

Action No.: 2101-05742
E-File Name: CVQ21SCOTT
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

ALBERTA HEALTH SERVICES

Applicant

and

CHRISTOPHER SCOTT, WHISTLE STOP (2012) LTD.,
GLEN CARRITT, JOHN DOE(S) and JANE DOE(S)

Respondents

Action No.: 2101-08416

AND BETWEEN:

ALBERTA HEALTH SERVICES

Applicant

and

DONALD FRANCIS SMITH

Respondent

PROCEEDINGS

Calgary, Alberta
October 13, 2021

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

2
3
4 October 13, 2021

Morning Session

5
6 The Honourable Justice Germain
7 (remote appearance)

Court of Queen's Bench of Alberta

8
9 J. M. Jackson, QC (remote appearance)

For Alberta Health Services

10 K. Fowler (remote appearance)

For Alberta Health Services

11 J. Siddons (remote appearance)

For Alberta Health Services

12 K. C. Johnston (remote appearance)

For C. Scott

13 C. Williamson (remote appearance)

For C. Scott

14 N. Holmberg (remote appearance)

For M. Fasih

15 S. C. Miller (remote appearance)

For A. Pawlowski and D. Pawlowski

16 I. S. McCuaig (remote appearance)

For K. J. Johnston (remote appearance)

17 K. Salguero

Court Clerk

18
19
20 THE COURT:

Good morning, ladies and gentlemen, and

21 welcome to this session of the Court of Queen's Bench in Calgary, Alberta, being
22 conducted virtually as a precaution against the COVID-19 pandemic in Alberta. The main
23 purpose of our hearing today is for me to announce the sanctions that I am intending to
24 impose on Mr. Christopher Scott, Pastor Artur Pawlowski, and his brother, Dawid
25 Pawlowski. Before we do that, however, there are some loose ends and other business that
26 we have to deal with briefly.

27
28 So as we get started, for any of you that have been frequently attending these virtual
29 hearings, remember that there are two hard and fast rules. The first rule is that under no
30 circumstance is a picture or screen capture or image capture to be taken in any way about
31 any of the participants in this litigation, including myself as the trial judge, the lawyers, the
32 individuals who are facing hearing, and also any of the other identified names that might
33 be watching the proceedings today. So absolutely no snapshots, camera shots, screen
34 captures, however this can be gathered electronically. The second rule is -- we're getting
35 some background talk, folks. So if you are not talking, could you please mute your mic?
36 The second absolute rule is there is to be no recording or transcription of this proceeding
37 taken by anybody. That is not to say that the remarks are not recorded. This is a court of
38 record. Everything that is said here is put on the record and can be obtained through
39 Transcript Management by ordering a transcript at a reasonable cost. So the second
40 important rule is no recording of the submissions or the comments or the events. So that
41 concludes the preliminaries. In terms of social mannerisms, best to keep your microphone

1 and your video off unless you are actually addressing the Court.

2
3 So as I mentioned earlier, the key reason for which this hearing has been booked is for me
4 to deliver my ruling relating to the sanctions that I am going to impose on Christopher
5 Scott, Pastor Artur Pawlowski, and his brother, Dawid Pawlowski. I'm also going to make
6 some general remarks about these matters and announce the actual citation by which my
7 written comments will be ultimately put up on the government website or on the legal
8 literature sites for anybody to read as an open decision of the Court. But we have two
9 preliminary pieces of business to conduct first. They involve, first of all, Mr. Kevin
10 Johnston, who is currently in a situation where his sentence has been stayed because of the
11 pandemic situation at the Calgary Remand Centre. When I imposed the sentence on him,
12 I intended it to be real time served intermittently. Due to COVID, the Remand Centre at
13 some point was not accepting intermittent sentences, so we're going to find out a little bit
14 more about that. And secondly, we have another matter that has rearisen, and that is a
15 matter involving Mr. Smith, who previously had taken a screenshot of the court
16 proceedings and was sanctioned by me on a consent basis and has now, it is alleged, to
17 have breached the conditions of that disposition.

18
19 So let's start with the Kevin Johnston matter, and counsel for Mr. Johnston is Mr. McCuaig
20 in Toronto and also Mr. Jackson in Edmonton. So if those counsel could come up live
21 now, let's deal with the Johnston matter.

22
23 MR. JACKSON: Good morning, Sir. It's Mark Jackson, counsel
24 for AHS. I'm not aware if Mr. McCuaig is on. There's a lot of participants. Mr. McCuaig,
25 are you there?

26
27 THE COURT: Mr. McCuaig?

28
29 MR. K. J. JOHNSTON: Your Honour, this is Kevin J. Johnston. Mr.
30 McCuaig indicated that he is dealing with something in the Toronto court right this second.
31 There was a scheduling error that had taken place. I believe he's going to contact Mr.
32 Jackson directly shortly.

33
34 THE COURT: All right, then that's fair. Then, Mr. Jackson, I'll
35 have to stand your matter down, and likewise I'll have to stand down the matter of Mr.
36 Smith, as well, because Mr. McCuaig indicated that he was going to try and assist him, as
37 well.

38
39 MR. JACKSON: That's fine, My Lord. Thank you. We'll stand
40 down.

41

1 THE COURT: All right. Then I'm going to turn, then, to the
2 sanction report, then, for Mr. Christopher Scott and for Pastor Artur Pawlowski and Dawid
3 Pawlowski. Before I do that, do any of the counsel have any final submission they want to
4 put on the record out of fear that the sky will fall if they don't get that submission on the
5 record?

6
7 MR. WILLIAMSON: Good morning, Justice Germain. This is Chad
8 Williamson and Kevin (sic) Johnston here for Christopher Scott. We just would like to
9 express our thanks to the Court for the -- the manner in which these proceedings have taken
10 place. It's been professional and, other than that, we don't have any further submissions to
11 make for the Court.

12
13 THE COURT: All right. Alberta Health Services or Ms. Miller,
14 anything? I'll take your silence to be that you have no other comment.

15
16 MS. MILLER: No other comment, My Lord. Thank you.

17
18 **Decision**

19
20 THE COURT: Thank you. Can I get a thumbs up from at least
21 one or more of the advocates so that I can confirm that you can still hear me?

22
23 Okay. So what I'm proposing to do in this particular case is make some general on the
24 record comments, but they do not constitute my official decision. My official decision will
25 be released in writing. If there is a conflict with what I say on the record today and my
26 official released rulings, it is the released rulings that will have to apply, because
27 particularly when we got into the area of court costs, there were a lot of numbers being
28 thrown around and a lot of submissions on that. And it's quite possible that a technical
29 error might creep up in my oral submissions today. So in the event of any error in my oral
30 submissions today, I'm simply going to default back to my written rulings.

31
32 So what are my written rulings, first of all, for the benefit of counsel, and when are you
33 going to get them. My decision is complicated in this particular case, in these cases for
34 different reasons, and you'll also see that my decision is somewhat similar in this case for
35 the obvious reason that the contemnors that I am sanctioning today all breached basically
36 the same court order. Very close in time to its issuance, they all breached the order of
37 Associate Chief Justice Rooke. I found that to be a breach and I found that breach to be
38 contempt. So you will appreciate as members of the bar that there are some similarities in
39 the sanctions that I am handing down to the contemnors today, because there's an obligation
40 for parity between them. You, the lawyers, understand that, so you want the official
41 citation for your records and that will save you a lot of handwriting this morning. So, first

1 of all, the case Alberta Health Services against Scott, the sanction hearing for him is going
2 to be identified as 2021 ABQB 812. The sanction hearing for the Pawlowskis is going to
3 be identified as Alberta Health Service against the Pawlowskis, 2021 ABQB 813.
4

5 So I now want to move into the delivery of some remarks to you this morning. First of all,
6 we go back to the beginning. On May 6th, 2021, Alberta Health Service, AHS, obtained a
7 court order from Associate Chief Justice Rooke. We're calling that throughout these
8 comments the Rooke order. This order targeted Christopher Scott and others to assist in
9 enforcing the community compliance that was required relating to Alberta Health rulings
10 and COVID-19. Alberta Health Services earlier in April had also obtained an order from
11 my colleague, Justice Gates, which we're calling the Gates order, that directed the Street
12 Church to permit the inspection of their facilities on a certain date to confirm that there was
13 compliance with the Alberta Health orders.
14

15 So moving forward from that, we had our hearing on the merits, the liability hearing, and
16 I concluded that all three of Christopher Scott, Artur Pawlowski, and his brother, Dawid
17 Pawlowski, breached the Rooke order and were therefore in contempt. I also concluded
18 that Pastor Pawlowski did breach the Gates order. Along the way, I also found Kevin
19 Johnston had breached the Rooke order, but during the sanction phase of these contempt
20 procedures, he concluded his case with a negotiated settlement. And that did not result in
21 a written ruling, but to the extent that it became of limited precedent value, I am going to
22 refer to it in this ruling.
23

