

CITATION: Paramount Fine Foods v Johnston, 2021 ONSC 6558
COURT FILE NO.: CV-17-580326
DATE: 20211004

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
PARAMOUNT FINE FOODS and)
MOHAMAD FAKIH)
)
Plaintiffs) *Jonathan C. Lisus and Niklas*
) *Holmberg, for the Plaintiffs.*
- and -)
)
KEVIN J. JOHNSTON, RANENDRA)
BANERJEE and)
FREEDOMREPORT.CA)
Defendants) *Kevin J. Johnston, on his own behalf.*
)
)
)
) *Sameha Omer, for the National Council*
) *of Canadian Muslims.*
)
)
)
) **HEARD:** September 22, 2021

FL MYERS J

REASONS FOR DECISION

Background

[1] On July 29, 2021, for reasons reported at 2021 ONSC 5285, I found that Kevin J. Johnston had committed six acts in contempt of court. On September 22, 2021, the parties made sentencing submissions. I pronounce sentence and provide reasons for the sentence now.

Mr. Johnston is an Internet Broadcaster

[2] Mr. Johnston is a social media performer and styles himself as a journalist. He is currently also a candidate running for the office of mayor in the municipal election being held in Calgary, Alberta.

[3] In his affidavit sworn September 18, 2021, Mr. Johnston describes his business as follows:

I operate The Kevin J. Johnston Show, Canada's best podcast, which runs from Monday to Friday at 7PM to 9PM Mountain Time. This is done through my personal website [list of website URLs omitted].

My podcast and social media are very popular in Canada and world-wide.

[4] The only evidence of Mr. Johnston's popular reach is that during his broadcast on August 13, 2021, he said, "[t]here's 10,000 people that watch this show". During that show, as discussed further below, he sought to raise \$2 from each of his 10,000 followers and said:

...that would solve all of the legal issues that we have here in its entirety. We could go on an all-out attack and assault on all these institutions and politicians.

[5] As will become apparent below, almost all of the evidence against Mr. Johnston comes from his own mouth during his broadcasts or other speeches.

This Lawsuit

[6] The plaintiffs Mohamad Fakh and his company Paramount Fine Foods sued Mr. Johnston for defamation arising from numerous statements published by Mr. Johnston in 2017 and 2018.

[7] On April 30, 2019, the plaintiffs brought a motion for summary judgment before Ferguson J. of this court.

[8] In her decision dated May 13, 2019, reported at 2019 ONSC 2910, Ferguson J. held Mr. Johnston liable for defaming the plaintiffs. She awarded damages and granted a permanent injunction order prohibiting Mr. Johnston from continuing to defame Mr. Fakh and his company.

[9] In her decision, Ferguson J. made several holdings including the following:

[12] Mr. Johnston uses the Johnston online platforms to broadcast hate. He has called Canadian Muslims “terrorists”, “terrorist scumbags”, “racist terrorist scumbags” and “Nazis”. According to Mr. Johnston, Islam is “non-civilized garbage”. Mr. Johnston has repeatedly called Muslims “rapists” and has said that Muslim immigrants bring sexually-transmitted diseases to Canada. He has also stated that Muslims are part of a “system designed to rape, kill and pillage and destroy” that would force a Canadian man to “pin his daughter down on the ground and cut her labia and clitoris off with a razorblade”.

[13] Mr. Johnston claims that Muslims are in Canada “to take this country over”, “to kill me, and kill my children, and kill the entire future of this entire nation” and have “the maple leaf removed from the flag to be replaced by the crescent moon”. He has also publicly encouraged people to

Buy guns, people. Go the gym, learn how to fight. Buy knives and learn how to use them. Stock up on cross-bow bolts. Stock up on arrows for your bow. Stock up on everything you need because, believe me, it’s gonna hit the fan [referring to when Muslims bring Sharia law to Canada] and when it does it’s gonna hit hard. You have to hit back three times harder.

[14] Mr. Johnston makes these statements with no regard for the law. He customarily invites the targets of his attacks to initiate legal proceedings against him, to “bring it on” or to “come and see me”, or words to that effect.

[15] Mr. Johnston profits from the promotion of hatred. He takes paid speaking engagements featuring anti-Muslim statements, and Freedom Report solicits “donations”. The Johnston defendants have also offered for sale a variety of anti-Muslim paraphernalia including: a comic book written and published by Mr. Johnston titled “Muslimland” which is described as a “tale of woe and warning about a world run by political Islam”; and a “documentary” created and

produced by Mr. Johnston titled “Rohingya Lie – A Documentary by Kevin J. Johnston” which “reveals” that there is no Rohingya crisis but rather “an invasion force of Bengali Muslims who raped and killed their way into the peaceful Buddhist nation”.¹

[10] In para. 19 of her decision, Ferguson J. set out a list of some of Mr. Johnston’s statements that she found to be false and malicious publications about Mr. Fakh and his company:

[19] From July 23 to August 1, 2018, the Johnston defendants published a series of eight videos from the day of the event with accompanying text and title pages posted widely on many websites of the Internet, including Freedom Report and the Johnston online platforms (the “event videos”). In the event videos, Mr. Johnston makes a number of **false and malicious statements** about Paramount and Mr. Fakh including:

(a) the Restaurant is in the middle of an industrial area “for the sole purpose of allowing Islamic discussion whether it be terrorist talk or not”;

(b) “I can’t for the life of me understand why a restaurant would be here unless the restaurant was up to something nefarious”;

(c) You have to be “Jihadist” or have raped someone else’s wife as a condition of entry to the Restaurant;

(d) Mr. Fakh is a “racist restaurant owner” and an “economic terrorist”;

(e) “Mohamad Mr. Fakh wants to be part of giving money to convicted terrorists”;

¹ This sentencing hearing was broadcast live on the internet. Mr. Johnston embedded a link to the court’s livestream on his own website on a page soliciting donations. There is no question that broadcasting is Mr. Johnston’s source of his livelihood.

(f) “Why do Muslim business men in Mississauga hate white Christian men so much?”;

(g) Paramount is “little more than a front” and “this man [Mr. Fakh] was under investigation by CSIS and by the Canada Revenue Agency...they were trying to figure out where this man’s money came from”;

(h) “the Pakistani spy agency ISI is giving him the money that he needs to utilize his stores as a front to bring more refugees/illegal aliens into the country, all whom, of course, are Muslim”; and

(i) “boycott Paramount Fine Foods until they come clean on terror involvement”. [Emphasis added.]

