

75-day house arrest ordered for contempt in a defamation case

Contempt of Court | Defamation | Litigation | Litigation & Dispute Resolution | Torts

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In a previous [blog dated 30 June 2022](#), my colleague James Cook wrote about the award granted to a university instructor who was defamed on Twitter by a political activist, CH. The case was *Post v. Hillier*, 2022 ONSC 3793 (CanLII). In an addendum to the decision, Mr. Cook noted that CH had been found in contempt of court for failing to obey the original order and that she was ultimately sentenced to 75-days house arrest, with probation to follow. This blog expands on the issue of sentencing for contempt based on this case.

Civil contempt is a procedure that is used to ensure that a court order is obeyed. Where a party to litigation fails to obey a court order, a motion can be brought to hold the party in contempt of court. Courts have noted that their orders must be obeyed otherwise the justice system will be ineffective. In *Mercedes-Benz Financial v. Ivica Kovacevic*, 2009 CanLII 9423 (ONSC), the court stated as follows:

...When a person deliberately fails to obey a court order, he shows disregard for the obligations which he owes to others in his community, disrespect for his community's system of justice which enforces those obligations, and disdain for the fundamental principle that all persons live in our community do so subject to the rule of law. By disobeying a court order, a person seeks to place himself above and beyond the law of his community. The disobedience also creates conditions of gross inequality, rewarding those who turn their backs on the law, while placing burdens on those who follow the law...

CH was found to have defamed the university instructor in a series of Tweets posted on Twitter. The posts began in November 2021. While the university instructor sought a resolution that would not involve the courts, she was ultimately required to commence an action for defamation because CH refused to stop her defamatory campaign. As reviewed in Mr. Cook's excellent blog, the court granted a default judgment against CH and ordered her to:

- remove any content about the instructor from her social media accounts;
- refrain permanently from communicating any further false or disparaging statements about the instructor; and
- post a retraction that her only online statements about the instructor were false.

CH did not comply with this order and instead tweeted 10 additional defamatory statements about the instructor on the same day as the order. Although the instructor's lawyer put CH on notice of the court order, CH continued to disobey it thereby causing the instructor to bring a motion for contempt of court. In *Post v. Hillier*, 2022 ONSC 5253 (CanLII), the court found CH in contempt.

In *Post v. Hillier*, 2022 ONSC 6005 (CanLII), the court dealt with sentencing against CH for the contempt.

The instructor contended that the court could impose a wide range of sentences against CH, including imprisonment. The instructor explained that she had suffered financial loss as a result of being required to pursue her action against CH and to pursue contempt of court proceedings. In a victim impact statement, the instructors described that she had also suffered physical and mental distress as a result of CH's defamatory campaign.

Courts have an inherent jurisdiction to enforce and punish violations of court orders. [Rule 60.11\(5\)](#) of the *Rules of Civil Procedure* also empowers courts to impose sanctions against a contemnor. Under the Rule, the court can order that the contemnor:

- a) be imprisoned for such period and on such terms as are just;
- b) be imprisoned if the person fails to comply with a term of the order;

- c) pay a fine;
- d) do or refrain from doing an act;
- e) pay such costs as are just; and
- f) comply with any other order that the judge considers necessary, and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

CH sought clemency. Among other things, CH showed that she had no prior criminal record, that she was a single mother of two school-aged children, that she lived with her parents, that she had filed for bankruptcy and that she earned very little income.

In crafting a sentence for contempt of court, courts are guided by the principles of sentencing used in criminal law. Those principles require a sentence:

- a) to be proportionate to the gravity of the offence and the degree of the responsibility of the offender;
- b) to be increased or decreased to account for aggravating or mitigating factors surrounding the contempt or the contemnor;
- c) to be similar to sentences imposed on similar contemnors, commonly referred to as the parity principle;
- d) to denounce unlawful conduct, commonly referred to as the principle of denunciation;
- e) to promote a sense of responsibility in the contemnor, and deter the contemnor and others from defying court orders, commonly referred to as the principles of specific and general deterrence;
- f) to assist in the rehabilitation of the contemnor;
- g) to provide reparation for harm done to victims to the community; and
- h) to be reasonable keeping in mind that all available sanctions other than imprisonment should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

In contrast to the purpose of a criminal sentence which is designed to punish the offender, a sentence for civil contempt is designed to ensure compliance with a court order and to enforce the rights of a private party.

The court explained that in CH's case there were both aggravating and mitigating factors that needed to be considered. The aggravating factors included the wilful nature of the breach of the initial court order, the nature of CH's statements, CH's delay in purging the contempt, the negative impact on the instructor caused by the defamation, and CH's lack of credibility.

The mitigating factors were CH's personal circumstances and the fact that she ultimately did purge the contempt and issued an apology.

Even though CH had purged the contempt, the court was still obligated to impose a sentence. As recognized in *McLean v. Sleigh*, 2019 NSCA 71 (CanLII), sentences are still required in cases where a party ultimately purges a contempt because otherwise a person could wait until shortly before sentencing to do so. In this case, CH waited until four days before the sentencing hearing to purge her contempt.

In the result, the court imposed a sentence against CH that was akin to a conditional sentence. CH was sentenced to 75-days house arrest, whereby she was not allowed to leave her home except for certain restricted reasons. She was also ordered, among other things, to remain in Ontario, and to not make any online statements about the instructor, including any defamatory statements. Further, the court made an order akin to a probation order by requiring CH, after her sentence was completed, to complete 120 hours of community service, comply with the initial court order and refrain from making any statements, including defamatory statements, about the instructor, whether online or in speaking with other persons.

The restraint against CH from making any further defamatory statements about the instructor was permanent, as set out in the court's original order.

The key takeaway from this case is that a person who is found to have defamed someone must ensure that they abide by a court's order. Where a court orders the removal of defamatory statements from social media accounts and/or grants an injunction to prohibit any further defamation, the party against whom the order is granted should take immediate steps to comply and cease from making any further defamatory comments. Either ignoring the order or delaying to comply with the



order will expose the disobeying party to potential imprisonment, fines and/or other sanctions. As we continue to see more cases involving online defamation and the granting of injunctions to remove defamatory statements from social media, it will be interesting to see if courts will be required to deal with more contempt orders in defamation cases and if courts will impose hefty sentences for contempt. A PDF version is available to download [here](#).

If you require any litigation assistance, our **Dispute Resolution Group** lawyers are available to assist you. Please contact **Stephen Thiele** at 416.865.6651.

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