24 So what got us to this point? The World Health Organization declared COVID-19 a
25 pandemic in March of 2020. By September of 2021, Alberta was in what expert medical
26 experts called the fourth wave of a pandemic. Ironically, Christopher Scott, Pastor Artur
27 Pawlowski, and Dawid Pawlowski are being sanctioned at a time when the threat to
28 Albertans from COVID-19 has never been greater. It had been hoped that as Alberta
29 opened for business during the summer of 2021, the worst was behind us. It has turned out
30 to be the exact opposite. From the perspective of COVID-19, Alberta has been and is in
31 the worst shape ever concurrently with these sanction hearings. It is not an overstatement
32 that Christopher Scott, Pastor Artur Pawlowski, and his brother, Dawid Pawlowski, have
33 contributed to this ominous health situation by their defiance of health rules and their public
34 posturing, which encouraged others to doubt the legitimacy of the pandemic and disobey
35 the health orders designed to protect them. In October of 2021, Alberta asked the Canadian
36 federal government for help, as well as the Canadian military. Most therapeutic surgeries
37 have been cancelled in Alberta. ICU units, intensive care units, despite emergency
38 expansion are overwhelmed. Notwithstanding the wide availability of statistically safe and
39 statistically successful vaccinations against COVID-19, the impact on Alberta in terms of
40 health, human suffering, and economic impact has never been worse. Paradoxically or
41 perhaps statistically relevant, when we were fully locked down in March of 2020 there

1 were relatively few cases. Today, virtually everybody in Alberta knows at least one person
2 that has died from COVID and many more that have experienced difficult illness and
3 persistent symptomology.
4

5 In my written rulings, I summarize in more detail the submissions of the parties, so I intend
6 these oral remarks to simply generalize. Of course, even in my written submissions, I could
7 not do justice to the strong and highly qualified arguments presented by the lawyers. The
8 position of Alberta Health Service is that the three contemnors should go to gaol, 21 days
9 for Scott and Pastor Pawlowski, 10 days for Dawid Pawlowski. As this is a civil case,
10 Alberta Health Service also asserts that they are entitled to costs, and they've proposed
11 costs of schedule C of the Alberta *Rules of Court*, plus a multiplier to those costs of two
12 and a half times. The position of the contemnors is that this is an inappropriate case for
13 gaol, as they are otherwise law abiding citizens who have become spokesmen during the
14 pandemic for policies -- opposition to the severity of the Alberta Health Service public
15 health orders. As important, they assert that as both of these contempt orders were obtained
16 on an ex parte, that is behind their back, basis, this should lessen the sanction of the Court.
17 They assert that a small fine is appropriate or even no further sanction. They also assert
18 that costs are not appropriate, as Alberta Health Service has utilized staff lawyers to handle
19 these proceedings, so incurred no extra cost. Their fallback position on costs is that they
20 should not have any increase to the usual amounts described in the *Rules of Court*; in other
21 words, no multiplier.
22

23 I now want to put on my record a bit of a legal analysis of my take on this from a sanctioning
24 point of view. So contempt proceedings in Alberta provide those accused of contempt
25 many protections that are afforded individuals as if they had been charged with a criminal
26 offence. There are some differences. They remain at their root a civil procedure. Processes
27 relating to civil procedure are codified in the Alberta *Rules of Court* and any sanction
28 hearing must start with a review of those rules as a starting point. In our Alberta *Rules of*
29 *Court*, we have a rule 10.53, which is entitled Punishment for civil contempt of Court. It
30 then sets out the wide array of remedies that are open to me, including the allowance to
31 impose a prison sentence plus fines. Rule 10.53 is purposely broad because it covers a
32 myriad of situations, nor is it exhaustive of all of the remedies a court may impose. By
33 example, in *Ouellet v. B.M.*, the Alberta Court of Appeal approved a sanction which
34 included community service.
35

36 In a couple of cases, Law Society against an individual by the name of Beaver and the
37 *Builders Energy Services* case against an individual by the name of Paddock listed the
38 criteria that judges should pay attention to when considering a sanction for contempt.
39 These can be summarized into four broad areas of review, and in this ruling I have followed
40 these particular recommendations from our Alberta Court of Appeal. So the first of these
41 is to consider the proportionality of the sentence to the wrongdoing. The second is to

1 consider the presence of aggravating or mitigating factors. The third, and one in which I
2 particularly emphasize, is the importance of deterrence both for the public at large and for
3 the individual being sanctioned. And fourth, I have to consider overall the global
4 reasonableness of any sanction that I impose, whether it be fine, prison, large costs. I have
5 to look at all of that in its totality and consider the reasonableness of the sanction.
6

7 So we get contempt frequently in the courts, not often but more than just one or two cases
8 --
9

10 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)

11 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)

12 MS. MILLER: Mr. Pawlowski, Dawid, I believe your mic is on.
13 If you can mute it, please. Thank you.

14 THE COURT: Thank you, counsel.

15 MS. MILLER: My apologies, My Lord.

16 THE COURT: No problem. You've got nothing to apologize
17 for. I'm sure that your client didn't, either. It's difficult conducting court in this manner,
18 but it's the way in which we've chosen to keep the courts opened, despite the pandemic.
19

20 So getting back to the type of contempts we confront, most of them, the largest number of
21 them involve civil litigation between the parties. The public never hears about these. The
22 press never reports on them. These can take many forms. They're typically the failure to
23 supply documents or undertakings when they've been ordered to be supplied, the failure to
24 present exhibits to be inspected, maybe the failure on the part of one parent to return a child
25 to the other parent at the end of a period of visitation, or to return property following a
26 court adjudication. When the dispute is solely between the litigants and does not have a
27 community impact, imprisonment is rare. Rare, but not unheard of. By example, in an
28 unreported 2004 case, my then colleague, the Honourable Madam Justice M. Bielby,
29 imprisoned an individual until he produced a big game trophy that he had indicated was
30 lost and that he couldn't produce it. After a short period of time in gaol, the big game
31 trophy suddenly was rediscovered. This is an example of a period of imprisonment or a
32 sanction imposed in order to bring about compliance. In other words, the individual goes
33 to gaol until he or she deals with the problem, and that is permitted in the rules that I spoke
34 of earlier. It was a case of an individual going to prison, even in a contemporary dispute
35 that involved really only the litigants.
36
37
38
39
40
41

1 The breach by Pastor Artur Pawlowski of the Gates order falls more into this category of a
2 narrower civil litigation breach that would result in a fine, not imprisonment, and in result,
3 in my view, both counsel were correct that this breach of the Gates order, irrespective of
4 what I do with the breach of the Rooke order, should be handled with a fine. The dispute
5 between the counsel is how much of a fine and whether anything more should be added.
6 So fines are a significant tool utilized to control contempt. While they do result in a
7 judgment debt in favour of the provincial treasurer, there is one significant --
8

9 UNIDENTIFIED SPEAKER: Ontario Science Centre.

10
11 THE COURT: There is one significant difference between --
12 madam clerk, can you go through and figure out who it is that has their mic on and see if
13 you can mute them? I don't want to expel them from the hearing, but we want to get that
14 background noise diminished.
15

16 THE COURT CLERK: My Lord, they should be muted now.

17
18 THE COURT: So when you have a fine for civil contempt and
19 that fine is not paid, the failure to pay that fine can result in a gaol imprisonment.
20 Conversely, no contempt lies for the failure to pay a civil debt. So for that failure, the
21 successful party must resort to other collection techniques. When you consider a fine, it is
22 prudent for the judge to make inquiries of the ability of the contemnors to pay. I did make
23 these inquiries in this case. I'm not sure I got complete (INDISCERNIBLE) because
24 Alberta Health Services felt that they should have imprisonment and the submission of the
25 contemnors was that the fines should be so narrow, if any, that they would be easily and
26 readily paid. However, I concluded that the fines could be paid irrespective of the amount
27 ordered. One also has to consider the impact of costs. When the costs are awarded in a
28 contempt proceeding, the costs go not to the provincial treasurer but to the actual applicant.
29 So any costs awarded today will go to Alberta Health Service. Nevertheless, the combined
30 effect of fines and costs have to be taken into account to ensure that the sentence is not
31 overbearing.
32

33 UNIDENTIFIED SPEAKER: Ontario Science Centre.

34
35 THE COURT: Okay. Madam clerk, I'm still hearing
36 background noise, so if you can help me there, that would be great. So while modest fines
37 can work for many breaches, they're not appropriate in all cases. There is a second broad
38 category of contempt proceedings in which the public order is challenged. Breaches of
39 these type of orders can have significant community impact, both in a specific and general
40 way. There are at least two subsets of these type of breaches. The first subset in this group
41 are breaches of healthcare orders which could affect the health of innocent third parties.

1 The second subset occur in labour or environmental disputes or protests against
2 government legislation. For example, notwithstanding back to work orders, a group of
3 employees defy the order and refuse to go back to work. The root of the problem here in
4 these type of contempts is that they challenge the authority of the court in a public and
5 community disruptive way and bring the administration of justice into disrespect. These
6 breaches can be extremely challenging. No judge wants to imprison, for example, striking
7 nurses or protesting priests, but as many judges have noted, we don't get to pick and choose
8 the orders we wish to obey and the ones we don't. And as judges, we don't get to pick and
9 choose the orders we want to enforce and the ones we don't. They all must be enforced. If
10 this was not so in a free and democratic society, we would quickly disintegrate into a
11 society where the rule of law was ignored. In another case, our Associate Chief Justice
12 observed that the central issue to contempt sanctions is the court's right to protect its own
13 dignity and the courts are entitled to discipline. Conduct that tarnishes, undermines, or
14 impedes the court's role in society as the principal administrator of justice must be
15 discouraged.

16
17 All three contemnors in this case, by breaching the Rooke order, are in the more serious
18 category of defying a public health order -- I'm getting a back vibration now, madam clerk.
19 Thank you.

20
21 THE COURT CLERK: I'm sorry, My Lord.

