

Court of Queen's Bench of Alberta

Citation: Alberta Health Services v Pawlowski, 2021 ABQB 813



Date:
Docket: 2101 05742
Registry: Calgary

Between:

Alberta Health Services

Applicant

- and -

Artur Pawlowski and Dawid Pawlowski

Respondents

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

A. Introduction

[1] On May 6, 2021, Alberta Health Services (AHS) obtained a court order from Associate Chief Justice J. Rooke (the Rooke Order) targeting Christopher Scott and others to assist in enforcing community compliance with restrictions imposed by AHS directed at mitigating the risk posed by the novel coronavirus (COVID-19). AHS also obtained an order from Justice Gates on April 23, 2021 (the Gates Order) directed at the “Street Church” to permit the inspection of their church facilities to confirm compliance with AHS Health Orders.

[2] I found that both Pastor Artur and his brother Dawid Pawlowski breached the Rooke Order and were thus in contempt of a court order (*Alberta Health Services v Pawlowski*, 2021 ABQB 493). In companion rulings I also found others in breach of the Rooke Order and the Gates Order. These include:

- a. Kevin Johnston (*Alberta Health Services v Johnston*, 2021 ABQB 508);

- b. Christopher Scott (*Alberta Health Services v Scott*, 2021 ABQB 490); and
- c. Pastor Artur Pawlowski in breach the Gates Order (*Alberta Health Services v Street Church*, 2021 ABQB 489).

[3] During the sanction phase of these contempt procedures, Kevin Johnston concluded his case with a negotiated a settlement that did not result in a written ruling, but to the extent it became of limited precedent value, I will refer to it in this ruling.

[4] In my analysis, I intend to repeat my general observations through all of the sanction matters to allow each decision to contain a complete review of my thought process. In addition to this ruling, I have also issued a second ruling *AHS v Scott*, 2021 ABQB 812 (sanction ruling).

B. Background

[5] The World Health Organization declared COVID -19 a pandemic in March 2020. By September 2021, Alberta was in what medical experts called the fourth wave of the pandemic. Ironically, Pastor Artur Pawlowski and Dawid Pawlowski are being sanctioned at a time when the threat to Albertans from COVID-19 has never been greater. It had been hoped that as Alberta opened for business during the summer of 2021, the worst was behind us; it has turned out to be the opposite. From the perspective of COVID-19, Alberta has been and is in its worst shape ever concurrently with these sanction hearings. It is not an overstatement that Pastor Artur Pawlowski and his brother Dawid Pawlowski have contributed to this ominous health situation by their defiance of the health rules and their public posturing, which encourages others to doubt the legitimacy of the pandemic and to disobey the AHS Health Orders designed to protect them.

[6] In October of 2021, Alberta asked the Canadian Federal Government for help as well as the Canadian military. Most therapeutic surgeries have been cancelled. ICU units (despite emergency expansion) are overwhelmed. Notwithstanding the wide availability of statistically safe and statistically successful vaccinations against COVID-19, the impact on Alberta in terms of health, human suffering, and economic impact has never been worse. Paradoxically or perhaps statistically relevant, when we were fully locked down in March 2020 there were relatively few cases. Today virtually everybody in Alberta knows at least one person that has died from COVID-19 and many more that have experienced difficult illness and persistent symptomology.

C. The Position of the Parties

[7] The position of AHS is that Pastor Pawlowski and Dawid Pawlowski knew they faced contempt sanctions for their conduct of openly defying the AHS Health Orders, which were in effect to curb the spread of COVID-19. Pastor Pawlowski acted defiantly when he was served with the Gates Order and refused an inspection of his church facility. On the date of their arrest in May 2021, they received a thorough briefing from co-contemnor Kevin Johnston and were aware that the police had taken the extraordinary step of publicly announcing the Rooke Order. Despite that, Pastor Pawlowski, aided by his brother, went ahead with a church service that segued into a political rally on the date of his arrest.

[8] In light of this, AHS asserts that nothing short of a jail sentence is satisfactory. They propose 21 days in jail, (10 days for Dawid Pawlowski). As this is a civil case, AHS also asserts they are entitled to costs and they propose costs of Schedule C, column 1, of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*), plus a multiple to those costs of 2.5 times.

