CITATION: AG of Ontario v. Trinity Bible Chapel et al., 2021 ONSC 1169
COURT FILE NO.: 21-95
DATE: February 23, 2021

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: The Attorney General of Ontario v. Trinity Bible Chapel, Jacob Reaume, Will Schuurman, Dean Wanders, Randy Frey, Harvey Frey and Daniel Gordon

BEFORE: The Honourable Mr. Justice P.R. Sweeny

COUNSEL: R. Ogden, A. Huckins, J. Hunter, M. Cheung, for the applicant
L. Bildy, for the Contemnors

HEARD: February 11, 2021

ENDORSEMENT

INTRODUCTION

[1] This is a motion to address the appropriate sentence arising from my finding of contempt made January 27, 2021, with reasons reported February 1, 2021: see *AG of Ontario v. Trinity Bible Chapel et al.,* 2021 ONSC 740. The purpose of a penalty for civil contempt is to enforce compliance with a court order and to ensure societal respect for courts: see *Boily v. Carleton Condominium Corporation 145,* 2014 ONCA 574, 121 O.R. (3d) 670, at para. 79.

[2] The Order read, *inter alia*, as follows:

> **THIS COURT ORDERS** that the respondents, their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this order, are restrained from directly or indirectly, by any means whatsoever, contravening Ontario Regulation 82/20, by holding gatherings of more than 10 persons in conjunction with the operations of Trinity Bible Chapel.

[3] I found that all three requirements for contempt were established by the applicant beyond a reasonable doubt for each of the respondents. Accordingly, I found the respondents – Trinity Bible Chapel, Jacob Reaume, Will Schuurman, Dean Wanders, Randy Frey, Harvey Frey and Daniel Gordon (the "Contemnors") – all in contempt of the Order of January 22, 2021.

ADJOURNMENT REQUEST

[4] At the outset of the motion, the Contemnors sought an adjournment, *sine die*. The Contemnors' counsel asserted that the Contemnors had not acted in breach of the Order on the last two successive Sundays. She indicated that, given that the province is moving to open up areas, including the Waterloo region, they would undertake to not hold services on February 14, 2021.

[5] The Contemnors indicated that they intended to bring a *Charter* challenge. They have since done so.

[6] I declined to grant the adjournment. The Contemnors had a full opportunity to prepare responding material and did so. The contempt arises out of the failure to comply with the Order on Sunday, January 24. The fact that there has been no further contempt is a factor that may be taken into consideration in determining the penalty. However, the assertion that the Contemnors "undertake" to comply with the Order, in my view, does not add anything to the matter. I also note that this "undertaking" is given on the basis that the province will open up and allow services in Waterloo. It is qualified. They do not say that they will abide by the Order because it is a court order. The Contemnors' request for an adjournment was denied.

BACKGROUND

[7] The background surrounding the issuing of the Order and contempt are set out in my prior endorsements. They need not be repeated here. It is necessary, however, to review the evidence submitted by the Contemnors.

[8] Jacob Reaume swore an affidavit which was reviewed, and the information and beliefs contained therein were agreed with and adopted by the other personal Contemnors.

[9] In his affidavit, Mr. Reaume deposes that, when the initial state of emergency was declared by the government back in March, he was "prepared to give the government the benefit of the doubt" with respect to the limitations imposed. Another church in Ontario brought an application to permit drive-in services, which resulted in the government allowing drive-in services.

[10] Mr. Reaume also deposes to being concerned that police did not take active steps to lay charges against protesters in a Black Lives Matter protest in downtown Kitchener who might be in breach of the law. His "perspective on the arbitrariness of the gathering restrictions, and the hypocrisy of their selective enforcement, was impacted by these actions." I note that there was no court order requiring the Black Lives Matter protestors to comply with the regulations.

[11] In June, churches were permitted to hold services at 30% capacity with all appropriate protocols in place, including hand washing, wearing face coverings, social distancing and no singing, chanting, or choirs.

[12] On September 28, 2020, a lawyer on behalf of the Church wrote to the Premier and expressed concern about a further shutdown, and stated the following:

> While our clients are quite prepared to continue incorporating reasonable, science based recommendations to help protect the health of their parishioners, they will not tolerate further restrictions on their freedom of religion, and are prepared to take legal action immediately should that happen [emphasis added].

[13] In a letter of December 3, 2020, Jacob Reaume advocated civil disobedience in the event of a second lockdown at the Church. No "legal action" was undertaken by the Church.

