

**CITATION:** Paramount Fine Foods v Johnston, 2021 ONSC 5285  
**COURT FILE NO.:** CV-17-580326  
**DATE:** 20210729

**ONTARIO SUPERIOR COURT OF JUSTICE**

**RE:** PARAMOUNT FINE FOODS *et al.*, Plaintiffs

-and-

KEVIN J. JOHNSTON *et al.*, Defendants

**BEFORE:** F.L. Myers J.

**COUNSEL:** *Jonathan C. Lisus and Niklas Holmberg*, for the plaintiffs.  
*Kevin J. Johnston* representing himself.

**HEARD:** July 28, 2021

**ENDORSEMENT**

**This Motion**

- [1] The plaintiffs have brought a motion to hold Mr. Johnston in contempt of court for allegedly violating the order made by Ferguson J. dated May 13, 2019, with reasons reported at 2019 ONSC 2910.
- [2] For the reason that follow, I find that the plaintiffs have proven beyond a reasonable doubt that Mr. Johnston has knowingly committed several breaches of the order made by Ferguson J. and that the breaches amount to contempt of court.
- [3] I convene a case conference by video conference on August 10, 2021 at 3:00 pm EDT (1:00 pm MDT) to schedule the sentencing hearing. The Court will provide telephone and videoconference details to the parties for the case conference.

**Background**

- [4] In my first case conference endorsement dated April 28, 2021, reported at 2021 ONSC 3191, I described this motion as follows:
  - [2] In her decision, Ferguson J. found Mr. Johnston had defamed the plaintiffs. She adjudged the defendants liable to pay \$2.5 million in

damages. In addition, she granted permanent injunctions against the defendants prohibiting them from approaching the plaintiffs and their lawyer and from publishing defamatory statements about the plaintiffs or their lawyers.

[3] Ferguson J. found that Mr. Johnston is a prolific and determined publisher of content on websites and social media platforms. The plaintiff alleges that Mr. Johnston has recently continued to defame him and his counsel online by saying things prohibited by the order made by Ferguson J.

[4] Ferguson J. discussed how the Mr. Johnston had used his internet platform to disseminate hate towards the plaintiffs as Muslims. She found:

Motivated by ignorance and a reckless regard for acceptable norms, the Johnston defendants' behaviour reflects a contempt for Canada's judicial process, an abuse of the very freedoms this country affords them and a loathsome example of hate speech at its worst, targeting people solely because of their religion. Left unchallenged, it poisons the integrity of our democracy.

[5] Ferguson J. made the following orders (among others):

[94] The Johnston defendants are permanently restrained, or anyone acting on their behalf, direction, or in conjunction with them, from:

(e) disseminating, posting on the Internet, publishing, or broadcasting in any manner whatsoever, either directly or indirectly, any defamatory statements concerning the plaintiffs or its officers, directors, shareholders, employees or related entities.

[95] The Johnston defendants are permanently restrained, or anyone acting on their behalf, direction, or in conjunction with them, from:

\* \* \*

(c) video or audio recording or photographing, or attempting to video or audio record or photograph anyone from Lax O'Sullivan Lisus Gottlieb LLP; and

(d) disseminating, posting on the internet, publishing or broadcasting in any manner whatsoever, either directly or indirectly, any defamatory statement concerning Lax O'Sullivan Lisus Gottlieb LLP.

[6] Ferguson J. also left no doubt what she found were defamatory statements and were therefore prohibited. She wrote:

[53] Justice Nakatsuru further held that the defendants' expressions shared "all the essential hallmarks and attributes of an expression that is not worthy of protection" blaming members of the group for the current political problems in society alleging they are a powerful menace, carrying out secret conspiracies, or plotting to destroy civilization; labelling them as criminals, parasitic, or pure evil; equating the targeted group with groups traditionally reviled in society such as child abusers or deviant criminals; and dehumanizing the targeted group by describing them as animals, lesser creatures, or the like.

