IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20210416
Docket: E190334
Registry: Vancouver

Between:

A.B.

Claimant

And

C.D. and E.F.

Respondents

Restriction on publication: A publication ban has been imposed by orders of this Court restricting the publication, broadcast or transmission of any information that could identify the parties referred to in these proceedings as “A.B.”, “C.D.”, and “E.F.”; and also restricting the publication of the names of the parties and witnesses referred to by their initials or as “G.H.” or “I.J.” in relation to these proceedings and any related proceedings regarding A.B. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Mr. Justice Tammen

Oral Reasons for Judgment
Re sentencing for contempt

In Chambers

Counsel for C.D.:	C. Linde
Counsel for the Provincial Crown:	D.J. Pruim E. Porter, A/S
Place and Date of Trial:	Vancouver, B.C. April 13-14, 2021
Place and Date of Judgment:	Vancouver, B.C. April 16, 2021

[1] **THE COURT:** These reasons should be read in conjunction with my reasons for detaining C.D. in custody, delivered March 19, 2021. At that time, C.D. was facing an allegation of criminal contempt arising from his alleged violation of court-ordered publication bans and anonymity orders in the family case styled *A.B. v. C.D. and E.F.* The reason C.D. was detained in custody on March 19, 2021, related to his continuing violations of those orders, in what appeared to be an ever more serious manner. His contempt appeared to be continuing and escalating in severity.

[2] C.D. has since entered a plea of guilty and acknowledged the ongoing contemptuous conduct. I must now craft and impose a fit sentence. The trial was scheduled for five days, commencing April 12, 2021, but C.D. advised the Crown, through his counsel, that he wished to plead guilty in the week prior to trial. The sentencing hearing occurred over two days on April 13 and 14, 2021. I will shortly set out the important facts which inform my consideration of appropriate sentence, but must comment first on the unusual nature of the sentencing hearing.

[3] Because criminal contempt is a common law offence, there was no Indictment. However, a written allegation was read to C.D. by the court clerk, and he entered a plea of guilty. He then, in response to queries from the Court, confirmed that he was making that plea voluntarily, that he understood that he was giving up his right to have the Crown prove the case beyond a reasonable doubt, and that the Court is not bound by the sentencing positions of counsel.

[4] Crown counsel provided the Court with a written submission and outlined its position on sentence, which was 45 days' imprisonment, in essence time served, once the appropriate deduction was made for time spent in pre-trial custody. That, in Crown's submission, should be followed by 18 months' probation, with essentially one discretionary term, requiring C.D. to write letters to hosts of websites who have thus far refused to assist him in purging his contempt. Crown counsel said there was not a joint submission as to fit sentence. Counsel for C.D. put his position on the record at the outset, namely that a conditional discharge was appropriate. After the

lunch break on April 13, Mr. Linde advised that his position had changed and he would not be seeking a discharge.

[5] The Court heard from C.D. twice during the proceedings. On April 13, he testified under solemn affirmation and was cross-examined. On April 14, after submissions of counsel, C.D. exercised his right of allocution, at some length. At that time, C.D. first expressed remorse for his conduct. Remorse was completely lacking during his earlier appearance in the witness stand.

[6] C.D. initially objected to the receipt of any victim impact information from A.B., the primary personal victim of his behaviour, and counsel for C.D. asserted a right to cross-examine A.B. on that information. That position was quickly abandoned, and the Court received a two-paragraph summary of information A.B. relayed through counsel on the family matter.

[7] On April 13, just prior to the morning break, counsel for C.D. attempted to resile from some important facts alleged by Crown, but when the prospect of a *Gardiner* hearing was raised, C.D. retreated from that position. It should be noted, that both times C.D. spoke in court, he accepted full responsibility for his actions and the underlying facts.

[8] Just prior to the lunch break on April 14, counsel for C.D. alluded to the case of *R. v. Anthony-Cook*, and made reference to a joint submission. I then advised the parties that I did not understand this to be a joint submission, and alerted them to my nascent view that a sentence of 45 days was inadequate, and would tend to bring the administration of justice into disrepute.