[11] In para. 22 of her decision, Justice Ferguson set out an additional list of statements published by Mr. Johnston that she also found to be false and malicious:

[22] The Johnston defendants responded to this lawsuit with **even more false and malicious content about the plaintiffs** on the Johnston online platforms, including statements that:

(a) Mr. Fakh is a “radical Muslim”, “Muslim business owner hates white people” and is “making sure that only Muslim refugees get hired”;

(b) Paramount restaurants are “hidden from the public” because “something nefarious” is going on, and Mr. Fakh is a “radical Muslim terror funder. There is no other way to word that. That’s what he does. He funds terror”;

(c) Mr. Fakh is taking money from “ISI, the Pakistani spy agency, the CIA of Pakistan” and/or that ISI is laundering money through me and/or Paramount which is sent to Bangladesh and Myanmar “so that the Arakan Rohingya Salvation Army (“ARSA”), can continue cutting Hindus, Buddhists and Christians in half with swords, stabbing them with swords, cutting them in half with knives, beheading them, shooting them and lighting them on fire”;

(d) Mr. Fakh provides funding for ARSA, a terrorist group that is “worse than ISIS in their atrocities” and who murder “the most peaceful people on Earth”, including children by slicing their faces with swords;

(e) Mr. Fakh is an “economic terrorist” who is or was under investigation by CSIS and the Canada Revenue Agency “to figure out where this man’s money came from. We know, I know, that the Pakistani spy agency ISI is giving him the money that he needs to utilize in his stores as a front to bring in more refugees – illegal aliens – into the country, all of whom, of course, are Muslim”;

(f) “BOYCOTT Paramount Fine Foods until the [sic] come clean on their alleged involvement with the Pakistani Spy Agency, ISI”;

(g) Mr. Fakh and Paramount are “working very closely with the Pakistani spy agency to bring not just me [Johnston] down but you down and all of Canada down too. If you’re eating at this guy’s [Mr. Fakh’s] restaurant, you are supporting terror worldwide. That’s a brash statement I know – and I’m going to state that clearly in a Court of law when I’m under oath when I swear on a Christian Bible and not the book of hell, the Quran”. [Emphasis added.]

[12] At para. 53 to 55 of her decision, Ferguson J. held that the listed statements made by Mr. Johnston were defamatory:

[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.** [Emphasis added. Footnotes omitted]

[13] Justice Ferguson then considered the defences offered by Mr. Johnston. First, he argued that his words were justified because they were true. As one would expect, the tort of defamation does not condemn truthful statements even if they might injure a person’s reputation.

[14] At para. 60 of the decision, Ferguson J. found that Mr. Johnston’s statements were not true or justified:

[60] In any event, **the hateful Islamophobic remarks have no basis in fact.** Indeed, the Johnston defendants refer to their comments as “satire” and “political satire” in their defence. By definition, satire is not fact. [Emphasis added.]

[15] Ferguson J. considered other possible defences that could be available in a defamation case including fair comment, responsible communication, and freedom of expression under the *Charter of Rights*. She held that none of these defences was established by Mr. Johnston.

[16] In discussing freedom of expression, Ferguson J. quoted an important statement made by the Supreme Court of Canada in *R v Keegstra*, 1990 CanLII 24 (SCC), at para 46, to which I will return below:

Nonetheless, expression can work to undermine our commitment to democracy where employed to propagate ideas anathemic to democratic values. Hate propaganda works in just such a way, arguing as it does for a society in which the democratic process is

subverted and individuals are denied respect and dignity simply because of racial or religious characteristics. This brand of expressive activity is thus wholly inimical to the democratic aspirations of the free expression guarantee..

[17] Justice Ferguson found that Mr. Johnston published the listed statements of or concerning Mr. Fakhri and that the listed statements were both defamatory and untrue. With no defences established by Mr. Johnston, Ferguson J. held that he had committed the tort of defamation.

[18] Justice Ferguson then made a damages award against Mr. Johnston and considered whether to also grant an injunction order to prohibit Mr. Johnston from continuing to defame the plaintiffs. She wrote:

[84] Permanent injunctions have been ordered in defamation actions where: (a) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiffs for defamation; or (b) there is a real possibility that the plaintiffs will not receive any compensation, given that the enforcement against the defendant of any damage award may not be possible.

[85] Both are met in this case. There is a strong likelihood that the Johnston defendants will continue to publish defamatory communications about the plaintiffs after judgment. The Johnston defendants' campaign of harassing the plaintiffs by defamatory publications and posts has continued for almost three years and did not abate even after this action was commenced.

[86] There is also a real possibility that the Johnston defendants will refuse or be unable to pay any judgment. The Johnston defendants have a history of ignoring and breaching orders of this court. They have refused to pay any of the costs awards already made against them for their breaches of court awards and have made a number of public comments maligning this court and the case management judge.

[19] Ferguson J. concluded her decision with the following statements that apply equally today:

[88] In conclusion, I feel compelled to stress the wider societal issues that this very disturbing case represents. In this fractious 21st century – where social media and the internet now allow some of the

darkest forces in our society to achieve attention - these issues are numerous and profound, and their impact extends well beyond the borders of this country.

[89] At its core, the horrific behaviour of the Johnston defendants has been a grievous injustice to a valued member of the Canadian community who deserves nothing less than our respect. That is lamentable enough, but it is more than that. **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.**

[90] It is important for us to assess the behaviour of the Johnston defendants in its wider context. It is not an isolated example; instead, it reflects an overall rise of hate speech in Canada. According to Statistics Canada, the number of hate crimes reported to the police in 2017, the last year for which data was collected, reached an all-time high. And they were largely driven by incidents targeting Muslim, Jewish and black people. Buried in these statistics are the stories of actual people. We know some of their names, and they are included in this judgment.

[91] The victims of these incidents deserve our respect and empathy, as the perpetrators warrant our condemnation and rebuke. In so doing, as this judgment suggests, hateful speech always needs to be identified, and confronted when warranted. [Emphasis added.]

[20] Mr. Johnston did not appeal Justice Ferguson's order. It remains an existing and legally valid order of the court. Mr. Johnston advises that he is going to bring a motion to try to re-open the defamation case. That may be so. That has no bearing on the breaches of the injunction committed while it remains in full force.

The Contempt of Court Findings

[21] In February to May of this year, at a torch lit rally and in internet broadcasts, Mr. Johnston made the following public statements about Mr. Fakhri despite the court order prohibiting him from doing so:

- a. ...I proved that he was **funding terror** groups in Myanmar slaughtering Buddhist, Hindus, and Christians.
- b. ...talking about a lawsuit filed against me by a **baby killer** and a terrorist from three years ago.
- c. We know they get government donations from **baby killers** like that restaurant guy back in Ontario.
- d. 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.
- e. ...**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. and
- f. ... 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. [Emphasis added.]

[22] For reason that I gave previously, I found that in repeating that Mr. Fakh was a "baby killer", a "terrorist", a "murderer", and "terror funder" Mr. Johnston violated the order made by Ferguson J. prohibiting him from continuing to defame Mr. Fakh.