22
23 THE COURT: Okay. So these three contemnors are in the
24 serious category of defying a public health order with its intendant risks to the general
25 public. They are always serious and often result in extremely large fines and significant
26 imprisonment. In considering an appropriate sanction for contempt, some attention must
27 be given to whether the contemnor apologizes for the contempt. While an apology will not
28 extinguish a contempt, a heartfelt apology may ameliorate a sanction. However, the
29 converse is not correct. A failure to apologize should not add a punitive element to the
30 sanction. It simply deprives the contemnor of any mitigation that might be achieved
31 through an apology.

32
33 I now want to discuss the contemporary precedents that have emerged through the COVID-
34 19 pandemic across Canada. The first of these is in our own jurisdiction, my decision to
35 adopt a negotiated settlement involving Mr. Kevin Johnston. This negotiated settlement
36 pre-empted our sanction hearing and pre-empted my requirement to deliver reasons about
37 my sanction hearing. I'm going to mention it, however, in this particular case because it is
38 a contemporary precedent. Although it is not binding on me as having been negotiated by
39 legal counsel, I have to take into account that it was competent senior, experienced legal
40 counsel that negotiated that settlement, making it a consent order of the court, and further
41 that it took into account the balancing that is required in dealing with the societal interests

1 and also the legal interests of the applicant and the legal interests of the person in contempt,
2 in that case Mr. Kevin Johnston.

3
4 So in Mr. Johnston's case, he received a sentence of 40 days in addition to the time he had
5 already served, and he paid costs or will pay costs effectively in the amount of \$20,000.
6 He was also placed on conditions, a type of probation in which he had to stay in the
7 province of Alberta and in which he couldn't leave until he had paid all of his fines. Now,
8 I indicate that that is not binding on me, but it nevertheless became a negotiated settlement
9 and was endorsed by me as the sentencing judge. So Mr. Johnston's case, in my view, is
10 more serious than any of the contemnors that I am dealing with today. I say this because
11 he breached three court orders, and arguably he breached at least one of those in a violent
12 and aggressive way that goes beyond the conduct of these three contemnors. All of these
13 contemnors do have one thing in common with Mr. Johnston, however, and that is they all
14 have already served 3 days in gaol for their alleged contempt.

15
16 I now take us to Ontario, to the case *R. v. The Church of God (Restoration) Aylmer*, Ontario.
17 That is a reported decision of one of my contemporaries in the province of Ontario. There
18 a church and its two ministers were fined a total of \$48,000 and had costs assessed against
19 them of \$68,000. These are the most contemporary COVID-19 sanction cases that I am
20 able to find. I am mindful that in *The Church of God* case in Ontario, the church as a
21 corporate entity received a much larger fine than the individual pastors. However, in Pastor
22 Pawlowski's case, he really is the church and the Street Church is simply his alter ego.

23
24 I now want to go back to the factors that I must consider, as directed by the Alberta Court
25 of Appeal in these particular cases. I'm going to dwell more on Pastor Pawlowski than his
26 brother, Dawid, for obvious reasons, that counsel have agreed that whatever happens to
27 Dawid Pawlowski has to be less than what happens to Pastor Artur Pawlowski, and I'm
28 going to touch a little bit on Christopher Scott, as well. So the Pawlowski brothers were
29 not identified in the Rooke order, but they were clearly on Alberta Health Service radar.
30 And we know this because a couple of Saturdays earlier, Alberta Health Services attended
31 at the church and attempted to gain entry through the Gates order to see if Pastor Pawlowski
32 was running a church service compliant with the appropriate health guidelines that were in
33 effect at that time. He was, of course, refused entry, and so he was aware of the type of
34 power that the courts could, on application, bring to bear on individuals who were ignoring
35 the COVID regulations.

36
37 So on May 8th, the police returned, armed with the Rooke order, to serve the order but also
38 surreptitiously to film the contemptuous conduct and the disdain for the health orders
39 exhibited by the Pawlowski brothers but expressed most vocally by Pastor Artur
40 Pawlowski. When the Pawlowskis left the church, they were arrested in a spectacle that
41 mirrored arrests that are seen in mass protests or third world countries. In short, it is not

1 an unreasonable observation that the Pawlowskis revelled in their arrest and went out of
2 their way to make their arrest the Saturday night news spectacle that it became. From this
3 it can be seen that Pastor Artur Pawlowski's conduct and that of his brother was extremely
4 aggravating. They engaged in both direct and public defiance of a court order which did
5 nothing more than encourage health orders designed to save people's lives. From the
6 perspective of proportionality, their sanctions must be significant.

7
8 Likewise, in Mirror, Alberta, Christopher Scott, in complete defiance of a court order that
9 had been served on him the day before, went ahead with a rally that attracted hundreds of
10 people, hardly any of them wearing masks and all of them decrying healthcare rules that
11 had been set up for their own safety. In the context of this case and as a general proposition
12 and as the case law analyzes, the position of Alberta Health Service that there should be
13 some imprisonment is not unreasonable. These individuals -- we're getting feedback again,
14 madam clerk. These individuals breached a court order issued in favour of a health
15 authority, designed to protect people by keeping them socially distant, wearing masks, and
16 away from groups. While I respect that these are all technical breaches on and intrusions
17 on personal liberty, they are not sacrifices that would offend the *Canadian Charter of*
18 *Rights and Freedoms* and they are not egregious sacrifices. The restrictions were directed
19 at keeping people alive. Fundamental to this debate, which is now roaring in Alberta and
20 getting louder and louder as more and more people die, is that the person you kill might
21 not be yourself. One medical doctor recently compared the rulebreakers as someone who
22 might drive impaired. Often when they crash, it is innocent victims that suffer the injury.

23
24 In my ruling, I discuss potential mitigation on the part of all three of these individuals. I
25 explain in my formal ruling that is difficult to see any mitigation here. All of them had a
26 clear chance to avoid the contempt finding by simply obeying the Rooke order. There were
27 no reasonable excuses in arguments. Any arguments marshalled in attempt to mitigate
28 were simply attempts generally to rewrite history.

29
30 All three individuals addressed the Court. Starting first with Christopher Scott, he at least
31 apologized and indicated that subsequent to the 3 days he spent in gaol, he declined any
32 speaking invitations that would further bring him in the public eye. When Pastor
33 Pawlowski addressed the Court, I almost view his comments to me as a taunt to imprison
34 him. He knows that for him the 21 days in gaol will be a slap on the wrist that will make
35 him a martyr. After Pastor Artur Pawlowski was found guilty of contempt, he went on a
36 speaking tour of the United States where he parlayed his title as a pastor and the fact that
37 he had been arrested for holding a church service into a rally cry that attracted likeminded
38 individuals in the United States who also oppose reasonable healthcare measures. It is
39 disappointing that Pastor Pawlowski had to air his grievances about Alberta in another
40 country. Leaders and statesmen don't do that.

41

1 During his sanction hearing, Alberta Health Service played some trip reports in which
2 Pastor Pawlowski oozes hubris while relishing in his notoriety. He got to take a picture
3 with a governor of a United States state. He is so proud of what he asserts is the love of
4 the US people for him, love he implies he is not feeling in Canada. One media network
5 gave him some airtime. He accuses the Court of being a tool of the government. In this
6 regard, he shows no civic understanding of the independence of the courts and their
7 distance from the government. In short, his address to the Court during his sanction hearing
8 was a political condemnation of the current government, a condemnation of the men and
9 women who make up Alberta Health Service, a condemnation of the courts, and basically
10 a condemnation of everyone who follows the science on COVID-19. He simply refuses to
11 apologize, and his lawyer indicates that it would be hypocritical of him to do so in light of
12 his disdain for Alberta Health Service and the current Alberta government.

13
14 He again describes Alberta Health Service personnel as Nazis. Pastor Pawlowski makes
15 much virtue of his status in Canada as an immigrant who emigrated from Poland during
16 the Cold War that followed World War Two. With his background, he should understand
17 how inappropriate it is to compare public health officials to a group that killed, by many
18 accounts, 4 million Polish people, of which at least half were Jewish. It defies belief that
19 any immigrant from Poland, having observed the atrocities of the Nazis in that country,
20 could identify the chief medical health officer, she being a doctor highly qualified in
21 medicine, trying to keep people alive as a Nazi. His address to the Court was so
22 inflammatory that I must remind myself that it is not a sanction aggravation but only a lack
23 of mitigation. Pastor Pawlowski is entitled to express his views about the government, the
24 courts, and Alberta Health Service, but he must do so in a respectful, hate free way that
25 does not breach public (INDISCERNIBLE) orders. He was not arrested because of his
26 religion or his religious worship or for his outlandish publicity seeking views. He and his
27 brother were arrested for breaching court orders.

28
29 During his court statement, he pointed out that the premier of the province in the middle of
30 a pandemic was observed dining with a group of other politicians and appearing not to
31 obey the public health orders. This gave him an opportunity to suggest that I should gaol
32 the premier along with him and that they could share the same cell. Again, I view this as
33 part of Pastor Pawlowski's fervent desire that I martyr him by giving him a little more gaol
34 time to add a little more gasoline to the anti-mask, anti-vaccination fire. Likewise, his
35 brother, Dawid, attempted to measure up to Pastor Artur Pawlowski's rhetoric, but it was
36 pale by comparison. Dawid Pawlowski appears to follow his brother, Pastor Artur
37 Pawlowski, and he himself is not dangerous in relation to the COVID-19 issue. What is
38 clear, however, is that Pastor Artur Pawlowski is potentially dangerous, because like others
39 that I have confronted in these sanction hearings, he is charismatic and able to use others
40 and be used by others to pursue his agenda.

