

**CITATION:** Town of Aurora v. Lepp, 2019 ONSC 5430  
**COURT FILE NO.:** CV-19-00138806-0000  
**DATE:** 20190919

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** The Corporation of the Town of Aurora, Applicant

**AND:**

Robert Lepp, Respondent

**BEFORE:** Justice J. Di Luca

**COUNSEL:** Charles Painter, Counsel, for the Applicant

Robert Lepp, Respondent, In Person

**HEARD:** September 16, 2019

**ENDORSEMENT**

- [1] On August 29, 2019, I provided oral Reasons finding Mr. Lepp guilty of civil contempt in relation to a violation of the Order of de Sa J. dated March 28, 2019. That order prohibited Mr. Lepp from communicating with certain named defendants in relation to a number of actions he commenced against the Town of Aurora, its mayor and council, and some of its employees. The Order of de Sa J. was an interim order imposed pending the determination of a vexatious litigant application that is scheduled to be heard on Friday, September 20, 2019.
- [2] Following delivery of my Reasons, I adjourned the penalty phase of the proceedings to allow Mr. Lepp some time to consider purging his contempt. I also invited him to prepare and provide any additional material he wished the court to consider in support of his position on penalty.
- [3] Mr. Lepp filed and read into the record a nine-page letter with certain attachments. The letter sets out his background and antecedents and details a number of proposals for disposition of the penalty phase of this proceeding. The letter also outlines steps purportedly taken to purge the contempt, which I will address later in these Reasons.
- [4] I also received a supplementary motion record from the Applicant. This material includes excerpts from a blog Mr. Lepp posted online shortly after he was found guilty of contempt.

**Rules and Legal Principles**

[5] The *Rules of Civil Procedure* expressly provide for a wide range of penalty options for dealing with civil contempt. Rule 60.11(5) of the *Rules of Civil Procedure* provides as follows:

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

- (a) be imprisoned for such period and on such terms as are just;
- (b) be imprisoned if the person fails to comply with a term of the order;
- (c) pay a fine;
- (d) do or refrain from doing an act;
- (e) pay such costs as are just; and
- (f) comply with any other order that the judge considers necessary,

and may grant leave to issue a writ of sequestration under Rule 60.09 against the person's property.

[6] As a general principle, the role of a civil contempt finding is twofold; first, it seeks to enforce compliance with a court order and second, it seeks to foster societal respect for the court process; see *Business Development Bank of Canada v. Cavalon Inc.*, 2017 ONCA 663 per Weiler J.A. at para. 77 and see also *Boily v. Carleton Condominium Corp. 145*, 2014 ONCA 574 at para. 79, wherein Epstein J.A. explained:

The purpose of a penalty for civil contempt is to enforce compliance with a court order and to ensure societal respect for the courts: *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, 1992 CanLII 29 (SCC), [1992] 2 S.C.R. 1065, at 1075. The remedy for civil contempt is designed not only to enforce the rights of a private party (See: *Poje v. Attorney General (B.C.)*, 1953 CanLII 34 (SCC), [1953] 1 S.C.R. 516 at 517; *Frontenac Ventures Corp. v. Ardoch Algonquin First Nation*, 2008 ONCA 534 (CanLII), 91 O.R. (3d) 1, at para. 37), but also to enforce the efficacy of the process of the court itself. Justice McLachlin powerfully expressed this broader purpose in *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC), [1992] 1 S.C.R. 901 at 931, stating:

[t]he rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

- [7] The following are the factors relevant to a determination of an appropriate sentence for civil contempt:
- a) the proportionality of the sentence to the wrongdoing;
  - b) the presence of mitigating factors;
  - c) the presence of aggravating factors;
  - d) deterrence and denunciation;
  - e) the similarity of sentences in like circumstances; and
  - f) the reasonableness of a fine or incarceration.
- [8] In terms of proportionality, it is important that the severity of the sentence imposed match the gravity of the conduct at issue: see *York (Regional Municipality) v. Schmidt*, [2008] O.J. No. 4915 (S.C.), at para. 16.
- [9] Aggravating and mitigating factors are relevant and substantive efforts to purge contempt will often be a significant mitigating factor. Mitigating facts are to be established on a balance of probabilities.
- [10] Deterrence and denunciation are important considerations. That said, incarceration is rare despite the focus on deterrence and denunciation: see *Korea Data Systems Co. v. Chiang*, 2009 ONCA 3 at para. 90.
- [11] Fines in the range of \$1,500 to \$5,000 are commonly imposed in cases of civil contempt; see: *Boily* at para. 108.