[9] After the lunch break, nothing more was said about a joint submission, other than Crown in reply reiterating that counsel had not reached agreement on a plea deal and joint submission. Counsel for C.D. closed his submissions by implying that the actions of the sentencing court would bring the administration of justice into greater disrepute than would C.D.'s actions.

[10] The background facts to C.D.'s contempt are these:

a) C.D. is the father of A.B., a teenager who identifies as male and wished to be permitted to make his own medical decisions, including commencing hormone therapy for gender dysphoria.

b) C.D. opposed the treatment, and A.B.'s ability as a minor to make such decisions.

c) Justice Bowden of this Court allowed A.B.'s application in February, 2019, and also made various ancillary orders.

d) Those orders included a ban on publication of anything that could identify A.B. or either of his parents. Those parties were anonymized in the proceedings as A.B., C.D., and E.F. That publication ban and anonymization order, with modifications made by me in February 2020, remains in place.

e) Justice Bowden also made ancillary orders pursuant to the *Family Law Act*, including a declaration that if C.D. referred to A.B. as a girl, such would constitute family violence.

f) Justice Bowden declined to make a publication ban and anonymity order in relation to the names and identities of A.B.'s healthcare providers.

g) In subsequent proceedings in April 2019, Justice Marzari revisited that issue, and granted the publication ban and anonymity orders. The primary treating endocrinologist was thus identified as G.H., and a treating psychologist as I.J.

h) Justice Marzari also made a protection order, on application brought by A.B. The reasons for the protection order were interviews C.D. gave to two online publishers, which then published the interviews, along with links to personal medical information of A.B., unredacted, including a

letter sent by G.H. to C.D. In the interviews, C.D. expressed his displeasure with A.B.'s decisions, made light of a suicide attempt, and referred to A.B. as a girl.

i) There was evidence from A.B. before Marzari J. about the impact of C.D.'s conduct on him, which amply supported a risk of psychological harm to A.B. if C.D. were to continue to disregard A.B.'s wishes to have his medical issues kept private and his identity protected.

j) C.D. appealed various of the orders of both Justices Bowden and Marzari. The main appeal was dismissed. However, the Court of Appeal set aside some parts of the declaratory relief granted by Bowden J. It also replace the protection order of Marzari J. with a conduct order. That order remained in effect for one year from the date of the original protection order, April 15, 2019. The key part of the order is set out at paragraph 222 of the Court of Appeal reasons:

> [222] We would also allow the appeal of the Marzari Order and set aside the protection orders made. We would substitute a conduct order under s. 227(c) of the *FLA* that CD shall not, directly or indirectly through a third party, publish information or provide documentation relating to AB's gender identity, physical and mental health, medical status or treatments, other than with:
>
> i. his retained legal counsel;
>
> ii. retained legal counsel for AB or EF;
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> iii. medical professionals engaged in AB's care or CD's care;
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> iv. any other person authorized by AB's written consent; and
>
> v. any other person authorized by court order.

k) At paragraph 223, the Court of Appeal said as follows:

> [223] This order should not restrict CD's right to express his opinion in his private communications with family, close friends and close advisors, provided none of these individuals is part of or connected with the media or any public forum, and provided CD obtain assurances from those with whom he

> shares information or views that they will not share that information with others.

l) There were also publication bans and anonymity orders made in relation to the parties and the various healthcare providers by the Court of Appeal. Those orders remain in place.

[11] On February 12, 2020, I made a declaration on application of A.B., that C.D. had breached the conduct order of the British Columbia Court of Appeal by giving an interview to Laura-Lynn Tyler Thompson which was posted on various social media platforms, as well as YouTube. There was also evidence of an earlier interview C.D. had given to Frank Vaughan, a blogger, in which C.D. breached both the conduct order and the publication ban by naming himself and one of the healthcare providers. That video had been removed from the internet by February 12, after counsel for A.B. made a request to Mr. Vaughan.