[14] On December 21, 2020, the Premier announced that there would be a province-wide lockdown commencing December 26, 2020 for 4 weeks. Again, no "legal action" was undertaken by the Church.

[15] Mr. Reaume and the church leadership then made their own determination as to the healthcare risks and related concerns of COVID-19. They determined that the problem was in long-term care homes and not as a result of churches. They decided to hold in person services. Once again, no "legal action" was undertaken.

[16] On December 23, 2020, Mr. Reaume sent a letter to the Chief of Police and Mayor indicating that the Church intended to meet in person in violation of the regulation. The Mayor responded and sought compliance.

[17] Mr. Reaume and the other Contemnors were aware of their legal right to seek to challenge the legislation. In fact, the *Emergency Management and Civil Protection Act,* R. S. O. 1990, c. E.9, specifically refers to the fact that it is subject to the *Charter.* However, they chose not to take that route.

[18] The Church held services on December 26, 2020, and January 3, 2021, with more that 10 persons in attendance. On December 30, the six personal Contemnors were served with summonses on the charge of "being an owner/occupier of the said premises did host or organize at prescribed premises being a place of worship and the number of people in attendance exceeded the number permitted contrary to section 10.1 of the *Reopening Ontario Act*, Ontario Regulation 82/20 Schedule 4 section 1(d)("the *Act*")."

[19] On January 6, 2021, summonses were served on Will Schuurman and Jacob Reaume on the charges of "attended gathering of more than 10 people for the purposes of a religious service, rite or ceremony contrary to the *Act*". All six Contemnors were served with summonses on the following charge: "host a gathering at a prescribed premise where the number of people in attendance exceeded the number permitted under a continued section 7.0.2 contrary to the Act, section 10.1(1)."

[20] Although he does not refer to it in his affidavit, Mr. Reaume was aware of the Order of January 22, 2020. He encouraged others to attend the church in violation of the Order.

[21] On January 24, 2021, two services were held at the church. The Contemnors received summonses as a result of holding those services.

ISSUE

[22] The sole issue for me to decide is as follows: what is the appropriate sentence for the Contemnors for their contempt? This is not an application to challenge the legislation under the *Charter*. The Contemnors did not take steps that were available to them to challenge the legislation

under the *Charter* before the contempt. They were fully aware of that right and, indeed, expressed that they would do so back on September 28, 2020.

[23] In *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534, 91 O.R. (3d) 1, the court held as follows at para. 42:

> I fully accept and agree that compliance with court orders is an important, but not exclusive, component of the rule of law. The motion judge in his sentencing decision did not address the other dimensions of the rule of law referred to in *Henco*. However, I do not think that he erred in focusing at the sentencing stage of contempt proceedings on the dimension of the rule of law that relates to ensuring that orders of the court are enforced. The following passage from McLachlin J.'s reasons in *United Nurses of Alberta,* at p. 931 S.C.R., supports this view:
>
> > 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. *To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court*. [Emphasis added by ONCA]

[24] As in *Frontenac*, the issue of the conflict between freedom of conscience and religion under s. 2(a), and other *Charter* rights, may be dealt with in other contexts – but are not at the forefront in determining the penalty to be imposed for contempt.

FACTORS TO CONSIDER

[25] In *Boily*, the Court of Appeal set out the relevant factors to consider at para. 90:

> The following are the factors relevant to a determination of an appropriate sentence for civil contempt:
>
> a) the proportionality of the sentence to the wrongdoing;
>
> b) the presence of mitigating factors;
>
> c) the presence of aggravating factors;
>
> d) deterrence and denunciation;
>
> e) the similarity of sentences in like circumstances; and
>
> f) the reasonableness of a fine or incarceration.

Echostar Communications Corp. v. Rodgers, 2010 ONSC 2164; *Sussex Group Ltd. v. Fangeat*, [2003] O.J. No. 3348, [2003] O.T.C. 781 at para. 67 (Ont. S.C.); *Builders Energy Services Ltd. v. Paddock*, 2009 ABCA 153, at para. 13. Megill, at pp. 7-8.

A) PROPORTIONALITY

[26] As with sentencing generally, the sentence for civil contempt "must be proportionate to the gravity of the offense and the degree of responsibility of the offender": see *Re Chiang,* 2009 ONCA 3, 93 O.R. (3d) 483, at para. 86. It is important to remember that the offence is the breach of the court Order. The prior alleged conduct and the charges are not for me to address.

[27] The gravity of the offence has to do with the administration of justice. A technical breach is to be contrasted with a flagrant act with full knowledge of its unlawfulness.

