond a reasonable doubt. (That is the standard of proof for civil contempt, per *Arthur Bischoff RRSP Plan No 7856 v McCargar*, 2017 ABCA 226 – para 19.)

[29] On a related theme, Primerica referred to this comment by Mr. Moukhaiber:

They've **tried to silence me** so [expletive deleted [sic]] hard I'm on the other side of the [expletive deleted [sic]] world in a place where I do not speak the language and I don't know anybody and I've done that why because this cult yes it is a cult of multi-level marketing has hired private investigators to find out where I live and knock on my door to go and find out where my dad lives and go to my dad's house looking for me asking if I live there [excerpt from March 25, 2024 YouTube video]

[30] Same ruling here: even assuming this refers to Primerica, the narrow references to looking for him, in the legal-proceedings context here, make his temporary self-exile seem to be a disproportionate response and his associated comments hyperbolic i.e. in comparison to the "threat" of being looked for i.e. nothing defamatory.

[31] As for references to multi-level marketing enterprises being **cults** and, in any case, the possible references to Primerica (if not an MLM) being a cult, I first note these dictionary definitions of that word:

Canadian Oxford Dictionary (1998)

1 a a system of religious worship esp. as expressed in ritual. **b** a religious sect considered to be unorthodox or anti-social. **c** the members of such a sect. **2 a** a devotion or homage to a person or thing (*the cult of aestheticism*). **b** a popular fashion esp. followed by a specific section of society. **3** (*attrib*) denoting a person or thing popularized in this way (*cult film; cult figure*).

New Shorter Oxford English Dictionary (1993)

1 Worship; reverential homage rendered to a divine being. **2 A** system of religious worship, especially as expressed in ceremonies,

rituals, etc. **3** Devotion or homage paid to a person or thing; *esp.* a fashionable enthusiasm; *derog.* A transit fad of an in-group.

Oxford Concise English Dictionary (10th ed., 2001)

1 a system of religious devotion directed towards a particular figure or object. – a relatively small religious group regarded by others as strange or imposing excessive control over members. **2** something popular or fashionable among a particular section of society.

Encarta World English Dictionary (1999)

1 RELIGION a system of religious or spiritual beliefs, especially an informal and transient belief system regarded by others as misguided or unorthodox.

2 RELIGIOUS GROUP a group of people who share religious or spiritual beliefs.

3 IDOLIZATION OF SOMEBODY OR SOMETHING extreme or excessive admiration for a person, philosophy of life or activity (*often used before a noun*) – a cult following.

4 OBJECT OF IDOLIZATION a person, philosophy, or activity regarded with extreme or excessive admiration.

5 FAD something popular or fashionable among a devoted group of enthusiasts (*often used before a noun*) – a cult status.

6. ETHNOL SYSTEM OF SUPERNATURAL BELIEFS a body of organized practices and beliefs supposed to involve interaction with and control over supernatural powers.

7 ELITE GROUP a self-identified group of people who share a narrowly defined interest or perspective.

Dictionary.com (July 25, 2024)

1. a particular system of religious worship, especially with reference to its rites and ceremonies.
2. an instance of great veneration of a person, ideal, or thing, especially as manifested by a body of admirers: *the physical fitness cult.*
3. the object of such devotion.
4. a group or sect bound together by veneration of the same thing, person, ideal, etc.
5. *Sociology.* a group having a sacred ideology and a set of rites centering around their sacred symbols.
6. a religion or sect considered to be false, unorthodox, or extremist, with members often living outside of

conventional society under the direction of a charismatic leader.

7. the members of such a religion or sect.
8. any system for treating human sickness that originated by a person usually claiming to have sole insight into the nature of disease, and that employs methods regarded as unorthodox or unscientific.

Merriam-Webster.com (July 25, 2024)

1 a religion regarded as unorthodox or spurious (see *SPURIOUS_sense 2*) *also*: its body of adherents – the voodoo cult – a satanic cult

2 a great devotion to a person, idea, object, movement, or work (such as a film or book)—Criticizing how the media promotes the cult of celebrity

Especially : such devotion regarded as a literary or intellectual fad

b the object of such devotion

c a usually small group of people characterized by such devotion
the singer's *cult* of fans

The film has a *cult* following.