[23] Mr. Johnston asked me not to hold him in contempt of court despite these findings. The court has a discretion to stop short of a contempt finding even where someone breaches a court order. I considered the request. I expressed a principal concern for the need to compel Mr. Johnston to comply with the court's injunction order.

[24] Instead of complying with the court's order, I found:

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.

[25] With those concerns in mind, I held:

[91] In ignoring the court's order, and continuing his unfounded, illegal, and untruthful attacks on Mr. Fakh, 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.

Mr. Johnston's Post-Hearing Conduct

[26] In considering how Mr. Johnston has conducted himself since the finding that he is in contempt of court, I am not finding any new counts of contempt. Rather, I consider these facts solely to inform my application of the relevant sentencing factors discussed below.

[27] Mr. Johnston submitted at the sentencing hearing that he only believed that he was prohibited from "defaming" Mr. Fakh and therefore he felt that it was open to him to re-argue the truth of statements that Ferguson J. had already held to be defamatory.

[28] I dealt with this issue in my decision holding Mr. Johnston in contempt of court and held that it was not open to Mr. Johnston to contest the merits of the summary judgment order.

[29] But the point for sentencing is subtler. His main sentencing submission is that if only he could be provided with a list of things that he cannot say, he will not say them. Justice Ferguson did list the statements she found to be defamatory. My decision holding Mr. Johnston in contempt of court left no possibility of doubt. I expressly found that in saying six specific things, that really resolve to two – publicly branding Mr. Fakh a "terrorist" and a "baby-killer"- Mr. Johnston had violated the injunction.

[30] Not only does Mr. Johnston know what has been found to be defamatory, his submission that if only he had a list he would obey the injunction does not stand up to scrutiny in light of his recent conduct,

[31] Sentencing hearings are held some time after contempt findings are made in order to allow the person who is held in contempt to make amends. The goal of civil contempt of court proceedings is, first and foremost, to compel

compliance with the court's orders. Like all people held in contempt of court, Mr. Johnston was given time to "purge his contempt" i.e. to comply with the court's order, to apologize for the affront to the court and the plaintiffs, and to provide assurances that the order would be complied with in future so as to minimize the need for a significant sentence.

[32] The time between the finding of liability and the sentencing hearing also gave Mr. Johnston an opportunity to deliver evidence to establish any mitigating factors that weigh in his favour or help him on sentencing. Mr. Johnston bears the burden of proving any mitigating factors on a balance of probabilities.

[33] At a scheduling hearing on August 10, 2021, Mr. Johnston advised, through legal counsel, that he would not be delivering any evidence for this sentencing hearing. That meant that there would be no evidence of Mr. Johnston "purging his contempt" and no evidence of mitigating factors adduced by Mr. Johnston. With this information, I scheduled this hearing bearing in mind the ongoing risk of Mr. Johnston continuing to breach the court's injunction.

[34] Mr. Johnston remained active on his internet broadcasts throughout.

[35] On July 30, 2021, in reference to his having been held in contempt, Mr. Johnston told his audience that he did not libel or slander anyone despite two decisions of this court that say otherwise.

[36] On August 11, 2021, he told his audience:

...this is Communist Canada, where there is no rule of law any longer. And every single episode of the Kevin J. Johnston Show is watched by almost every police department in the country, Crown Attorneys all over the country, court staff all over the country ... **looking for me to break the law, which I have never once done on my show in the last five years.** They're just -- they're grasping at straws. Do you know what it is, everyone? Right. For all of you lefties that work in the court system and the police stations and whatnot, I'm going to win. Get used to it. [Emphasis added.]

[37] On the same day, he broadcast:

You need to be out of the Province of Ontario because it is a very dangerous place. The -- the courts are being used as a weapon against we the people for no reason other than they want us to shut up, be quiet, and -- and tote their line, which, in good conscience, I

simply cannot do. I'm not a Liberal. I'm not a left -- left-wing LIBTARD, I am not someone who appreciates anything that the extreme left does. I actually think the extreme left are -- they're terrorists. They are terrorizing us, using every method they possibly can ... -- to get us to be quiet.

[38] I have already quoted above Mr. Johnston's plea for donations to his audience two days later on August 13, 2021, He ask for money to solve all his legal issues and fund an **“all-out attack and assault on these institutions and politicians”**.

[39] On August 14, 2021, Mr. Johnston denied committing contempt of court:

As you see, the Calgary Sun is publishing stories about me having to deal with a sentencing hearing for contempt of court on an event where **I did not commit contempt of court. They just say that I did because they want me locked up.** That is how this country functions. [Emphasis added.]

[40] On the same day, he broadcast:

Well, the thing -- what I guess the average citizen doesn't understand, the City of Toronto has fewer now than 5,400 police officers, that's it. That's all they got. Peel Region, which signifies three -- my hometown of Mississauga, Brampton, and Caledon. Those are three different cities. There is only about 2,700 cops there.

Like, there's just -- **there's not enough police to stop us if we the people decide, hey, you know what, we've had enough. And Calgary is what, 2,500 police? There's -- not enough of them to stop us...**

... Well, the court -- yeah, the court system is beginning to actually eat itself. There is -- I do forget his name, but there was a lawyer, a defence lawyer, in Edmonton who said that he would not wear a mask. And he was threatened by the judge to state that, you'll be found in contempt of court. And he said, well, that's fine...

He's -- he doesn't care. So what the judge says, and this -- this -- it was a very historical remark, the judge says to him that you are now bringing into disrepute the justice system itself, which means that you're showing the world that -- that the courts actually don't have any

power. That's what the judge was saying to this lawyer, and this lawyer showed us that. **So we -- we have the potential to actually collapse the court system as people, which we should.** I've been in the...court system myself over 180 times in the last 4 years just because I had the wrong political opinion. **Let me tell you about the court system. It needs to go. It has nothing to do with justice. It just has everything in the world to do with telling you what to do. That's stealing from we the people.** [Emphasis added.]

[41] On August 23, 2021, he told his audience:

There is no rule of law in this country anymore, so the cops just do whatever they feel like doing. What else can we say, man, you know. It's -- the rules do not apply for we the people who pay their salaries, you know. Maybe it's time for each and every one of you out there to absolutely stop paying your taxes. Like, it doesn't seem that we're getting any value for our money, does it? [Emphasis added.]

[42] On August 26, 2021, he continued:

Yes, stop paying your taxes, that -- like, there's only about 1,100 or 1,200 people that work for Canada Revenue Agency. They've handed over 50 million cheques. Do you think for a second that they have time to audit you?

And we've covered this before. When -- when Canada Revenue Agency wants to audit you, **you can tell them in a letter that you need 120 days to acquire legal counsel. And then if you haven't acquired it, you send them another letter on the hundred and tenth day saying you haven't acquired legal counsel and you require legal counsel. They can't force you to do this without a lawyer. Period. I -- I say stop paying your taxes.** [Emphasis added.]