[9] The position of the contemnors is that this is an inappropriate case for jail as both are otherwise law-abiding citizens who have become a spokesman for policies in opposition to the severity of the AHS Health Orders. They assert that as both of these contempt orders were obtained on an *ex parte* basis, they were given no significant time to consider their conduct and therefore they should be sanctioned more as “spur of the moment contemnors” rather than having acted in a planned and deliberate manner. They assert that a small fine is appropriate, or even no further sanction. They also assert that costs are not appropriate as AHS utilized staff lawyers to handle these proceedings so incurred no extra cost. Their fall-back position on costs is that they should not be asked to pay them all nor have any increase to the usual amounts described in the *Rules*.

[10] As it relates to the breach of the Gates Order, legal counsel both agree that a fine is appropriate differing only on the quantum. And finally, concerning Dawid Pawlowski, both counsel agree that his sanction should be less than that of Pastor Artur Pawlowski.

D. Legal Analysis

1. An Overview about Sanctions for Contempt in Alberta

[11] While contempt proceedings in Alberta provide those accused of contempt many protections afforded individuals charged with criminal offences, there are some differences. They remain at their root a civil procedure. Processes relating to civil procedures are codified in the *Rules* and any sanction hearing requires a review of the *Rules* as a starting point.

[12] Rule 10.53 of the *Rules*, entitled **Punishment for civil contempt of Court**, sets out the following:

- (1) Every person declared to be in civil contempt of Court is liable to any one or more of the following penalties or sanctions in the discretion of a judge:
 - (a) imprisonment until the person has purged the person’s contempt;
 - (b) imprisonment for not more than 2 years;
 - (c) a fine and, in default of paying the fine, imprisonment for not more than 6 months;
 - (d) if the person is a party to an action, application or proceeding, an order that (i) to (iv) not applicable

[13] In *Law Society of Alberta v Beaver*, 2021 ABCA 163 [*Beaver*], the Court of Appeal cited *Builders Energy Services Ltd v Paddock*, 2009 ABCA 153 [*Paddock*], for a list of criteria to consider when crafting a penalty for contempt. These are

- a. the proportionality of the sentence to the wrongdoing;
- b. the presence of aggravating or mitigating factors;
- c. deterrence; and
- d. the reasonableness of any fine or term of imprisonment (the “**Paddock Factors**”).

[14] Rule 10.53 of the *Rules* is purposely broad because it covers a myriad of situations. Nor is it exhaustive of the remedies a court may impose. By example, in *Ouellet v BM*, 2010 ABCA

240, at para 62, our Alberta Court of Appeal approved a sanction which included community service.

[15] Most contempts occur within the context of civil litigation between parties. Typical in this array would be breaches of orders to supply documentation or information, present exhibits for review, return children to the other parent as required by a parenting order, or return property following a final or interim court order. Where the dispute is solely between the litigants and does not have a community impact, imprisonment is rare. Rare but not unheard of. By example in an unreported 2004 case Justice M. Bielby imprisoned an individual until he produced a mounted big game trophy that had been taken from other family members in an estate fight. This was an application of Rule 10.53 (1)(a) as the contempt could be purged by delivering up the item that had been ordered returned. After the contemnor spent a short time in jail, the big game trophy was “discovered”.

[16] The breach by Pastor Arthur Pawlowski of the Gates Order falls more into the category of a narrower civil litigation breach that would result in a fine rather than imprisonment. The disobedience there was simply to deny the inspection of a property so that AHS could confirm whether a public gathering in breach of the AHS Health Orders was taking place. Both counsel correctly agree that this matter should be handled with a fine.

[17] Fines, are a significant tool utilized to control contempt. While they do result in a judgment debt in favour of the Provincial Treasurer [*Makis v Alberta Health Services*, 2020 ABCA 168 at para 66] there is one significant difference between a fine for contempt and unpaid civil debt. When a fine for a breach of a court order is imposed the failure to pay that fine can result in imprisonment. Conversely, no contempt lies for the failure to pay a judgment debt, so for that failure, the successful party must resort to other collection techniques.

