Court of Queen's Bench of Alberta

Citation: Alberta Health Services v Johnston, 2021 ABQB 508

Date: 20210707
Docket: 2101 06254, 2101 05742
Registry: Calgary

Between:

Alberta Health Services

Applicant

- and -

Kevin Johnston

Respondent

Reasons for Decision
of the
Honourable Mr. Justice A.W. Germain

A. Introduction

[1] In May of 2021, Alberta Health Services (AHS) obtained a series of court orders to assist in enforcing Covid -19 community compliance. They allege the Respondent (Kevin Johnston) has breached one or more of these orders and in result is guilty of contempt of a court order. For the reasons outlined in this ruling, I agree in part with the submission of AHS and cite Mr. Kevin Johnston in contempt.

[2] Earlier I issued three other rulings involving other respondents relating to the same or similar issues. Similar legal principles apply in each case. I have purposely repeated myself throughout the rulings so each can provide transparency about my ruling without resort to the companion rulings. The companion rulings are: ***Alberta Health Service v Street Church***, 2021

ABQB 489; ***Alberta Health Service v Pawlowski***, 2021 ABQB 493 [***Pawlowski***]; ***Alberta Health Service v Scott***, 2021 ABQB 490 [***Scott***].

B. Background

1. General Background

[3] The World Health Organization declared the Novel Coronavirus (Covid -19) to be a pandemic in March 2020. By May 2021, Alberta was in what medical experts called the third wave of the pandemic. Active cases in Alberta (including cases of more dangerous variants that had developed elsewhere in the world) caused increasing numbers of Covid-19 infections. AHS took steps to reduce the impact of this third wave, as both hospitals and the intensive care units became dangerously overcrowded.

[4] Kevin Johnston and others, openly flaunted the efforts of AHS to control the third wave of the virus in Alberta. In response, AHS obtained an injunctive order from Associate Chief Justice Rooke on May 6, 2021 (the First Rooke Order, subsequently amended on May 13, 2021) and a second order from Associate Chief Justice Rooke on May 14, 2021 (the Second Rooke Order).

[5] Kevin Johnston operates social media sites and a broadcast outlet, which gained some notoriety in Calgary for its vicious, unrelenting attacks on AHS personnel and the orders of the Chief Medical Officer of Health (Public Health Orders). Kevin Johnston is running for mayor of Calgary and positioned himself as a candidate opposed to the Public Health Orders. Mr. Johnston aligned himself with Pastor Artur Pawlowski and his brother Dawid Pawlowski, operators of the Street Church, and Mr. Christopher Scott, who are also identified objectors to the steps taken by AHS to lesson the health impact on Albertans. At the date of the release of these reasons, I have also found all three individuals to be in contempt of the First Rooke Order.

2. The Three Court Orders

[6] The First Rooke Order, restrained Albertans (identified as John Does) from:

> (i) Organizing an in-person gathering, including requesting, inciting or inviting others to attend an "Illegal Public Gathering";
>
> (ii) Promoting an Illegal Public Gathering via social media or otherwise; or
>
> (iii) Attending an Illegal Public Gathering in a public or private place.

[7] The First Rooke Order defined an "Illegal Public Gathering" as any gathering that did not comply with the requirements of current CMOH Orders (Chief Medical Officer of Health Orders) including, but not limited to:

> (a) Masking requirements;
>
> (b) Attendance limits applicable to indoor or outdoor gatherings; and
>
> (c) Minimum physical distancing requirements.

[8] The Second Rooke Order issued on May 14, 2021, was specifically directed against Mr. Johnston and obliged him to cease and desist in his vitriolic attacks on AHS personnel and to remove inflammatory information about AHS personnel from his various social media sites. The specifics of the Second Rooke Order may be summarized as enjoining Mr. Johnston from:

> Obstructing, molesting, hindering, or interfering with AHS and its officers and employees including public health officers in the execution of any duty imposed or in the exercise of any power conferred by the *Public Health Act*, RSA 2000, c. P-37 or its regulations, threatening such conduct, or urging others to engage or assist in such conduct;
>
> Contacting, telephoning, emailing, texting, or communicating with AHS and its officers and employees including public health officers engaged in enforcing a public health mandate to curtail the spread of COVID in Alberta, either personally or by an agent;
>
> Video or audio recording or photographing, or attempting to video or audio record or photograph AHS officers and employees, including public health officers;
>
> Attending at a hospital or business premises of AHS, excepting for necessary personal medical treatment;
>
> Intentionally attending at or near the residential premises of AHS officers and employees including public health officers;
>
> Approaching or remaining within 100 meters of any AHS public health officer, that is either known to the Respondent or that identifies themselves as an AHS public health officer to the Respondent; and
>
> Publishing, broadcasting, communicating or uttering any threats or engaging in any hateful speech directed at AHS and its officers and employees including public health officers in the media or on social media platforms, including soliciting the names, addresses, phone numbers and other personal or private information of AHS officers and employees.

[9] The Second Rooke Order specifically required Mr. Johnston to immediately remove any existing hateful, threatening or harassing statements from any website utilized by Mr. Johnston, including any social media platforms.

[10] On May 17, 2021, I released Mr. Johnston from detention pursuant to the terms of an order of Judicial Interim Release (Bail Order) pronounced in his presence, that included:

> Pending the Contempt Hearing, the Respondent is enjoined from engaging in any further breaches of the Orders, subject to any amendments thereto, which includes, but is not limited to being prohibited from organizing, promoting, or attending at any future public or private gatherings in breach of current orders issued by the Chief Medical Officer of Health of the Province of Alberta under the *Public Health Act*, RSA 2000, c P-37 such as gatherings which do not comply with:
>
> > Masking requirements;
> >
> > Attendance limits applicable to indoor or outdoor gatherings; and
> >
> > Minimum physical distancing requirements.

3. The Arrest of Mr. Johnston

[11] Mr. Johnston was arrested the evening of May 15, 2021. The details leading to his arrest are described in this portion of my ruling. On Saturday morning May 15, 2021, the Calgary Police Service (CPS) received a complaint advising that Mr. Johnston was at an event at the Street Church.

[12] Mr. Johnston posted a live-stream recording of this May 15th event to his Instagram account. Next, Mr. Johnston attended at the McMahon Stadium parking lot located at 1817 Crowchild Trail NW and participated in another public gathering where the Public Health Orders were not being followed. Finally, Mr. Johnston attended at a gathering at the Prince's Island Park located at 698 Eau Claire Ave SW. His Instagram account posted a live-stream recording of the gathering.