[54] The other false and malicious statements published by the Johnston defendants throughout 2017 and 2018 also bear the hallmarks of hate. Among other things, the Johnston defendants' statements: refer to Mr. Fakhri as a "Muslim business owner" or a "Muslim man" who discriminates against "white" or Christian people; accuse the plaintiffs of conspiring to take down the Johnston defendants' online accounts and working with politicians and law enforcement officials to sabotage Mr. Johnston's political aspirations; accuse the plaintiffs of "nefarious" activities and funding/supporting terrorist organizations "so they can cut babies in half"; further accuse the plaintiffs of working "very closely with the Pakistani spy agency to bring not just [Mr. Johnston] down but you down and all of Canada down too".

**[55] The impugned statements are defamatory.**

[Notes omitted. Emphasis added]

[7] I convened a case conference to schedule the contempt motion. Mr. Johnston is currently in Calgary where he says he is running for election as mayor. He attended the case conference by telephone.

[8] Mr. Lisus provided a video clip of Mr. Johnston indicating to his internet audience that he intended to use the case conference to ask for a lawyer and he was good to his word. He told me that he did not understand the proceedings and he wants to retain a lawyer. He said he would apply for legal aid today.

[9] Although he says he wants to retain counsel, as he is currently a self represented party, I felt it was important to explain a few things about the proceeding process to Mr. Johnston. I told him that the plaintiffs claim that he has violated Justice Ferguson's order. I read to him paras. 53 to 55 of the order and explained to him that Ferguson J. has already determined what words are defamatory and prohibited. This hearing will not be about whether the words that Mr. Johnston has now published are "defamatory". Rather, the plaintiff needs to prove that Mr. Johnston has published words that were prohibited in letter or in spirit by the judge's order.

[10] I also explained to Mr. Johnston that he has the right to remain silent. If he wishes he can file written evidence or he can give or call others to give live evidence at the hearing.

[11] I also told Mr. Johnston that while I was not requiring him to say anything, if I knew that between now and the date of the hearing of the motion, he would not publish any words that could be considered prohibited by the injunction, it would be easier to provide him more time to prepare. I have not made any effort to compare to the order of Ferguson J. to the evidence of what the plaintiffs claim Mr. Johnston has said to date. I am not talking about whatever Mr. Johnston may or may not have said that led the plaintiffs to bring this motion. But I asked if he had anything to tell me to give me confidence in granting him an adjournment. He quite properly chose to await representation by a lawyer before responding.

### **Adjournment Request Denied**

[5] Mr. Johnston brought a motion seeking an adjournment of the hearing. He says that he would like to be represented by counsel. He was represented in his recent contempt of court hearing in Alberta by Ontario lawyer Ian McCuaig. But Mr. Johnston says he has no funds to retain Mr. McCuaig for this hearing. Third parties apparently donated funds to pay for Mr. McCuaig's services in Alberta.

[6] In my endorsement dated April 28, 2021, I urged Mr. Johnston to seek counsel as follows:

Finally, I explained to Mr. Johnston that this is a serious matter. Although Mr. Lisus advises that Mr. Johnstone has not availed himself of the right to be represented by counsel up to this point in the proceeding, I urge him to do so now. Should a court make a contempt finding, sentences can include all manner of legal punishments including a jail term.

[7] I convened a case conference on May 3, 2021 at which the contempt motion was to be scheduled. At Mr. Johnston's request, it was adjourned to May 17, 2021 to await the outcome of Mr. Johnston's application for a Legal Aid Certificate.

[8] On May 17, 2021, the motion was scheduled for June 30, 2021. Mr. Johnston did not attend that case conference as he was imprisoned in Alberta at the time. On June 24, 2021, the date and filing schedules set on May 17, 2021 were deferred at Mr. Lisus's motion to accommodate the period of Mr. Johnston's incarceration.

[9] Mr. Johnston was released from jail in early July. He participated in his Alberta contempt proceeding with Mr. McCuaig a few days later.

[10] Mr. Johnston advises that his application for a Legal Aid Certificate in this proceeding was denied.

[11] Mr. Johnston has delivered an affidavit in support of his request for an adjournment. Mr. Johnston says that he is facing a contempt motion in another proceeding in the Central West Region of this court. In that proceeding, Mr. Johnston will be asking Lemay J. to order the government to pay for counsel on Mr. Johnston's behalf under the *Charter of Rights*. That application has not yet been brought. It is scheduled to be heard in the fall.