[18] When considering a fine, it is prudent that the judge imposing the sanction inquire about the contemnor’s ability to pay. This inquiry was made of the Pawlowskis through their counsel. Taking the evidence at the sanction hearing in its entirety, it appears clear that both Pawlowskis have resources to pay a significant fine if it is ordered.

[19] The relationship between costs and fines has also been identified in the courts. Court costs awarded in a contempt procedure are payable to the successful applicant but still have an impact on the totality of the penalty imposed. It is important for a sanctioning judge to consider the total global effect of any fine and court costs to avoid a disproportionately high penalty imposed on a contemnor.

[20] While modest fines can work for many breaches they may not be appropriate in all cases. There is a second broad category of contempt proceedings in which a public order is challenged. Breaches of these types of orders can have significant community impact. There are at least two subsets of these breaches. The first subset in this group are breaches of healthcare orders which could affect the health of innocent third parties. The second subset occurs in labour, environmental disputes, or protests against government legislation. For example, notwithstanding back to work orders, a group of employees defy the order and refuse to go back to work.

[21] The root of the problem is that these people challenge the authority of the courts in a public and community disruptive way and bring the administration of justice into disrespect. These breaches can be extremely challenging. No judge wants to imprison striking nurses or protesting priests, but as many judges have noted, we don’t get to pick and choose the orders we

wish to obey and the ones we don't. If this was permitted in a free and democratic society we would quickly disintegrate into a society where the rule of law was ignored.

[22] In *AMEC Foster Wheeler Americas Ltd v Attila Dogan Construction and Installation Co Inc*, 2016 ABQB 305 at para 13, Associate Chief Justice N.M. Wittmann observed that the central idea of sanctioning contempt is that courts have a right to protect the dignity of their own proceedings and are entitled to discipline. Conduct that tarnishes, undermines, or impedes the Court's role in society as the principal administrator of justice must be discouraged.

[23] The contemnors, by breaching the Rooke Order, are in this more serious category of defying a public health order with its attendant risks to the general public. They are always serious and can often result in extremely large fines and significant imprisonment.

[24] In considering an appropriate sanction for contempt some attention must be given to whether the contemnor apologized for the contempt. While an apology will not extinguish a contempt, a heartfelt apology may ameliorate a sanction. However, the converse is not correct; a failure to apologize should not add a punitive element to the sanction, it simply deprives the contemnor of any mitigation that might be achieved through an apology.

2. Contemporary Precedents (COVID-19 related)

[25] In *AHS v Johnston*, our sanction hearing was pre-empted by a joint submission of an appropriate sanction. There were no written reasons issued for that sanction. Pastor Pawlowski and Dawid Pawlowski were expressing some of the same objections that Mr. Johnston was expressing and have been found in contempt of the same order. Therefore, in the interests of parity and consistency it is important that I identify the Johnston sanction as a precedent. It is not binding on me as it was negotiated by members of the bar; however, their negotiations were at arm's length and represent a pragmatic effort to balance the interests of the contemnor against society. Mr. Johnston's case was worse than the Pawlowskis' in that Mr. Johnston offended three orders, in a more aggressive and arguably violent way. All three contemnors have one similarity in that they each served three days in jail after breaching the Rooke Order. Ultimately, Mr. Johnston was sanctioned to 40 additional days in jail and ordered to pay costs of \$20,000. He also had certain continued prohibition orders put in place against him.

[26] In *AG of Ontario v the Trinity Bible Chapel at al*, 2021 ONSC 1169, the Court dealt with a church and its elders that held church service contrary to prevailing public health orders. The judgment makes clear that the presiding Justice felt constrained by some of the fines that had been handed out in other community contempt cases. It is also to be noted that the contemnor's admitted their civil disobedience, and the Crown was not asking for jail. The church was fined \$15,000 while various church elders incurred smaller fines totaling \$23,000. All were obliged to pay costs totaling \$45,000.

[27] In *R v The Church of God (Restoration) Aylmer*, 2021 ONSC 3452, a church and its two ministers were fined a total of \$48,000.00 and had costs assessed against them of \$68,000.00. These are the most contemporary cases concerning COVID-19 situations. I am mindful that in the Trinity and Church of God case, the church as a corporate entity received a much larger fine than the individual pastors, however in Pastor Pawlowski's case he really is the church and the 'Street Church' is simply his alter ego.

