

**CITATION:** Heathcote v. RBC Life Insurance Company, 2024 ONSC 6845  
**SUDBURY COURT FILE NO.:** CV-23-61409  
**DATE:** 2024-12-09

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Simon Heathcote ) B. Sullivan, Counsel for the Plaintiff  
 )  
Plaintiff )  
 )  
– and – )  
 )  
RBC Life Insurance Company and Anna ) D. Fenicky, Counsel for the Defendants  
Watroba )  
 )  
Defendants )  
 )  
 ) **HEARD:** December 6, 2024

**THE HONOURABLE JUSTICE J. R. HENDERSON**

**CONTEMPT MOTION DECISION**

- [1] The plaintiff brings this motion for, among other things, a finding that the defendants, RBC Life Insurance Company (“RBC”) and Anna Watroba (“Anna”) are in contempt of my order dated March 12, 2024 (“the order”) because the defendants failed to provide a copy of the complete RBC Claims Manual to the plaintiff.
- [2] The plaintiff also requests an order that RBC provide the court with the names of the officers and directors of RBC that instructed counsel to disobey the order, and an order that the statement of defence be struck.
- [3] The defendants submit that they have complied with the order, and therefore the defendants resist all of the plaintiff’s requests for relief.

## THE BACKGROUND

- [4] The plaintiff brought a motion returnable in March 2024 (“the March motion”) wherein the plaintiff requested an order that the defendants answer questions that had been refused at the examinations for discovery and fulfil undertakings that had been given.
- [5] The only part of the March motion that is relevant to the present motion relates to the production of the RBC Claims Manual. In summary, at paragraph 51 of my reasons, I ordered that the defendants “provide the complete RBC Claims Manual.”
- [6] The material before the court on the March motion included an affidavit from the defendants’ lawyer who swore that the RBC Claims Manual was a collection of electronic documents that was organized under 67 separate headings. It was RBC’s position at the March motion that only five of those headings were relevant, that the documents under those five headings had been produced, and that RBC was not required to produce any of the documents under the other 62 headings.
- [7] In my reasons, I considered the positions of both parties as well as the general principles of disclosure and ordered that the defendants were to produce the complete RBC Claims Manual.
- [8] In accordance with the order, RBC has provided plaintiff’s counsel with the documents under the other 62 headings that were referenced in the March motion material.
- [9] However, plaintiff’s counsel has now reviewed those documents and has noted that the disclosed material refers to other documents that have not been produced. The plaintiff submits that there are 17 undisclosed documents that are either mentioned or hyperlinked in the disclosed material.
- [10] Moreover, in her affidavit for the present motion, RBC Senior Manager, Pamela Bowman (“Pamela”), deposed that the RBC Claims Manual consists of 83 separate “guidelines”. I equate Pamela’s use of the word *guidelines* with the defendants’ lawyer’s use of the word *headings* on the March motion.
- [11] Pamela deposed that only 67 of the 83 headings were disclosed to the court on the March motion because RBC had determined that the other 16 headings did not apply to the present case as they did not deal with the handling of LTD claims.
- [12] The plaintiff has requested that the defendants provide the 17 undisclosed documents that are mentioned or hyperlinked in the disclosed material, and the documents under the 16 headings that Pamela acknowledges were not provided, but the defendants have chosen not to do so. Therefore, the plaintiff submits that the defendants have not complied with the order to provide the complete RBC Claims Manual.

- [13] Defendants' counsel submits that the defendants have complied with the order because the defendants have provided copies of all the documents under the 67 headings that were referenced at the March motion.