[12] Mr. McCuaig is acting for Mr. Johnston on criminal charges in Brampton. Mr. McCuaig has also attended several case conferences in the contempt proceeding in Central West on Mr. Johnston's behalf. Mr. McCuaig is also preparing and acting on the application for funding for Mr. Johnston.

[13] Mr. Johnston has exhibited to his affidavit a letter from Mr. McCuaig in which Mr. McCuaig indicates his willingness to represent Mr. Johnston in this proceeding “once retainer [*sic*] has been finalized”. To that end, Mr. McCuaig writes:

... I am confident that a success before Justice Lemay would be enough to convince Crown Law Office Civil to provide funding in this matter as well.

[14] Mr. Johnston has not applied for funding for counsel in this motion. Rather, his ability to appoint Mr. McCuaig as his counsel in this proceeding is said to depend on the outcome of a proceeding that will be brought elsewhere in the fall. If that proceeding succeeds, then there will need to be a negotiation with the government as to whether the decision in the other matter should also apply in this matter. Mr. McCuaig’s unsworn prediction of that outcome is positive. It is realistic however to note that this will take many months and that the retainer of Mr. McCuaig in this proceeding requires at least two and perhaps more positive outcomes elsewhere.

[15] Mr. Lisus argues that it is not in the interests of justice to grant the adjournment as sought. He submits that on the evidence from Mr. Johnston’s own mouth, he is engaging in a tactical approach to make a mockery of the court’s process.

[16] After being served with the contempt motion and knowing that a case conference was being held on April 28, 2021, Mr. Johnston broadcast the following statement on his online show on April 26, 2021:

To give you an example of how stupid some of these judges in Ontario are, I've got a really, really awful loser lawyer -- and I'm going to talk about him at a later time -- who's wanting me to come into a conference. And he wants me to talk to a judge without a lawyer. Are you kidding me?

So, no. I'm going to -- yeah, exactly. But the judges are letting this type of stuff happen. So, I'm going to jump on the call -- most likely, it's going to be live here -- and tell them flat out, lawyer, lawyer, lawyer, lawyer, lawyer, I want -- I want a lawyer. I want lawyer. Lawyer, lawyer, lawyer. And there we go.

So, judges, they -- especially in Ontario -- they do not bother with the rule of law anymore...

[17] Then, on May 7, Mr. Johnston broadcast the following:

So, for my enemies out there, understand this: I have been beat up by the government itself for four and a half years now. Do you guys not think I'm fed up? I'm fed up. So I'm coming after all of you. Every legal measure that I have available to me, I'm going to use, with my goal to destroy you financially.

Remember this: **I don't hire lawyers for any civil case whatsoever; it's just me. I've learned more than my fair share of how the legal system works, and when I get people on the stand, they fold up pretty fast. I am very, very good at cross-examinations in a courtroom. You don't want to be in a courtroom with me.**  
[Emphasis added.]

[18] Mr. Lisus submits that Mr. Johnston has had ample time to retain a lawyer. His “lawyer, lawyer, lawyer” plea is a cynical abuse knowing that he does not want a lawyer but that the court bends over backwards to try to accommodate such requests. Mr. Lisus submits that it is evident from Mr. Johnston’s broadcasts that he uses his request for a lawyer and his pretense of not understanding the process to mock the court system for his own political ends – including continuing to defame Mr. Fakhri in face of an express order forbidding him from doing so.

[19] Mr. McCuaig attended the hearing for the adjournment argument but he did not make submissions. Mr. Johnston submitted that when he referred to his ability in court he was referring only to Small Claims Court cases. This is neither consistent with the words Mr. Johnston used nor admissible evidence.

[20] Mr. Johnston offered to work with Mr. Lisus during the period of an adjournment to remove broadcasts from the internet to which the plaintiffs object. He complains that Mr. Lisus has not sent him a list of the offending broadcasts. However, the motion materials and factum go through each offending broadcast one at a time in detail. Remarkably, Mr. Johnston submitted that he had not read the motion materials at all.

