

CANADA / JUDGMENT

Nanaimo (City) v. Bernier

2025 BCSC 2208

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Supreme Court of British Columbia

DECIDED

7 November 2025

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2025 BCSC 2208 Nanaimo (City) v. Bernier

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nanaimo (City) v. Bernier,

2025 BCSC 2208

Date: 20251107

Docket: S100738

Registry: Nanaimo

Between:

City of Nanaimo

Petitioner

And

Yan Reinhold Bernier

Respondent

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Petitioner:

K. Bhandar

The Respondent, appearing in person:

Y. Bernier

Place and Date of Hearing:

Nanaimo, B.C.

November 3, 2025

Place and Date of Judgment:

Nanaimo, B.C.

November 7, 2025

- [1] This is an application by the City of Nanaimo for an order of contempt against the respondent Mr. Bernier. It arises out of Mr. Bernier's alleged failure to comply with an order of Justice Thompson made January 13, 2025 which required Mr. Bernier to obtain and comply with a building permit for certain structures on his property. Mr. Bernier says that he has done his best to comply, but has been unable to do so.
- [2] The Thompson order was made in a petition in which the City asserted Mr. Bernier constructed three structures on his property (a second storey addition, a carport, and a front deck), in contravention of certain City bylaws. The order included the following terms:
- a) The Respondent may apply to the Petitioner for a building permit (the "Building Permit") to authorize the Structures by February 7, 2025;
 - b) If the Respondent obtains the Building Permit, then the Respondent shall complete the scope of work described in the Building Permit before the expiry of the Building Permit;
 - c) If the Respondent fails to complete either paragraph 1 or 2 of this Order, then the Respondent must remove the Structures, or the Petitioner is at liberty to apply for an order to remove the Structures.
- [3] The petition was brought following years of interactions with Mr. Bernier, where the City repeatedly attempted to convince Mr. Bernier of the need to comply with the building by laws. Mr. Bernier has been the subject of numerous interactions with the building department and has been the subject of remedial orders issued by the City Council. It is clear the many years of interactions with Mr. Bernier have frustrated the City and animates this application.
- [4] On February 14, 2023 a building permit to rectify all unpermitted construction was issued to Mr. Bernier, which was valid for six months, but he did not pick it up.
- [5] On December 20, 2023, Mr. Bernier's agent, Ms. Reinhold, who is also Mr. Bernier's mother, submitted another application for a building permit, which was rejected on January 8, 2024.

- [6] Mr. Bernier did not attend on the application before Justice Thompson, although he was served. The order was delivered to Mr. Bernier's home on January 27, 2025, along with a letter from the City's legal counsel indicating that the City would bring contempt proceedings if Mr. Bernier did not comply.
- [7] On February 11, 2025, Mr. Bernier acknowledged the letter and order and advised he would be applying for a building permit and attempt to complete the work within the scope of the permit. On February 14, 2025, Mr. Bernier advised the City he would be ready to submit the building permit application by the end of March 2025.
- [8] On February 18, 2025, Mr. Love on behalf of the City wrote to Mr. Bernier advising he would pursue contempt proceedings if the structures were not removed by the end of March 2025, and counsel for the City advised Mr. Bernier the City would extend the time to obtain the building permit until March 21, 2025.
- [9] On March 20, 2025, Mr. Bernier attempted to submit an application for a building permit, and sent an email to Mr. Love to advise him of this, writing:

As per your request I am informing you that I submitted a building permit application today. Doug Rathy, contractor, spoke with Lindsay Fitzgerald on the 18th of March regarding the application, its contents, its duration and a timeframe for the work to be completed. It is my hope that the building department approves the application and grants a 12-month permit, as the work to be completed is heavily dependent on good weather, and having all the subcontractors complete their work sequentially and on time.