3 a system of religious beliefs and ritual

also: its body of adherents – the *cult* of Apollo

4 formal religious veneration : **WORSHIP**

5 a system for the cure of disease based on dogma set forth by its promulgator

Health *cults*

Dictionary.cambridge.org (July 25, 2024)

A religious group, often living together, whose beliefs are considered extreme or strange by many people:

religious cult *Their son ran away from home and joined a religious cult.*

A particular system of religious belief:

cult of the *Hindu cult of Shiva*

someone or something that has become very popular with a particular group of people:

the cult of celebrity

CollinsDictionary.com (July 25, 2024):

1. countable noun [*usually singular*]

A **cult** is a fairly small religious group, especially one which is considered strange.

The teenager may have been abducted by a religious cult.

2. Adjective [ADJECTIVE *noun*]

Cult is used to describe things that are very popular or fashionable among a particular group of people.

Since her death, she has become a cult figure.

The film is destined to become a cult classic.

The Osaka-based group is popular home in Japan and has developed a cult following in the United States.

3. singular noun

Someone or something that is a **cult** has become very popular or fashionable among a particular group of people.

Ludlam was responsible for making Ridiculous Theatre something of a cult.

The bra has gone from being a fashion classic to a fashion cult.

4. countable noun

The **cult** of something is a situation in which people regard that thing as very important or special.

[*disapproval*]

...the cult of youth that recently gripped publishing.

Society is entitled and bound to protect itself against a cult of violence.

Meanwhile, the personality cult around this campaigner grew.

[32] Each definition reflects various meanings for “cult”, some but not all with a disparaging tenor.

[33] The activities ascribed by Mr. Moukhaiber to MLM “cults” include “saying that I’m just a hater or just doing this [i.e. pursuing his MLM-focused investigations and reporting] for clicks and views”, “suing content creators for defamation”, and “saying that [a] content creator is just making these videos to try to get clout and money and whatever else.”

[34] Such described activities are not inherently pernicious or otherwise objectionable. Saying (effectively) that “this is what these cults do” has, in my view, no defamatory sting or edge.

[35] As for other activities attributed by Mr. Moukhaiber to cults, such as “spreading false rumours about you online”, “reporting your social media profiles to try to get you banned”, “hiring private investigators to follow you and film you and harass you in person”, as explained

above Mr. Moukhaiber did not attribute or at least did not necessarily attribute such behaviour to Primerica.

[36] In one posting, Mr. Moukhaiber said: “Cults may not follow through on their threats to kill you and your family[;] what they’re counting on is that you can only take so much before you snap – the process is the punishment.” However, nothing in the collective postings highlighted by Primerica reflected that any such threats had been made, to him or others, by any organization or person, let alone Primerica. I find nothing defamatory in respect of Primerica here.

[37] Primerica did not refer to Canadian or other cases finding “cult characterization” to be defamatory or otherwise examining that label. (For an example of a case so finding, concerning a religious group, see *Chen Cheng v Central Christian Church*, [1998] SGCA 51 (paras 21-28).)

[38] Primerica did not offer submissions, whether in its written brief or in oral argument, on the particular defamatory sting of a “cult” label.

[39] Neither did it point to any evidence of how viewers or readers of these postings understood or may have understood the “cult” reference.

[40] For all these reasons, even assuming a reasonable onlooker would understand Mr. Moukhaiber as having so characterized Primerica, I find that use of that label, on its own, to be non-defamatory.

[41] Concluding on this aspect, I find no breaches of para 5(d) of the July 21, 2023 order.

V. INTERPRETATION OF PARA 5(E) IN LIGHT OF PARA 5(D)

[42] The next question is whether para 5(e) of the order barred Mr. Moukhaiber from publishing or posting *any* references to Primerica i.e. not just defamatory statements (covered by para 5(d) as explored above). Primerica so argues.

[43] Mr. Moukhaiber argues that para 5(d) exclusively and exhaustively governs the subject of his publishing and posting about Primerica, with para 5(e) governing output about *other* participants in this litigation.