[21] In *Bhimji Khimji v. Dhanani*, 2004 CanLII 12037 (ON CA), in his dissenting opinion, Laskin JA discussed a judge's discretion to adjourn proceedings:

In exercising this discretion, however, the trial judge should balance the interests of the plaintiff, the interests of the defendant and the interests of the administration of justice in the orderly processing of civil trials on their merits. In any particular case, several considerations may bear on these interests.

[22] In that case, Laskin JA discussed the following factors as relevant to the adjournment request in that case:

1. The overall objective of civil proceedings: a just determination of the real matters in dispute
2. Prejudice caused by refusing or granting an adjournment
3. Mr. Khimji's ability to pay the costs ordered on November 12, 2002
4. Mr. Khimji's explanation for not being ready for trial on December 16, 2002
5. The length of the adjournment requested and disruption to the court's trial schedule

[23] I also take into account that Mr. Johnston is self-represented. In *Toronto-Dominion Bank v. Hylton*, 2010 ONCA 752 (CanLII) the Court of Appeal also added:

39. Once again, the fact that a party is self-represented is a relevant factor. That is not to say that a self-represented party is entitled to a "pass". However, as part of the court's obligation to ensure that all litigants have a fair opportunity to advance their positions, the court must assist self-represented parties so they can present their cases to the best of their abilities.

[24] Throughout the steps leading to the hearing, I took care to ensure that Mr. Johnston had the information that he required to participate in the hearing in case he was not represented at the hearing. I explained the issues on the first day and then, in successive endorsements, I explained the manner by which Mr. Johnston could present evidence and file legal argument.



- [25] I do not accept that Mr. Johnston does not understand the proceeding. He has just been through a contempt proceeding in Alberta and has another pending before Lemay J. of this court. He knows that he is alleged to have repeated words in his online shows that he was prohibited from broadcasting by the order of Ferguson J.
- [26] Just as I was required to fulfill my obligations toward Mr. Johnston as a self-represented litigant, he too was required to take steps to participate in the process. The Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons*, provides the following:
1. Self-represented persons are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case.
  2. Self-represented persons are expected to prepare their own case.
  3. Self-represented persons are required to be respectful of the court process and the officials within it. Vexatious litigants will not be permitted to abuse the process.
- [27] If Mr. Johnston actually never read any of the evidence or the factum of the plaintiffs, then that problem lies at his feet.
- [28] In any event, I do not accept that Mr. Johnston did not read any of the material. In his detailed oral submissions on the merits (after I denied the adjournment), Mr. Johnston took me through the plaintiffs' factum on a paragraph-by-paragraph basis responding to each of the six specific incidents of alleged contempt. He had no lack of familiarity or lack of facility with the facts and issues as set out in the factum.
- [29] The discretion to adjourn requires the balancing of disparate factors. In my view, a just determination on the merits is both possible and appropriate at this time. Mr. Johnston did not lead any evidence. The evidence against him is his own broadcasts as enshrined on the internet.
- [30] Mr. Johnston's request for counsel at this time is open-ended temporally. It depends on a positive outcome in the case before Lemay J. and then the government agreeing to extend that outcome to this case. If Lemay J. denies relief or if the government says that this case is different, then this case will have waited for months for nothing.