## CONTEMPT OF COURT

- [14] The contempt of court powers, set out in rule 60.11, should be used with great restraint and as a tool of last resort. Because of the serious consequences of a contempt finding, the procedures for a contempt motion must be stringently followed. Moreover, all of the elements of contempt must be proved beyond a reasonable doubt. In that respect, see the decisions in *Susin v. Susin*, 2014 ONCA 733, 379 D.L.R. (4th) 308, at para. 21 and *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79, at paras. 32-35.
- [15] As discussed in the above-mentioned decisions, the party alleging contempt must prove beyond a reasonable doubt that there is an order that clearly and unequivocally states what should and should not be done, that the alleged contemnor had knowledge of the order, that the alleged contemnor clearly breached the order, and that the alleged contemnor intentionally did or failed to do the act that the order contemplates.
- [16] In the present case, the order is clear on its face as it requires the defendants to produce the complete RBC Claims Manual. However, the foundation of the order is the evidence that the complete RBC Claims Manual consisted of documents under 67 headings. Although this foundation at this point appears to be inaccurate, the order cannot be interpreted to mean that the defendants must produce something that was not in evidence before the court at the time of the order.
- [17] Furthermore, in my reasons at paragraph 27, I considered the proportionality principle. Given the evidence that there were only 67 headings to the RBC Claims Manual, I ordered the production of the complete RBC Claims Manual. Thus, the number of headings was relevant to my decision to make the order.
- [18] I find that the order is clear and unequivocal with respect to the 67 headings that were referenced at the March motion. However, I find that the order is ambiguous as to whether the requirement to produce the complete RBC Claims Manual included the production of additional documents beyond the documents organized under the 67 headings.
- [19] Given the ambiguity of the order, I cannot find beyond reasonable doubt that the defendants breached the order, or if there was a breach, that it was intentional. Therefore, the plaintiff's request for a finding of contempt for a breach of the order will be dismissed.
- [20] The true problem in this case is not the failure of the defendants to comply with the order, but the failure of the defendants to provide accurate evidence in the affidavit material that was before the court at the March motion.

- [21] In oral submissions today, plaintiff's counsel submitted that the defendants' lawyer who swore the affidavit for the March motion should be found in contempt for providing a false affidavit to the court. However, the defendants' lawyer has never been provided with notice that the plaintiff would be requesting an order that he be found in contempt. In addition, the defendants' lawyer may have a valid explanation for his belief that the RBC Claims Manual was limited to 67 headings. Therefore, this request by the plaintiff will also be dismissed.
- [22] Further, the plaintiff requests that I order RBC to provide the names of RBC's officers and directors who provided instructions to the defendants' lawyer, so that the plaintiff may consider another contempt motion. With respect, this is not a proper request. That is, a party cannot start a contempt motion, and thereafter ask the court to order disclosure of the name of the alleged contemnor. This request by the plaintiff will also be dismissed.

### **STRIKING THE STATEMENT OF DEFENCE**

- [23] Rule 60.12 provides that the court may strike out a party's defence where a party fails to comply with an interlocutory order.
- [24] For the reasons set out above, I do not find that the plaintiff has proved that the defendants have failed to comply with the order. This request will also be dismissed.

### **CONCLUSION**

- [25] The plaintiff is unable to prove that the defendants have breached the order. However, the material before the court on this motion suggests that there may be other documents in RBC's possession that may be producible. The evidence as to what other documents exist, and the relevance of those documents, is vague, and therefore I will make no finding and offer no opinion as to whether these other documents are producible.
- [26] In my view, if the plaintiff wishes to pursue this matter, the appropriate procedure would be a motion for further production and/or further examinations. I will not provide any opinion as to whether leave to bring such a motion should be granted.
- [27] Regarding costs, all of the plaintiff's requests for relief will be dismissed. However, the problems before the court today are a direct result of the inaccurate evidence provided by the defendants to the court at the March motion. Therefore, there should be no costs payable by either party for this motion.
- [28] For the above-mentioned reasons, the plaintiff's motion is dismissed, and there will be no costs awarded to either party.
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J. R. Henderson J.

**Released: December 9, 2024**

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**BETWEEN:**

Simon Heathcote

Plaintiff

– and –

RBC Life Insurance Company and Anna Watroba

Defendants

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**CONTEMPT MOTION DECISION**

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J. R. Henderson J.

**Released:** December 9, 2024