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Still in contempt

Appeal by Great Glasses founder denied, court upholds \$50,000-a-day fine

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The Hamilton Spectator

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Ontario's Court of Appeal has handed Dundas optician Bruce Bergez another resounding defeat.

The panel of three justices unanimously ruled that it's entirely appropriate for Bergez, his wife and three of their companies to be fined \$50,000 a day since November 2006 for operating in violation of Ontario health regulations.

The outstanding fines against Bergez now total more than \$38 million.

Bergez is the founder of the Great Glasses chain of stores, which operates throughout southern Ontario. It's the second time the Court of Appeal has unanimously ruled against Bergez.

Bergez was seeking to overturn part of a November 2006 finding of contempt in Hamilton court that led to the largest fine for a civil contempt case in Canadian history.

Bergez had been fined \$1 million and a further \$50,000 a day for every day since that he hasn't been in compliance with Ontario legislation that governs the prescribing and dispensing of eyeglasses and contact lenses.

In October, the Court of Appeal upheld the \$1-million fine, and yesterday, the appeal court also upheld the \$50,000-a-day component of the fine.

"The brazen nature of the appellants' contempt, its lengthy and ongoing nature, and the risk to the public health and safety posed by the appellants' conduct demanded a substantial fine that would act as a strong disincentive to the continuation of this kind of conduct," the judges wrote.

Eyeglasses and contact lenses must be dispensed by a registered optician based on a prescription supplied either by an optometrist or a physician.

Under the Great Glasses business model, the only optician listed for the entire chain had been Bergez, who has been suspended as an optician since late 2006.

A hearing by the College of Opticians into his disciplinary case concluded Friday, and a five-person panel is now deliberating on Bergez's professional fate.

Bergez and Great Glasses outlets have been repeatedly ordered to abide by Ontario's health regulations and to stop dispensing eyeglasses based on eye tests conducted on a computerized machine without a proper prescription.

The stores were also ordered to post notices that customers must have a proper prescription from an optometrist or physician.

The judges stated in yesterday's decision that Bergez, his wife and their companies were well aware of the financial risk they faced.

"The appellants are business people," the court wrote. "One can only assume that they judged the financial risk associated with non-compliance and deemed that risk worth the potential financial gain occasioned by continued operation in violation of the court order.

"The fact that the appellants, having been fined \$1,000,000, carried on their operation in violation of an order knowing that they faced potentially huge penalties, speaks loudly to the need for a very significant penalty."

The appeal court also ruled that Bergez must pay \$42,000 in costs to the College of Optometrists, which launched the original case.



The College of Opticians said it was happy with the decision but frustrated with the length of time the case has dragged on.

"Ultimately what we wanted was for them to comply with the law and have opticians in their stores," said Caroline MacIsaac-Power, registrar for the college.

"I think that really now they have two choices: to simply comply with the law and get an optician and use proper methods for obtaining a prescription, or close the store.

"At this point, we're not going to stop until one of those two things happens," she added.

A lawyer representing Bergez could not be reached for comment.

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