- [31] Meanwhile, Mr. Johnston is alleged to have continued to defame Mr. Fakh even after this contempt proceeding was brought. He gives no undertaking to discontinue during the period of any adjournment. In fact, he denies speaking of or concerning Mr. Fakh and says that even if he made a few bad statements out of all his hours of broadcasting, they are just a drop in the bucket.
- [32] I disagree. Mr. Fakh is entitled to a timely hearing on the allegations that Mr. Johnston has violated the court's order. If Mr. Johnston is continuing to violate the injunction granted by Ferguson J. and defaming Mr. Fakh as alleged, the interests of justice require that the matter be heard and resolved.
- [33] Mr. Johnston relies on the period of time that he was incarcerated in Alberta as well. But, if he had not read the material and did not want to present evidence, then there was nothing for him to do during that period beside retaining Mr. McCuaig. And he was able to do that sufficiently to have Mr. McCuaig act for him in Alberta, in criminal charges in Brampton, and for several case conferences with Lemay J. or other judges in the Central West Region on the other contempt matter.
- [34] I do not need to find that Mr. Johnston's "lawyer, lawyer, lawyer" statement was in bad faith or was designed to abuse the process of the court. In my view, the issues raised by the plaintiffs are important and require resolution. Mr. Johnston was provided with three months to obtain counsel (despite his indication that he does not use counsel in civil matters) and to accommodate his time in jail. I have ensured that he had information about how to participate in this motion in case he remained self-represented.
- [35] Mr. Fakh risks prejudice if the matter is adjourned and Mr. Johnston makes further statements that turn out to be violations of the order made by Ferguson J. Moreover, that outcome would be contrary to the interests of the administration of justice as well.
- [36] At the hearing on July 28, 2021, I gave brief oral reasons denying the adjournment. I said that Mr. Johnston has already had more than a fair opportunity to consult and retain counsel. Legal Aid has already denied Mr. Johnston funding. I noted that Mr. McCuaig was not prepared to act without Mr. Johnston bringing a separate proceeding before Lemay J. which did not have any certainty of outcome or timing.
- [37] For those reasons, as expanded upon above, it was my view that it was not in the interests of justice to adjourn the proceeding.

## Contempt

- [38] The plaintiffs bear the burden to prove the contempt beyond a reasonable doubt. They must show that the order on which they rely was clear and unequivocal. They need to show that Mr. Johnston had knowledge of the order. And they need to show that Mr. Johnston violated the order intentionally. See: *Carey v Laiken*, 2015 SCC 17, at paras. 32 to 35.
- [39] In my April 28 endorsement above, I recited paras. 53 and 54 of the reasons for judgment of Ferguson J. that set out with clarity the statements made by Mr. Johnston that she found to be defamatory. Mr. Holmberg makes reference to paras. 19, 22, 23, and 31 of the decision as well.
- [40] Mr. Johnston chose not to give evidence at the hearing. I had advised him of his entitlement to do so in pre-hearing endorsements. The evidence of the plaintiffs is therefore uncontradicted.
- [41] Mr. Johnston did not adduce any evidence or make any submission that he did not understand what the judge ordered. Neither did he deny knowing of the order. He made numerous statements about the plaintiffs' \$2.5 million judgment online that preclude that possibility in any event.
- [42] In making findings about a lack of evidence from Mr. Johnston here and below, I am mindful of the burden of proof. At all times, the burden remains on the plaintiffs to prove the constituent elements beyond a reasonable doubt. There is no burden on Mr. Johnston and I draw no negative inference from his remaining silent. In commenting on the absence of evidence, I am merely stating that there was no doubt raised in admissible evidence that would then require me to weigh whether the plaintiffs' evidence was sufficient to meet their burden.

## February 20, 2021

- [43] On February 20, 2021, Mr. Johnston told a rally in Alberta that he had run for mayor of Mississauga against Bonnie Crombie. He continued:
- She had a good friend of hers sue me for \$2.5 million. Why? Because I went to the war zone in Myanmar and I proved that he was funding terror groups in Myanmar slaughtering Buddhist, Hindus, and Christians.
- [44] In making this statement publicly, Mr. Johnston repeated the allegation found defamatory by Ferguson J. at para. 54 of her reasons that Mr. Fakh was....:

...working with politicians and law enforcement officials to sabotage Mr. Johnston's political aspirations; accuse the plaintiffs of "nefarious" activities and funding/supporting terrorist organizations...

