

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

COLLEGE OF PHYSICANS AND SURGEONS OF ONTARIO

Applicant  
(Moving Party)

v.

EVE STEWART

Respondent

\* \* \* \* \*

**REASONS FOR DECISION**

HEARD BEFORE THE HONOURABLE MR. JUSTICE P. ROGER  
on Monday, June 5<sup>th</sup>, 2017, at OTTAWA, Ontario

\* \* \* \* \*

Appearances:

Ms. L. Cader

&

Ms. D. Awad

Counsel for the Applicant

Ms. E. Stewart

in Person

**SUPERIOR COURT OF JUSTICE**  
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TRANSCRIPT ORDERED: June 15<sup>th</sup>, 2017  
TRANSCRIPT ORDER RECEIVED: June 15<sup>th</sup>, 2017  
30 REASONS APPROVED BY ROGER, J.: July 13<sup>th</sup>, 2017  
TRANSCRIPT COMPLETED: July 7<sup>th</sup>, 2017  
TRANSCRIPT DELIVERED: July 18<sup>th</sup>, 2017

MONDAY, JUNE 5, 2017

...PROCEEDINGS START (not transcribed)

R E C E S S

...U P O N R E S U M I N G

COURT SERVICES OFFICER: All rise.

COURT REGISTRAR: Court is reconvened, please be seated.

THE COURT: All right, good afternoon everybody. I heard that counsel wanted to speak to me but I think it's after I deliver my Reasons, correct?

REASONS FOR DECISION

ROGER, J. (Orally):

The College of Physicians and Surgeons of Ontario brings this motion seeking for this Court to find the Respondent in contempt of the 2014 order of this Court and as well seeking related disclosure relief at this stage asking then, depending on the ruling, that the matter return at a later date to deal with any required or appropriate penalty and/or sanction at the second stage, if there is one. Now that may be part of the submissions, we will see.

I allowed the Respondent to file the materials that she has served on the College. I allowed her to file those over the bench this morning, and I considered these materials for the purposes of this motion.

The unsworn affidavit that she had prepared

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and served on the College was admitted by this Court as if it had been sworn because the Respondent indicated to the Court that the content, from her perspective, was true. The College wanted an opportunity to cross-examine the Respondent on the content of the affidavit, and in the interest of expediency considering this matter I proceeded almost like a mini-trial.

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I allowed the Respondent to give evidence in-chief, because in her submission she was conflating the distinction between submissions and evidence. So she was sworn in by Court staff and she then made her submissions as if sworn so that she could be cross-examined.

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She gave her evidence in-chief. I considered that evidence, and I considered her affidavit as evidence and she was cross-examined by the College on her evidence and on the content of her affidavit, and frankly all of that proceeded quite expeditiously this morning and we were able to deal with this matter I think fairly and quickly this morning, avoiding an adjournment that would have probably not seen this matter return for months in the future.

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Now dealing with the law, Rule 60 of the *Rules of Civil Procedure* confirms the Civil Contempt Jurisdiction of this Court. In a Civil Contempt Proceeding, the onus is on the moving party to prove the elements of contempt beyond a reasonable doubt. I have considered all of the evidence and essentially I will start by giving you my disposition and then I will give you my

Reasons. I do find that the Respondent is in contempt of the order of Justice Hackland in a certain regard, and I will get back to this.

When I do my analysis, firstly and I will back track a bit, because the Respondent provided evidence, provided an affidavit, gave evidence in-chief, was cross-examined, as the onus is beyond a reasonable doubt, as there is an element of assessing her credibility, I applied - in my Reasons you will see I have applied a *W(D)* analysis. Which I realize is applicable to criminal matters, but because the onus is beyond a reasonable doubt, I have applied that analysis in this case to ensure that I do not invert the onus at any point in time and that I leave the onus where it should be, *i.e.* with the College. It is for the College to prove this case, and like I said they did prove it and now I will tell you why.

So firstly when I do the *W(D)* analysis, I do not believe the evidence of Ms. Stewart in her affidavit such as that evidence relates to the element of contempt. So for parts of her affidavit that relate to the elements of contempt, I do not believe her evidence and this is why. In her affidavit, Ms. Stewart denied performing laser services. However, when she was cross-examined she admitted that there were some instances where she did provide laser services to various patients. Another example, in her affidavit Ms. Stewart denied ever failing a health inspection. While in her cross-

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examination she admitted that in March of 2014,  
she was found not to be in compliance. Those are  
two instances of why I did not believe the  
evidence of Ms. Stewart in her affidavit or in-  
chief as it related to some of the elements of  
contempt.