[13] CPS arrested Mr. Johnston who appeared before me on Monday, May 17, 2021, where he was released on the Bail Order that obliged him to conduct himself in accordance with the Public Health Orders. At that time, I also scheduled a contempt hearing for June 13, 2021.

[14] After his release, Mr. Johnston gave the police cause to believe that he was breaching either the conditions of his Bail Order or the First Rooke Order, and as a result, he was rearrested on May 26, 2021.

C. The Position of the Parties

[15] The position of AHS is that they have established by their affidavit evidence, both Rooke Orders and my Bail Order were breached by Mr. Johnston after he had notice of them. They say that these breaches amount to a contempt beyond a reasonable doubt because the three criteria - notice, certainty of terms, and deliberate conduct - exist in relation to all three court orders.

[16] Mr. Johnston insists that AHS prove the allegations against him to the requisite standard. Mr. Johnston asserts that after the First Rooke Order was amended on May 13, 2021, a reasonable interpretation is that it no longer applied to him. The Respondent's fallback position on the First Rooke Order is that it must be interpreted with *Charter* values in mind such that Mr. Johnston's role as a journalist, and also as a mayoral candidate, must be accorded the respect of freedom of expression. Further, where his free speech amounts to an opinion (even one that might be interpreted as promoting an event), this should not lead to a finding of contempt. I interpret this as a "read in" argument, that the Rooke Orders must be read to exclude conduct amounting to freedom of expression, which cannot be prohibited by the Orders. Alternative to the "read in" argument, Mr. Johnston's freedom of expression amounts to a reasonable excuse allowing me to excise my discretion against a finding of contempt.

[17] In relation to the Second Rooke Order, Mr. Johnston asserts that subsequent to finding out about the details of the Order, he has taken down from the social media under his control any perceived inappropriate allegations or criticism against AHS personnel. His assertion here is that he cannot be said to be in breach of this Order until he was aware of it and he did not become aware of it until he was arrested and, in result, he has a reasonable excuse for any delay in taking down the offensive material.

[18] As it relates to the Bail Order, Mr. Johnston indicates that on its facts AHS cannot prove that it was breached or if it was technically breached, it was in the interest of advancing his journalistic right of fair comment and free speech which should provide an excuse. The argument

advanced by Mr. Johnston raises significant social issues. I will spend some time discussing them in this ruling.

D. Legal Analysis

1. The Facts

[19] The evidence of Detective B. Jacklin (June 1, 2021) is substantially confirmed by the video-recorded evidence attached as exhibits to the affidavit of K. Isabelle (June 4, 2021) and is not significantly disputed in the opposing affidavits filed by the Respondent. If a picture is worth a thousand words, a video, particularly those as graphic as the exhibits attached to the Jacklin affidavit, are worth much more! They provide proof to virtual certainty of the conduct of the Respondent.

[20] I can do no better then quote from the Jacklin affidavit (modified for time continuity, and with irrelevant discourse removed) as the cornerstone of the facts in this case:

> 8. On May 15, 2021 at 0932 hours, the Calgary Police Service received a complaint advising that the Respondent, Kevin J. Johnston, was at an event of about 40 people located at a church located at 4315 26 Avenue SE. The caller indicated that there was a street preacher and brother at the church with protest signs.
>
> 9. The Respondent has been [a] vocal opponent of CMOH Orders under the *Public Health Act* throughout the Covid-19 Pandemic and has had previous confrontations with members of the City of Calgary Bylaw, CPS, and AHS Health Inspector over the defiance of these Orders.
>
> 10. I observed a simultaneous Facebook live stream of what appeared to be a church service on a Facebook page called "The Cave of Adullam" which was occurring at the Church located at 4315 26 Avenue SE. The Calgary Police Service Helicopter responded to the area and observed the Respondent at the Church within this Illegal Public Gathering. Calgary Police Service members observed there to be at least 40 to 45 people who appeared to be scattered throughout the outside of the church. People in attendance were not wearing masks, nor were they maintaining minimum physical distancing requirements. There was a large red and white banner promoting "Calgary Mayor-Elect Kevin J. Johnston" hanging from a railing in front of the church. There were other individuals holding signs displaying various messages, including; "Wanted" (with a photo of Jason Kenney).
>
> 11. The Respondent was observed in the front area of the Church, on the sidewalk, holding a phone out in front of his face. The Respondent had his arm around another unmasked person he was standing beside. The Respondent was observed live streaming a broadcast on Instagram from the front sidewalk area of the Church. The Respondent was observed interacting with individuals with a distance of less than two (2) metres without wearing masks, hugging another unmasked individual as well as another unmasked female putting her hand on the Respondent's back as they walked.

12. While outside The Church, the Instagram account of the Respondent, "kevin jjohnston" posted a live-stream recording to his Instagram account. I made the following observations from this Instagram Live stream event:

> Video clearly showing the Respondent not wearing a mask and interacting within a distance of less than 2 m with individuals not wearing masks;
>
> Video clearly showing the Respondent putting his arm around another individual and then an unidentified female putting her hand on the back of the Respondent as they walked together;

13. I later observed the Respondent at the McMahon Stadium parking lot located at 1817 Crowchild Trail NW in a Live Facebook feed, in the account of "Derek Peter Storie". The following observations were made from this Facebook Live stream event:

> The Respondent was observed in the parking lot appearing to do a "meet and greet" with persons on foot and in vehicles;
>
> The Respondent and persons he was interacting with were not wearing masks or face coverings of any type at a distance of less than 2 meters;
>
> The Respondent was observed going vehicle to vehicle as the vehicles were lined up in a parade and interacting with the occupants, shaking hands at a distance of less than 2 meters.

14. I later observed the Respondent at an illegal gathering at the Prince's Island Park located at 698 Eau Claire Ave SW on the Instagram account of the Respondent. I communicated with Lynne Navratil - Director, Calgary Zone - AHS Environmental Public Health and received confirmation that gathering at Prince's Island Park was in breach of current CMOH orders (in particular 19-2021 and 26-2021), as well as the Court Order (attached as Exhibit "B")

15. The Instagram account "kevinjjohnston" posted a live-stream recording and I made the observations from this Instagram Live stream event:

> The Respondent was observed associating with individuals at a distance of less than 2 metres with no visible masks or face coverings;
>
> The Respondent made reference to all of their signs and banners being taken down; and
>
> The Respondent was observed providing instructions to unmasked individuals to stay together as a crowd;

16. I observed the Respondent hugging an unidentified female, making physical contact for an extended period of time while unmasked.