- [45] Mr. Johnston says that the statement was cherry-picked and it might have been taken out of context. He also notes that he did not refer to Mr. Fakh by name.
- [46] All of those points are matters for evidence. Mr. Johnston has had since April to scour his own internet postings and the videos of his shows to find any contextual issues that might alter or provide nuance to the plain meaning of the words he used. He also had the time to put into evidence the name of anyone else whom he says was friends with Ms. Crombie and who sued him for \$2.5 million.
- [47] I have no hesitation finding beyond a reasonable doubt that the statement was referring to Mr. Fakh in light of its specificity.
- [48] Accordingly, this statement fell squarely within the injunction prohibiting Mr. Johnston from making defamatory statements concerning Mr. Fakh as particularized at para. 54 of the reasons given by Ferguson J. Mr. Johnston knew about the order. He knew the statement has been found to be defamatory. And I find that he uttered the statement intentionally and of his own free will.
- [49] Mr. Johnston submits that he never intended to violate the order made by Ferguson J. Absent sworn evidence and cross-examination, I can give this submission no weight. In any event, Mr. Johnston's motive is irrelevant. As discussed in *Carey* at para. 38, in civil contempt, the issue is whether the plaintiffs have established beyond a reasonable doubt that the act that is said to amount to contempt was an intentional act. They are not required to prove that Mr. Johansson intended to breach the order. Having seen the video clips, I am satisfied that Mr. Johnston intended to make the statement he made.
- [50] Therefore, I find the claim of contempt proven beyond a reasonable doubt on this statement.

**March 18, 2021**

[51] In his broadcast show on this date, Mr. Johnston complained about a report about him on Newstalk1010 radio in Toronto. He said the report was:

...talking about a lawsuit filed against me by a baby killer and a terrorist from three years ago.

[52] This lawsuit was commenced in 2017 – three years before the broadcast. Mr. Johnston repeated the “baby killer” statement again shortly after the first time. The allegations that Mr. Fakh was a terrorist and abused, cut up, and killed children were among those found defamatory by Ferguson J.

[53] Mr. Johnston submitted that one cannot tell from the words he uttered whether he was referring to Mr. Fakh. In addition, he again submitted that the words may have been taken out of context from a much larger broadcast.

[54] In my view, the words used leave listeners with no doubt as to whom they refer. As far as I know from the evidence, there is only one lawsuit in 2017 against Mr. Johnston from someone whom he brands a terrorist and child killer. He gave no evidence of anyone else to whom he might have been referring. Neither did he give evidence of any other words in his own broadcast that might alter the plain and ordinary meaning of the words he used.

[55] Accordingly, this statement fell squarely within the injunction prohibiting Mr. Johnston from making defamatory statements concerning Mr. Fakh as particularized at para. 54 of the reasons given by Ferguson J. Mr. Johnston knew about the order. He knew the statement has been found to be defamatory. He made the statement intentionally.

[56] Therefore, I find the claim of contempt proven beyond a reasonable doubt on this statement.

**April 1, 2021**

[57] In an April 1, 2021 broadcast on social media, Mr. Johnston was commenting on statement made about him in the wider media and said:

We know they get government donations from baby killers like that restaurant guy back in Ontario. We know that they get a lot of money from a lot of bad sources.

- [58] Mr. Fakh is the only restaurant owner in Ontario whom Mr. Johnston accuses of funding his political opponents and being a baby killer. There is no evidence of anyone else he could possibly be referring to. Again, both of these expressions are found to be defamatory in paras. 54 and 55 of the reasons of Ferguson J.
- [59] Accordingly, this statement fell squarely within the injunction prohibiting Mr. Johnston from making defamatory statements concerning Mr. Fakh as particularized at para. 54 of the reasons given by Ferguson J. Mr. Johnston knew about the order. He knew the statement has been found to be defamatory. He made the statement intentionally.
- [60] Therefore, I find the claim of contempt proven beyond a reasonable doubt on this statement.

**April 4, 2021**

- [61] On April 4, 2021, during his show broadcast on the internet, Mr. Johnston said:
- This gentleman, and I'll use that term loosely, worked with Yassar Acbi (ph) to send over \$360 million to ARSA, the Arakan Rohingya Salvation Army, who have slaughtered more than a hundred thousand innocent people in a land grab in Bangladesh and Myanmar. I was in that war zone, guys. If Mohamad Fakh goes to Burma, he will be arrested and executed for murder. That's what's going to happen.
- [62] In this statement Mr. Johnston named Mr. Fakh expressly and said he funded terrorists.
- [63] In para. 54 of her reasons, Ferguson J. found Mr. Johnston's allegations that Mr. Fakh works with a Pakistani spy agency to be defamatory. In para. 22 (c) she particularized one element of the claim was that Mr. Fakh's or his restaurants launder money through the Pakistani spy agency to fund the Arakan Rohingya Salvation Army.
- [64] Mr. Johnston submitted that he was told that Mr. Fakh would be arrested by an unnamed government official in Myanmar. Although that would not be admissible evidence of anything, the time to prove the truth of the allegation was at the summary judgment motion before Ferguson J. It is not open to Mr. Johnston to breach the order on the basis that he now alleges that the statement already found to be unlawful and defamatory was true.