1 Incidentally, madam clerk, we're getting all kinds of chat here of what would not be
2 permitted in court. Would you please take anybody who is on chat now, and if there is one
3 more negative chat comment, madam clerk, I'm asking you to identify them and exclude
4 them. This is a public court hearing. You don't get to stand up in the middle of a hearing
5 and criticize the comments. Some lawyers have correctly pointed out that the comments
6 are being entered into the official court record and asked them to stop immediately. So this
7 is the last warning. Last warning, madam clerk. If you get another chat from anybody
8 other than the lawyers in this case, you would want to remove them.
9

10 Returning to the issues, Pastor Pawlowski's activism against the COVID-19 health
11 measures gave him two significant personal benefits. First, the ability to raise money.
12 Second, the thing he cherishes the most, public notoriety. To a lesser extent, this is what
13 his brother, Dawid, wishes, as well. Christopher Scott also received significant personal
14 benefit from his attacks on the Alberta healthcare orders. Evidence revealed in his hearing
15 confirmed that he raised \$120,000, which essentially provided most of the down payment
16 so he could purchase the restaurant and related lands from which he was suffering by their
17 closure. There is no indication how effective Pastor Pawlowski is in raising funds, but
18 given his higher profile and intentional travel, one has to assume that he has been doing
19 well on the backs of those who may be dying and suffering from COVID and the smaller
20 but vocal group that continues to believe that it is a hoax.
21

22 Christopher Scott, Pastor Artur Pawlowski, his brother, Dawid Pawlowski, and others that
23 I dealt with in the sanction hearings are on the wrong side of science. They're also on the
24 wrong side of common sense. The growing number of dead and dying in North America
25 from COVID infection cannot be ignored and cannot be defined as a false reality. Pastor
26 Pawlowski's vicious, outspoken sermon and political lecture delivered to me in his sanction
27 hearing was a cry for gaol, because Pastor Pawlowski has observed that gaol will add to
28 his persona as a martyred Christian fighting the forces of government evil. Like a criminal
29 sentence, a contempt sanction must also focus on the element of deterrence. In the context
30 of contempt of general and public orders, this deterrence must be specific to the offender
31 but also must send a message to others who would likewise be engaged. Community
32 deterrence is extremely important. As a specific example in the context of health safety
33 orders, Alberta Health Service counsel either obtained or threatened to obtain a court order
34 against another third party who was proposing to have a rodeo. After the order was
35 obtained, those individuals wisely decided to obey the order. If, after the fact, they now
36 see that a contemnor would get away with a slap on the wrist, there would have been no
37 economic reason for those individuals to ignore the public health orders. That was an
38 example in the context of injunctions for general health orders where the order coupled
39 with the downstream risk brought about the desired result. From this it should be seen that
40 the Pawlowski brothers must be sanctioned, either for a period of imprisonment, as
41 suggested by AHS, or a significant fine that will impact and influence their behaviour and

1 that of others who choose to flaunt court orders.

2
3 The final suggestion given from the Alberta Court of Appeal in handling sanctions against
4 contemnors is to ensure that either the fine, the imprisonment, or both are reasonable. In
5 the *Beaver* case, while the Court of Appeal found that a 1 year sentence in gaol was
6 unreasonable, they still considered a 6 month term of imprisonment to fall within the
7 confines of reasonableness in the discretionary power of the sentencing judge.

8
9 So I'm coming now to my bottom line. Alberta Health Service strongly suggests that
10 additional gaol time is required to deter the Pawlowskis and the individuals like this.
11 Despite this strong submission, I've decided that further gaol for the Pawlowski brothers
12 and Christopher Scott is inappropriate, as there are more effective ways which they can
13 make reparations for the breach of the Rooke order. On balance, I suspect that many
14 reasonable individuals will view the sanctions that I impose to be more beneficial in
15 repairing the harm done by Pastor Pawlowski, his brother, Dawid Pawlowski, and
16 Christopher Scott, and the harm they inflicted on society, than any short period of gaol that
17 would perhaps martyr them in the eyes of their followers. I therefore intend to handle this
18 without additional gaol time but instead impose a very large fine, community service work,
19 plus a requirement that wherever they are opposing the Alberta Health Service orders in
20 any public forum, including social media forums, they must also place the other side of the
21 argument on the record. The other side is that the scientific community agrees that social
22 distancing, avoiding crowds, wearing masks, and availing oneself of medically approved
23 vaccines has been proven effective in reducing the spread of COVID-19 or minimizes its
24 efforts.

25
26 Now, counsel, I'm going to go over the highlights of my sanction and then also return and
27 discuss some of the time to pay concepts, the priority of the payments, and that sort of thing
28 as we go forward. So let's deal first of all with Pastor Artur Pawlowski. Pastor Artur
29 Pawlowski is sentenced to a period of 3 days in prison, which is deemed fully satisfied by
30 the prison time he served following his initial arrest in May of 2021. He is ordered to pay
31 a fine of \$23,000, which is characterized as \$3,000 for the breach of the Gates order,
32 \$20,000 for the breach of the Rooke order.

33
34 In addition, I place Pastor Pawlowski on 18 months probation, the terms and conditions of
35 which will be that he will keep the peace and be of good behaviour; obey all Alberta Health
36 Service health orders relating to COVID-19; and to provide 120 hours of community
37 service work at a rate of not less than 10 hours per month, working at a homeless shelter,
38 a foodbank, or any other facility and charity, but excluding his own church ministry. He
39 must remain in the province of Alberta during his period of probation unless he obtains the
40 consent of his probation officer, who will authorize such temporary absences if they are
41 for an emergency, family, or health matter. If he is not currently in Alberta, he is given 7

1 days to return to the province of Alberta and identify himself to adult probation services.

2
3 The final term of his probation order will be that when he is exercising his right of free
4 speech and speaking against AHC health orders and AHS health recommendations in any
5 public gathering or public forum, including electronic social media, he must indicate in
6 his communications the following or words like the following: I am also aware that the
7 views I am expressing to you on this occasion may not be views held by the majority of
8 medical experts in Alberta. While I may disagree with them, I am obliged to inform you
9 that the majority of medical experts favour social distancing, mask wearing, and avoiding
10 large crowds to reduce the spread of COVID-19. Most medical experts also support
11 participation in a vaccination program unless, for a medical reason, you cannot be
12 vaccinated. Vaccinations have been shown statistically to save lives and to reduce the
13 severity of COVID-19 symptoms.

14
15 I now move on to put on the record Dawid Pawlowski's sentence. He is again sentenced
16 to 3 days in prison, deemed fully satisfied by the time he's already served. He is ordered
17 to pay a fine of \$10,000. In addition, I am placing him on 1 year's probation, basically the
18 terms and conditions of which will be the same as that of his brother, Artur Pawlowski.

19
20 I now turn to deal with Christopher Scott. Christopher Scott is also sentenced to 3 days in
21 gaol, deemed served by the time he already spent. He is sanctioned with a fine of \$20,000.
22 He is also placed on probation for a period of 18 months, the terms and conditions of which
23 are the same as that which I outlined for Pastor Pawlowski.

24
25 I now want to review the matter of costs. Alberta Health Services' claim of costs of
26 \$15,733.50 for the breach of the Rooke order and \$4,758.75 for the breach of the Gates
27 order are reasonable, appropriate, and ordered included in the sanctions against the
28 Pawlowskis. The Pawlowski brothers will be jointly and severally liable for the \$15,733.50
29 amount, Pastor Artur Pawlowski alone liable for the \$4,758.75 for the breach of the Gates
30 order.

31
32 I will not go into my legal conclusions relating to costs. Legal counsel now have the
33 number and will be able to read these shortly in my formal judgment.

34
35 I want to now go back -- before I do that, I want to talk about Scott's cost. Mr. Scott, of
36 course, will pay a fine of \$20,000, and his costs ordered payable by him are \$10,922.75.
37 Now, the fines are large and I've also created a basket of additional terms and conditions
38 to secure their payment and to get them paid.

39
40 So the first condition in relation to the fines is this. The fines will be subject to an interest
41 rate of 3 percent per annum compounded semi-annually, that interest rate starting January

1 1st, 2022. In addition, AHS and the provincial treasurer as the case is may file a lien charge
2 and encumbrance on the assets owed by the contemnors to secure the payment of their
3 individual fines. There are terms and conditions set out in my formal ruling about the
4 postponement of these orders in favor of legitimate financing but provincial treasurer is
5 going to be entitled to register my order as a mortgage and charge on the assets of the
6 individuals.

7
8 The contemnors are to pay these fines, provided that they pay not less than \$500 per month
9 towards the obligation contained in this ruling. The first payment of these fine will start
10 November 1st, 2021, with interest starting January 1st of 2022. There is a priority scheme
11 outlined in my ruling. The priority is that the priority of the payments will be first interest,
12 second the costs and third the fines.

13
14 In addition, all of the contemnors are going to be obliged to provide within 30 days of this
15 order an accurate and fully completed form 13 as approved in the civil enforcement
16 regulation section 35.10 and they must do that again without further court order every 6
17 months until these fines are paid. Further they are, of course, compelled on notice but
18 without the payment of conduct money to appear before an examiner to be questioned
19 about their assets, liabilities and ability to pay.