[21] The evidence supporting the breach of the Second Rooke Order consists mainly of venomous, hateful and threatening rants, about various AHS personnel, entrained into Mr. Johnston's various social media sites. These were introduced as exhibits through the affidavit of K. Isabelle (June 4, 2021). Watching Mr. Johnston on these videos played in open court and attached as electronic exhibits to the material filed by AHS, reveals an individual who is frightening in his bombast and demeanor.

[22] His words could only inflict fear and concern for their personal safety in the AHS personnel who Mr. Johnston targeted. They are overtly harassing in their nature. He presents as a dangerous, out-of-control individual. The malice that Mr. Johnston expresses is simply beyond the pale of normal social discourse. Reasonable people can reasonably disagree with the Public Health Orders, but in Mr. Johnston's case (whether for economic or political gain) he clearly reflects an animus to AHS personnel that is shocking.

[23] A brief selection of the lengthy social media recordings on Mr. Johnston's personal media pages was played in court during these proceedings. The following non-exhaustive list taken from AHS's brief are not denied by the Respondent, but asserted to be taken out of context. He suggests the AHS has intentionally misconstrued his statements. These are:

> "AHS is criminals, cowards and terrorists and they must be brought to justice; (name of AHS public health officer)";
>
> [Affidavit of K. Isabelle, Exhibit C, Video No. 11, Clip 35]
>
> "If you're friends with this (name of AHS public health officer) person, when I'm mayor I'm going to investigate you as well; I intend to make this woman's life miserable, I intend to destroy this woman's life like she has destroyed the lives of Calgarians...she's going to have to fight terrorism charges."
>
> [Affidavit of K. Isabelle, Exhibit C, Video No. 11, Clip 36]
>
> Respecting AHS staff - "You might want to leave Alberta, you might want to go somewhere I can't get to you."
>
> [Affidavit of K. Isabelle, Exhibit C, Video No. 11, Clip 36]
>
> Respecting AHS public health officers – "I'm coming for you all, If SWAT won't come, it's simple, I'll arm myself and I'll come right to your doors."
>
> [Affidavit of K. Isabelle, Exhibit C, Video No. 8, Clip 16]
>
> Respecting AHS staff - "I intend to do a lot of harm to AHS and I mean a lot of harm. God, you guys are not going to like what I do."
>
> [Affidavit of K. Isabelle, Exhibit C, Video No. 8, Clip 20]
>
> Threatening to "dox" (releasing personal information including residential addresses) - AHS public health officers - "I want my fanbase out there to find their names and addresses (AHS public health officers) now so that we can file a lawsuit now before the election happens," "When I put it into a lawsuit, it'll be on the first page. And that lawsuit, that I can give to anybody because that's a public document," "So it is legal to dox somebody and that's exactly how we're going to do it."
>
> [Affidavit of K. Isabelle, Exhibit C, Video No. 7, Clip 15]

[24] Finally, the affidavit evidence filed by AHS, including the exhibits, makes clear that after Mr. Johnston's release on May 18, 2021, he carried on as if the Bail Order granted by me was not in effect or did not contain any bail conditions that required his compliance.

2. The Standard of Proof

[25] A judge considering whether a contempt of a court order has occurred must determine the existence of the below discussed three essential elements to a level of proof beyond a reasonable doubt. The Supreme Court of Canada in ***R v Starr***, 2000 SCC 40 (at para 50) described proof beyond a reasonable doubt as something less than absolute certainty, but much greater than probable guilt. This is the standard that I propose to apply.

3. The Test for Contempt

[26] Three elements are required for a finding of contempt:

> (1) That the order alleged to have been breached must state clearly and unequivocally what should and should not be done;
>
> (2) That the party alleged to have breached the order must have had actual knowledge of it; and
>
> (3) The party allegedly in breach must have intentionally done the act that the order prohibited or intentionally failed to do the act that the order compelled (***Carey v Laiken***, 2015 SCC 17 at paras 32-35 [***Carey***]).

[27] Even if the test is made out beyond a reasonable doubt, if a respondent has taken reasonable steps to comply with the order, the Court retains the discretion to deny an application for contempt (***Carey*** at para 47).

4. Applying the Test to the Facts

i. Service and Notice

[28] Although notice of the order is the second element of the three-part test for contempt, it is useful to deal with this first as occasionally it can be determinative of the entire issue. The question becomes: was the respondent aware of the existence of the order? The gold standard of awareness is personal service. However, personal service is not absolutely necessary if it becomes clear on the record, and beyond a reasonable doubt, that the respondent had actual notice of the order that was specific enough to indicate the requirements of it.

[29] There is no evidence in this record that Mr. Johnston received personal service of the First Rooke Order, nor is that necessary in this case. Entrained in the evidence is a video recording of Mr. Johnston briefing Pastor Artur Pawlowski and his brother Dawid Pawlowski at the Street Church in the early morning of May 8, 2021. That date is important because it was on that date that the Pawlowski brothers were arrested for organizing a public gathering contrary to the First Rooke Order and contrary to the Public Health Orders. Mr. Johnston indicated that he had contacted the CPS to inquire about the details of the public notice that the CPS sent out advising the public about the existence of the First Rooke Order and their commitment to enforcing the Order. He commented that the police had confirmed that in their view it applied to church services. I therefore find beyond a reasonable doubt that Mr. Johnston had effective notice of the First Rooke Order.

[30] Mr. Johnston is not captured on video when the First Rooke Order was served on Dawid Pawlowski by being dropped at Mr. Pawlowski's feet at the door to the Street Church. However, immediately after service of the First Rooke Order, and as tensions flared at the Street Church on May 8, 2021, Mr. Johnston is seen as being part of the group of individuals advancing against the

retreating CPS. At one point, as a credit to him, he appears to intervene to prevent one of the Street Church supporters from pushing a CPS officer. Being caught up in that close environment where service of the First Rooke Order is taking place on the Pawlowskis (neither of whom, like Mr. Johnston were named in the Order), coupled with Mr. Johnston's comment specifically about the Order lead me to conclude beyond a reasonable doubt that he had full notice and knowledge of the First Rooke Order on May 8, 2021.