- [65] Even if the issue of whether the statement was defamatory was open to argument on this motion, Mr. Johnston provided no evidence to support his allegation. His bald, unattributed hearsay submission cannot be tested by document production or cross-examination and is of no weight.
- [66] Mr. Johnston again submitted that he would need to see his whole video to assess the context of his statement. He has had three months to do so. They are his videos. He can look at them whenever he wishes. He presents no evidence today to show that the context gives the words he used a meaning other than their plain and ordinary meaning.
- [67] Accordingly, this statement fell squarely within the injunction prohibiting Mr. Johnston from making defamatory statements concerning Mr. Fakhri as particularized at para. 54 of the reasons given by Ferguson J. Mr. Johnston knew about the order. He knew the statement has been found to be defamatory. He made the statement intentionally.
- [68] Therefore, I find the claim of contempt proven beyond a reasonable doubt on this statement.

**April 10, 2021**

- [69] During his show broadcast on April 10, 2021, Mr. Johnston was discussing hate mail that he receives and said:
- It's all just hate mail. There's a lot of Antifa clowns that are really fascinated with the idea that a baby killing terror funder sued me for two and half million bucks and won because they had a Sharia-compliant judge and I didn't have a lawyer at the time. Very fascinated on that, but it's junk so, yeah. Good-bye, Antifa.
- [70] Only Mr. Fakhri has a \$2.5 million judgment against Mr. Johnston. Allegations that Mr. Fakhri is a terror funder and child killer were held defamatory by Ferguson J. in para. 54 of her reasons.
- [71] Accordingly, this statement fell squarely within the injunction prohibiting Mr. Johnston from making defamatory statements concerning Mr. Fakhri as particularized at para. 54 of the reasons given by Ferguson J. Mr. Johnston knew about the order. He knew the statement has been found to be defamatory. He made the statement intentionally.
- [72] Therefore, I find the claim of contempt proven beyond a reasonable doubt on this statement

**May 14, 2021**

[73] After the first two case conferences in this motion had been held and Mr. Johnston was applying to Legal Aid for counsel on the allegations of contempt, he broadcast the following in his show on May 14, 2021

That's what's happened here, is the media brings out the crazies, and they know that that's what's going on. Just like Bonnie Crombie knew that when she was criticizing me publicly back at 2017 because I was objecting to -- to a select individual who was a confirmed terrorist being allowed to have any kind of political power in Southern Ontario, she divulged all that, called me racist, called me Islamophobic. And then I got attacked by a guy of a select ideology with a knife.

[74] Again, there is no doubt as to the identity of the “select individual” referred to by Mr. Johnston. There is no evidence of anyone else to whom he objected having a relationship with Ms. Crombie and political power, for which he was branded Islamophobic.

[75] Calling Mr., Fakhri a terrorist was held defamatory in para. 54 of the reasons of Ferguson J.

[76] Accordingly, this statement fell squarely within the injunction prohibiting Mr. Johnston from making defamatory statements concerning Mr. Fakhri as particularized at para. 54 of the reasons given by Ferguson J. Mr. Johnston knew about the order. He knew the statement has been found to be defamatory. He made the statement intentionally.

[77] Therefore, I find the claim of contempt proven beyond a reasonable doubt on this statement

**Discretion**

[78] Civil contempt is concerned principally with compelling compliance with an order as between the parties to a civil lawsuit. It is less concerned with retribution or criminal punishment. Judges are encouraged to exercise discretion to find a way to ensure compliance with the court's orders short of contempt in most cases. Contempt is said to be the remedy of last resort.