- [10] On April 14, 2025 Mr. Love wrote to Mr. Bernier advising that there had been no application made, and the City was intending to seek advice on a contempt application.
- [11] On March 20, 2025, Mr. Bernier had sent the application to Ms. Reinhold for her signature and uploading to the City bylaw department. She did not sign the document properly, and it was not properly uploaded as a result. After receiving the email from Mr. Love on April 14, she reviewed what happened with her submission, realized her error, re-did her signature and uploaded the application on April 14, 2025. She wrote to Mr. Love that same day explaining what had happened, that she saw Mr. Bernier completing the application on March 20, and that it was her error that caused the problem with uploading the final document.
- [12] On April 15, 2025, Mr. Love wrote to Mr. Bernier and Ms. Reinhold advising the application was being processed.
- [13] Mr. Bernier was required to pay a permit application fee to complete the permitting process, and was advised of this on April 16, 2025.

- [14] On May 26, 2025, Mr. Fitzgerald, a building inspector with the City, advised Ms. Reinhold that a new and corrected application must be submitted and the application fee was required by May 30, 2025. Ms. Reinhold was also advised that if the City did not receive the permit fee by the May 30 deadline, the City would contact their legal counsel to enforce the order.
- [15] On June 4, Mr. Love wrote to Mr. Bernier advising that the time to comply had passed, and the City would be pursuing contempt proceedings.
- [16] On June 5, 2025, Mr. Love wrote to Mr. Bernier advising that the permit application had been received and the application fee must be received by June 6, 2025.
- [17] By June 9, 2025 the building permit application fee had been paid and on June 11, 2025 Mr. Fitzgerald, advised Ms. Reinhold the permit was approved and available for pick up, and that the permit needed to be signed by June 20, 2025. He also advised her that the permit would expire on September 19, 2025, and a final inspection needed to be scheduled before the expiry date.
- [18] In June 2025, Ms. Reinhold received quotes from contractors for doing the work to repair the structures. On June 19, 2025, Ms. Reinhold wrote to Mr. Fitzgerald and advised that the quotes they received for the work described in the building permit were too high for Mr. Bernier's budget, so they decided that rather than improving the roof (as was their original plan), they would have to repair the roofline to its original state. Ms. Reinhold asked Mr. Fitzgerald, "What is the fastest and cheapest way to proceed now around the building permit please?"

- [19] On June 20, 2025, Mr. Fitzgerald replied as follows:

The current building permit as approved must be signed and paid for by 4:30pm today. If the plans on the renovation are changing you will need drawings (architectural and structural) revised and submitted for a revision within 7 days from today after you have paid for the existing permit. Be advised this is a 90-day permit to be completed by September 19th, 2025. If the current application is not issued by 4:30pm today the file will be sent back to the Bylaw Department for further enforcement.

- [20] On June 23, 2025, Ms. Reinhold wrote to Mr. Love. She explained everything they had done in June to get estimates, and what their initial understanding of cost was compared to the quotes they ultimately received. She then recited the email exchange which I have set out above, and finally advised him:

On Thursday June 19th I emailed Mr. Fitzgerald to let him know that we cannot afford the 125,000 to execute the building permit, which had been approved in the meantime, and that we would be returning it to the original. I asked him what the cheapest and fastest way was to do this. He replied to designer. I got a hold of the engineer this past Friday who said that she is on vacation and will not be back until tomorrow, Tuesday and would then be in touch with me as to cost and time frame. So more delays. It has taken 3 months for her to do the last 2 plans as she has so

many clients. I will let you know what the engineer says once I speak with her. It therefore makes no sense to me to get a permit which we will not use especially since there is no way we will be able to get an amendment in by this Friday, and the permit is only for 90 days.

[21] On July 6, 2025, Ms. Reinhold heard back from the engineer setting out her fee for the required structural assessment scope of work to return the building to its original state. On July 21, 2025, the engineer advised she could do a site visit on August 5, 2025.

[22] On August 11, 2025, Ms. Reinhold wrote to Mr. Love stating:

Just a quick update for you as promised.

