

# KEEPING CURRENT

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## Defamer gets 18 month jail sentence for contempt of court

By Stephen Thiele

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In the law of defamation, we only tend to think about the damages that are awarded for a person's loss of reputation or the intellectual analysis conducted by a court in assessing the defences raised by an alleged defamer. However, in some cases the ultimate award granted by a court does not necessarily end a matter, particularly where a defamer continues to publish inappropriate comments about the person defamed. In circumstances where a court has made an order prohibiting a defamer to continue his or her wrongful conduct, but the defamer ignores the order, the court can hold the defamer in contempt of court and impose the ultimate punishment of imprisonment.

This was the result in [\*Paramount Fine Foods v. Johnston\*, 2021 ONSC 6558](#).

In this case, the individual plaintiff and his company had brought a defamation claim for numerous statements made by the defendant in 2017 and 2018 about the individual plaintiff and his restaurant. In the defamation action, the court found that the defendant had made

numerous false and malicious statements about the plaintiffs. The plaintiffs were awarded damages and a permanent injunction prohibiting the defendant from continuing to defame the plaintiffs.

However, the defendant, who was a social media performer and who styled himself as a journalist, continued to make comments about the plaintiffs on his internet broadcasts. In those broadcasts, the defendant referred to the individual plaintiff as being a "baby killer" and a "terrorist".

On a contempt of court motion, it was determined that the defendant had breached the original court order, which had not been appealed. The court specifically found as follows:

In ignoring the court's order, and continuing his unfounded, illegal, and untruthful attacks on [the individual plaintiff], [the defendant] shows contempt for the rule of law, for the court, and for the promises of equality, decency, and good will to our

neighbours that are so integral to Canadian society.

This is not a case in which to exercise discretion to withhold a contempt finding. This is a case that requires the court to ensure that its orders are obeyed going forward and that the past breaches be addressed.

The court found that the defendant had continued to defame the plaintiffs six times and was therefore in contempt of court.

Despite this finding, the defendant continued to deny that he had defamed the plaintiffs.

As well, on the day before the sentencing hearing, the defendant delivered an affidavit in which he tried to prove that the individual plaintiff had links to international Muslim terrorism. The court stated at [paragraph 44](#) that the affidavit was a stream of allegations based on undisclosed hearsay and inferences from undisclosed speculation. The defendant had also linked the current Prime Minister of Canada, former Premier of Ontario Bob Rae, former Attorney General Yasir Naqvi, and many others to the conspiracy of international Muslim terror.

At [paragraph 48](#), the court said: “None of the allegations about [the individual plaintiff] are admissible as they are both irrelevant and not first-hand evidence. His conclusory speculative allegations are the stuff of internet conspiracy theories and are not admissible as evidence.”

Rule 60.11 of the [Rules of Civil Procedure](#) governs sentencing for contempt of court. As determined in cases such as [Estate of Paul Penna, 2010 ONSC 6993 at paragraph 34](#), the following factors are to be considered for sentencing for contempt of court:

- (a) the gravity of the offence;
- (b) the need to deter the contempt;
- (c) the past record and character of the respondents; in particular whether the alleged contemnor has committed previous contempts;
- (d) the protection of the public;
- (e) the successful party’s ability to realize on the judgment; and
- (f) the extent to which the breach was intended.

A court also possesses a wide range of options in determining the scope of the sentence that is to be imposed in a civil contempt and is directed by section [718.2\(a\)\(i\) of the Criminal Code](#), which provides:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing;
  - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other factor.



Under the [Criminal Code](#), a court is also required to consider a victim impact statement. In this case, the individual plaintiff provided such a statement. The National Council of Canadian Muslims filed a Community Impact Statement as well.

In the circumstances, the plaintiffs sought a jail sentence of 24 months based on consecutive sentences of four months for each of the defendant's six acts of contempt of court.

After commenting that one of the goals of sentencing was to coerce compliance with a court's order and that the defendant had been shown to not accept the legitimacy of the order or the court system and was unwilling to accept responsibility for his actions, the court concluded that an appropriate sentence was 18 months.

The plaintiffs and the public were to be protected, and the only way of doing so, in the view of the court, was to impose a jail sentence against the defendant.

The length of the sentence was based on three months for each of the six acts of contempt of court. At the end of the first 15 months, the court ordered that the defendant was to return to court for a reconsideration of the sentence and whether it should be varied based on whether the defendant purged his contempt between the time of the court's sentencing order and his return to court.

As a matter of principle, court orders are to be followed. If court orders are not followed, the rule of law is eroded and courts, as stated in *777829 Ontario Ltd. v. McNally* (1991), 9 C.P.C. (3d) 257 (Ont. Gen. Div.) (not available on CanLII), "...will have no real meaning."

Accordingly, the key takeaways from this case are that in the law of defamation, court orders, particularly injunctions that require a person to discontinue defaming a victim, must be obeyed and that the failure to obey such an order might result in the defamer being found in contempt and being subject to imprisonment.

### Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact the Chair of our dispute resolution group, **Stephen Thiele**, at 416.865.6651 or via email at [sthiele@grllp.com](mailto:sthiele@grllp.com).

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