[44] Here is paragraph 5(e):

[Mr. Moukhaiber] is prohibited from directly or indirectly:

- e. publishing or posting ... **any material concerning these proceedings**, or [causing] to be published or posted any material concerning these proceedings, as well as **any material** (including images) **or commentary concerning any participant in these proceedings**, including but not restricted to any **counsel, Court staff, or members of the judiciary, but excluding himself** provided that any publication or posting about himself is not connected in any way to these proceedings or is not otherwise subject to any ongoing injunction. [emphasis added]

[45] Reduced to relevant essentials, para 5(e) bars Mr. Moukhaiber from saying anything about this litigation to anyone, including anything about any other participant i.e. other than himself.

[46] These bars are not aimed at output that is defamatory of, prejudicial or harmful to, or otherwise negative about the sheltered participants. They extend to *all* output: defamatory, otherwise negative, neutral, and even positive.

[47] Primerica argues that it is a “participant” within the meaning of this provision and that, accordingly, Mr. Moukhaiber cannot publish, post or say *anything* about it.

[48] Mr. Moukhaiber argues that so interpreting para 5(e) would effectively write para 5(d) out of the order i.e. as unnecessary. If he was barred from saying anything at all about Primerica, why the no-further-defamatory-postings direction in the latter?

[49] To resolve this issue, I first examine how para 5(e) came to be included in the order.

[50] In the “Remedy claimed or sought” segment of its application for the July 21, 2023 order, Primerica included, at paras 1(d)(iv) and (v), the provisions that became paras 5(d) and (e) of the order. (Below I will refer to both provisions by the latter designations.)

[51] Per Court’s recording of the application, the presiding justice had a copy of the draft order at hand. (I also proceed on the basis that the draft order fully tracked the “Remedy claimed or sought” segment of the application.)

[52] Also per that recording, during the application Primerica’s counsel made no submissions about the proposed para 5(e) i.e. “say nothing about ‘participants’ or this litigation.”

[53] Primerica’s counsel did address the proposed para 5(d) (i.e. no further defamatory material), submitting (in part) that:

[Mr. Moukhaiber] can talk about Primerica all he wants subject to legal restraints on speech. ... He cannot just talk about Primerica because of **how it is being done.** [For example] there are express provisions under the *Trademarks Act* that matter There are two pieces of it: remove [existing] videos ... and **not otherwise defaming Primerica.** ... We need assurances [that this] do-not-post-more [aspect] applies [to any online accounts Mr. Moukhaiber may have] [and that he] **cease publishing and promoting this defamatory material.** ... **Maligning [Primerica] has to stop.**

[54] These submissions are hard to reconcile with simultaneously seeking, at least per the application and the draft order, an order barring output about Primerica at all. However, again, Primerica’s counsel did not discuss the eventual para 5(e) in his submissions.

[55] In an oral ruling in the course of the application, the presiding justice, at least initially, granted the latter relief vis-à-vis Primerica, telling Mr. Moukhaiber:

You must stop. You must not do [anything] on social media ... as of now, you may not publish anything further about Primerica. That is not a topic you may discuss on social media, directly or indirectly.

[56] Mr. Moukhaiber then asked:

To [see] if I understand correctly: you are giving me a direction not to mention Primerica at all, or not to mention Primerica in a way that is or might be interpreted to be defamatory?

[57] To which the presiding justice replied:

No, [nothing about] Primerica at all. Your campaign against Primerica has [now] gone silent in the media and elsewhere. ... You are shut down. ... You are not mentioning Primerica ... at all in any context whatsoever.

[58] If nothing else had been said on this subject, it would have been clear that Mr. Moukhaiber was barred from saying anything defamatory and, in fact, anything at all about Primerica.

[59] However, shortly after, the presiding justice said:

[It's] very clear ... you do not mention anything [about Primerica], until a court order permitting you to do it, **that Primerica could possibly complain about.** That is very clear. ... Go back to what I said a moment ago. You are not to do anything ... my order will be broad enough that you are not to do [anything], [as of] ten minutes ago, ... **that Primerica could complain about as wrong, something aimed at defaming them, devaluing their trademarks, and all those sorts of things.** ... [emphasis added]

[60] Via these remarks, the justice revised and narrowed his earlier “nothing at all” ruling i.e. effectively ruling that output about Primerica was governed by para 5(d) i.e. no further defamatory output. Which illuminates the interpretation of para 5(e).

[61] Primerica argued that the closing words of para 5(e), carving out an exception for output by Mr. Moukhaiber about himself, show that “participant” was intended to include not only counsel and Court officials but the parties themselves i.e. that Primerica should also be classed as a “participant” and thus be sheltered under para 5(e).