[12] Also on February 12, I gave directions concerning other posts that were then in breach of court orders, and prohibited C.D. from giving an online interview to Jenn Smith, which had been planned for that evening.

[13] C.D. was present in court on February 12, unrepresented. In a colloquy with the court, C.D. said he understood the orders then in place. I advised him that I was going to make the declaration that he had breached the conduct order, and that any further breaches would likely lead to an application by counsel for A.B. to have him held in contempt.

[14] There was also evidence of a crowdfunding page on a site called GoFundMe, which was in breach of the anonymity orders and publication bans because it referred to C.D. by his full name. I advised him that he must take steps to bring that webpage into compliance.

[15] At a further hearing on February 21, 2020, initiated by counsel for A.B., I provided some further directions and made some amendments to the publication ban orders, to clarify the scope of what might be considered broadcasting. There

were at that time issues of reposting and rebroadcasting offending material. C.D. had also posted on Facebook using his own name.

[16] At that time, counsel for A.B. presented an interview C.D. had given to Jeremiah Keenan of The Federalist that post-dated the February 12 appearance. During the interview, on the accompanying video, a photograph of A.B., then approximately 12, holding an elementary school graduation certificate, was shown. With freeze-frame and zoom functions, A.B.'s full name is visible on that certificate. The circumstances of that photograph being in the hands of The Federalist, and timing of same, were unclear. However, there was evidence that the offending video had been posted to a GoGetFunding page in C.D.'s name the previous day.

[17] I made an express order to this effect concerning social media and any crowdfunding page created by C.D.: “C.D. is restrained from posting online, on Facebook, GoGetFunding, or any other online forum, in a manner that may identify him as the father in these proceedings.”

[18] C.D. was not then in court but was represented by Mr. Linde. I asked Mr. Linde to have C.D. present himself in the afternoon, because I was concerned that the conduct might have risen to the level of contempt of court. Nonetheless, I did not cite C.D. for contempt, nor then accede to the request of counsel for A.B. that I refer the matter to counsel for the Attorney General to consider whether such proceedings should be initiated.

[19] There were potential applications related to the various bans contemplated by the parties, including C.D., mentioned at the hearings of February 12 and 21. Counsel for A.B. expressly sought directions with respect to service and scheduling of an application for contempt should that become necessary. Thus, the final term of my order was this: “A direction that March 9, 2020, be reserved for a full-day hearing in front of Mr. Justice Tammen so the parties to this application can reappear to address any applications for requests for directions in relation to the publication bans and conduct orders in these proceedings.”

[20] Ultimately two days were taken up with those matters, March 9 and 10. C.D. was represented by counsel throughout, but only present for part of those proceedings. He filed no application seeking to vary any orders. Jenn Smith did bring such an application, and was partly successful.

[21] Counsel for A.B. presented the court with evidence of further breaches of orders by C.D. and renewed the invitation to refer the matter to the Attorney General for consideration of contempt proceedings on the morning of March 9, 2020. I ultimately did so at the conclusion of proceedings March 10, 2020.

[22] In the interim, C.D. swore and presented the court with an affidavit, in which he deposed that he had removed the offending video from one crowdfunding page, but that the other one had been hacked and content posted without his knowledge or consent. He said he did not intentionally breach orders on the GoGetFunding page, and it was then compliant with court orders.

[23] The final sentence of the affidavit reads, "I have no desire to share information that would hurt A.B." He also deposed that the instant proceedings had helped him to see how he could share his story while still adhering to court orders.

[24] The conduct which led to these criminal contempt proceedings was not anything that had occurred prior to March 10, 2020, but rather an interview C.D. gave on June 26, 2020. The interview was with Erin Brewer and was posted to her YouTube channel on that date. It is entitled, "Dad speaking out despite gag order."