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Secondly, when I continue with my analysis  
and considered all of her evidence and I look at  
does it leave me with a reasonable doubt, yes or  
no? For part of the case of contempt it leaves  
me with reasonable doubt and for other parts it  
does not. Hence my conclusion at the outset that  
I did find contempt, but I, when I do the *W(D)*  
analysis I am left with, on the second part of  
the analysis, I am left with reasonable doubt  
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only with regards to the self-administered  
treatment and the self-administered services that  
are described in the evidence of the College and  
admitted to by Ms. Stewart.

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So I am left with reasonable doubt only with  
regards to the self-administered treatments and  
services, or in other words, when I considered  
the evidence of Ms. Stewart, I am left with  
reasonable doubt with regards to that because the  
clarity of the order as it relates to self-  
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administered services, and I arrive at this  
conclusion because the text of the order, which  
to some extent mirrors the text of Section 27 of  
the *Regulated Health Professions Act and Code*,  
appears to be directed to an individual in the  
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sense of a third party.

For the purposes of this motion, I am not

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interpreting Section 27, I am just looking at in this instance is there proof beyond a reasonable doubt of contempt, and with this ground of contempt that was raised by the College, the self-administered services, with regards to that, when I do the *W(D)* analysis I am left with reasonable doubt when I consider the evidence of Ms. Stewart, that she did not understand the text of the order to prohibit her from doing that to herself. That is all I am deciding. I am not deciding how Section 27 of the *Regulated Health* should be interpreted, whether or not it is directed to the public, i.e. third parties or whether or not it is directed to a non-physician who does things to him or herself. I am not dealing with that. I am just looking at the clarity of the order. Is it sufficiently clear beyond a reasonable doubt? And I have a reasonable doubt on that point when I consider the evidence of Ms. Stewart.

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Now, when I continue with the *W(D)* analysis, when I consider all of the evidence, not just that of Ms. Stewart, but when I consider the evidence of the College and the materials of the College were extremely well put together, they are very thorough in how they presented the evidence. When I consider that evidence together with that of Ms. Stewart, both in her affidavit and in-chief, when I consider all of the evidence I am convinced beyond a reasonable doubt that the College has established Civil Contempt by Ms. Stewart of the 2014 order of Justice Hackland.

I arrive at this conclusion for the following reasons. The order, other than to what I have not found you in contempt of, the order is otherwise clear and that is amply demonstrated by the evidence and by the admissions made by Ms. Stewart to the private investigators. The order is otherwise clear. It is clear as to what it does. It is clear in the evidence of the College and it is clear in the admissions of Ms. Stewart.

Now in addition to that, Ms. Stewart clearly had knowledge of the existence of the order. And I go further, she clearly had knowledge of the effect of the order as it relates to third parties, and this is clear from the evidence of the College. It is clear from the fact that she had counsel at the time as well. And it is clear, particularly I have referred to the evidence of the College, but it is clear when you look at what was indicated to the private investigators by Ms. Stewart.

It is also clear in the evidence that Ms. Stewart intentionally breached the 2014 order. She did this firstly by offering for sale, Botox, as part of her treatment to Ms. Lucre (ph). She did this as well by intending to administer Botox into Ms. Lucre and offering to do so to Ms. Bernard as well. It is clear in the evidence that Ms. Stewart admitted. She admitted doing so to others as well. Such that these instances with the private investigators are not isolated events. That is clear to me when I look at all of the evidence.



I accept the evidence of the private investigators in this regard and I disregard the evidence of Ms. Stewart to the extent that she contradicts this *vis a vis* third parties, *i.e.* regularly offering such services to third parties. I disregard that, as I find it not credible for the reasons I have indicated earlier. Indeed, I accept that Ms. Stewart admitted to Ms. Lucre that she injected Botox to third parties or in third parties quite frequently. There was a mention of how often per week, but for the purposes of this motion it is certainly clear that she did so - she admitted doing so quite frequently to third parties.

So these are my findings and these are my Reasons now with regards to disposition, before I deal with this, I think the College wanted to speak to me first, correct?

\* \* \* \* \*

...PROCEEDINGS CONTINUE (not transcribed)

Certification

**FORM 2**

Certificate of Evidence

*Evidence Act*, subsection 5(2)

5 I, Lorenzo Patino, certify that this document is a true and  
accurate description of the recording of the College of  
Physicians and Surgeons of Ontario v. Eve Stewart in the  
Superior Court of Justice held at 161 Elgin Street, Ottawa,  
10 Ontario on Monday, June 5<sup>th</sup>, 2017 taken from Recording No.  
0411\_CR20\_20170605\_094340\_\_all-chs.dcr, which has been  
certified in Form 1.

15 July 7<sup>th</sup>, 2017

. . . . .

(Lorenzo Patino)

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