[62] I reject this argument:

- if accepted, it would (as Mr. Moukhaiber argued) effectively read para 5(d) out of the order i.e. as unnecessary; and
- the carve-out for Mr. Moukhaiber adds nothing to the balance of para 5(e). Since the balance already directs that he can say nothing about this proceeding (more on this later), he was already free to publish and post information about himself unrelated to the proceeding. The carve-out is simply “for greater certainty.”

[63] All to say: Primerica is not a “participant” within the meaning of para 5(e) and, accordingly, Mr. Moukhaiber was not barred from making non-defamatory comments about or references to it.

[64] If I am wrong here i.e. Mr. Moukhaiber was in fact barred from saying anything at all about Primerica, I would take the same approach as discussed below concerning the bar on any discussions of “these proceedings” i.e. withhold the imposition of any sanction until Mr. Moukhaiber’s review-of-order application is decided.

[65] The reason is the possible overbreadth of such an order, as discussed (for example) in *Yu v 16 Pet Food & Supplies Inc*, 2023 BCCA 397:

In her article “*The Scope of Canadian Defamation Injunctions*” (2021) 44:1 Dal LJ 285, Professor Hilary Young is critical of the breadth of interlocutory and

permanent injunctions made by Canadian courts to restrain defamatory or allegedly defamatory speech. As she notes:

Overbroad orders risk proscribing lawful speech and potentially punishing speakers with penalties including imprisonment. While it may be difficult to decide exactly how broad a particular order should be, **the principle that orders should be minimally impairing of speech is, I think, uncontroversial**, According to the Ontario and British Columbia Courts of Appeal, **“injunctive relief must be broad enough to be effective but no broader than reasonably necessary to effect compliance.”** [footnote omitted here]

Professor Young identifies four types of defamation injunctions, namely those that prohibit the defendant from making:

- **any statements at all about the plaintiff;**
- any defamatory statements about the plaintiff;
- statements about the plaintiff with a particular imputation, where the imputation has not been found to be defamatory; and
- statements about the plaintiff whose imputations have been found to be defamatory: at 290–291.

As Professor Young notes, the first three types of injunctions are particularly difficult to justify. I note what I consider to be the primary concerns below.

Injunctions that prohibit the defendant from making any statements at all about a plaintiff restrain speech that is not defamatory. For example, the defendant would be restrained from saying something favourable about the plaintiff or making a fair comment about the plaintiff on a topic of public importance.

...

In this case, WoouoF sought and was granted a very broad order. ... WoouoF says the order had the advantage of creating a bright line for Ms. Yu.

I understand WoouoF’s desire to create an easily enforceable order. I also understand the judge’s concern about both the power of the Internet to spread falsehoods and Ms. Yu’s response to the “cease and desist” letter. Nevertheless, in my respectful view, **the order was overbroad.**

On a plain reading, the order required Ms. Yu to remove all posts about WoouoF and associated parties and **restrained her from making any posts at all about them. For example, Ms. Yu could not retain any posts that had positive things to say about WoouoF and could not make future posts to inform others that she had been sued by WoouoF, was subject to an injunction not to make any statements about WoouoF or perhaps offer an apology to WoouoF.**

... In this case, ... even if the judge had applied the correct legal test and had a basis for finding that the test was satisfied, **I would have set aside the order for being overbroad.** [paras 82-85 and 88-91] [emphasis added]

[66] To the same effect, see also *Labours' International Union of North America, Local 183 v Castellano*, 2020 ONCA 71 (paras 15-21) and *Beidas v Pichler (Legasse)*, 2008 CanLII 26255 (ONSC – DC) (paras 40-47). And the

VI. GENERAL REFERENCES TO PRIMERICA NOT OFFSIDE ORDER

[67] As a result, statements about Primerica impugned not as defamatory but simply references to it, such the examples below, are not off-side the order:

... first of all we're not going to say [the] names of any companies but this was a company that was primarily an American company, yes, they have Primal instincts.

... but there's a primarily American company, I can think of, that deals with insurance and investment and whatever and they have a system called the KT which stands for kitchen table and that is how they do their approaches ...