[28] Tying together my sanction decisions, I have also decided in a separately released ruling to treat Christopher Scott somewhat similarly to the treatment I am imposing in this case on the Pawlowski brothers.

3. Applying the Paddock Factors to Pastor Artur Pawlowski and Dawid Pawlowski

[29] While the Pawlowski brothers were not identified by name in the Rooke Order, they were clearly on AHS' radar. AHS was aware that their church met on Saturday having previously been rejected entrance as required by the Gates Order. Therefore, armed with the Rooke Order, the Calgary Police Service showed up on May 8 to serve the order but also filming the contemptuous conduct and the disdain for the health orders exhibited by the Pawlowski brothers. They made every effort to obstruct the police from doing their court mandated duty.

[30] When the Pawlowskis left the church, they were arrested in a spectacle, mirroring arrests seen in mass protests or Third World countries. It is not an unreasonable observation that the Pawlowskis reveled in their arrest and went out of their way to make their arrest the Saturday night news spectacle that it turned out to be. From this it can be seen that Pastor Artur Pawlowski's conduct and that of his brother was extremely aggravating. They engaged in both direct and public defiance of a court order designed to save peoples lives. From the perspective of proportionality, their sanctions must be significant.

[31] In the context of this case, as a general proposition and as the case law analysis reveals, the position of AHS that there should be some imprisonment is not unreasonable. These individuals breached a court order issued in favour of a health authority designed to protect people by keeping them socially distant, away from groups, and wearing masks in public. While I respect that these are all intrusions on personal liberty, they are not sacrifices that would offend the *Canadian Charter of Rights and Freedoms* and they are not egregious sacrifices. The restrictions were directed at keeping people alive. Fundamental to this debate, which is roaring in Alberta, and getting louder and louder as more and more people die, is that the person you kill may not be yourself. One medical doctor recently compared the rule breakers as someone who might drive impaired. Often when they crash it is innocent victims that suffer the injury.

[32] Pastor Arthur Pawlowski has few mitigating circumstances. Although his legal counsel has marshaled all that she can to assist her clients the submissions cannot ameliorate the severity of the breach of the Rooke Order. The religious overtone to the service being conducted by Pastor Pawlowski on May 8, the fact that he had little or no notice and therefore little time to apply sober second thought to his conduct, and the fact that he is entitled to free speech and to express in a democratic country his beliefs are not in my view mitigating circumstances. Some of the submissions were cut down by the cruel facts and the reality that on May 8 Pastor Pawlowski was actually conducting a political rally wrapped up in the flag of a religious service, and that he had ample time to be briefed on the impact of the Rooke Order and was even told by co-contemnor Kevin Johnston that it applied to activities like those being conducted by Pastor Pawlowski. Even after the police arrived and served the Rooke Order the rally went ahead. The police, for officer safety reasons, had to stand down until the Pawlowski brothers left the building where they held their services and meetings.

[33] When Pastor Pawlowski addressed the Court, he taunted me to imprison him. He knows that for him the 21 days in jail will be a slap on the wrist that will make him a martyr. After Pastor Artur Pawlowski was found guilty of contempt he went on a speaking tour in the United

States where he parlayed his title as a pastor and the fact that he had been arrested for holding a church service into a rally cry that attracted like-minded individuals in the United States who also oppose healthcare measures addressed at combatting COVID-19.

[34] It is disappointing that Pastor Pawlowski had to air his grievances about Alberta in another country. Leaders and statesmen don't do that. During his sanction hearing, AHS played some trip reports in which Pastor Pawlowski oozes hubris, while relishing in his notoriety. He got to take a picture with a governor of a U.S. state. He is proud of what he asserts is the love of the U.S. people for him. Love he implies he is not feeling in Canada.

[35] He accuses the Court of being a "tool of the government." In this regard, he shows no civic understanding of the independence of the Courts and their distance from the government. His address to the Court during his sanction hearing was a political condemnation of the current government, a condemnation of the men and women who make up AHS, a condemnation of the Courts, and basically a condemnation of everyone who follows the science on COVID-19. He simply refuses to apologize and his lawyer indicated that it would be hypocritical of him to do so in light of his disdain for AHS and the current Alberta government.