[31] The Second Rooke Order, described as a cease, desist and remove electronic media order, was not obtained until Friday, May 14, 2021. On Saturday, May 15, 2021, at the end of the day, Mr. Johnston was arrested and was not released until May 17, 2021. That Order was served on him substitutionally to an e-mail address of a political organization to which he apparently has access. Substitutional service is an adequate and widely recognized form of service in the context of civil proceedings; however, the contempt adjudication process which requires proof beyond a reasonable doubt of knowledge means that the gold standard of knowledge (personal service) must be reviewed when another form of service has taken place. Mr. Johnston in his affidavit filed in these proceedings, and not challenged by AHS in cross-examination, indicates that the Second Rooke Order (the cease and desist order) came to his attention on May 17, 2021, the day he was released from jail, after being arrested on May, 15 2021. That makes sense; I find that from May 17, 2021 onward Mr. Johnston was bound by the Second Rooke Order.

[32] The last order is the Bail Order. Knowledge of this Order is absolute because it was reviewed in court with Mr. Johnston and his lawyer, who appeared electronically. The terms were clearly expressed and understood. Upon his release, it was a condition of that release that he obey the Public Health Orders. Thereafter, Mr. Johnston is heard in several of his own video comments expressing the view he was not bound by any release condition because he had not signed anything. Mr. Johnston's ignorance of the law in this regard, that he had to sign something to be bound by an interim release order, does not diminish his knowledge of the Bail Order and its potential impact upon him.

[33] I conclude that Mr. Johnston had knowledge of the First Rooke Order as early as 8 AM on May 8, 2021. He received service and had knowledge of the Second Rooke Order on May 17, 2021, and he had knowledge of the Bail Order in open court on May 15, 2021. Thus, he had notice and knowledge off all three orders for which AHS seeks to have him cited in contempt.

ii. Is Mr. Johnston bound by the First Rooke Order as "John Doe?"

[34] I repeat the observations I made in ***Pawlowski*** about this issue. This will not be the first nor likely the last time that parties not specifically identified in a court injunction are prosecuted on an allegation of being in contempt of it. The concept is not new. British cases recognized this ability in the courts over 100 years ago. In Canada, it is been recognized particularly in the area of public order breaches, intellectual property breaches or labour law breaches, that "John Does" are commonly utilized and identified in the orders.

[35] While the process has been criticized, others have also identified that it reduces the multiplicity of litigation, and serves as a warning for others who might contemplate acting in defiance of court orders. Canadian courts are an important check in a rule of law jurisdiction. The rule of law would quickly break down if court orders could be avoided, ignored or disobeyed with impunity.

[36] In the context of this case, there has been an increase over time during the pandemic of open disobedience of AHS Public Health Orders. With infinite time and resources, AHS could return to court multiple times per day to get injunctions which they feel are needed to protect the public. ***MacMillan Bloedel Ltd v Simpson***, [1996] 2 SCR 1048, 1996 CanLII 165 [***MacMillan***] confirms an alternate approach. Injunctions against the public at large, identified as John Doe and Jane Doe, are legally enforceable in Canada. At para 31, MacLachlan J stated:

> It may be confidently asserted, therefore, that both English and Canadian authorities support the view that non-parties are bound by injunctions: if non-parties violate injunctions, they are subject to conviction and punishment for contempt of court. The courts have jurisdiction to grant interim injunctions which all people, on pain of contempt, must obey. The only issue -- and one which has preoccupied courts both in England and, to a lesser extent, here -- is whether the wording of the injunction should warn non-parties that they, too, may be affected by including language enjoining the public, or classes of the public, from committing the prohibited acts.

[37] Earlier, at para 27, McLachlin J explained, anyone who disobeys an "order or interferes with its purpose may be found to have obstructed the course of justice and hence be found guilty of contempt of court." See also para 40.

[38] At para 42, McLachlin J advised it is not essential that the order refer to unknown persons. "However, the long-standing Canadian practice of doing so is commendable because it brings to the attention of such persons the fact that the order may constrain their conduct."

[39] The Supreme Court most recently affirmed ***MacMillan*** in ***Google Inc v Equustek Solutions Inc***, 2017 SCC 34, where Abella J at para 28 wrote:

> Google's first argument is, in essence, that non-parties cannot be the subject of an interlocutory injunction. With respect, this is contrary to the jurisprudence. Not only can injunctive relief be ordered against someone who is not a party to the underlying lawsuit, the contours of the test are not changed. As this Court said in ***MacMillan Bloedel Ltd v Simpson***, injunctions may be issued "in all cases in which it appears to the court to be just or convenient that the order should be made . . . on terms and conditions the court thinks just."

[40] Applying ***MacMillan*** in ***Siksika Nation v Crowchief***, 2016 ABQB 596, where Mr. Crowchief was supported by several unnamed and unknown band members in protesting the perceived lack of consultation during the construction of a housing development, Hunt McDonald J concluded at para 78:

> Therefore, I find that naming Unknown Defendants in this action does not invalidate it. The order for an injunction in this case is enforceable against all persons, including those who are not parties to the action, who violate it; those who violate it may be found guilty of contempt for interfering with justice provided they have received notice of the injunction and any subsequent application for contempt.

[41] As it relates to the Covid-19 pandemic, in ***Nova Scotia (Attorney General) v Freedom Nova Scotia***, 2021 NSSC 170, Norton J cited ***MacMillan*** while granting an injunction to the Province of Nova Scotia to prevent a large in-person gathering to protest Covid-19 restrictions.

The decision emphasized the practice of clear wording and including the designation of "John Doe, Jane Doe or Persons Unknown." At para 36, Norton J explained:

> It is appropriate that the order includes clear language that law enforcement officers and other law enforcement agencies will enforce the prohibitions. It is appropriate to include notice that law enforcement officers will arrest and charge anyone in breach of the prohibitions.