[28] As Watt J.A. noted in *College of Optometrists of Ontario v. SHS Optical Ltd.,* 2008 ONCA 685, 93 O.R. (3d) 139, at para. 107, "[d]isagreement with restrictions imposed on regulated activity by a statute enacted in the public interest does not entitle the dissenter to break the law."

[29] This is a case of a public, notorious and intentional breach of a court order.

B) MITIGATING FACTORS

[30] In *Devathasan v. Ablacksingh*, 2018 ONSC 7557, Nishikawa J. succinctly summarised the mitigating factors to consider at para. 24, which include the following:

- no evidence of previous defiance of any court order;
- first conviction of contempt;
- purging or attempting to purge the contempt;
- a sincere apology or demonstration of remorse to the court;
- admitting the breach or breaches;
- the existence of separate sanctions for the same factual circumstances such as a fine from the Ontario Court of Justice;
- there are dependents who rely on the Contemnor; and
- efforts to mitigate damages on other parties

No evidence of previous defiance of any court order

[31] In this case, we have no previous defiance of a court order. The summonses arising out of behaviour on prior Sundays is not a factor for me to consider on this first factor because it is the behaviour in failing to obey the court Order which is my concern, not prior conduct.

First conviction of contempt

[32] This is the Contemnors' first conviction for contempt.

Purging or attempting to purge the contempt

[33] The contempt occurred when the service was held. It is a historical contempt. It cannot be purged because it has already occurred. This is in contrast to a case where there is an order that the contemnor do something by some time. If a contemnor, after being found in contempt, does what he or she is required to do, he or she has, in a sense, purged the contempt by complying with the order. That is not the case here. The compliance with the court Order subsequent to the contempt is just that, following the Order, as the Contemnor is required to do by law. Compliance is a factor to take into consideration, but it is tempered in this case by the Contemnors' failure to acknowledge the authority of the court Order. The position of the Contemnors appears to be as follows: we will abide as long as this does not go on too long, and if it does, we may not comply.

Admitting the breach or breaches

[34] In this case, the breach was admitted.

The existence of separate sanctions for the same factual circumstances such as a fine from the Ontario Court of Justice

[35] With respect to separate sanctions for the same factual circumstances, the Contemnors are subject to prosecution. However, that has not yet occurred. They have been charged. It may be that the prosecution considers the sentence for contempt as a factor in the sentencing under the other charges.

A sincere apology or demonstration of remorse to the court

[36] There is no apology or demonstration of remorse for the conduct in this case. The Contemnors assert that they are conflicted. However, they do not apologize for their breach of this Order.

[37] The fact that the Contemnors assert that freedom of religion is a justification for their breach of the Order is not a mitigating factor. It is not because the Contemnors took no steps to assert that right prior to the contempt, as they were entitled to do.

[38] In *Frontenac*, the Court referred to certain relevant mitigating factors at para. 51:

> Importantly, both Mr. Lovelace and Chief Sherman were first offenders. Until the events giving rise to their protest of blockade, they have lead lives characterized by leadership in their community, including leadership in demonstrating respect for Canadian law. Both candidly conceded their contempt. That significant fact should have been acknowledged and taken into account in fashioning an appropriate sentence [emphasis added].

[39] I observe that, with respect to the personal Contemnors, they have leadership responsibilities in their Church. However, there is no evidence before me that they demonstrated any particular respect for Canadian law. In fact, Jacob Reaume, specifically encouraged "civil disobedience" and encouraged others to attend the service in breach of the Order.

C) AGGRAVATING FACTORS

[40] In *Devasathan*, at para 28, the aggravating factors to consider were summarized by Nishikawa J., and include the following:

- a deliberate course of conduct over a lengthy period of time;
- numerous breaches of court orders;
- repeated acts of contempt;
- benefiting financially from contempt;
- demonstrating disrespect for the court by
    - lying to the court;
    - offering an insincere apology; or
    - giving only the appearance of complying with orders;
- the breach occurred with full knowledge and understanding of the contemnor rather than by mistake or misunderstanding;
- rejecting the authority of the court; and
- public safety concerns.

[41] Many of the aggravating factors are the converse of the mitigating factors. This includes deliberate conduct over a lengthy period of time, breaches of a number of court orders, and repeated acts of contempt. These are not present here. There is no personal gain other than notoriety. There was no lying or disrespect to the court. There was no insincere apology, and as I have noted, there was no apology at all.