[Am I] ever going to make videos on the Prime Americans that shall not be named? I'm working on it. I'm working on it. Can't say anything.

Having your MLM company disguised as an insurance company is very clever for a multitude of reasons. Firstly, you actually have to get a license from the government to sell insurance. When these people say, "you have to get a license to be with us, we're highly regulated by government", know this: insurance as an industry is regulated. That does not mean that the specific base shop office of ... a – can't say the name because of reasons – that specific office is not "highly regulated."

I recently met a girl named Erica, and she was a very beautiful girl some might even say she was in her Prime, and so we're not going to talk about Erica.

... another company whose name I can't remember that is Primarily an American company.

VII. REFERENCES TO "THESE PROCEEDINGS"

[68] This leaves the other dimension of para 5(e): "publishing or posting ... any material concerning these proceedings."

[69] The current (contempt) proceedings do not extend to varying or setting aside the injunction order. As I understand it, counsel for both sides are currently working (possibly with the Court's assistance) on scheduling the lead-up steps to Mr. Moukhaiber's application seeking that relief and the application itself.

[70] Accordingly, it is not for me to rule on whether this provision should have been included in the order.

[71] The reason is that a court order operates and must be followed unless and until it is set aside, varied, or overturned on appeal. Per *Canada (Human Rights Commission) v Canadian Liberty Net*, [1998] 1 SCR 626:

... the appellants argue that they were not in contempt on two separate grounds. Their first ground of attack has to do with the **validity of the order**. As I have found above that the Federal Court had jurisdiction to issue the order, **at its highest, the appellants can only suggest that that jurisdiction was exercised wrongly. Such an order is neither void nor nugatory, and violation of its terms constitutes contempt of court.** The words of McLachlin J. in *Taylor*, *supra*, at pp. 974-75, are both definitive and eloquent on this point:

In my opinion, the 1979 **order** of the Tribunal, entered in the judgment and order book of the Federal Court in this case, **continues to stand unaffected by the Charter violation until set aside.** This result is as it should be. If people are free to ignore court orders because they believe that their foundation is unconstitutional, anarchy cannot be far behind. The citizens' safeguard is in seeking to have illegal orders set aside through the legal process, not in disobeying them.

... For the purposes of the contempt proceedings, [the order] must be considered to be valid until set aside by legal process. Thus, the ultimate invalidity of the order is no defence to the contempt citation. [para 51]
[emphasis added]

[72] The point is elaborated by Jeffrey Miller in “*The Law of Contempt in Canada*” (Third Ed., 2023):

It is not defence that the court order is incorrect, null, unconstitutional, or under appeal, and thus “ineffective.” The order stands, and commands respect in all its aspects, until it is reversed on appeal “or an equally effective order [is] secured to the effect that it need not be obeyed.” Thus, where a court sets aside an order after a contempt finding ..., that revocation is no (retroactive) excuse for non-compliance. [part of 7:18 – Orders wrong or ineffective in law – Generally]
[footnotes omitted]

[73] However, it is not clear on what basis the “no references to this proceeding” order was made.

[74] As noted, while this element was included in the draft order, Primerica’s counsel made no arguments about or submissions concerning it during his remarks.

[75] More fundamentally, it is hard to understand what prejudice or disadvantage would or might be caused to Primerica from neutral statements about or anchored on the existence of this litigation.

[76] Here are examples of postings highlighted by Primerica as breaches in this zone:

... this is going to be a short stream because I have to be very, very **careful with what I say** and the longer I stream the higher the risk that I say something I

shouldn't say. So, I know that a lot of you guys have reached out to me, a lot of you guys have questions ... **there's things that I, uh, can't answer directly.**

You know, even if I had a hundred thousand dollars in the bank, which I don't ..., I mean you'd be amazed at **how fast that can be depleted in a legal proceeding.**

I knew this would happen, I can't speak directly, but if you have followed me for even a little bit, **you know what's happened, what I'm dealing with right now.** I told you it would happen, I knew it would happen, and the good news is that I'm always five steps ahead so I knew it would happen.

I have **partnered with a lawyer** who already knew my work. I have partnered with a lawyer who was already a fan of my work, had told me that he has already seen my work and shared it with people before, so he gets it.