[79] At the hearing, Mr. Johnston offered to “work with” Mr. Lisus to identify and take down videos that contain statements to which the plaintiffs take issue whether found in contempt or not. He submitted that the whole contempt process was a waste of time and said that Mr. Lisus should have simply sent him a list of offending videos so they could cooperate and avoid court.



- [80] In some cases, an offer of that type might go a long way to avoid a contempt finding. In this case however, dealing with derogatory slurs made by Mr. Johnston on the internet during live broadcasts, the offer has less meaning.
- [81] First, nothing stopped Mr. Johnston from taking down the identified videos before the hearing of his own volition. He did not need Mr. Lisus's involvement. An offer made at the last minute in court may risks being seen as contrived.
- [82] There is no evidence of how many people search through and watch archived videos of Mr. Johnston's old shows. What is of greater impact is that Mr. Johnston did not accompany the offer with a clear or any undertaking not to repeat his misconduct. Taking down archives that may not be viewed by anyone is not the same as not making any fresh comments during livestreams being watched potentially by thousands.
- [83] Moreover, context matters. In *Chirico v. Szalas*, 2016 ONCA 586, the Court of Appeal wrote:
- This court has rejected a formalistic interpretation of the relevant order. It is clear that a party subject to an order must comply with both the letter and the spirit of the order: *Ceridian Canada Ltd. v. Azeezodeen*, 2014 ONCA 656, at para. 8. That party cannot be permitted to "hide behind a restrictive and literal interpretation to circumvent the order and make a mockery of it and the administration of justice": *Boily*, at para. 58; *Sweda Farms Ltd. v. Ontario Egg Producers*, 2011 ONSC 3650, at para. 21.
- [84] Here, Mr. Johnston has sought to delegitimize the court's order. He excuses his own hateful, unlawful words by identifying the summary judgment judge as "Sharia compliant". He dismisses this court's effort to ensure that he understands the process and has time to find counsel as a bunch of stupid judges who do not have regard to the rule of law. He heaps blame on Mr. Lisus for not cooperating with him after Mr. Johnston stalked Mr. Lisus to the point that the judge felt the need to protect Mr. Lisus and his firm with an injunction. And Mr. Johnston continues to brand Mr. Lisus as a "loser".
- [85] The motion judge found it likely that Mr. Johnston would re-offend and granted the injunction precisely to try to persuade him not to do so. Mr. Johnston's offer does not reduce the harm to Mr. Fakhri of being repeatedly tarnished by racist slurs even after going to court and obtaining judgment.

- [86] To the contrary, Mr. Johnston also broadcast that he will never pay any civil judgment obtained against him even if he finds it justly granted. In other words, he tells his listeners that he can ignore the court's orders at will.
- [87] Mr. Johnston's last minute offer does nothing to address the affront to the administration of justice caused by his very public efforts to undermine the authority and dignity of the court, its proceedings, its judges, and its officers.
- [88] On hearing my suggestion that an apology would be better offered than the suggestion that he would "work with" Mr. Lisus to take down old archives, Mr. Johnston offered an apology to the court for any insult.
- [89] The issue isn't a little name calling. I have been called worse by better. The issue is that Mr. Johnston appears to make a living as a political actor and a quasi-journalist. I agree with Mr. Lisus who submits that Mr. Johnston uses language, his intellect, and street smarts to tap into and fan the ugliest currents in society. In doing so he paints himself as sitting above the rule of law.
- [90] By contrast, judges do abide by the rule of law. In *United Nurses of Alberta v. Alberta Attorney General*, [1992] 1 S.C.R. 901 at para. 20, former Chief Justice McLachlin wrote:
- Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect.
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- [91] In ignoring the court's order, and continuing his unfounded, illegal, and untruthful attacks on Mr. Fakhri, Mr. Johnston shows contempt for the rule of law, for the court, and for the promises of equality, decency, and goodwill to our neighbours that are so integral to Canadian society.
- [92] 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.

[93] I will deal with costs as part of sentencing.

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F.L. Myers J.

**Date:** July 29, 2021