[43] In discussing laws enforcing health measures in light of the pandemic, on August 25, 2021, Mr. Johnston broadcast:

There is no accountability. You see, if -- if judges break the law in Canada, there is no accountability. You cannot sue them. You can't prosecute them. You can't even arrest them.

This is the type of thing that leads to revolutions, when everybody in the country has zero faith in the police and zero faith in the justice system. And why would anybody have faith in

the justice system right now? Because they're locking Canadians up just for having political opinions that happen to be correct, just not what the narrative is. [Emphasis added.]

[44] On the day before the sentencing hearing, Mr. Johnston doubled down. He delivered an affidavit in which he tried to prove Mr. Fakhri's links to international Muslim terrorism. Ignoring that the issue was not relevant to the sentencing hearing, the affidavit is a stream of allegations based on undisclosed hearsay and inferences from undisclosed speculation. He links the Prime Minister, former Premier Bob Rae, former Attorney General Yasir Naqvi, and many others to the conspiracy of international Muslim terror.

[45] The Table of Contents to the affidavit is instructive:

Introductory Remarks

ABOUT Mohamad Fakhri's Islamic Relief Canada Charity

ABOUT The National Council of Canadian Muslims NCCM

Anonymous Tip From A Whistleblower About Criminal Activities Of Mohamad Fakhri And Paramount Fine Foods

Peaceful Protest Against Mohamad Fakhri and Omar Khadr Outside A Trudeau Fundraiser At Paramount Fine Foods

Mohamad Fakhri Files SLAPP Lawsuit Over Peaceful Protest

Mohamad Fakhri Makes False Claims In The SLAPP Lawsuit

Historic Links To Mohamad Fakhri And Hezbollah Terrorism

Mohamad Fakhri's Involvement With Terrorism Overseas

Mohamad Fakhri & Organizations Linked To Finance An Insurgency Of Terror

Mohamad Fakhri & Organizations Known To Finance An Insurgency Of Terrorism And Genocide In Myanmar; Lawfare Jihad Of Mohamad Fakhri

Mohamad Fakhri Promotes The Defamation Of Canadians With Anti-Hate Network (CAHN) With A Platform For Paedophilia

Mohamad Fakh Involved With Domestic Extremism In Canada, SLAPP Lawsuits And The Liberal Party Of Canada

More Evidence Of Mohamad Fakh's Involvement With Terrorism Overseas

Continued Lawfare From Mohamad Fakh And His Lawyer

Mohamad Fakh Commits Perjury In The Court To Win His Defamation Lawsuit

Mohamad Fakh Makes False And Defamatory Public Statements

Mohamad Fakh Directly Supporting AntiFa Extremism, Violent Crime and Immigration Fraud

Mohamad Fakh Orchestrating Violent Crimes Across Canada With AntiFa

Mohamad Fakh Using Lawfare As A Mechanism To Interfere & Obstruct The Democratic Process In Canada

Arakan Rohingya Salvation Army (ARSA), Mohamad Fakh, Bob Rae and Yasir Naqvi

Injury, Harm and Damages by Mohamad Fakh and Jonathan Lisus

Appendix -- Sources

- [46] As evidence, Mr. Johnston repeatedly says in his affidavit that Mr. Fakh “is linked with” or is known to “work closely with” others as if those statements are proof of anything. He blames Mr. Fakh for attacks on him by protesters whom he identifies as members of “Antifa”. Their link to Mr. Fakh is that Mr. Johnston says that the protesters often profanely taunt him by asking if he has paid his damages award to Mr. Fakh yet.
- [47] Mr. Johnston’s affidavit plainly asserts that Mr. Fakh is engaged in international Muslim terrorism and violence. He tried to link Mr. Fakh to pedophilia although I did not see any reference to baby-killing *per se*.

- [48] None of the allegations about Mr. Fakh 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. Mr. Storrie's affidavit is to the same effect.
- [49] Mr. Johnston delivered a second affidavit with allegations about Mr. Lisus. This affidavit is also irrelevant to the issues before the court in this sentencing hearing. To the extent that he characterizes Mr. Lisus or Mr. Fakh's conduct as leading to an improper judgment of the court, the place for complaints about the court's injunction order was at an appeal from the decision of Ferguson J. Having decided not to appeal, Mr. Johnston cannot mount a collateral attack on the injunction in this sentencing hearing.
- [50] It bears repeating that these are not new grounds of contempt. Rather, this post-conviction evidence is recited in relation to the sentencing principles that I deal with next.

Sentencing Principles

- [51] Rule 60.11 (5) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, deals with sentence for contempt of court. It provides:

(5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- (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.

[52] In *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC), Chief Justice McLachlin, discussed how the rule of law was central to a consideration of contempt of court:

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 court to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

[53] In *Estate of Paul Penna*, 2010 ONSC 6993 (CanLII), at para. 34, Greer J. adopted the following factors for sentencing for contempt of court:

[34] Society expects its laws to be upheld, whether in the civil or criminal context of a breach. Egregious conduct in society cannot be overlooked and cannot be swept “under the carpet”, as if the conduct had not occurred. In determining the appropriate sanctions, the Court may consider the factors as noted in *Law Society of British Columbia v. Hansen*, 2004 BCSC 825 at para. 108, 132 A.C.W.S. (3d) 43:

- (a) the gravity of the offence;
- (b) the need to deter the contemnor;
- (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.

[54] Greer J. also relied on the following at para. 38 of her decision:

[38] The Court of Appeal in *Chiang*, [2009 ONCA 3 \(CanLII\)](#), [2009] O.J. No. 41, 2009 ONCA3, 78 C.P.C. (6th) 110 (C.A.) said in para .86 that Madam Justice Lax recognized that a sentence must be

proportionate to the gravity of the offence and the degree of responsibility of the offender. They also noted that adults who are found in contempt must bear full responsibility for what they have done.

[55] Greer J. also said the following that I adopt:

[42] In determining what sanction or sentence to impose in civil contempt cases, the Judge has a wide range of options when exercising his or her discretion. As was said by Mr. Justice Borins, as he then was, in *777829 Ontario Ltd. v. McNally*, [1991] O.J. No. 3458, 9 C.P.C. (3d) 257, 31 A.C.W.S. (3d) 739 (O.C.J.(Gen. Div.)), para. 16, “It is my opinion that unless proper penalties are imposed where a court order is deliberately disobeyed the orders of the court will have no real meaning.”

[43] **Proper penalties make the public sit up and take notice. The word goes out into the community that the Court will not tolerate disobedience of its Orders. In this case, the “community” is specific as well as general in nature.** [Emphasis added]

[56] In the *Penna Estate* case, the court was concerned with estate trustees and others who hold money or property in trust for beneficiaries. In this case, the context is broadcasting defamatory hate speech over the internet.