[42] In this case, video-recorded evidence attached as exhibits to the affidavits clearly confirm that Mr. Johnston commented upon the First Rooke Order, knew of it existence and had a good understanding of its content and detail on May 8, 2021. He is bound by that Order.

iii. Did Mr. Johnston's conduct breach the First Rooke Order?

a. Between May 8, 2021 and May 13, 2021

[43] Prior to May 13, 2021, the first paragraph of the First Rooke Order read as follows:

> 1. The named individual Respondents and any other person acting under their instructions or in concert with them or **independently to like effect** and with Notice of this Order, shall be restrained anywhere in Alberta from (emphasis mine):
>
> a. Organizing an in-person gathering, including requesting, inciting or inviting others to attend an "Illegal Public Gathering";
>
> b. Promoting an Illegal Public Gathering via social media or otherwise;
>
> c Attending an Illegal Public Gathering of any nature in a "public place" or a "private place," which each have the same meaning as given to them in the Public Health Act.

[44] There is evidence that on May 8, 2021, (the date of the arrest of Pastor Artur Pawlowski and his brother Dawid Pawlowski), Mr. Johnston was present prior to the church service being held at the Street Church and specifically led a briefing about the Order and indicated that he had communicated with the City of Calgary and understood the wide-ranging effect of the First Rooke Order. I conclude that Mr. Johnston was acting "independently to like effect" in attending the Street Church service. This was prohibited by the First Rooke Order. Therefore, applying this conclusion to the fact situation, Mr. Johnston's conduct on May 8, 2021, by participating in the political rally portion of the service at the Street Church, not maintaining social distancing and not wearing a mask amounts to a breach of the First Rooke Order on that day.

[45] However, there is no other evidence that would be sufficient to found a conclusion beyond a reasonable doubt that after Mr. Johnston left the church service on May 8, he conducted himself in a further contemptuous way prior to the CPS' observations of his conduct on May 15, 2021.

b. May 15, 2021

[46] On May 15, 2021, when Mr. Johnston was arrested, the words "independently to like effect" had been removed from the First Rooke Order. This begs the question whether that Order, as amended, was intended to limit the John Does to individuals directly connected with the named respondent, Christopher Scott, who operated the Whistle Stop Café in Mirror, Alberta. This case is the first where this issue has arisen.

[47] Matters involving allegations of contempt require precision in wording so that reasonable individuals can objectively "see themselves" in the wording of the order. Learned counsel for AHS suggests that while many Albertans could escape the effect of the First Rooke Order, as amended, Mr. Johnston cannot. Counsel argues that even with the removal of the words "independently to like effect," the Order still catches John Does if they are individuals acting "in concert" with the named respondent in the First Rooke Order. This is because the plain meaning of the words "in concert" would apply to anybody who was publicly encouraging civil disobedience of the Public Health Orders.

[48] Learned counsel for AHS recognized the difficulty that this amendment created and reminded us that the amendment in the First Rooke Order was a consent amendment (at least in respect of the element that is being interpreted) so must be given a reasonable interpretation based on the common meaning of the words. To round out this argument the "operating in concert" concept would modify the intention to create public disorder and disobey the Alberta Health Orders, or even expressing support for the plans of Mr. Scott.

[49] The countervailing argument is that the amendment must stand for something. The submission of the Respondent is that the amendment narrows the individuals caught by the First Rooke Order to those who are in some way more closely connected with Christopher Scott and his restaurant operation in Mirror, Alberta. Mr. Johnston further points out that other contemnors, such as the Pawlowski brothers or Mr. Scott are connected to a building or a location, whereas his interest is simply as a politician who is campaigning for elected office or a populist who wishes to attract those with sympathy to Pastor Pawlowski, his brother or Christopher Scott to support him. Counsel for Mr. Johnston suggests that Mr. Johnston was only "aligned" with Mr. Scott not operating "in concert" with him.

[50] My conclusion is that by May 15, 2021, the First Rooke Order had been restricted in its scope and concept. There is no other way to interpret the removal of the phrase "**or operating independently and to like effect**." Once that amendment took place there is a cogent, realistic, and rational argument that the John Does identified in the Order now must in some fashion be connected to the Whistle Stop Café and the commercial restaurant activity of Christopher Scott.

[51] Were this merely a case of contractual interpretation, the AHS argument might prevail; however, this is a case of contempt where the standard of proof is beyond a reasonable doubt and where if there are two equally reasonable interpretations, the individual charged must get the benefit of the most favourable interpretation.

[52] While the CPS had, in my view, reasonable grounds to arrest Mr. Johnston on May 15, 2021, a close legal analysis of the First Rooke Order, as amended on May 13, reveals that AHS cannot prove beyond a reasonable doubt that on May 15, 2021, Mr. Johnston was a John Doe in breach of the amended Order. This is because alleged contemnors of that Order would have to have some connection or at least a more solid footing that they were acting in concert with Christopher Scott and his restaurant operation in Mirror, Alberta. It would be dangerous to convict Mr. Johnston of that alleged contempt simply on the basis of him indicating on his Instagram account that the roads were opened and that he planned to attend Mr. Scott's event in Mirror, Alberta. He in fact did not attend that event.

c. Has Mr. Johnston breached the Second Rooke Order?

[53] The Second Rooke Order enjoined Mr. Johnston from his continued torment and harassment of AHS personnel and his odious depiction of them on his various websites and personal social media sites. Embedded in the Second Rooke Order was the requirement that Mr. Johnston both cease and desist in his vile conduct against AHS personnel and take down all of the offensive commentary about AHS personnel. He had done neither until recently. As at June 13, when the first portion of this hearing took place, the material remained online and easily accessible. It could be played and even if arguably no new material (post Order) has been added, the existing material still constituted a broadcasting of this prohibited material.

[54] Prior to the conclusion of the hearing on June 27, 2021, Mr. Johnston did remove all of the material that he still had control over. Counsel for AHS very fairly concedes that the material has been taken down. He also concedes that some of his commentary remains in the public domain because others captured it.

[55] Counsel for Mr. Johnston submits that I should therefore exercise my discretion to not find Mr. Johnston guilty of this contempt. He also asserts that taking down the material was not to be considered an admission on the part of Mr. Johnston that this material was not protected by freedom of expression. I will deal with the issue of freedom of expression separately in this ruling.

[56] Defence counsel also raised the issue that the the Second Rooke Order may have been too vague to be enforceable, as it required that the material to be removed was material that constituted “hateful, threatening or harassing statements” and these terms were not defined. A simple review of the nature and tone of the material reduced to writing found earlier in these Reasons for Judgment leads inescapably to the conclusion that no further definition was needed because it literally encompassed all of the material. To hear the material as it was graphically played in court leaves no doubt that all of it was hateful, threatening and harassing. This argument also fails.