... if you've observed **what's happened in the last two weeks with my channel, you know that I knew it was going to happen** I have a lot of content planned, so ultimately, maybe it'll take a month, maybe it'll take six months, maybe it'll take a year, but ultimately the truth always prevails. ... every single one of my infiltrating-a-pyramid-scheme videos has at some point been taken down. Did you know that? And every time I have got it back ... and if you know me, you know that **I have no plan on changing that track record of winning.**

I have a big update that I'll hopefully be able to talk about soon with **one of my legal issues that's moving forward**

... my lawyer keeps reminding me of this: the process is the punishment. We're going to come back to that multiple times throughout this video. Cults don't actually care about **winning a lawsuit ... what they are counting on is that you can only take so much** before you snap – the process is the punishment.

I'm going to give you a real-world example of how this happens. Let's pretend there's some hypothetical cult and let's pretend there's some hypothetical content creator who is making videos exposing the truth about this cult. First, the cult will **sue the content creator claiming defamation** and saying that their videos contain factual inaccuracies and that the content creator is just making these videos to try to get clout and money and whatever else. **The content creator now has a limited time from the moment that lawsuit is initiated to first find a lawyer, then pay their retainer fee or negotiate some other arrangement. Then, the content creator has to familiarize both themselves and their lawyer with the claims the cult is making and determine the validity or lack of thereof of what the cult is saying they did**

... one [thing to do] is to **find a lawyer who is willing to take the case on a contingency basis** where they only get paid if and when they win, at which point their bill is paid by the side who lost. So the content creator's lawyer would be paid by the cult who is suing them, this would mean that there's virtually zero financial burden on the content creator, this is great. ...

... things heating up behind the scenes with **various different legal situations** and what not ..

I recently have been feeling a little bit of stress, and I say a little bit I mean a lot, I've been feeling a little bit of anxiety, I say a little bit I mean a lot, about **a situation that I've been dealing with that I can't talk about** but basically it's a girl problem. I've been seeing this girl, her name is Erica ... she's in her prime, and she's just been **causing me a lot of headaches** things went south back in the summer, back the past summer of 2023, and since then we've had a bit of a **rocky relationship**. ...

... [the target of a hypothetical video by a content creator] may, hypothetically, **take action against that person**

... just know there are **risks**, if you get involved with a girl named Erica and she's in her prime and ... primarily lives in America, ... you know that **there's going to be risks associated with it**.

[Erica, who's in her prime, and I] are going to be meeting together now in Canada. **We are going not sit down and sit across the table, eye to eye, and talk to each other**. And you know, you may be thinking why couldn't you have talked to her over Zoom? **And the powers-that-be have decided that this is the way it must be and so**. [emphasis added]

[77] A couple of other impugned “proceedings” references focus on raising funds from viewers, for example:

... if you've ever considered supporting me in any tangible material, financial way, I would say now is the time to do so, and I apologize that I can't give you more information, but I trust that my audience is very perceptive and intelligent and can put two and two together and understands what this is for.

... at this time any support, any memberships gifted, any donations, any patron stuff, any merch sales, like it really means a lot, so thank you guys and it's needed now.

[78] On the latter comments, Primerica asserted both a breach of the “no proceedings references” order and wrongdoing by Mr. Moukhaiber in seeking funds for this litigation where (as is common ground here) his counsel is acting *pro bono*.

[79] The first answer is that, as was explained by Mr. Moukhaiber's counsel at the recent application, Mr. Moukhaiber is responsible for ongoing disbursements. The second answer is that Primerica has no stake or standing on that point, making the use of any fundraised monies irrelevant here.

[80] Mr. Moukhaiber may have a reasonable argument that two or three of the more generic comments above -- for example, “my lawyers keeps reminding me ...” and “things heating up ...” -- should be fairly understood as pertaining to other proceedings (not involving Primerica) or to litigation in general.

[81] For the balance, I find that, in all the circumstances here, a reasonable onlooker would understand him to be speaking about the current litigation with Primerica i.e. to be making references to “these proceedings.”

[82] However, it is hard to see what prejudice or disadvantage has accrued or might accrue to Primerica from the highlighted statements or any of them.

[83] They are largely neutral reflections of the existence of the litigation and the injunction order. A couple of them are positional: “the truth always prevails” and “I have no plan on changing that track record of winning.” But Mr. Moukhaiber has filed a statement of defence to Primerica’s action and is contesting the injunction order (in the noted proposed review proceedings). I do not see it as inherently objectionable that he should say (effectively): “The litigation is on. There are two sides.”