[57] In a recent case, *Duncan v. Buckles*, 2021 ONSC 5567, Goldstein J. described the sentencing principles in a case of contempt of court as follows:

[44] The whole point of punishing a contemnor is to maintain the rule of law: *United Nurses of Alberta v. Alberta*, 1992 1 S.C.R. 901 at p. 931. As Justice Watt put it in *College of Optometrists of Ontario v. SHS Optical*, 2008 ONCA 685 at para. 106: “The underlying purpose of contempt orders is to compel obedience and punish disobedience.” In *Astley v. Verdun*, 2013 ONSC 6734 (affirmed 2014 ONCA 668) at para. 16 I attempted to summarize the principles of sentencing in contempt cases:

- A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: *Criminal Code*, s. 718.1; *Chiang*, para. 86; *Mercedes-Benz Financial v. Kovacevic*, [2009] O.J. No. 888, 308 D.L.R. (4th) 562, 74 C.P.C. (6th) 326 (Ont. S.C.J.) at para. 12.

- A sentence should be increased or reduced to account for aggravating or mitigating factors surrounding the contempt or the contemnor: *Criminal Code*, s. 718.2(a); *Chiang*, para. 24; *Sussex Group Ltd. v. Fangeat*, [2003] O.J. No. 3348, 42 C.P.C. (5th) 274 (Ont. S.C.J.) at para. 67.
- A sentence should be similar to sentences imposed on similar contemnors for similar contempts committed in similar circumstances: *Criminal Code*, s. 718.2(b); *Chiang*, para. 24.
- Sentences should denounce unlawful conduct, promote a sense of responsibility in the contemnor, and deter the contemnor and others from defying court orders: *Criminal Code*, s. 718; *Sussex Group Ltd.* at para. 67; *Chiang* at para. 24.
- The Court should consider sanctions other than jail: *Criminal Code*, s. 718(2) (d) and (e); *Sussex Group Ltd. v. Sylvester*, [2002] O.J. No. 4350, 62 O.R. (3d) 123 (Ont. S.C.J. [Commercial List]) at paras. 80-82.

[58] In addition, in this case I am directed by s. 718.2 (a)(i) of the *Criminal Code* as follows:

718.2 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 similar factor,

[59] Section 722 (1) of the *Criminal Code* provides that a sentencing court must consider a victim impact statement “describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim.”

- [60] Similarly, section 722.2 (1) provides that a sentencing court must consider a “statement made by an individual on a community’s behalf ...describing the harm or loss suffered by the community as the result of the commission of the offence and the impact of the offence on the community.”
- [61] Although this proceeding is not a sentencing for a criminal offence laid under the *Criminal* Code, the same considerations apply at least by analogy. Mr. Fakhri filed a Victim Impact Statement and the National Council of Canadian Muslims filed a Community Impact Statement in accordance with leave granted by order dated September 15, 2021 reported at 2021 ONSC 6116.

Mr. Johnston’s Submissions

- [62] Mr. Johnston sought an adjournment of the sentencing hearing to retain a lawyer and because he had appealed both the contempt finding and my scheduling endorsement dated August 12, 2021. I denied both requests for oral reasons dictated in court. I do not repeat them here.
- [63] In his submissions, Mr. Johnston repeated several times his claim that he has been denied a lawyer. In my July 29, 2021 endorsement, I discussed Mr. Johnston’s “lawyer, lawyer, lawyer” strategy. As quoted above, he was even more pointed on how his strategy works on August 26, 2021 when he broadcast:
- ...when Canada Revenue Agency wants to audit you, you can tell them in a letter that you need 120 days to acquire legal counsel. And then if you haven't acquired it, you send them another letter on the hundred and tenth day saying you haven't acquired legal counsel and you require legal counsel. They can't force you to do this without a lawyer. Period.
- [64] Once again Mr. Johnston has an incomplete understanding. He had ample opportunity to retain counsel. His effort to carry out his strategy is transparent.
- [65] Mr. Johnston says that people are being punished for having the wrong opinions and for not being left wing. I have no interest at all in Mr. Johnston’s political leanings or his political opinions. But whether Mr. Fakhri is a terrorist, funds terror, has murdered people, or killed babies, are not political opinions. They are factual statements that can be proven to be objectively true or untrue.

[66] In this case, Mr. Johnston has been found by a court of law to have published untrue, harmful, and hateful things about Mr. Fakhri and he has been ordered to stop. He is not being sentenced today for his political opinions or for not espousing communist or liberal values. He is being sentenced for having been found by a court of law to have committed unlawful defamation by saying factually untrue things about Mr. Fakhri and then refusing to comply with an injunction order prohibiting him from continuing his unlawful defamation.

[67] Mr. Johnston explained his statement that there are not enough police to stop an insurrection as being an expression of concern. He says that the pandemic has unleashed a selfishness so that people no longer care about each other. He says he was just expressing his fear for the danger that the “lack of love in our society” could lead to an overwhelming of the police.

[68] I will come back to Mr. Johnston trying to portray himself as a voice for peace and love in society. But in saying that he was just voicing a concern that anger in society could overboil and overwhelm police, he ignores his statement,

...there's not enough police to stop us if we the people decide, hey, you know what, **we've had enough**. And Calgary is what, 2,500 police? **There's -- not enough of them to stop us...**[Emphasis added.]

[69] Mr. Johnston is not warning his peaceful flock that others might be angry. He is fomenting violence among a populist “we the people”. He submits that if he said a single racist word on his broadcast, he would have no audience left because Canadians do not tolerate racism. I am not sure if that statement was naïve, a lie, or self-deception. But if Mr. Johnston does not see himself appealing to a very ugly and increasingly emboldened slice of society, he is the only one.

[70] Mr. Johnston says he never questioned the rule of law. He was just quoting the anger of others. He ignores his statement:

So we -- we have the potential to actually collapse the court system as people, **which we should...It needs to go**. It has nothing to do with justice. It just has everything in the world to do with telling you what to do. That's stealing from we the people. [Emphasis added.]

[71] And then there is his August 23 statement:

There is no rule of law in this country anymore, so the cops just do whatever they feel like doing. What else can we say, man, you know. It's -- **the rules do not apply for we the people who pay their salaries**, you know. [Emphasis added.]

[72] And on August 25:

This is the type of thing that **leads to revolutions, when everybody in the country has zero faith in the police and zero faith in the justice system. And why would anybody have faith in the justice system right now?** Because they're locking Canadians up just for having political opinions that happen to be correct, just not what the narrative is. [Emphasis added.]

[73] He was not quoting others.