[36] He again describes health authorities as Nazis. Pastor Pawlowski makes much virtue of his status in Canada as an immigrant from Poland. With this background he should understand how inappropriate it is to compare public health officials to a group that killed, by many accounts, four million Polish people, of which at least half were Jewish. It defies belief, that any immigrant from Poland (having studied the atrocities of the Nazis in that country) could identify a doctor of medicine trying to keep people alive as a Nazi. His address to the Court was so inflammatory that I must remind myself that his failure to apologize and to acknowledge his wrong doings is not a sanction aggravation, but only a lack of mitigation.

[37] Pastor Pawlowski is entitled to express views about the government, the Courts, and AHS, but he must do it in a respectful, hate-free way that does not breach AHS Health Orders. He was not arrested because of his religion or his religious worship, or for his outlandish publicity seeking views. He was arrested for breaching a court order. During his court statement, he pointed out that the Premier of the province in the middle of the pandemic was observed dining with a group of other politicians and appearing not to obey the AHS Health Orders. This gave him an opportunity to suggest that I should jail the Premier along with him and they could share the same cell. Again, I view this as part of Pastor Pawlowski's fervent desire that I martyr him by giving him a little more jail time to add a little more gasoline to the anti-mask, anti-vaccination fire.

[38] Pastor Arthur Pawlowski, his brother Dawid Pawlowski, and others that I dealt with in the sanction hearings are on the wrong side of science, history, and common sense on this issue. The growing number of dead and dying in North America from COVID-19 infection cannot be ignored, nor defined as a false reality. Pastor Pawlowski's outspoken sermon and political lecture delivered to me in his sanction hearing was a cry for jail because Pastor Pawlowski has observed that jail will add to his persona as a martyred Christian fighting the forces of government evil.

[39] Likewise, his brother Dawid attempted to measure up to Pastor Artur Pawlowski's rhetoric, but it was a pale comparison.

[40] Pastor Pawlowski's activism against the COVID-19 health measures gave him two significant personal benefits. First the ability to raise money. Second, the thing he cherishes the most - public notoriety. To a lesser extent this is what his brother Dawid wishes as well.

[41] Like a criminal sentence, a contempt sanction must also focus on the element of deterrence. In the context of contempt of general and public orders this deterrence must be specific to the offender but also must send a message to others who could be likewise engaged. Community deterrence is extremely important. As a specific example in the context of AHS Health Orders, AHS's legal counsel obtained a court order against another third party who was proposing to have a rodeo. After the order was obtained, those individuals wisely decided to obey the order. If after-the-fact they now saw that a contemnor would get away with a slap on the wrist there would've been no economic reason for those individuals to ignore the order. That was an example in Alberta, in the context of injunctions regarding AHS Health Orders, where the order coupled with the downstream risk brought about the desired result. From this it should be seen that the Pawlowski brothers must be sanctioned either with a period of imprisonment as suggested by AHS, or with a significant fine that will impact and influence their behaviour and that of others who choose to flaunt court orders.

[42] The final suggestion from the Alberta Court of Appeal in handling sanctions for contemnors is to ensure that both the fine or the imprisonment is reasonable. In the *Beaver* case, while the Court of Appeal found the one-year sentence to be unreasonable they still considered a six-month term of imprisonment to fall within the confines of reasonableness and within the discretionary power of the sanctioning judge.

4. Sanction to be Imposed on the Pawlowski Brothers

[43] AHS submits strongly that additional jail time is required to deter the Pawlowski brothers and individuals like them. Despite this strong submission, I've decided that further jail time for the Pawlowski brothers is inappropriate as there are more effective ways in which they can make reparations for the breach of the Rooke Order. On balance, I suspect that many reasonable individuals will view the sanctions that I impose to be more beneficial in repairing the harm Pastor Pawlowski and his brother did to society than a short period of jail that will perhaps martyr them in the eyes of their followers.

[44] I therefore intend to handle this without additional jail time, but instead impose a very large fine, community service work, plus a requirement that whenever they are opposing the AHS Health Orders in any public forum, (including social media forums), they must also place the other side of the argument on the record.