### **Application to this Case**

- [12] The Applicant initially sought an order granting Mr. Lepp seven days to apologize, failing which a sentence of 14 days in jail would be imposed. The Applicant also sought a term of probation for 12 months, community service, a fine of \$3,000 and related orders maintaining the injunctive relief granted by de Sa J. for the period of probation.
- [13] During submissions on penalty counsel for the Applicant did not press for a jail sentence, though he maintained that Mr. Lepp had not apologized or substantively purged his contempt despite the opportunity to do so.
- [14] Mr. Lepp indicates before me that he is prepared to accept whatever punishment I deem appropriate.
- [15] In my view, this is an appropriate case for a fine and costs. I reach this conclusion for the following reasons:

- a. To my knowledge, Mr. Lepp has no history of contempt of court. He is a first-time contemnor.
- b. Mr. Lepp has a history of civil and community service that stands to his credit. However, he appears to have commenced a personal and relentless quest against the Town of Aurora. He seeks to right every perceived injustice he sees regardless of who is involved. Indeed, it appears that he had inserted himself in municipal politics as a full-time busybody.

To be clear, holding government to account is not only a lawful activity but also a noble enterprise. There is, however, a reasonable limit to this type of activity. Once the activity engaged in veers towards harassment or veers towards abusing the court's process, the noble justification wanes.

I am not determining the vexatious litigant issue at this stage and I need not make a finding that Mr. Lepp has engaged in harassment or engaged in abusing the court process. That said, I can say with confidence that he is heading in that direction. Indeed, he appears to be undeterred. His submissions before me can best be characterized as merely "mouthing" the words of contrition as opposed to demonstrating any insight into why his behaviour needs to stop. Rather than accepting that the Town of Aurora wants nothing to do with him, he proposes that he be permitted to volunteer his professional technical services with the Town of Aurora, that he be permitted to assemble a team of volunteers to collect \$300,000 per year in pet tag revenue on behalf of the Town of Aurora, that he perform 50 hours of community service *for* the Town of Aurora and that his apologies, which he refers to as "detailed confessions", be posted on the Town of Aurora website for everyone to see. In short, these proposals entirely miss the point of de Sa J.'s Order. Instead, they demonstrate his continued commitment to his cause.

Lastly, Mr. Lepp advances the position that he intends to dismiss his Small Claims Court actions that have been stayed by the Order of de Sa J. He complains that he has been unable to dismiss them due to the order staying these actions and is, therefore, in a catch-22. While I appreciate that he is currently unable to dismiss those actions, I note that their dismissal nonetheless leaves an overarching action in the Superior Court that encompasses all the claims made in the various small claims actions. As such, the offer to dismiss these small claims actions is a pyrrhic gesture at best.

On the whole and despite his claim otherwise, I am not prepared to find that Mr. Lepp has purged his contempt. This denies him the mitigation of a true substantive apology or remediation effort. That said, I will not aggravate his penalty as a result.

- c. The nature of the contempt in this case, while serious, is not towards the more serious end of the spectrum. Mr. Lepp was enjoined from sending

correspondence to certain persons he has involved in litigation. He was undaunted by the Order of de Sa J. and the repeated cautions he received from counsel and the court. He sent a number of letters to members of Town of Aurora Council and its employees.

- d. The Order of de Sa J. will end as of this Friday when the vexatious litigant application is heard. On that date, the order will either be vacated or extended, assuming the matter is determined on that date. There is little need at this stage to ensure compliance with the order.
- e. Nonetheless, a significant sentence is required for the purpose of general and specific deterrence, and in order to foster preservation and maintenance of a functioning justice system.
- f. In my view, a fine coupled with a significant costs order will serve to send the requisite message both to Mr. Lepp and to others who may be similarly inclined.
- g. In terms of a fine, I consider Mr. Lepp's ability to pay. He is not impecunious. He advised the court that while he is retired, he owns a home and four vehicles. In my view, a fine of \$1,500 payable within six months is a fit and appropriate fine in the circumstances. It is at the low end of the range suggested in *Boily*, but nonetheless is a significant amount of money for a retired person with a restricted income.
- h. In terms of costs, I read Rule 60.11(5) as permitting the inclusion of costs as a component of a penalty package. Indeed, the general presumptive rule in a civil contempt matter is that costs are payable on a substantial indemnity basis: see *Astley v. Verdun*, 2013 ONSC 6734, aff'd 2014 ONCA 668. The Applicant seeks costs totaling \$16,217.54 on a full indemnity basis. I am sympathetic to the claim for full costs. The taxpayers of Aurora should not be out of pocket as a result of steps taken to enforce a court order that Mr. Lepp refuses to abide by. While I am not prepared to award full indemnity costs, I see no reason why a significant cost award is not appropriate in the circumstances of this case. Balancing all the factors, including reasonableness and proportionality, I order costs of \$10,000 all-inclusive.

[16] Mr. Lepp is therefore ordered to pay a fine of \$1,500 within six months and costs of \$10,000 all-inclusive within 30 days.

[17] I decline to make any further order enjoining him from communicating with the Town of Aurora. Justice de Sa's Order remains in effect for the time being and Mr. Lepp can be under no misapprehension regarding what it prohibits.

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Justice J. Di Luca

**Date:** September 19, 2019