The breach occurred with full knowledge and understanding of the Contemnor rather than by mistake or misunderstanding

[42] In this case, the aggravating factors are that the breach occurred with the full knowledge and understanding of the Contemnors. There was no mistake.

Rejecting the authority of the court

[43] The Contemnors reject the authority of the court by their actions.

Public safety concerns

[44] The violation of the order had potential health risks associated with it. The regulation is in place to deal with potential harm as a result of spread of COVID-19. That is its stated purpose. The order was made to support that purpose.

D) DENUNCIATION AND DETERRENCE

[45] Civil contempt is concerned with ensuring compliance with court orders.

[46] Denunciation is the general societal expression of approbation for the conduct. It cannot be condoned.

[47] Deterrence has both a specific and general aspect. Specific deterrence applies to the individual contemnor. It is to deter that party from future breaches of court orders. General deterrence is to deter other parties from breaching court orders, often in similar circumstances.

[48] In this case, specific deterrence is warranted. The Contemnors have not stated that they will unconditionally abide by the Order in the future. They have indicated a limited intention to abide by the Order. Accordingly, specific deterrence is at play and is a factor to be considered in this case.

[49] General deterrence is also at play in this case. The Contemnors encouraged others to follow in their conduct. They publicly declared their intention not to comply with the Order. That was flagrant.

E) SENTENCES IN LIKE CIRCUMSTANCES

[50] While no two circumstances are ever the same, guidance can be obtained from other cases.

[51] In *Boily,* the Court of Appeal imposed a fine of $7,500 on each volunteer board member of a not-for-profit condominium corporation. There was no personal gain involved. The individuals believed that what they were doing was right.

[52] In the case of *Regional Municipality of York v. Schmidt,* 2008 CanLII 63236 (Ont. Sup. Ct.) the Contemnor sold unpasteurized milk in contempt of a court order. The court imposed a $5,000 fine. The court considered the potential health consequences of the behaviour.

[53] In *Ontario (Attorney General) v. Paul Magder Furs Ltd.,* 10 O.R. (3d) 46 (C.A.), Mr. Magder had not complied with the *Retail Business Holidays Act* while challenging its constitutionality. He had previously been convicted. A fine of $5,000 per breach was imposed in 1992.

[54] In *Mississippi Valley Conservation Authority v. Mion*, 2018 ONSC 1114, 15 C.E.L.R. (4th) 346, a corporation and one of its directors and officers breached a court order under the *Conservation Authorities Act* requiring them to rehabilitate and restore certain wetlands. A fine of $5,000 per respondent was imposed for a total of $10,000.

[55] In *West Lincoln (Township) v. Chan* (2001), 13 C.P.C. (5th) 137 (Ont. Sup. Ct.), the personal respondent and his corporation operated a game farm in violation of a zoning bylaw. They had not breached any other order. They admitted and purged their contempt and expressed genuine remorse. A $25,000 fine was imposed jointly.

[56] Fines in the case of protest and blockades have been limited to nominal fines or short terms of imprisonment. In *Peter Kiewit Sons Co. v. Perry,* 2007 BCSC 305, for example, the court imposed fines of different amounts for the contemnors ranging from $250 to $5,000, depending upon their individual circumstances and conduct.

[57] In *Frontenac,* the Court of Appeal held that the imprisonment and fines ranging from $10,000 to $25,000 imposed by the sentencing judge were too harsh. The Court found that a fine of $1,000 would have been appropriate against one Contemnor. In my view, both *Frontenac* and *Perry* are special cases insofar as there is an element of protest. There was, however, no health or public protection aspect to the orders that were disobeyed. It was in the context of a private corporation seeking to enforce private rights against public protestors. These cases are clearly different.

[58] The case at bar was not a protest with no potential adverse effects on others.

F) THE REASONABLENESS OF THE FINE

[59] As I have outlined above, courts have imposed fines of varying quantum for contempt. In examining the reasonableness of the fine, consideration should be given to the financial circumstances of the parties.

[60] I have no evidence before me of the ability to pay of the individual Contemnors. I have some evidence of the Church's revenue and salaries paid to unidentified employees. Jacob Reaume, Will Schuurman, and Randy Frey are employees.

[61] There is evidence that the Church was soliciting donations to a legal fund to assist with its legal troubles.

[62] The applicant seeks fines of $25,000 for the Trinity Bible Chapel and $7,500 for each of the personal Contemnors: a total of $70,000.

[63] The Contemnors assert that there should be fines of $5,000 for the Trinity Bible Chapel and $1,000 for each of the personal contemnors: a total of $11,000.