[74] I reject Mr. Johnston's submissions that he is merely a journalist standing by reporting on concerns expressed by others. He actively undermines the rule of law and to some degree at least seems to be calling for or supporting the overthrow of our democratic institutions.

[75] Mr. Johnston says that he does not call any names. He also says that he does not make racist statements. He says that he has been painted as a bad person by the "liberal media".

[76] At para. 89 of my decision holding Mr. Johnston in contempt, I found:

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.

[77] As I indicated in court, if Mr. Johnston's portrait has been painted, he supplied the paint.

[78] Mr. Johnston's submissions just ignore the facts. He ignores the findings of courts of law. He ignores his own prior words. He ignores court orders.

[79] Mr. Johnston submitted that he had done nothing wrong. He said that the Calgary police force has investigated five years of his broadcasts and had determined that they did not amount to intimidation, sedition, or uttering threats. Five years would go back to 2015 or 2016. Yet, just a few weeks

ago, Mr. Johnston pleaded guilty in Brampton, Ontario to a charge of wilfully promoting hatred against an identifiable group in respect of online broadcasts in that five year period.

- [80] Mr. Johnston submitted to me that his plea of guilty related to one broadcast only in which he was reckless. He said that there was no hatred in the video. He pleaded guilty, he said, because what he said could possibly be construed by some as promoting hatred. The submission raises an interesting question about the adequacy of Mr. Johnston's plea as he seems to have denied having wilfully promoted hatred in his submissions to me. But neither that nor the alleged hearsay findings of the Calgary police bear on sentencing Mr. Johnston for the six acts of contempt of court that I have found he committed this year.
- [81] Mr. Johnston says that he is not racist and if he is just given a list of things not to say, he will not say them. He says he has no interest in repeating any statements about Mr. Fakh. None of those submissions ring true. As discussed above, he knew what had been found defamatory by Ferguson J. and committed his six acts of contempt. Moreover, despite the added clarity of my finding that branding Mr. Fakh as a terrorist or a terror funder was contempt of Justice Ferguson's order, in his new affidavit Mr. Johnston repeated the allegations in extensive detail as the Table of Contents above demonstrates.
- [82] Within a few days before the hearing, Mr. Johnston also delivered a new statement of claim in which he repeated his allegations as part of a lawsuit suing Mr. Fakh, prominent politicians, and all members of Mr. Lisus's law firm personally, among others.
- [83] Despite saying that he does not wish to repeat his allegations, he did so twice *in extensio* in the week before the hearing.
- [84] At the sentencing hearing Mr. Johnston said that was two days ago and does not reflect his current view.
- [85] As I told Mr. Johnston, he is not being held in contempt for the statement of claim or his affidavit in this hearing. Whether or how the law of privilege might apply to those documents is not before me. Mr. Johnston also submitted that the lawsuit was a separate matter that would continue. Privileged or not, his decision to publish both of those documents as a last hurrah immediately before the sentencing hearing puts the lie to Mr. Johnston's claim that he does not want to keep saying things about Mr. Fakh that he has been prohibited from saying by the court.

- [86] Mr. Johnston relies on a broadcast conversation between himself and someone he calls “Dr. Zee” whom Mr. Johnston says is a Muslim scholar. In the conversation, Dr. Zee says that Mr. Johnston is not racist and that he is a friend to the Muslim community.
- [87] The conversation with “Dr. Zee” reflects a friend of Mr. Johnston’s unsworn and untested statement. It has no evidentiary value.
- [88] Near the end of his submissions, after being invited by me to make submissions on how the court can be assured that he accepts and will comply with the court’s injunction, Mr. Johnston apologized for not understanding the injunction. He asked again for a list of words or things that he cannot say so he will know how to keep out of jail.
- [89] Mr. Johnston asks to be sentenced of 100 hours of community service in the Muslim community so he can be a “central figurehead of love”. He seemed to be negotiating with the court by offering to leave Mr. Fakhri out of future broadcasts, continuing to strive to be a good community support, and to be a good person if he is sentenced to community service.

The Plaintiffs’ Submissions

- [90] The plaintiffs submit that Mr. Johnston ought to be sentenced to a jail term of 24 months. They ask for consecutive sentences of four months for each of the six acts of contempt of court. They acknowledge that if granted, this would be the longest sentence for contempt found among precedent cases.
- [91] Mr. Fakhri discusses in his Victim Impact Statement his feelings about being the target of Mr. Johnston’s hate speech first as part of Mr. Johnston’s campaign for mayor of Mississauga and now as part of Mr. Johnston’s campaign for mayor of Calgary. Mr. Fakhri writes:

Johnston's deliberate stoking of these currents worries me. I do not consider him a fool to be ignored. He has many followers who support him and his views. He obviously believes that he and his followers have something to gain in repeatedly targeting me with hate speech.

- [92] Mr. Fakhri then discusses the fact that Mr. Johnston’s attacks have continued despite an order of this court. He says:

The truth is that I do not know what to tell my wife and children about what has happened. I want them to believe in the justice system, but

I do not know how to explain to them why Johnston can continue to attack me. I feel powerless and unsafe. I fear for the safety of my family and my employees. I think about this every day.

- [93] Mr. Lisus's submissions paralleled his client's Victim Impact Statement. I treat the following paragraph from Mr. Fakhri as having elements of both submissions and impact statement:

Johnston does more than tell his audience not to trust the government and to disrespect the justice system. He tells them to defy government and the justice system and sets a personal example of doing so. He has held up my Judgment against him as an example of how the courts have no power to control a man like him and those that support him. He mocks the courts and tells his audience that courts are powerless. He says that me and my lawyer are part of a conspiracy against government. This frightens me and my family.

- [94] Mr. Lisus focused his submissions more on Mr. Johnston's attacks on the rule of law than on Mr. Fakhri. He submits that Mr. Johnston is enthusiastically unrepentant, incorrigible, and has an unending appetite to undermine the rule of law. He argues that the panoply of remedies set out in Rule 60.11 (5) are meaningless as Mr. Johnston ignores the court's orders. The only way to restore the dignity of the court, he submits, is by sentencing Mr. Johnston to jail.

- [95] Mr. Lisus relies upon the following statement by Cumming J. in *Sussex Group Ltd. v Sylvester*, 2003 CanLII 49336 (ONSC), at para. 48

If the remedies a court directs to be put in place through its orders can be ignored with impunity, the road to civil anarchy is close at hand. **The thin veil of civilization that cloaks our community through the rule of law is fragile, in need of constant protection, and in need of being seen by all members of the community to be constantly protected.** [Emphasis added.]

- [96] Mr Lisus stresses the fragility of the "thin veil of civilization". While I understand Justice Cumming's metaphor of a thin veil covering the civilization within, I think an equally or more apt metaphor is to a wall or dike holding back the oncoming rush of ill-tides. The rule of law and the courts are like a dike restraining the ever-present risk of anarchy and violence that would threaten our cherished democratic values and the democracy itself. And like a dike, a small breach can quickly expand and be overwhelmed by an inflow of harm engulfing whatever lies in its path.