20
21 One other issue that will arise is whether I have taken away the potential of prison if they
22 elect not to pay their fines. All of the civil remedies that I provide in favor of Alberta
23 Health Services or the provincial treasurer do not exclude if at the end of 36 months any of
24 the fine portion remains unpaid, the parties can come back to the court to see what if any
25 imprisonment in failure to pay fines should be imposed.

26
27 Now, I recognize that this will be a complicated court order and there may be some
28 negotiations between counsel putting it together. As long as I remain a judge with the
29 Court of Queen's Bench, if there is any dispute that comes up about the court order or my
30 ruling today, I invite you to come back to me. However, if I am no longer a member of the
31 court or physically unable to handle the case, then I invite you to go back to the Associate
32 Chief Justice for the assignment of another judge.

33
34 That concludes my oral commentary. Please understand that if there is any conflict between
35 my oral comments today and the written ruling, the written ruling is the ruling of the court.
36 The oral comments today were simply to provide in an open and transparent way some
37 comments about this situation.

38
39 I would last like to thank the lawyers who since early May have been walking this journey
40 with me and I want to thank them for their professionalism, their responsibility, their
41 courtesy and their respect of the Court. I am satisfied that counsel for Pastor Pawlowski

1 does not share his views about the courts being a tool of the government. Counsel acted in
2 very difficult circumstances in the proudest tradition of our profession and I thank them
3 all.

4
5 Now, somebody indicated to me in their comments, What is the purpose of chat if not chat?
6 Well, the purpose is of chat is the service that comes with the program we are using. It is
7 intended to be utilized by lawyers and the clerk of the court to deal with things, for example,
8 if somebody loses transmission of video or oral. The comments that have been placed on
9 this public chat forum are inappropriate and any of you that took the opportunity today to
10 make an inappropriate comment, including somebody who signed on using my first name,
11 I only want to say to you shame on you.

12
13 Good people at Alberta Health Services, good people in the court system are trying to deal
14 with the cases fairly and impartially and when, frankly, individuals take the opportunity to
15 abuse a privilege that they have had to engage and to (INDISCERNIBLE) this, I am
16 embarrassed for them and they offend me. I want to say that I thank the lawyers for
17 chirping up on the chat to try to contain some of this.

18
19 Counsel, you're going to get my rulings no later than the close of business tomorrow.
20 (INDISCERNIBLE) and be governed by the details of the rulings. However, if there are
21 any questions that I can perhaps answer now or could answer in my written ruling, please
22 ask me now. If I've covered it in my writing ruling, and I know that to be the case, then
23 I'll simply tell you that and you can wait to get the written ruling.

24
25 MR. JOHNSTON: Justice Germain, this is Ken Johnston with Chad
26 Williamson, our client being Christopher Scott. Firstly, Sir, I want to thank you as an
27 officer of the court but I want to thank you specifically, Sir, for having handled this matter
28 in an adept manner. Notwithstanding our client's position, we've encouraged our client to
29 respect the Court, which we hope he's done, but as a senior member of the bar, Sir, I want
30 to emphasize to all listening that once we have a democracy without a rule of law and
31 respect for a rule of law, we will indeed descend into the chaos of a third world country.
32 So as a senior member of the bar, My Lord, I thank you. Thank you.

33
34 THE COURT: Thank you. Any other comments that the
35 lawyers want to make before we end these (INDISCERNIBLE) hearings pending
36 comments that may come out of the formal reasons. You may have some comments that
37 arise out of the formal reasons and I'll deal with them either by amended reasons or by
38 further discussion between you on open court Webex, but I urge you to wait for the reasons
39 and do your orders up accordingly.

40
41 MS. MILLER: Good morning, My Lord. I do just have one

1 question. It's Ms. Miller on behalf of the Pawlowskis. You -- you indicated the only
2 contemporary decision from Ontario, the -- the *Church of God (Restoration)*, and -- and
3 you cited some fines that -- that occurred in, I think, the -- the second case from that church,
4 and you did not mention *Trinity Bible*, which was referenced both in our written
5 submissions and oral submissions before you. I'm just wondering if it's going to be
6 addressed in your written submissions, the distinguishment that you've made between
7 those cases in Ontario that you didn't mention today, the *Trinity Bible* case and the earlier
8 Aylmer cases.

9
10 THE COURT: Ms. Miller, I claim to be a judge, not perfect. I
11 may have missed the connection between those two cases. It isn't going to change my
12 outcome here, but it may merit me looking at my reasons in that area before I release them.
13 Thank you.

14
15 MS. MILLER: Thank you, My Lord. That was my only
16 question. And again, I -- I echo the comments of my friend. Thank you for -- for your
17 patience today. I'm -- as you saw, I tried to comment on the chat. I -- I agree with you,
18 the chat is not the appropriate place to have this discourse. So thank you for -- for dealing
19 with this this morning, and thank you for dealing --

20
21 THE COURT: Yeah.

22
23 MS. MILLER: -- (INDISCERNIBLE).

24
25 THE COURT: I see that there's an individual that has chatted
26 several times very disappointingly and all I can say is, folks, we try to allow an open and
27 transparent court and we get this abuse. Pretty soon, there won't be any chat and pretty
28 soon everybody will be excluded. We've already had one incident where somebody took
29 a snapshot of the proceedings. It's disappointing is all I can say.

30
31 With that then, counsel, I don't know if you want to stick around for the other bits of
32 business. We're going to go back to the Johnson (INDISCERNIBLE) matter, but this
33 concludes any comment I'm going to make today involving the Pawlowskis or Mr. Chris
34 Scott. Again, I thank counsel. You're welcome to take your screens and mics off. You're
35 welcome to stay, of course, and listen on, but we're going to go back if Mr. McCuaig is on
36 the line to deal with Mr. Jackson and Mr. McCuaig on the Johnson matter.

37
38 MR. JACKSON: Thank you, My Lord. I -- I did have some email
39 communication with Mr. McCuaig in the interim. He is (INDISCERNIBLE) unless he's
40 on the line now, he was dealing with an emergency matter in Ontario and having difficulty
41 (INDISCERNIBLE) due to that. I don't know. Mr. McCuaig, are you -- are you now

1 joined in? May have to put the matter over. I can advise you, Sir, I did send you
2 (INDISCERNIBLE) email this morning with respect to Alberta Corrections. I did receive

3 --

4
5 THE COURT: Hang on. I don't see Mr. McCuaig yet. I'm
6 looking.

7
8 MR. JACKSON: (INDISCERNIBLE) he's here, My Lord. I think
9 we should probably (INDISCERNIBLE) matters over.

10
11 THE COURT: Yeah. Just hang on. Madam clerk, while you are
12 on the line, I've now had a chance to look at some of the chat. Would you please remove
13 an individual called Nicole Kelly (phonetic) from the court. She's lost her entitlement to
14 appear here. Would you remove somebody from Christ Rules Radio (INDISCERNIBLE).
15 They've lost their entitlement. There's somebody called Adam. Could you please remove
16 them? And somebody called Observer. Could you please remove them? Somebody --
17 I've mentioned Adam already. Please remove him. We talked about Nicole Kelly already.
18 Madam clerk, would you also make a point of capturing these chat notes and putting them
19 on the file?

20
21 THE COURT CLERK: Yes, My Lord. I have already expelled some of
22 the people you mentioned to me.

23
24 THE COURT: Okay. Would you please remove somebody
25 called VF, Victor Foxtrot?

26
27 THE COURT CLERK: Sorry, My Lord. What was the name again?

28
29 THE COURT: It's just two letters, VF, Victor Foxtrot.

30
31 THE COURT CLERK: Is there anyone else, My Lord?

32
33 THE COURT: I'm just going through now. Remove somebody
34 called Rich.

35
36 THE COURT CLERK: They have been removed, My Lord.

37
38 THE COURT: Removed somebody from -- remove someone
39 called Gorin.

40
41 THE COURT CLERK: They don't appear to be on the line anymore, My

1 Lord.

2

3 THE COURT: G-O-R-I-N. These people are being removed
4 from the courtroom as if it was an open court. They would be taken out by the sheriffs'
5 officers for acting inappropriately in the courtroom. All we can do is remove them. Okay.
6 Now --

7

8 MR. JACKSON: My Lord, I just received an email from Mr.
9 McCuaig saying he should be able to connect in 5 minutes.

10

11 THE COURT: Let's take -- it's 10:11 now. Let's take an
12 adjournment until 11:30 (sic) and then return with the matter involving Mr. Johnson and
13 the matter involving Mr. Smith.

14

15 MR. JACKSON: Thank you, My Lord.

16

17 THE COURT: Madam clerk, call court to order.

18

19 (ADJOURNMENT)

20

21 THE COURT CLERK: Sorry. Counsel, we're ready?

22

23 MR. MCCUAIG: Counsel Ian McCuaig for Kevin Johnson is here
24 and I just hung up the phone with Mr. Jackson and I expect he'll appear in mere moments.

25

26 MR. JACKSON: He's here.

27

28 THE COURT CLERK: All mics are now live.

29

30 THE COURT: Thank you, madam clerk. I want to begin after
31 our short adjournment by reminding everybody of the long established rules and based on
32 the experience we had in the (INDISCERNIBLE) relating to Pastor Artur Pawlowski, his
33 brother Dawid Pawlowski and Christopher Scott, I'm obliged now to add a third one. It
34 just shows that you can teach an old dog new tricks.