[64] I consider the fact that the church initially chose not to challenge the provincial regulation as they are legally entitled to do. Instead, they wilfully disobeyed the court order. It was flagrant. It was intentional and it was public. It attracted the attention sought by the Contemnors.

[65] There is also a public health aspect to this. The regulations were enacted with a view to containing and stopping the spread of COVID-19.

[66] I observe that much of the evidence offered by the Contemnors – and by evidence, I mean the affidavit of Jacob Reaume sworn February 10, 2021 – is not responsive to the issue before me. The fact that police declined to charge others in contravention of the regulations is not a justification to breach a court order. Nor is the conduct of persons in authority taking vacations. In any event, I have made my finding of contempt.

[67] The assertion that the government does not know what it is doing in imposing these restrictions is also not relevant to the issue of sentence. A challenge to the government's rationale behind the restrictions is a matter to be dealt with in a constitutional challenge.

[68] The amounts suggested by the Contemnors are not sufficient considering all the factors in this case. The amounts requested by the applicant are too much. In my view, different fines are appropriate for the personal Contemnors. They are all elders but have different involvement in the Church.

[69] Jacob Reaume is the Senior Pastor. He encouraged others to participate in the breach of the regulation by an online letter. I find the appropriate fine for him is $5,000.

[70] Will Schuurman is an employee: Associate Pastor. He wrote in May 2020 that the Church should open regardless of whether the "government ban was still in place." I find the appropriate fine for him is $5,000.

[71] Randy Frey is also an employee: Pastor of Christian Education. I find the appropriate fine for him is $4,000.

[72] The other 3 personal Contemnors are directors of the Trinity Bible Chapel. I find the appropriate fine for each of them is $3,000.

[73] I find that the appropriate penalty in this case is a fine of $15,000 for the Trinity Bible Chapel. This results in total fines of $38,000.

COSTS

[74] In *Astley v. Verdun*, 2013 ONSC 6734, 118 O.R. (3d) 43, at para 52, Goldstein J. noted that "the authorities in Ontario lean to the view that costs should generally be awarded on a substantial indemnity basis in contempt matters." This proceeding was necessitated as a result of the conduct of the Contemnors. The applicant does not seek costs incurred in obtaining the initial order on January 22, 2021. The costs are sought with respect to the contempt only. With respect to quantum, the applicant claims $59,591.25 on a substantial indemnity basis and $39,725.50 on a partial indemnity basis.

[75] In my view, this is an appropriate case for costs to be paid on a substantial indemnity basis. The Contemnors were aware that they were breaching a court order. They did it knowingly. They did it intentionally. The applicant incurred costs with respect to that contempt. The applicant is entitled to substantial indemnity for those costs.

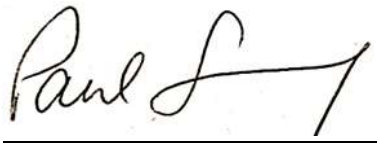
[76] The challenge in this case is that the applicant has salaried lawyers. The applicant calculates its costs based on hourly rates for lawyers of comparable experience. However, there are many factors which go into an hourly rate charged. I have no evidence or information about comparable hourly rates charged. I am not prepared to simply accept the amounts claimed by the applicant for hourly rates. I would set the hourly rates on a substantial indemnity basis at $475 for Mr. Ogden and $425 for Ms. Huckins. I consider the importance of the issues to the parties, the time spent, and the results achieved by counsel's work. Counsel for the Contemnors did not really challenge the time spent but submitted that costs should only be awarded on a partial indemnity basis.

[77] In the circumstances, I fix the applicant's costs, on a substantial indemnity basis, in the amount of $45,000 all-inclusive to be paid by the respondents jointly and severally.

ORDER

[78] There will be an order as follows:

1) the respondent, Trinity Bible Chapel, shall pay a fine of $15,000 for its contempt;
2) the respondent, Jacob Reaume, shall pay a fine of $5,000 for his contempt;
3) the respondent, Will Schuurman, shall pay a fine of $5,000 for his contempt;
4) the respondent, Dean Wanders, shall pay a fine of $3,000 for his contempt;
5) the respondent, Randy Frey, shall pay a fine of $4,000 for his contempt;
6) the respondent, Harvey Frey, shall pay a fine of $3,000 for his contempt;
7) the respondent, Daniel Gordon, shall pay a fine of $3,000 for his contempt; and
8) the respondents shall pay the costs of the applicant on a substantial indemnity basis fixed in the amount of $45,000 to the applicant.



Sweeny R. S. J.