I did some back and forth with the engineer and she asked me to go see Lindsay [Mr. Fitzgerald] if her suggestion of what needed doing was acceptable. I went in to see him on July 16th, 2025 and he said that he needed more details. I relayed that to Sam [the engineer retained by Mr. Bernier], the engineer, who, as a result of that, came and did another site visit on August 5th, 2025. She indicated, as did the contractor, that it should be straightforward and that she would try her best to get something together before she leaves to go on vacation on August 16th, 2025 for 3 weeks. So hopefully I can get some paperwork in to the City within a week. If not, then when she comes back.

Some time ago, we were on the phone including Lindsay, possibly Darcy and a lady that did most of the talking, and I am not sure who else, right now. Anyhow, they indicated that the City would be OK if we went ahead with the front entrance and just completed it. Is that still on the table, as time is passing, and we will be getting into the rain again and Doug did not want to work in the rain with an open roof, so if we could start on the front stairs now

[23] Mr. Fitzgerald replied to Mr. Bernier with a one line email, stating "NO WORK TO BE DONE WITHOUT A BUILDING PERMIT."

[24] On September 19, 2025, the engineer provided her report to Mr. Bernier and Ms. Reinhold.

[25] On September 22, 2025, Ms. Reinhold wrote to Mr. Fitzgerald and Mr. Love stating:

I just received this Engineering report from Check Engineering about returning the attic to its original state. Will the attached be sufficient for the Engineering part of the building permit application after the engineer certifies it?

[26] On October 10, 2025, Ms. Reinhold wrote to Mr. Love and Mr. Fitzgerald following up on her September 22 email, and asking for a response so she could instruct the engineer on next steps.

[27] On October 14, 2025, Mr. Love wrote to Ms. Reinhold and Mr. Bernier advising he was seeking legal advice.

[28] On October 21, 2025, Ms. Reinhold wrote to counsel for the City acknowledging receipt of this application for contempt, and setting out all the steps taken since January 22, 2025 to comply with the Order. After reciting all the steps taken, Ms. Reinhold stated:

We wish to bring to your attention that Yan Reinhold Bernier has been diagnosed with dyslexia and social anxiety. I, Gabriela Reinhold, his mother, have been supporting him in this action with City Hall, the engineers and the contractors. I am a widow and living on my pension. Yan is the primary breadwinner for the family. We cannot afford a lawyer and I have spoken to legal aid and they have said that the earliest availability is in approximately 2 months and it could be delayed even further because of the upcoming Holidays in December. Yan depends on me to support him in this matter. Unfortunately, I am away on November 3rd for an urgent family matter. Therefore, we request that this matter be allowed to proceed by the City working with us to get a revised building permit based on the documents submitted on September 22, 2025. Check Engineering is willing to amend or add to the submission as per City requirements.

In conclusion, since the start of these proceedings we have been diligent in following the guidelines given to us by the City of Nanaimo especially Lindsay Fitzgerald and Grant Love. The delays have been caused not by us but by the process that is required for hiring a contractor and more importantly the limited number of engineers that work on renovations and their heavy workload. If required, we can submit a letter from the engineer indicating the progress that is being made. We are not well versed with the City process and procedures. We accept that mistakes were made on our part regarding following up with the city on progress updates related to the Permit.

This is our home and we have every intention of complying with the city bylaws of the City of Nanaimo. Our finances are limited and we request that we be allowed to submit a new application for permit based on the email sent on September 22, 2025 so that we can get a permit and move on with this project. The Engineering feasibility report has been completed. We now have a contractor in place, all we require now is a building permit to begin this work.

Analysis

[29] An order for civil contempt is an extraordinary remedy. Its purpose is "first and foremost a declaration that a party has acted in defiance of a court order": *Carey v. Laiken*, 2015 SCC 17 [Carey] at para. 30.

[30] Civil contempt has three elements which must be established beyond a reasonable doubt:

- a) The order must clearly and unequivocally state what should and should not be done.
- b) The party alleged to have breached the order must have had actual knowledge of the order.
- c) The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

Carey at para 32-35.

Is the order clear?

[31] The order is comprised of four paragraphs. The fourth paragraph is simply an order for costs. The first paragraph is permissive and allows Mr. Bernier to apply for a permit by February 7, 2025. These paragraphs are clear.