[45] The sanctioning of a contemnor, is an individualized process. Here I have emphasized the importance of deterrence with a large fine. The Ontario cases which I cited earlier are not binding on me; however, I recognize that the fines those individuals received are less than the fine I am imposing on Pastor Artur Pawlowski and Dawid Pawlowski. This is purposeful, as a large fine was the only option preventing a period of imprisonment.

[46] Pastor Artur Pawlowski's sanction is as follows:

- i. He is sentenced to a period of three days in prison which is deemed fully satisfied and served following his initial arrest in May 2021;
- ii. He is ordered to pay a fine of \$23,000.00, which fine is characterised as \$3,000.00 for breach of the Gates Order and \$20,000.00 for breach of the Rooke Order;

- iii. In addition, I place Pastor Artur Pawlowski on 18 months' probation, the terms and conditions of which will be to keep the peace and be of good behaviour, obey all AHS Health Orders relating to COVID-19, and to provide 120 hours of community service work (at a rate of not less than 10 hours per month), working at a homeless shelter, a food bank, or any other facility and charity but excluding the Street Church Ministry;
- iv. He must remain in the Province of Alberta during his period of probation unless he obtains the consent of his probation officer who will authorize such temporary absences if they are for an emergency family or health matter. If he is not currently in the province of Alberta, he must return within seven days and report in person to Alberta probation in Calgary, Alberta, and thereafter as required by the probation office; and
- v. The final term of his probation order will be that when he is exercising his right of free speech and speaking against AHS Health Orders and AHS health recommendations, in a public gathering or public forum (including electronic social media); he must indicate in his communications the following:

I am also aware that the views I am expressing to you on this occasion may not be views held by the majority of medical experts in Alberta. While I may disagree with them, I am obliged to inform you that the majority of medical experts favour social distancing, mask wearing, and avoiding large crowds to reduce the spread of COVID-19. Most medical experts also support participation in a vaccination program unless for a valid religious or medical reason you cannot be vaccinated. Vaccinations have been shown statistically to save lives and to reduce the severity of COVID-19 symptoms.

[47] Dawid Pawlowski's sanction is as follows:

- i. He is sentenced to a period of three days in prison which is deemed fully satisfied and served following his initial arrest in May 2021;
- ii. He is ordered to pay a fine of \$10,000.00, for breach of the Rooke Order;
- iii. In addition, I place Mr. Dawid Pawlowski on one year's probation, the terms and conditions of which will be to keep the peace and be of good behaviour, obey all AHS Health Orders relating to COVID-19, and to provide 120 hours of community service work (at a rate of not less than 10 hours per month), working at a homeless shelter, a food bank, or any other facility and charity but excluding the Street Church Ministry;
- iv. He must remain in the Province of Alberta during his period of probation unless he obtains the consent of his probation officer who will authorize such temporary absences if they are for an emergency family matter. If he is not currently in the province of Alberta, he must return within seven days and report in person to adult probation in Calgary, Alberta, and thereafter as required by the probation office; and
- v. The final term of his probation order will be that when he is exercising his right of free speech and speaking against AHS Health Orders and AHS health

recommendations, in a public gathering or public forum (including electronic social media), he must indicate in his communications the following:

I am also aware that the views I am expressing to you on this occasion may not be views held by the majority of medical experts in Alberta. While I may disagree with them, I am obliged to inform you that the majority of medical experts favour social distancing, mask wearing, and avoiding large crowds to reduce the spread of COVID-19. Most medical experts also support participation in a vaccination program unless for a valid religious or medical reason you cannot be vaccinated. Vaccinations have been shown statistically to save lives and to reduce the severity of COVID-19 symptoms.

E. Costs

[48] AHS's claims costs of \$15,733.50 for the breach of the Rooke Order and \$4,758.75 for the breach of the Gates Order. This is based on appropriate items set out in schedule C, column 1 in the *Rules* with a multiplier of 2 ½ times for the complexity of the case.

[49] AHS's argument that Pastor Pawlowski and his brother should be obliged to pay court costs is compelling. By precedential background, the individuals involved in the Church of God matter in Ontario were ordered to pay \$68,000 in court costs. Here, AHS suggests a more balanced and fairer schedule C amount using a 2 ½ times multiplier.