35

36 First of all, there's to be no screen snaps or screen collected of any of the images of any of
37 the participants here today or even the identifying comments relating to the parties by their
38 real or nicknames. Secondly, there's to be no official transcript. And thirdly, the use of
39 the chat function is only for the purpose of lawyers to communicate with the Court if they
40 have an equipment failure or an equipment breakdown. It is not to allow people to
41 comment as if this was a live talk show where people can express their points of view as

1 the matter is ongoing. To do that will result in you being disqualified from attending,
2 despite the open court feature.

3
4 So, Mr. McCuaig, it's good to see you again. I reached out to Mr. Jackson this week, a
5 short week as it was, to see if we could begin your item by him getting a report from the
6 Calgary Remand Centre as to their position as it relates to the commencement of the
7 intermittent sentence. Mr. Jackson, you're up.

8
9 **Submissions by Mr. Jackson (Kevin Johnston Intermittent Sentence)**

10
11 MR. JACKSON: Thank you, My Lord. With respect to Mr.
12 Johnston, I did receive and sent Your Lordship an email at 8:55 or shortly thereafter this
13 morning. I -- I've been in communication with Alberta Corrections and was awaiting
14 confirmation. I was advised at 8:55 this morning that Alberta Corrections, specifically,
15 My Lord, Calgary Corrections Centre, is ready and waiting for Mr. Johnston on October
16 22nd and prepared to facilitate the sentence. That's the only information I've received as
17 of this morning, My Lord.

18
19 THE COURT: That would be the recommencement of the
20 sentence because that would be as ordered previously when I stated it was to then move to
21 the 22nd. Was it?

22
23 MR. JACKSON: It -- it was, My Lord. We moved it from
24 commencing in September to October 22nd.

25
26 THE COURT: Mr. McCuaig? Can't hear you.

27
28 MR. MCCUAIG: Can you hear me now?

29
30 THE COURT: Yes, sir.

31
32 **Submissions by Mr. McCuaig (Kevin Johnston Intermittent Sentence)**

33
34 MR. MCCUAIG: Sorry. My computer has been acting up. Am I -
35 - am I audible now? Good. So I -- I already started these -- this discussion with you on
36 Friday, you'll recall. Obviously, Mr. Johnston has not expressed a concern about attending
37 to serve his sentence in the past, but, Your Honour -- sorry, My Lord has expressed some
38 concerns, which I think are still valid. I appreciate the position of -- of Alberta Corrections.

39
40 My experience this morning with Ontario Corrections -- they don't call them that here, but
41 for today's purposes may be instructive, because as you know, I -- I was scheduled to

1 appear before you an hour and a half ago. I did have another matter scheduled today at a
2 different time. The gaol, because of COVID concerns, staff shortages, just completely
3 upended my day and hopefully not your day. And we have a much better -- much better
4 situation with COVID here in Ontario according to the numbers than Alberta does right
5 now.

6
7 So I do think there are still some concerns about someone entering and leaving gaols and
8 the onerous conditions that that might create, both for staff and for Mr. Johnston. Certainly,
9 he is alive to the fact that in normal times, he would not be locked down 24 hours a day but
10 that is something that could result in -- from the present circumstances and so I -- I -- you
11 know, he -- he is still making the request to -- for another 4 weeks, subject to My Lord's
12 judgment.

13
14 I mean, I -- I watch from afar and I see that both Alberta and Saskatchewan, where I grew
15 up, are -- are still struggling through this. There's some hope on the horizon and it seems
16 wise to me to give everybody a little bit of extra breathing room until that hope comes to
17 fruition, but other than that, I -- Mr. Johnston and I are in your hands, My Lord.

18
19 THE COURT: Anything else, Mr. Jackson?

20
21 MR. JACKSON: I have nothing further. Thank you.

22
23 **Decision (Kevin Johnston Intermittent Sentence)**

24
25 THE COURT: Okay. So, folks, let's put the rubber on the road
26 here. Mr. Johnston was sentenced to 40 days in prison by a negotiated consent agreement.
27 The appeal periods for that agreement have now expired, even if it could have been
28 appealed being a consent order. And due to the very serious COVID situation last month,
29 I extended the start of his gaol time because I was not prepared to have the 40 days eroded
30 away by house arrest. If I had wanted to make a house arrest order, counsel would have
31 brought that proposition forward and under all of the circumstances, it likely would have
32 been rejected.

33
34 In this particular case, my only concern is to -- for the Corrections institution, because Mr.
35 Johnston has made very clear that he does not believe that there is a pandemic. He
36 considers it an alternate reality. His lawyer, as an officer of the court, has made very clear
37 that any amelioration I give to the Johnston sentence is not for Mr. Johnston but for the
38 good men and women at the Alberta correctional institution.

39
40 I can only go by what they say. Mr. Jackson, QC, is an eminent professional in the legal
41 community in Edmonton and he reached out to Alberta Corrections to determine their

1 status and their situation and they said they could accommodate Mr. Johnston. In my
2 respectful view, that is determinative of the issue.

3
4 No further stay is being granted. Mr. Johnston will have to show up and start his sentence,
5 which then should dovetail -- its completion should then dovetail with the January 4th date
6 that was imposed in Ontario for the much larger sentence to start in Ontario, although Mr.
7 McCuaig has indicated that the Ontario matter will be taken under appeal and a stay might
8 be granted, but that is for the Ontario courts to worry about. In this particular case, there
9 will be no further extension. The intermittent sentence will start as scheduled on the 22nd
10 of July.

11
12 MR. JACKSON: 22nd of October, Sir.

13
14 THE COURT: 22nd of -- I'm sorry. What date? 22nd. Yeah.
15 Right. It's been a tough morning for me. Mr. Jackson, it's already been a tough morning
16 for me.

17
18 MR. MCCUAIG: Well, perhaps you're confused. I don't know if
19 you have the summer weather we do, My Lord, but it's very much like July here in Toronto.

20
21 THE COURT: No. Mr. McCuaig, I just had to listen to a bunch
22 of people on the chat line tell me that if I'm going to make a health ruling, I should lose
23 weight and all kinds of casting aspersions about my physical appearance and my strength
24 and my entitlements to be a judge and my qualification. It was all very good reading.

25
26 MR. JACKSON: Oh (INDISCERNIBLE). And, My Lord, your
27 existing order still stands then and -- and that is already in the hands of Alberta Corrections,
28 so there's nothing further that's --

29
30 THE COURT: Okay. As long as we understand, gentlemen, on
31 the record that I meant an intermittent sentence but real gaol. House arrest is not real gaol.

32
33 MR. JACKSON: Understood.

34
35 THE COURT: Counsel, you'll advise Mr. Johnston about his
36 situation in Ontario. I think you may have already been retained now for him on that
37 matter?

38
39 MR. MCCUAIG: I will have the appropriate discussions with Mr.
40 Johnston. Thank you.

41

1 THE COURT:

2 Smith matter?

Okay. Are we able to move on now to the Mr.

3
4 **Submissions by Mr. Jackson (Donald Smith Contempt Matter)**

5
6 MR. JACKSON:

Yes, My Lord. My Lord, I hesitate, given your
7 comments already about the aspersions cast (INDISCERNIBLE) or going back there. As
8 you're aware, My Lord, on June 28th, 2021, the respondent Mr. Smith breached a court
9 order by taking screen captures of the Webex proceedings in the Johnston matter, including
10 pictures of Your Lordship and myself. He then used these images on social media to
11 threaten and harass participants in the hearing.

12
13 Mr. Smith admitted his contempt, deleted the images from social media and apologized to
14 the Court. And on that basis, Mr. McCuaig and I reached a joint submission on sanction.
15 On August 25th, 2021, an order was pronounced by Your Lordship. Mr. Smith was found
16 in contempt and fined \$1,000 with a year to pay. Your Lordship at the time stated that a
17 short and swift period of incarceration might have also been appropriate in these types of
18 circumstances, but you accepted the joint submission.

19
20 And, My Lord, I'm somewhat embarrassed to be back before you today because since that
21 time -- and the -- the hope was that Mr. Smith was truly contrite at -- and the sanction of
22 contempt was sufficient to deter any further contemptuous conduct. Almost immediately
23 following that court hearing on August 25th, Mr. Smith began an extensive and persistent
24 campaign on social media (INDISCERNIBLE) harassing a host of individuals, including
25 Your Lordship and myself.

26
27 Many of these posts were brought to -- to my attention -- and, My Lord, I -- I get emails
28 on almost a daily basis by individuals that have knowledge of the court order that enjoined
29 the conduct of Mr. Smith, mainly that he not engage in any threatening or harassing conduct
30 or doxing on social media. My Lord, I also received a notice from court staff that this
31 conduct was ongoing and, My Lord, you have two affidavits before you, dated September
32 17th and October 12th, that provide a sample of the conduct that Mr. Smith has engaged
33 in. I'm not going to repeat it, My Lord. It is juvenile. It's crass. It's offensive and it's
34 been persistent.

35
36 In summary, repeatedly calling the Court and counsel corrupt, crooked, allegedly that the
37 Court and counsel support pedophilia, rape, acknowledging that he would only stop
38 harassing the Court and counsel if they took steps against people he identifies as Antifa are
39 being problematic. And, My Lord, just an endless list of homophobic, anti-COVID attacks,
40 anti-COVID rhetoric, threats on individuals, threats of violence and constant harassment
41 of individuals on social media, including the Court and including myself, My Lord.

1
2 Now, the challenge is that Mr. Smith persists in this conduct on social media in
3 circumstances where there's a very public court order that he agreed to enter into. That
4 was a product of a joint submission which was specific in directing and
5 (INDISCERNIBLE) --

6
7 UNIDENTIFIED SPEAKER: (INDISCERNIBLE) one in grade 12 and the
8 other one in grade 8, whose parents and themselves are anti-mask, anti-vaccine, anti-
9 COVID, because they don't believe it's real (INDISCERNIBLE) super conservative.