[32] The second paragraph of the order reads:

2. If the Respondent obtains the Building Permit, then the Respondent shall complete the scope of work described in the Building Permit before the expiry of the Building Permit;

[33] I have some concerns about the second paragraph. The permit that was issued had an expiry date of three months after its issuance. The previous permit issued to Mr. Bernier expired six months after its issuance. Counsel for the City advised that the bylaw respecting building permits allowed for permits to be issued with a variety of expiry dates, including up to one year.

[34] The order as drafted gives the discretion to the City to set a permit with an expiry date that may not be achievable, in reality. As I will discuss further, I find that the three months duration of the permit was not achievable for Mr. Bernier.

[35] However, on its face, the second paragraph is clear.

[36] The third paragraph of the order reads:

3. If the Respondent fails to complete either paragraph 1 or 2 of this Order, then the Respondent must remove the Structures, or the Petitioner is at liberty to apply for an order to remove the Structures.

[37] The third paragraph of the Order requires the removal of the structures, but does not say how or when Mr. Bernier is to remove the structures. It does not say if he is to obtain permits to remove the structures, or a time frame for him to obtain such permits. It does not state an outside date within which the structures must be removed.

[38] As is clear from the evidence, while Mr. Bernier attempted to work with the permit issued in June 2025, it became clear that he would have to abandon those plans and put the building back into its original state. He made inquiries with the City about changing the permit to allow for that to be done, but did not receive any helpful responses. Instead, the City chose to pursue contempt proceedings against him.

[39] While para. 3 clearly requires the removal of the structures, it is not unequivocal about how and when such removal is to take place. It is missing these essential details: Carey para 33. As such, I find that para. 3 is not clear, for the purposes of a civil contempt proceeding.

Did Mr. Bernier have actual knowledge of the order?

[40] This element is conceded. Mr. Bernier did have actual knowledge of the order.

Did Mr. Bernier intentionally fail to do the act the order compels?

- [41] In this third element, it is not necessary for the City to prove that Mr. Bernier intended to disobey the order. Such considerations are relevant to the issue of penalty, should contempt be proven. For the third element to be established, the City must only show that Mr. Bernier intentionally did an act or omission which breached the order.
- [42] While Mr. Bernier did not apply for the permit in accordance with the timeframe set out in para. 1 of the order, the City extended that deadline and does not rely on para. 1 before me.
- [43] The City relies on paras. 2 and 3 of the order. Paragraph 2 states Mr. Bernier must complete the work within the timeframe set out in the permit. It is clear that Mr. Bernier did not complete the work described in the June 11 permit within the timeframe required, namely September 19, 2025.
- [44] The order contemplates that if para. 2 is not achieved, para. 3 comes into effect. Therefore, I do not agree that Mr. Bernier breached of the order by failing to complete the work by September 19, 2025. The order itself provides a remedy should the obligation in para. 2 not be met. Given the wording of the order as a whole, Mr. Bernier cannot be held in contempt for not meeting the obligations in para. 2.
- [45] With respect to para. 3 of the Order, from the evidence advanced on this application, I find that Mr. Bernier was in the process of taking steps to remove the structures when this application was brought:
- a) On June 23, Ms. Reinhold advised Mr. Love they would be "returning it to the original" and that they would not be proceeding under the permit.
 - b) On August 11, Ms. Reinhold asked Mr. Love if they could deal with the front entrance, and Mr. Fitzgerald replied in strong language that nothing could be done without a permit.
 - c) In August, Ms. Reinhold retained an engineer to do the work needed to apply for a new permit to, essentially, remove the structures and return the building to its former state.
 - d) On September 22, Ms. Reinhold advised Mr. Fitzgerald that she had the engineering report about "returning the attic to its original state" and asking if that report would support a permit for that work.
- [46] In order to succeed on this application, the City must prove beyond a reasonable doubt that Mr. Bernier has not complied with the order. There is no time frame in para. 3 to establish when the structures must be removed. I find that the evidence I have reviewed above supports a finding that Mr. Bernier was complying with para. 3 of the order in removing the structures in August and September 2025. As such, I find the City has failed to meet its burden in proving beyond a reasonable doubt that Mr. Bernier breached para. 3 of the order.