[84] Leaving aside for the moment that the order bars any comments about the litigation at all, none of the comments reflects any disdain for the court process or disrespect of the judge who granted the order, the Court generally, the lawyers involved, court officials or other “participants.”

[85] For a contrasting example, see Mah J.’s decision in *West Edmonton Mall Property v Proctor*, 2020 ABQB 161 (paras 124-126).

[86] None of these postings mis-describe or mischaracterize anything material about the existence of this proceeding, the steps taken to date, or the possible further steps.

[87] The record contains no evidence reflecting any history of Mr. Moukhaiber misconducting himself in any previous litigation.

[88] This aspect of the order is akin to a *de facto* partial publication ban, albeit (as far as I can tell) without any of the traditional justifications for such a ban present.

[89] Mr. Moukhaiber was obviously aware that he was not supposed to say anything about the litigation. As far as I can tell, he believed that, if he veiled his comments about Primerica, he could.

[90] As found above, Mr. Moukhaiber was offside the order in making these comments i.e. his “veiling efforts” were, in the end, no cover for his litigation comments.

[91] But with possibly no basis for the order in the first place or possibly an overbroad order (incorporating here the overbreadth comments and cases above) i.e. one not restricted to prejudice-causing comments, with a review application coming, and with what may be only harmless breaches, my decision is to hold off imposing any sanction pending the outcome of the review application.

[92] On a court so proceeding, see the comments of McLachlin J. in *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892:

... the wisdom or validity of the [order] is a relevant consideration in determining the appropriate sanction.” [citing a passage from R. J. Sharpe, *Injunctions and Specific Performance* (1983) at p 259 “and the cases cited there.”]

[93] On a court refraining from deciding any aspect of a contempt-of-order application pending the outcome of a review-of-order application, see also *United Nurses of Alberta v Alberta (AG)*, [1992] 1 SCR 901:

... the judge hearing the motion for contempt can decline to deal with the matter until the review proceedings are completed, thereby avoiding the danger of a finding of criminal contempt based on an invalid order ...

[94] One of the Sharpe-cited cases is *Drewry v Thacker* (1819) 3 Swans. 529 at 546, 36 ER 963, in particular this passage (per Lord Eldon):

On an application against persons guilty of a breach of it [the order], the Court would forget its duty, if it did not give them the benefit of the fact that the order ought not to have been made.

[95] Again, it is not for me to make that call. But I believe reasonable arguments can be made in support of it.

[96] Accordingly, I will decide on sanction once the review is complete.

VIII. OTHER ALLEGED BREACHES

[97] Finally, Primerica asserted that Mr. Moukhaiber breached various “do not post” or “take-down” provisions in the July 21, 2023 order i.e. the breaches particularized in paras 12, 18, and 20 of its application.

[98] In his June 5, 2024 affidavit (paras 17-31), Mr. Moukhaiber disputed both posting the described materials and failing to take down any offending materials (even if posted by others).

[99] In view of the conflicting evidence here on who posted what materials, what “third-party-postings policing” duties (Mr. Moukhaiber has (if any), and whether the impugned materials have been removed and (if so) when, I decline to make any contempt finding on these alleged breaches.

IX. CONCLUSION AND COSTS

[100] For these reasons, I dismiss Primerica’s application for orders directing Mr. Moukhaiber to remove the impugned-in-this-application postings and finding him in contempt of paras 5(d) and (e) of the July 21, 2023 order.

[101] I also dismiss Primerica’s application for an order directing him to remove the postings and other material described in “Other Alleged Breaches” above, without prejudice to Primerica’s right to seek such relief, and Mr. Moukhaiber’s to contest it, in future proceedings where findings of fact may be made.

[102] Costs-wise, and recognizing that Mr. Moukhaiber was successful on the “no further defamatory comments” aspect, I will defer a decision on costs of this application until Mr. Moukhaiber’s application to review or set aside the July 21, 2023 order has been decided or resolved.

Heard on the 13th day of June, 2024.

Dated at Edmonton, Alberta this 30th day of July, 2024.

M. J. Lema
J.C.K.B.A.

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