[57] To summarize, my ruling about the Second Rooke Order, Mr. Johnston admits he knew of it, took his good time to remove the material and only under protest, and was deliberate and wilful in his breach of the Order. All three essential elements for a finding of contempt of a court order have been made out in this case by AHS, virtually to absolute certainty, and definitely beyond a reasonable doubt. I will consider Mr. Johnston’s asserted reasonable excuses in a moment.

[58] Having found the existence of all three required elements, I must consider whether I should exercise my discretion against a finding of contempt because Mr. Johnston has taken down the impugned material. I do not consider this to be an appropriate case to exonerate Mr. Johnston by exercising judicial discretion against a finding of contempt. That discretion should be utilized in cases where the breach is trifling or short-lived and without malice. This is not one of those cases. Any mitigation that Mr. Johnston should get for finally obeying the Second Rooke Order should be reflected in the sanction phase of this hearing.

iv. Is Mr. Johnston in contempt of my Bail Order?

[59] Any one of the many people who breach bail orders could theoretically be brought back to the court for a sanction of contempt. This rarely happens because they receive by their breach the ultimate sanction of a re-arrest and potentially longer incarceration. In the result, it is rare for

an applicant to apply for a contempt ruling against someone who has lost their liberty by breaching terms and conditions of bail. Rare, but still, particularly in the context of public and open disobedience, an available remedy.

[60] What is unusual in this case, is that although many people breach bail conditions they usually don't advertise the fact that they feel they are not bound by any conditions. Mr. Johnston in his social media outreach is noted on more than one occasion to take the position that he is not bound by any conditions of judicial interim release because he was not asked to sign anything. He is wrong about this in law and this mistake in law will not prevail to provide a defence. The Bail Order is not a written agreement requiring the signature of the parties to the agreement; it is an enforceable court order.

[61] The terms and conditions of the Bail Order specifically obliged Mr. Johnston not to appear at gatherings that were being conducted in breach of the Public Health Orders. While Mr. Johnston may himself have a reasonable excuse against masking (a medical exemption letter for example) he is still observed after his release on May 17, 2021, attending other gatherings in which social distancing is not being observed. By example he attended and commented upon the "Just Say No" Protest in Edmonton on May 26, 2021.

[62] All three elements for a finding of contempt - notice, intentional breach and knowledge of the obligations contained within the Bail Order - exist in this case and while the subsequent incarceration may go to the issue of sanction, AHS was both entitled to, and has succeeded in proving beyond a reasonable doubt that Mr. Johnston intentionally and wilfully breached the terms and conditions of his Bail Order.

v. Do the Orders, or enforcement of them, violate Mr. Johnston's *Charter* rights?

a. The First Rooke Order

[63] Mr. Johnston describes himself in his affidavit opposing a finding of civil contempt as follows:

> I am an independent journalist, political candidate and social commentator who reaches my audience through social media. I have been successful and I am recognized across Canada. I have never been more fulfilled in life before I found this outlet in which I express myself. This activity is the core of my personal identity.

[64] Although I have concluded that Mr. Johnston was bound by the First Rooke Order for only a short period of time, I must now deal with the argument raised by his legal counsel and that is whether either as a journalist or because he is involved in the political process, he is entitled to flaunt the AHS Public Health Orders on the basis of rights protected by the *Canadian Charter of Rights and Freedoms,* being Part I of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the *Charter*).

[65] The *Charter* does give Canadians substantial rights and freedoms that are consistent with a democracy and a rule of law jurisdiction. Section 2 of the *Charter* provides:

> Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

[66] These rights are not without limit. Were they without limit, it would mean that those exercising their rights could potentially violate the rights of others. Counsel for Mr. Johnston concedes these limits, but asserts that as a journalist, Mr. Johnston was entitled to be at the Street Church on May 8, 2021, commenting on the activities taking place there.

[67] Counsel for Mr. Johnston has essentially developed a "read in argument," asserting that the Rooke Orders and my Bail Order must be interpreted with attention to the *Charter*. This argument is often raised in the context of legislation, allowing courts to read in or out sections that violate the *Charter*, with the social goal of preserving something of the legislation. However, this is rarely a valid approach in the context of a court order because it constitutes a collateral attack on the order.

[68] The Supreme Court of Canada has recognized a general rule against collateral attacks on court orders. With limited exceptions, an order issued by a court must be obeyed unless it is set aside in a proceeding taken for that purpose: ***R v Bird***, 2019 SCC 7 at para 22 [***Bird***]. See also: ***Hiles v Hiles***, 2021 ABCA 57 at footnote 15 for a summary of the meaning of a collateral attack.

[69] The rule has been applied where the accused alleges that the court order is unconstitutional. In ***R v Domm*** (1996), 31 OR (3d) 540, 1996 CanLII 1331 (Ont CA) [***Domm***], leave to appeal refused, [1997] 2 SCR viii (note), Doherty JA, writing for the Ontario Court of Appeal, held that "[e]ven orders that are constitutionally unsound must be complied with unless set aside in a proceeding taken for that purpose" (549).

[70] The Supreme Court, however, has recognized that people must have an effective means to challenge court orders, particularly when those orders are alleged to violate constitutional rights. The Court must consider the availability of another effective remedy apart from a collateral attack. Where a collateral attack is the only way to effectively challenge a court order, a collateral attack will be permitted: ***Bird*** at para 23; ***Domm*** at 552-554.

[71] Here there are other effective means for challenging both Rooke Orders. This contempt proceeding is not to become a collateral attack on the foundation of the Rooke Orders, although their detailed wording may be aggressively reviewed to ensure clarity and certainty as a requirement of a finding of contempt.

[72] Even placing the Respondent's argument on its highest possible pedestal, in regard to the First Rooke Order, the argument would still fail here on the facts. On May 8, 2021, after the CPS served Dawid Pawlowski with the First Rooke Order, the CPS elected to withdraw to determine what would happen. What in fact happened is the attendees were briefed about the terms and conditions of the Order and carried on in open defiance of it. Mr. Johnston was present.