- [97] Mr. Lisus argues that Mr. Johnston cannot be dismissed as a quack. He is venomous and frightening. He calls for his followers to take up arms. He has pleaded guilty to wilful promotion of hatred. He has already been sentenced to a jail term for contempt of court in Alberta in July. He now says the courts “need to go” and performs calculus to show his followers that they can overwhelm the police.
- [98] Mr. Holmberg submits that Mr. Johnston profits economically from his acts. He seeks unity and support like a political propagandist. Mr. Holmberg submits that Mr. Johnston is shameless, intentional, remorseless, and unrepentant. He has engaged in a shocking form of public non-compliance that can only serve to undermine the public’s confidence in the court and the rule of law.

Analysis

- [99] While I understand the sincerity of the plaintiffs’ submissions, I need to keep focused on what is before the court. I am sentencing Mr. Johnston for six acts of contempt of court. I am not sentencing him for political views. I am not sentencing him for sedition or other crimes.
- [100] The social context of Mr. Johnston’s six acts of contempt of court is important to be sure. I am satisfied beyond a reasonable doubt on the evidence from Mr. Johnston’s own words that his acts of contempt were “motivated by bias, prejudice or hate based on race, national or ethnic origin, [or] religion”. As discussed by the two other judges who have been involved in this matter previously, Mr. Johnston’s words are classic hate speech. They draw on tropes to assign negative characteristics based on ugly stereotypes – like branding Muslims as terrorists for example.
- [101] There are no mitigating factors in this case. This is not Mr. Johnston’s first time being held liable for contempt of court. He has been held in contempt of court recently for ignoring court orders in Alberta. Mr. Johnston tells me as well that he has another contempt proceeding under way before this court in Brampton.
- [102] As I quoted above, Mr. Johnston puts himself above the rule of law. He allows himself to decide what the law is or when it applies to him. For example, in explaining why he exhorted people to stop paying their taxes, he told me that the law requires people to file tax returns, but it is his “understanding” that no law requires them to actually pay the tax due. That is simply not correct.

- [103] The exhortation about taxes is not itself particularly relevant to this sentencing. But Mr. Johnston's willingness to think that he knows or can declare the law to be as he supposedly "understands" it, lets him continue to deny that he has ever defamed Mr. Fakh and to deny that he has committed contempt of court despite court orders finding both of those things.
- [104] Mr. Johnston delegitimizes the courts and denies the applicability of the rule of law to him and, ostensibly, to those to whom he speaks over the internet. Chief Justice McLachlan's words above about the centrality of the rule of law weigh heavily in this sentencing.
- [105] With his acts in contempt of court and his subsequent conduct, Mr. Johnston attacks the rule of law in Canada. While I do not ignore or downplay the seriousness of the harm that Mr. Johnston has inflicted on Mr. Fakh, that I will deal with below, one of the things that differentiates this case from any other precedent of which I am aware, is the degree of affront to the rule of law presented by Mr. Johnston's contempt of court and his ongoing refusal to accept decisions of the court.
- [106] Mr. Johnston and Mr. Storrie refer to physical attacks that occurred prior to the injunction granted by Ferguson J. Neither that nor the protests against Mr. Johnston's public speaking engagements by people he refers to as "Antifa" bear on Mr. Johnston's decision to ignore the court's order and repeatedly defame Mr. Fakh once again in his broadcasts earlier this year.
- [107] Mr. Johnston's repetition of his conduct six times is significant. One slip might be an accident. Six are not. The last one occurred after the contempt motion had already been brought. They are an appeal to a constituency that Mr. Johnston relies upon for his livelihood and to enhance his profile.
- [108] The post-hearing conduct that was the focus of the sentencing hearing cannot overwhelm the central issue. Mr. Johnston's broadcasts through August and his recent repetition of his entire panoply of racist attacks against Mr. Fakh in his statement of claim and his affidavit are telling circumstances. They help inform my understanding of the types of sentences needed to enforce compliance with the court's injunction and to protect the dignity of the court. But they are not the offence itself.
- [109] They do however wholly undermine and render ironic and, frankly, ridiculous Mr. Johnston's statement that he wants to be a central figurehead of love to bring love and peace to the Muslim community among all Canadians.

- [110] The first goal of sentencing for contempt of court is coerce compliance with the court's order. I do not accept Mr. Johnston's word that if he could just be given a list of defamatory words, he would not say them any more. As noted above, he was provided just such lists first by Ferguson J. and then by me. Yet he repeated most of them six times in the spring and now twice more in the week prior to the sentencing hearing.
- [111] Mr. Johnston does not accept the legitimacy of the court's order or the court system. He made clear that the injunction was granted because Ferguson J. was "Sharia compliant" and it was due to lies told by counsel and Mr. Fakh. He believes that he can hide his assets and decide which laws to obey and which to ignore. There is no basis to have any confidence that Mr. Johnston will voluntarily comply with the court's injunction in this case.
- [112] Moreover Mr. Johnston is not willing to stand up and bear responsibility for his actions. He mis-quotes his broadcasts to try to argue that he did not say or mean the things he said. He undermines the sincerity of his guilty plea by denying that he wilfully promoted hatred. By denying responsibility he does not show repentance or contrition.
- [113] There is obviously no point in considering a monetary penalty. Mr. Johnston has not paid any amount on the damages judgment or costs ordered against him. He has made clear that he will not do so and that he has organized his affairs to try to avoid doing so.
- [114] Community service in the absence of contrition achieves neither enforcement of the court's order nor punishment for the level of harm inflicted by Mr. Johnston on Mr. Fakh and society.
- [115] Mr. Johnston has chosen to take aim at Mr. Fakh. The initial injuries to Mr. Fakh and his business were quantified in a damages award. But with the repetition of Mr. Johnston's defamatory attacks as part of a new campaign for political power with a new audience of donors, Mr. Johnston returns to inflict yet further hurtful blows to Mr. Fakh. No one deserves to be harassed and defamed for his religion let alone before thousands of people online. Moreover, someone who has endured a court proceeding and obtained a court order is entitled to be secure in feeling that the law will protect him and his family. Mr. Johnston de-humanizes Mr. Fakh and has no regard for the pain, anxiety, or psychological harm he inflicts on Mr. Fakh.