10
11 THE COURT CLERK: Sorry, My Lord. I'm trying to mute them.

12
13 UNIDENTIFIED SPEAKER: The mask mandates were --

14
15 THE COURT: Would that be your client adding to your -- to the
16 submissions, Mr. McCuaig?

17
18 MR. MCCUAIG: I apologize. My eyes weren't on the screen. I
19 didn't see which box was lit up providing the audio.

20
21 THE COURT: I think madam clerk has contained it now,
22 haven't you? Madam clerk?

23
24 THE COURT CLERK: Yes, My Lord. They've been muted.

25
26 THE COURT: All right. I'm sorry, Mr. Jackson. Carry on.

27
28 MR. JACKSON: That's fine, My Lord. And this persistent
29 contempt has been ongoing since your court order. It's been very public, flagrant, and, My
30 Lord, undermines the confidence in the ability of the Court to enforce its own process and
31 upload the rule of law.

32
33 My Lord, I did provide you with brief written submissions yesterday. We've -- we've been
34 through the rules -- sorry, the legal test with respect to contempt. My position -- and -- and
35 I don't think my friend -- and, well, I'll leave it to Mr. McCuaig to say, but it's very clear
36 that Mr. Smith has been persistently in contempt of the order since the day it was
37 pronounced. The -- as of October 6th, I've asked my paralegal to double check and it's in
38 the affidavit before you.

39
40 All of this contempt remains on social media. He hasn't removed it. I'm seeking an order
41 now, My Lord, for further sanction for this contempt. Obviously, the fine didn't work with

1 Mr. Smith. I'm seeking a short and swift incarceration of Mr. Smith for a period of 1 week
2 and, My Lord, I'm also seeking a -- that he immediately remove the offending social media
3 posts from the internet. They are identified in the affidavit evidence, and that he pay costs
4 to the applicant in the amount of \$5,000 forthwith.
5

6 Unless My Lordship needs further submissions on this point, as I said to My Lord, I -- I
7 had hoped we were done with Mr. Smith in August. I hoped his contrition was genuine
8 and that he was going to follow the terms of the court order that he agreed to.
9 Unfortunately, My Lord, that just isn't the case.
10

11 THE COURT: Okay. Before we get into that, and thank you for
12 your written submissions which I suspect you've sent to your learned friend, although he
13 probably would have just got them, the issue is should we in fact schedule a more
14 formalized contempt hearing on this? Secondly, because of the insults to myself, is this
15 appropriate that I divert this to another judge of the Court of Queen's Bench. As you're
16 aware, Mr. Jackson, the concept of scandalizing the courts has now disappeared from the
17 modern Canadian legal lexicon and we are expected to have thick skins and take a lot of
18 abuse.
19

20 Now, this abuse does go well beyond reasonable abuse, because it questions for you and
21 for me our integrity, implies that we are conducting criminal behaviour or supporting
22 criminal behaviour and is a complete misapprehension. It's almost coercive in that it's
23 attempting to intimidate the judge to start becoming a law enforcement agency and going
24 after people that Mr. Smith is upset with.
25

26 Mr. Smith also seems to take some exception to the quality and nature of the consent order
27 which he voluntarily entered into, threatening an appeal, and questioning the integrity of
28 his counsel, for which Mr. McCuaig I thought acted in the greatest and proudest tradition
29 of the profession in handling somebody who was perhaps somewhat a challenge.
30

31 Mr. Smith himself indicates that we picked on somebody with a disability. Well, he's
32 picking on us, so obviously he should know that if you pick on somebody, the pickers will
33 pick back. So I wonder -- I got these (INDISCERNIBLE) concerns, scheduling concerns,
34 and I also haven't found out from Mr. McCuaig whether his client concedes a further
35 breach of the conditions of our order or wants to play a different set of cards. Mr. McCuaig,
36 you're up.
37

38 **Submissions by Mr. McCuaig (Donald Smith Contempt Matter)**
39

40 MR. MCCUAIG: That was a lot of questions, My Lord. I'll see if
41 I can unpack them. I think Mr. Smith after my discussion with him concedes that the

1 elements of his video posts which address counsel and the Court are in violation of your
2 order. I wouldn't concede on his behalf that most of the rest of that material is necessarily
3 in breach of the order you made with respect to Mr. Smith.
4

5 I -- I trust My Lord does not spend a lot of time on social media. It's a cesspool. The --
6 the level of discourse is unfortunately very low and a lot of Mr. Smith's comments, while
7 they are in bad taste, I think are just part of what goes on in social media, but certainly the
8 -- the elements of those videos that address the Court and counsel I think are -- are certainly
9 conceded as having been in -- in bad judgment.
10

11 THE COURT: So what can we do about it?

12
13 MR. MCCUAIG: Well, I personally have no concern about My
14 Lord continuing with this matter, but I certainly understand the Court's concern about that
15 perception. I hadn't actually thought of it until you -- until My Lord raised it, and so I'm
16 just sort of processing the idea whether or not we need to address this in a different court.
17

18 What I can tell you is this. I have had some time -- I -- I just finished a trial last week. You
19 may know -- may remember I've had some time this week to have some discussions with
20 Mr. Smith. I understand -- I have not confirmed myself, but I understand that any of the
21 offending videos have, in fact, been removed from the internet to the extent possible,
22 because something that does happen is that videos get copied and re-posted by accounts
23 that Mr. Smith does not have control of. I can't tell you that that has or has not happened,
24 because I haven't been looking, but it would not shock me because I've seen it happen on
25 a number of occasions where videos posted by one party are -- are then copied and re-
26 posted in a place that is out of their control, but to the extent Mr. Smith can remove the
27 videos identified by my friend, they have been removed. That's my --
28

29 THE COURT: That would be very recent, Mr. McCuaig,
30 because I think Mr. Jackson saw -- technical staff checked on this quite recently.
31

32 MR. MCCUAIG: Yeah. And I think my discussion with Mr. Smith
33 was happening simultaneously with Mr. Jackson's staff, because I -- I admonished him that
34 it would be a good idea to make sure none of those were available on the internet and --
35

36 THE COURT: Okay. Well, let's suppose he does that, that he
37 takes down the stuff as much as he can. What would you then propose as a way of wrapping
38 this matter up?
39

40 MR. MCCUAIG: Well --
41

1 THE COURT: I must say, speaking for myself, the Courts are
2 not vindictive and I sentenced Mr. Smith and I understand that even though he consented
3 to the sentence, he may feel anguished by it and we understand that. I mean, you can't be
4 in this business and not have skin as thick as a water buffalo, but his rants and his comments
5 are going way beyond that, of course. So what can we -- let's assume he takes down what
6 he can and promises not to do it again as it relates to Mr. Jackson and myself. What then
7 would be reasonable to kind of wrap this up?
8

9 MR. MCCUAIG: Well, my thought is this. I think -- I think the
10 Court needs to see some good faith before the Court can do anything other than probably
11 what Mr. Jackson has asked you to do. And I have reviewed -- and I am content that is
12 authentic -- that Mr. Smith has an employment opportunity that should take him away and
13 keep his attention on things other than these matters for at least a good solid month.
14

15 And I think it would be in his best interests and I think it might assist the Court in making
16 a fair determination if he took that month and demonstrated that he can, in fact, put this
17 behind him, because I think you've definitely -- you've identified it. Mr. Smith is
18 anguished.
19

20 I think if you were drill down into the social media response to the August order, you would
21 find that there was lots of taunts and lots of -- just the worst part of social media directed
22 at him, and I don't mean to say that he is a victim. I just mean to say people went out of
23 the way to incite him and he did not exercise good judgment and -- and responded in kind
24 and your -- My Lord has seen, you know, the -- the worst part of that.
25

26 It -- it is -- I -- I deleted my social media some time ago and only recently re-established a
27 couple of accounts because I needed to review some of this kind of material, and it's -- it's
28 shockingly worse than it was 5 years ago when I got rid of all those accounts. And Mr.
29 Smith has, I think, just been -- allowed himself to be too embroiled in it. So my proposal
30 is essentially to let him take this employment opportunity, which I think is a good
31 opportunity. It looks like some really productive thing that he can do with his time and his
32 life. Let him show the Court that he can, in fact, just let go of this and come back and
33 address -- make final submissions on what an appropriate disposition is sometime in
34 November.
35

36 THE COURT: Mr. Jackson, could you live with that?
37

38 MR. JACKSON: What I would propose, My Lord, is a -- perhaps
39 we put an order before you with the finding -- the admission of contempt and we can stay
40 the -- the submissions on sanction until the month period identified by Mr. McCuaig. You
41 know, hopefully in that -- on -- in that basis, we see better conduct from Mr. Smith. If so,

1 perhaps we could have a joint submission then on sanction (INDISCERNIBLE).

2
3 THE COURT: Okay. Mr. McCuaig, can you live with that
4 proposal?

5
6 MR. MCCUAIG: Yeah. I think that's -- that's in line with the
7 submissions I made today. I -- I don't see that Mr. Smith has a winning argument and he's
8 never expressed his desire for me to make a losing argument to My Lord about the -- the
9 nature of those comments that were directed towards the Court and to Mr. Jackson.