[50] I suspect that if AHS had obtained outside counsel to handle these matters legal fees might have been much greater. The injunctions were complex and the contemnors aggressively challenged the Rooke Order as well the finding of contempt such that a multiplier based on complexity is justified.

[51] Pastor Pawlowski's counsel suggests that costs should be at a reduced rate. While there is certainly some inferential authority to that effect in Alberta, it is more the recognition of an exercise of discretion where there is no compounding of the workload of the lawyers involved. Here, however, AHS legal counsel had to embark on contempt proceedings at a level which would be abnormal to and which would clearly interrupt other traditional work that AHS legal counsel may engage in. I recognize for the lawyers involved this was outside their normal scope of work, extremely complex, and the AHS staff lawyers were well prepared. Costs are appropriate. The amount claimed by AHS for breach of the Rooke Order in the total amount of \$15,733.50 is approved payable jointly and severally by Pastor Artur Pawlowski and Dawid Pawlowski. The amount of \$4,758.75 payable only by Pastor Artur Pawlowski is also approved for the Gates Order breach. I reject the submission that if the Respondent is partially successful in avoiding prison, costs should only be partially awarded, as the high fine is, in my view, a sufficient deterrence and goes further to make reparation on the part of the Pawlowskis. These costs will be paid in addition to the fine.

F. Interest, Collection Priorities, Time to Pay, and Enforcement

[52] I impose the following terms relating to payment and collection of the combined fine and costs (the debt):

- i. The debt will be subject to an interest charge of 3% per annum compounded semi-annually not in advance, starting January 1, 2022;

- ii. To secure this debt, the Provincial Treasurer of Alberta and as applicable AHS may by court order register a charge and lien against any property in each contemnor's name and to the extent of their debt. The charge and lien created by this ruling is subordinate to any existing financing on such asset and shall be postponed to any replacement financing provided the terms and conditions of such replacement financing are no more onerous and for no greater amount of principal. In the event the property is registered in a corporation the shares held by the contemnors are attached and the corporate veil pierced to allow registration;
- iii. The contemnors will be given 36 months to pay the fine provided they each pay not less than \$500 per month towards the debt, starting November 1, 2021. Payments received will be applied first to interest, second to costs and last to the fine. At the end of three years any debt that remains outstanding will be subject to enforcement by any debt collection method open to the Provincial Treasurer including attachment of any eligible assets;
- iv. These collection steps are without prejudice to the AHS or the Provincial Treasurer of Alberta applying for imprisonment in the event of default of payment of the fine; and
- v. Within 30 days of this Order, the contemnors shall each provide an accurate and fully completed Form 13 as approved in the Civil Enforcement Regulation, section 35.10. This is a statement of their assets and liabilities plus details by which this debt may be satisfied. They must provide this form every six months, without further order, and are subject to attending before a court reporter on notice to them and without the payment of conduct money to be questioned under oath as to their assets and liabilities and means by which they can each pay this fine.

G. Conclusion

[53] I recognize that it is not possible in a judgment such as this to cover all of the eventualities that may occur including whether a default on payment of the fine should result in a period of imprisonment, and for how long. Accordingly, I direct that in the event that any disagreement about the enforcement of any term of this ruling or any application for an amendment or variance should be brought back to me as long as I am still a sitting member of the Court of Queen's Bench. If I am unable to act in any review capacity, counsel may approach Associate Chief Justice Rooke (and in his absence the Chief Justice or other Associate Chief Justice) for the assignment of a different judge to handle downstream matters.

[54] As this brings an end or at least a plateau to these contempt proceedings against Pastor Artur Pawlowski and Dawid Pawlowski, I would like to conclude by again thanking counsel for AHS and the Pawlowski brothers for their professional, courteous, and responsible handling of this matter.

Heard on the 15th day of September, 2021.

Dated at Edmonton Alberta this 13th day of October 2021



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

Appearances:

J. Siddons for Alberta Health Services
the Applicant

S. Miller
for the Respondents, Pastor Artur Pawlowski,
and Dawid Pawlowski