- [116] In considering the need to protect Mr. Fakh and the public, I accept that the only way to do so is to remove Mr. Johnston from the public for a time. No sentencing option short of a jail term will bring compliance with the injunction, protect Mr. Fakh, or the public.
- [117] I also accept that the thin veneer of civility represented by the rule of law requires protection. Our society only continues if people voluntarily respect the law. Canada is not a society with soldiers on street corners policing the population with machine guns at every turn. It is our shared values, including our commitment to the rule of law, that differentiates our democracy from so many other cultures.
- [118] Mr. Johnston attacks Mr. Fakh in the most heinous manner. But he also threatens and exhorts others to breach the dike by undermining the rule of law that surrounds and protects us all.
- [119] I asked Mr. Holmberg however, whether the best response to Mr. Johnston's threats was to invoke the brute power of the state. Might that not make him a martyr to the cause or play into his theme that he is being silenced for his political views? Mr. Holmberg submitted that the fact that the court is dealing with a context of hate speech by which one person was attacking another due to his religion makes it essential that the court protect the plaintiff and others threatened by Mr. Johnston's racism. The National Counsel of Canadian Muslims asks me to consider the marginalized and vulnerable racialized people who are impacted by Mr. Johnston's attacks on Mr. Fakh. Mr. Fakh is a man of some prominence in society. If the court is powerless to stop unrelenting, unlawful, racist attacks against a man like Mr. Fakh, how are the powerless to feel welcome or safe in Canada?
- [120] I agree this far: in considering the sentencing factors set out above, there is a need in this case for a sentence that makes the public sit up and take notice. I am thinking of those who might fear that the civil courts cannot protect them; those who might try to undermine the authority of the court; and the public in general who expect the law of the land to be enforced equally. The court's order will be enforced. The rule of law requires no less. To that end a jail term is required. The social context of racism and hate speech makes the six acts of contempt so odious as to be aggravating under s. 718.2 (a)(i) of the *Criminal Code*. So too Mr. Johnston's defiant unwillingness to comply, his refusal to acknowledge responsibility, his lack of any expression of remorse, repentance, or contrition, and his added profit and power-seeking motives.

[121] I also agree with Germain J. of the Alberta Court of Queen's Bench who sentenced Mr. Johnston to a jail term for contempt of court in July in relation to breaches of an injunction granted by that court. In *Alberta Health Services v Kevin Johnston*, 2021 ABQB 508 at para. 21, Germain J. wrote:

Watching Mr. Johnston on these videos...reveals an individual who is frightening in his bombast and demeanor.

[122] In that case, Mr. Johnston was making statements about Alberta Public Health employees. Substituting Mr. Fakih for those employees, I adopt Justice Germaine's findings at para. 78, as follows

To personalize animus about the Public Health Orders onto the shoulders of AHS personnel who are trying to save lives is more than outrageous. Most people who have the misfortune of listening to Mr. Johnston would be terrified by the extent of his animus, his frightening facial features and his threats expressed in certain terms. I recognize that some of this may be an act to gain attention in a crowded field of political candidates who wish to express a message in a reasonable and balanced way; however, listening to Mr. Johnston reminds all of us of how thin the veneer of civility is in the face of this pandemic.

[123] Nearly all of the precedents relied upon by the plaintiffs involve cases where individuals have refused to obey injunctions requiring them to disclose the location of assets. The cases with sentences over one year (up to 21 months) involve factors that exist here: repeated acts of contempt; no repentance; no efforts to purge the contempt despite being offered the opportunity to do so; and no other way to enforce the court's order. See, for example: *GM Textiles v Sidhu*, 2016 ONSC 2055, appeal from a varied order dismissed 2017 ONCA 969; and *Chiang (Re)*, 2009 ONCA 3 (CanLII),

[124] I agree with Mr. Holmberg that this case is unique in its combination of both the hate speech context and with Mr. Johnston's statements undermining the rule of law. As I quoted above from the *Keegstra* decision at the Supreme Court of Canada, hate speech is an anathema to democratic values. Perhaps jail is a blunt tool and risks making Mr. Johnston a martyr to his cause. But at some point, society simply needs to protect its members and itself from those who would use our democratic freedoms to deliberately hurt others and strike at the democratic and *Charter* values and the democratic institutions that are Canada.

- [125] Having considered the cases set out in the plaintiffs' factum, those cited by Mr. Johnston, and considering the factors set out above, in my view this case calls for a significant sentence proportional to the harm inflicted on the plaintiff and society by Mr. Johnson's repeated and intentional defiance.
- [126] In my view, Mr. Johnston's unrelenting hate speech inflicted on Mr. Fakhri to an audience of thousands, in defiance of the court's order, and in the context of deliberate and very public attacks on the courts and the rule of law, make this case deserving of a more significant sentence than one-year sentence pronounced by Lax J. in *Re Chaing*.
- [127] Mr. Johnston repeated his baby-killer/murderer defamation three times and his "terrorist" defamation three times. I sentence Mr. Johnston to a jail term of three months for each for total consecutive terms of 18 months for contempt of court.
- [128] At the end of the first 15 months, I require that Mr. Johnston return to court for the purpose of allowing the court to consider varying the sentence based on Mr. Johnston's acts to purge his contempt between now and then. Section 6 (1) of the *Prisons and Reformatories Act*, RSC 1985, c P-20 as incorporated into s. 28 of the *Ministry of Correctional Services Act*, R.S.O. 1990, c M.22 apply. That is, there shall be no remission on the sentence unless or until ordered by the court upon Mr. Johnston purging his contempt satisfactorily or the full sentence being served.
- [129] The sentence should begin as soon as Mr. Johnston is legally able to return to or be brought to Ontario. Mr. Johnston is not able to leave Alberta at the present time due to his sentence there for contempt of court. The Alberta sentence ends after the weekend of December 25, 2021. That sentence has nothing to do with the contempt of court found here. I exercise my discretion under Rule 60.11 (5)(f) and defer the commencement of this sentence to begin on Tuesday, January 4, 2022. I order Mr. Johnston to present himself at 10:00 a.m. Eastern Standard Time, at the University Avenue entrance to the 361 University Avenue courthouse, to turn himself in to the Court Officers there.
- [130] I have signed a Warrant of Committal in the foregoing terms. If Mr. Johnston does not surrender himself at the time and place stipulated, a Warrant for his Arrest will issue.

[131] The plaintiffs may deliver up to 5 pages of costs submissions and a costs outline by November 1, 2021. Mr. Johnston may deliver no more than 5 pages of costs submissions and a costs outline by December 1, 2021.

FL Myers J

Released: October 4, 2021

CITATION: Paramount Fine Foods v Johnston, 2021 ONSC 6558
COURT FILE NO.: CV-17-580326
DATE: 20211004

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PARAMOUNT FINE FOODS and
MOHAMAD FAKIH

Plaintiffs

– and –

KEVIN J. JOHNSTON, RANENDRA BANERJEE,
and FREEDOMREPORT.CA

Defendants

REASONS FOR DECISION

FL Myers J

Released: October 4, 2021