Should an order for contempt be made?

- [47] Although I have found the City did not meet its burden in establishing the three elements of an order for civil contempt, I have also considered whether I would make such an order even if the City had met its burden.
- [48] The Supreme Court of Canada was clear in *Carey* that an order for civil contempt is an extraordinary order, and a discretionary order. It is not to be used routinely to obtain compliance with court orders. The discretionary power to make an order for contempt is one that should be used cautiously and with great restraint: *Carey* at para 36.
- [49] In *B & B Barges Ltd. v. British Columbia*, 2023 BCCA 98, the Court of Appeal stated:
- [34] It is my view that questions of ability to comply are best considered within the exercise of the court's discretionary power to decline to make a finding of contempt even where all three elements have been established, or as a defence of impossibility of compliance. As Justice Cromwell stated in *Carey*, the contempt power is an enforcement power of last resort and should be used "cautiously and with great restraint", and where an alleged contemnor acted in good faith in taking reasonable steps to comply with an order, the court "generally retains some discretion to decline to make a finding of contempt": at paras. 36-37. He left open "the possibility that a judge may properly exercise his or her discretion to decline to impose a contempt finding where it would work an injustice in the circumstances of the case": at para. 37. In declining to impose a heightened degree of fault for the required intent, Cromwell J. considered that this "existing discretion not to enter a contempt finding and the defence of impossibility of compliance" provided better answers: *Carey* at para. 41.
- [35] I appreciate that there is a distinction between mandatory and prohibitory injunctions. In a contempt proceeding, different considerations may arise that could interfere with a person's ability to carry out the positive action required in a mandatory order. Some courts have related such considerations to a defence of impossibility of compliance that negates a wilful or deliberate disobedience: see *Jackson v. Honey*, 2009 BCCA 112 at para. 14; *Métis Nation - Saskatchewan v. Provincial Métis Council*, 2015 SKQB 259 at paras. 28-31; others have related such considerations more generally to the exercise of the discretion not to make a finding of contempt: see *Fresno Pacific University Foundation v. Grabski*, 2015 MBCA 70 at paras. 22-23, 30-32. Either way, an ability to comply with a mandatory order has never been considered a separate element of civil contempt, and the above passage from *Carey* suggests the better approach is to consider these matters within the court's discretionary power and the defence of impossibility of compliance.
- [50] Even if the City had established all three elements, I would not exercise my discretion to make an order for contempt in the circumstances of this case. I find that Mr. Bernier has in good faith taken reasonable steps to comply with the order.

- [51] Mr. Bernier and Ms. Reinhold are not construction professionals. While I cannot comment on the circumstances that led to the January order, since that order was made both Mr. Bernier and Ms. Reinhold have politely and actively negotiated the permitting process in an attempt to comply. They were given a very short time frame for the original permit, only three months although they asked for one year. They had no control over that timeframe.
- [52] A permit was needed for any work. They retained professionals in a timely way to fulfil permitting requirements. The schedules of the construction professionals, and in particular the engineer, are beyond their control and contributed to delays. Once it became clear they could not continue with the renovations that had been started without a permit, they contacted the City to find out next steps. They were told a permit was needed for any work. Returning the building to its original state would require engineering reports. They diligently obtained a new report, again at the mercy of the engineer's schedule.
- [53] Ms. Reinhold kept the City up to date on their efforts and the schedule of the engineer. It is difficult to imagine what else they could have done.
- [54] This is not a case where Mr. Bernier is deliberately flouting the court order. He did not ignore or disregard the order. His conduct was not high handed. He diligently took all steps to comply with the order, and was impacted by delays outside his control.
- [55] This is not a case where an extraordinary order for civil contempt is warranted, nor should the threat of such an order have been made against Mr. Bernier at every turn.

Disposition

- [56] The application of the City is dismissed, with costs to the respondent Mr. Bernier.

"W.A. Baker J."

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