10
11 **Decision (Donald Smith Contempt Matter)**

12
13 THE COURT: Okay. Counsel, I like that proposal, too, but my
14 only issue is I'm starting to worry about court scheduling and the like. I'd like to give Mr.
15 Smith a greater period of time to show his sincerity and also to wrap this into the new term
16 of the court, which will start in January.

17
18 So could we adjourn this -- the sanction portion of this to some date in January that we'll
19 select right now? And madam clerk will set it up for 9:00 Alberta time. And just be
20 reminded, counsel, by January, we're going to have fallen back. We're going to come out
21 of Daylight Saving time. I think that's correct, although we're voting on that in Alberta
22 right now, but -- so it will be Alberta time, 9:00 Alberta time, some date in January, and
23 I'm happy to talk to the two of you now with your calendars in hand to see if we can agree
24 on a date.

25
26 MR. JACKSON: And, My Lord, just one more thing I should add
27 to the order that we're contemplating. It should also reflect that offending posts be
28 immediately removed from -- from social media.

29
30 THE COURT: Yes. I think that's fair, Mr. McCuaig, and you -
31 - that -- your comment to the extent that Mr. Smith is able to do that, of course.

32
33 MR. MCCUAIG: Yeah. I -- as I said, my understanding from Mr.
34 Smith a few moments before we appeared here in court was that it had been completed. I
35 don't think there's any mischief to Mr. Smith in an order which is consistent with
36 something that is already done.

37
38 THE COURT: Gentlemen, I have my January calendar in front
39 of me. What's your pleasure?

40
41 MR. JACKSON: My Lord, I am open from -- the week of January

- 1 10th, I'm fairly open. I do have a hearing potentially that's going to be set, so if we have
2 an early morning attendance, I can accommodate that.
- 3
- 4 THE COURT: I'm looking at 9:00 Alberta time, which I think
5 would be 11:00 Ontario time.
- 6
- 7 MR. JACKSON: Okay.
- 8
- 9 MR. MCCUAIG: I'm -- that week I am completely available on 11,
10 12 and 14 and the other 2 days I have matters scheduled and in order to avoid a repeat of
11 today, I'll just -- just steer clear of them completely. So --
- 12
- 13 THE COURT: If we set it for January 12, 2022, at 9 AM in the
14 morning, would that work for everybody?
- 15
- 16 MR. MCCUAIG: It does.
- 17
- 18 THE COURT: Okay. Madam clerk, would you make a note of
19 that and make sure that we have a Webex time slot for 9:00 on 12 January, 2022?
- 20
- 21 THE COURT CLERK: Yes, My Lord.
- 22
- 23 THE COURT: Thank you. Any other business then on this
24 matter today?
- 25
- 26 MR. JACKSON: My Lord, I just want to state for the record, too,
27 while Mr. McCuaig may not agree that his attacks on other individuals and harassment of
28 other individuals other than counsel and Your Lordship are in breach of the order, my
29 position is -- is not the same. I would just suggest that Mr. Smith be told to cease all
30 harassment, threatening behaviour on social media and prove that he can do that.
- 31
- 32 THE COURT: Well, I'm not sure I have the authority to control
33 his conduct as it relates to other third party relationships of which I don't know the full
34 story. I know the full story about our relationship with him, but --
- 35
- 36 MR. JACKSON: Yeah.
- 37
- 38 THE COURT: -- I don't want to be overbroad in any order that
39 I make.
- 40
- 41 MR. JACKSON: Well, the terms of your order, My Lord, are -- are

1 he not engage against any individual on social media in a threatening, harassing or doxing.
2 I just want to make sure that that's clear to him that's the terms of your order that already
3 exist.

4
5 THE COURT: Should we put in the new order that your
6 proposing today a reminder of the existing terms?

7
8 MR. JACKSON: I think that would be helpful.

9
10 THE COURT: Mr. McCuaig?

11
12 MR. MCCUAIG: If you're -- if My Lord feels it's necessary. I --
13 I've -- I can advise you that I've had some fairly extensive discussions again recently with
14 Mr. Smith about the limits of that previous order. I think he's aware of them. If -- if My
15 Lord feels it would be helpful to remind him, I take no issue with that.

16
17 THE COURT: It -- the better approach, I think now that I think
18 it through in my head while you two gentlemen are talking, would be to confirm in the new
19 order that the conditions established in the old remain in full force and effect.

20
21 MR. JACKSON: (INDISCERNIBLE) My Lord, and circulate it to
22 Mr. McCuaig.

23
24 THE COURT: Okay. So who's preparing the court order? All
25 right. Get the -- Mr. McCuaig's approval in some fashion on it. Send it up to me through
26 my assistant. We'll sign it, get it stamped and somehow get it back to you gentlemen. And,
27 Mr. McCuaig, as an officer of the court, can I count on you to fully brief your client about
28 the implications. He may dodge the bullet this time, but there's only so much bullet
29 dodging that one can expect in the Canadian court system.

30
31 MR. MCCUAIG: You can absolutely count on me, My Lord.

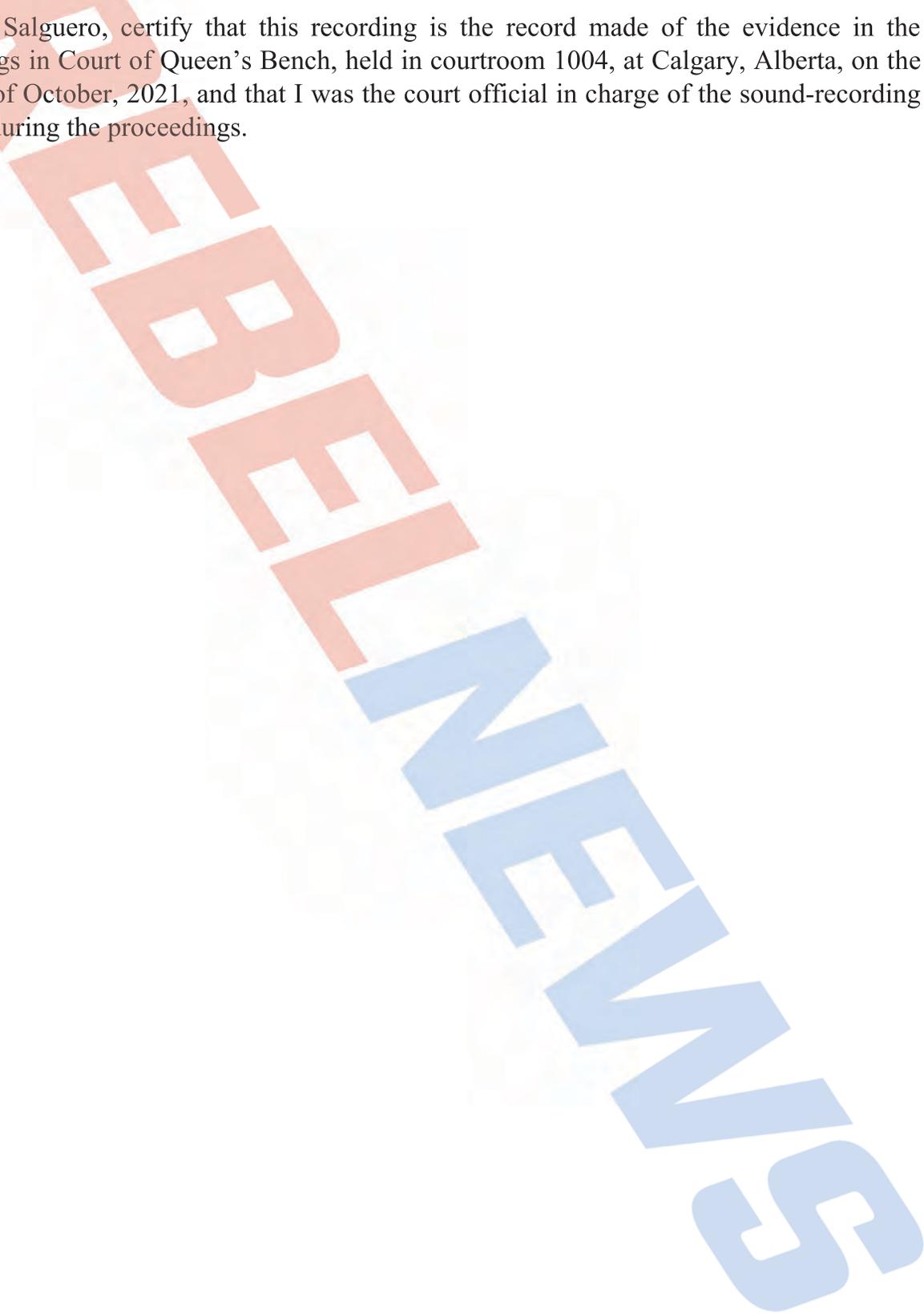
32
33 THE COURT: Thank you then, and with that, have a good day.

34
35 MR. MCCUAIG: Thank you, My Lord.

36
37
38
39 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, JANUARY 12, 2022
40
41

1 **Certificate of Record**

2
3 I, Karina Salguero, certify that this recording is the record made of the evidence in the
4 proceedings in Court of Queen’s Bench, held in courtroom 1004, at Calgary, Alberta, on the
5 13th day of October, 2021, and that I was the court official in charge of the sound-recording
6 machine during the proceedings.
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1 **Certificate of Transcript**

2
3 I, Michelle Hiebert, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best of
6 my skill and ability and the foregoing pages are a complete and accurate transcript of the
7 contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and is
10 transcribed in this transcript.

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16 Order: AL22750

17 Dated: October 18, 2021

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