[73] When Pastor Pawlowski indicated that there were 11 people present at the service running for political elected office in Calgary, there was exuberant cheering from the unmasked, not socially distant crowd. All of the candidates were called to the front of the room. Mr. Johnston is observed at the front of the room enjoying the accolades of the crowd unmasked and in extreme close proximity to others. Part of the First Rooke Order prohibited attending

gatherings where the Public Health Orders were not being followed. Attending at the Street Church that day and coming to the front of the church facility to receive the accolades of the crowd was a breach of the First Rooke Order that is not protected by any journalistic right or any rights protected by s 2 of the *Charter*. It was a pure and blatant breach of the First Rooke Order not condoned by any element of the *Charter* or *Charter* values.

[74] Further, if there was a legitimate breach of the First Rooke Order by virtue of a *Charter* right, the appropriate handling would have been to withdraw at that point and go to court (as others did on May 13, 2021) to seek amendment, clarification or alteration of the First Rooke Order. It cannot be emphasized enough that one's personal disagreement with a court order does not give an individual the right to breach the order. The order must be obeyed unless it is varied, withdrawn or amended.

[75] An important feature of a rule of law democracy is a free independent media. It is important in our legal environment that a bona fide journalist, present at the scene to record for the public what is going on, would not be in breach of the First Rooke Order. However, when that journalist gives up the mantle of journalism and becomes part of the populist crowd that is prohibited from gathering because of a court order, then a contempt sanction will lie. That was the situation of Mr. Johnston. When he joined with a group of other politicians at the front of a church to take part in what was effectively a political blessing, he was no longer acting as a journalist with the right of fair comment, but he was acting in breach of a Public Health Order, which curtailed his right to publicly gather. To the extent that his freedom was limited, it was limited in a prescribed manner and consistent with the existing medical decisions taken to curb the spread of the Covid -19 virus.

[76] In short, Mr. Johnston receives no exoneration of his conduct on May 8, 2021 by virtue of s 2 of the *Charter*.

b. The Second Rooke Order

[77] Let us now consider this argument in relation to the Second Rooke Order. While it is true that the Public Health Orders have not met with universal endorsement, reasonable individuals recognize that AHS was trying to balance health restrictions against the negative effect on the economy, while at the same time fighting a difficult virus. The experience in Alberta has been that each time the rules were relaxed, the virus spread further in the community. Counsel for Mr. Johnston submits that Mr. Johnston is simply part of that debate with a right to criticize the Public Health Orders. Again, this is always a matter of degree and this argument is cut down by the reality that Mr. Johnston went much further than criticizing the Public Health Orders: he effectively threatened AHS personnel and in particular made a future threat that when he was mayor, (expressed by him in absolute terms), he would be coming for these AHS personnel.

[78] 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. This type of outburst is not protected by the *Charter*.

[79] This then leads to the argument that Mr. Johnston is entitled to forcefully blog his opinion about Public Health Orders within the latitudes of s 2 of the *Charter* and that he is entitled to keep these sites active, online and not obliged to remove them. Let us suppose, without arguing the fact, that depending on the nature and type of the expressions they might fall within fair journalistic comment and thereby be protected by the *Charter*. The comments of Mr. Johnston do not, however, have those characteristics; instead, they constitute hatred, animosity and threats to a defined group - health care personnel who are part of the fight against the Covid-19 pandemic. However, even if there was factual merit to a good faith journalist expressing a contrary view about the Public Health Orders, the appropriate approach would have been to return before ACJ Rooke to obtain clarification or amendment to the Second Rooke Order.

[80] You do not get the right in the Canadian legal context to act in disobedience of a court order simply because you conclude that it was granted in constitutional error, granted upon factual error or granted based on a legal or jurisdictional error. I reviewed this extensively in ***Scott*** (paras 23 to 30), but to ensure that this decision provides complete transparency of my handling of this issue, I will repeat these concepts here, which concepts also apply to the First Rooke Order.

[81] In ***Scott***, the position taken was that the First Rooke Order was flawed because the Respondent had not been given notice in advance of the Order. He argued a defect in the granting of the Order made it invalid and unenforceable. Here, Mr. Johnston argues similarly, that the defect in both Rooke Orders is that they failed to consider his s 2 and s 3 *Charter* rights.

[82] In ***Scott***, I was referred to ***Gunther's Building Center Ltd v Kleinschmidt***, 1975 63 DLR (3rd) 361, 1975 CanLII 1014 (Alta CA), a completely unrelated debt collection case where an *ex parte* order was likely obtained contrary to the enabling legislation. While the Court forcefully decried *ex parte* orders, it nevertheless acknowledged that the order stood as the appeal period had expired.

[83] In ***Carey,*** a solicitor breached a court order because he believed that it soon wouldn't matter and that the funds which had been frozen would flow to his clients anyway to satisfy their judgment. The solicitor was afraid obedience to the order would disclose the existence of the funds or breach solicitor client privilege. The Supreme Court pointed out (at para 58):

> there were appropriate avenues open to him other than making a unilateral decision to breach the order. The unilateral approach that he adopted gave no weight to the important principle that "a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed": Wilson v. The Queen, 1983 CanLII 35 (SCC), [1983] 2 S.C.R. 594, at p. 599. See also Ontario (Attorney General) v. Paul Magder Furs Ltd. (1991), 1991 CanLII 7053 (ON CA), 6 O.R. (3d) 188 (C.A.), at p. 192: "It is elementary that so long as … an order of the court remains in force it must be obeyed."

[84] Alternatives to the payment out of the funds to his client included seeking "a variation of the order or direction from the court on an ex parte and in-camera basis" (para 59).

[85] This issue also arose in ***United Nurses of Alberta v Alberta (Attorney General)***, [1992] 1 SCR 901, (1992), 89 DLR (fourth) 609 (SCC) at 639 [***United Nurses***]. The issue there was that the UNA viewed the order of an administrative tribunal to be invalid, but despite this, it was

entered as a valid order of the Court of Queen's Bench and a decision concerning contempt was made. A discussion arose about sub-facial validity of the order, and the Court responded as follows (at 935):

> the question is whether the inability of the judge to inquire into the validity of the order on the contempt proceeding deprives the judge of a responsibility which should rest with a s. 96 court. One way of approaching the problem is to ask whether a judge entertaining a motion for contempt of an order made by a judge of the court, as opposed to an inferior tribunal, would have the power to go behind the order. It would seem not. The validity of the order is not an issue on the contempt hearing. Unless the order has been set aside for want of jurisdiction, the judge hearing the motion on criminal contempt must accept it as valid.

[86] On the date of our hearing, both Rooke Orders were in full force and effect and, as Justice McLachlin pointed out in ***United Nurses***, a contempt hearing is not the place to look behind a valid court order unless and until it has been successfully appealed or revoked. Even that, may not temper the effect of a contempt while the order was in effect.

[87] In ***Scott***, I also considered ***Canada (Human Rights Commission) v Taylor***, [1990] 3 SCR 892, 1990 CanLII 26 [***Taylor***], a case in which the appellants sought to set aside a prior finding of contempt. In ***Taylor***, McLachlin J indicated:

> In my opinion, the 1979 order of the Tribunal, entered in the judgment and order book of the Federal Court in this case, continues to stand unaffected by the Charter violation until set aside. This result is as it should be. If people are free to ignore court orders because they believe that their foundation is unconstitutional, anarchy cannot be far behind. The citizens' safeguard is in seeking to have illegal orders set aside through the legal process, not in disobeying them.
>
> … For the purposes of the contempt proceedings, [the order] must be considered to be valid until set aside by legal process. Thus, the ultimate invalidity of the order is no defence to the contempt citation. (Page 974)

[88] As expressed by Justice McLachlin, and many other authorities, there is no circumventing an order merely because it may later be established to be defective.

[89] In *Charter* litigation, the individual who raises the *Charter* breach must prove it on a balance of probabilities. Even if I were to conclude that this contempt proceeding is the only appropriate venue for reviewing whether the Second Rooke Order violates Mr. Johnston's *Charter* rights, I conclude his *Charter* rights were not violated.

[90] The commentary of Mr. Johnston that was ordered removed by the Second Rooke Order, fell so far afield of fair journalistic comment that it is nearly identifiable hate literature, with the overtone of a threat of harm. There is no *Charter* breach engaged in the enforcement of the Second Rooke Order.

[91] In ***Duncan v Buckles***, 2021 ONSC 1158, the defendant plead a *Charter* right in the face of a court order prohibiting commentary on evidence heard at a small claims trial; the argument failed (para 45). Similarly, Professor Hogg in *Constitutional Law of Canada, 5th Edition*, Part III: Civil Liberties, 43.15 shared this view:

> Therefore, even if the effect of the contempt proceedings were to enforce a restraint on freedom of expression...., the Charter cannot be called in aid to resist the contempt proceedings.

[92] In ***R v Lucas***, [1998] 1 SCR 439, the Supreme Court of Canada was considering s 2 of the *Charter* in the context of defamatory liable under the *Criminal Code*. At para 94 (page 480), the Court expressed the following view:

> It is thus clear that defamatory libel is so far removed from the core values of freedom of expression that it merits but scant protection. This low degree of protection can also be supported by the meritorious objective of the impugned sections. They are designed to protect the reputation of the individual. This is the attribute which is most highly sought after, prized and cherished by most individuals. The enjoyment of a good reputation in the community is to be valued beyond riches.

[93] This is the attribute of AHS personnel that Mr. Johnston sought to destroy. To paraphrase the Supreme Court of Canada, freedom of expression in that context merits scant protection.

c. The Bail Order

[94] Since the Bail Order is an order I granted, perhaps here the Respondent can argue that I should amend it before enforcing it to clarify that it can not be interpreted contrary to s 2 of the *Charter*. That would be an aggressive argument since the vary nature of bail orders is often a restriction or curtailment of personal rights and liberties as a compromise to more restrictive curtailment such as incarceration. In the Bail Order, my conditions were clear and consistent with the Public Health Orders as they existed at the time. While arguably absent the Bail Order, Mr. Johnston could have attended to deal with pure journalism obligations at the “Just Say No” protest rally in Edmonton, my Order intended to keep Mr. Johnston away from illegal gatherings where he could stimulate and encourage others by his rhetoric to ignore the Public Health Orders. It is not unusual for bail orders to be restrictive and to control conduct perceived to be disruptive or amounting to a failure to keep the peace and be of good behavior.

5. Does Mr. Johnston have a Reasonable Excuse for the Breach of the Rooke Orders?

[95] Mr. Johnston argues in the alternative that if the Rooke Orders and the Bail Order are not interpreted to prevent a finding of contempt, his *Charter* rights should at least create a reasonable excuse to which I could apply my discretion against a finding of contempt. While the applicant must disprove it, and the respondent is not obliged to prove the existence of a reasonable excuse, some factual situations create a presumption in favour of the applicant that there can be no reasonable excuse.

[96] Counsel for Mr. Johnston raised two potential excuses. First, it is a reasonable excuse to disobey a court order if the order affects your *Charter* rights; second, fair journalism was not intended to be caught by the Second Rooke Order. Further, fair journalist coverage of events could not violate a term of a bail order. I have indicated that the proper handling of these concerns would be to return to the Court for clarification, not to intentionally breach the Orders. A review of the videos attached to and identified in the AHS affidavit immediately establishes why there could be no reasonable excuse in the factual context of this case.

[97] To repeat this concept, perhaps in an over simplistic way, let us assume that a judge grants a court order that requires that anybody travelling on a certain road must transport a sack of gravel from one side of the road to the other. It is a reasonable excuse for an individual to have a bad back and not be able to physically transfer the sack of gravel. If, however, the individual feels that the order is inappropriate because there is too much gravel on the receiving side of the road, that is not a reasonable excuse calling for disobedience. That situation calls for a return to the judge to explain the facts and ask for a modification to the order. That happened to the First Rooke Order; it was modified on May 13, 2021. Mr. Johnston got the benefit of that modification. The facts establish there is no reasonable excuse that exists here to exonerate Mr. Johnston's conduct.

E. Conclusion

[98] My conclusion anchors upon the common-sense reality that Mr. Johnston breached both of the Rooke Orders and my Bail Order. I have found beyond a reasonable doubt that he received effective service or notice of all the Orders and had actual knowledge of them. Despite this, he persisted in a public and defiant manner in disobeying these Orders. The three essential elements of the test for contempt have been established beyond a reasonable doubt. Kevin Johnston is in contempt of the Order of Associate Chief Justice Rooke dated May 6, 2021, until it was amended on May 13, 2021; the Order of Associate Chief Justice Rooke dated May 14, 2021, and my Bail Order dated May 17, 2021.

[99] The sanction phase of this case will occur on a future date.

Heard on the 13th and 28th days of June, 2021.
Dated at the City of Calgary, Alberta this 7th day of July 2021.

A.W. Germain
J.C.Q.B.A.

Appearances:

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