[25] By June 26, 2020, the conduct order made by the British Columbia Court of Appeal had lapsed, but the publication bans and anonymity orders were still in effect.

[26] In the interview, both C.D. and the interviewer referred to C.D. by his full name multiple times. C.D. named both G.H. and I.J. by their full names multiple times. C.D. stated that he had a GoGetFunding page near the end of the interview.

[27] It is abundantly clear from the other comments made by C.D. that he was wilfully and intentionally breaching court orders, which he called “gag orders” both at that time and in the past. He was also aware that the Attorney General for British Columbia was contemplating criminal charges, for which he thought the sentence might be 45 days in jail.

[28] That particular video was unavailable to be viewed in Canada as of April 9, 2021, without what is called “domain spoofing”. As of April 9, 2021, it had 1,371 views.

[29] As noted, that interview formed the subject matter of the allegation of criminal contempt in this case. Crown initiated proceedings by way of notice of motion filed July 30, 2020.

[30] By that date, C.D. had given at least two further interviews, which had been posted online.

[31] One was an interview with Frank Vaughan, accessed by a member of the Vancouver Police Department on C.D.'s GoGetFunding page on July 22, 2020. The crowdfunding page in C.D.'s own name was in breach of both the publication bans and a specific term of the February 21, 2020, order.

[32] However, the interview with Frank Vaughan is compliant with the publication bans and anonymity orders. Both parties used initials for participants throughout. Only Mr. Vaughan appeared on screen. During the interview, there was reference to the bans and the fact that both were bound by them. There was meaningful discourse, in which C.D. was able to put forward his views about this case and his situation. Thus, both C.D. and online broadcasters were able to meaningfully broadcast their message online without breaching court-ordered publication bans.

[33] The second interview with Jonathon van Maren, given July 29, 2020, and posted on YouTube, was non-compliant and breached those orders. C.D. appeared on screen. The interviewer referred to C.D. by his full name, and during the

interview, C.D.'s last name appeared on screen, albeit with an incorrect first name. C.D. referred to both G.H. and I.J. by their full names during the interview.

[34] That site appears to be an American one. During the interview, C.D. referred to the fact of court orders and that when he broke his silence, Canadian outlets might take interviews down in response to such requests, but that American outlets did not care and would keep them up. C.D. also referred to his crowdfunding page and acknowledged that he had been before the court about previous breaches.

[35] As at April 9, 2021, that video was still accessible online and had 1,534 views.

[36] C.D. then gave at least three interviews to Canadian online broadcasters: to Erin Brewer on August 1; Dan Dicks on August 3; and another to Frank Vaughan on August 30, 2020. As at April 9, 2021, only the Dicks interview remained accessible online. That interview has as its title: "Exclusive - Parent of transgender daughter now facing 30 to 45 days in jail for telling his story."

[37] There are both further breaches and admissions of prior breaches in all three interviews.

[38] Of note, in the Dicks interview, C.D. said that he decided about one month after the Court of Appeal decision that it was "important to break the gag order". In the Vaughan interview, C.D. stated that at a certain point, he had to break his silence and that landed him in court.

[39] In the fall of 2020, there were court appearances and ultimately the April 2021 hearing dates were set.

[40] Members of the Vancouver Police Department accessed C.D.'s GoGetFunding page on March 1, 2021, which page was then shown to be owned by C.D., using his full name. The video posted in support of his plea for crowdfunding was the lengthy one I referred to in my earlier bail reasons. Of note, C.D.'s full name appears in both script and audio; there are multiple photographs of A.B., including

the graduation photo with A.B.'s name visible; an image of I.J. and his full name appears on screen.

[41] Based on that material, I issued the warrant for C.D.'s arrest on March 4, 2021. At the request of Crown counsel, I directed that the warrant be held on file and not executed to provide C.D. with an opportunity to present himself to the court, which he did on March 16, 2021.

[42] Unfortunately, C.D. took the opportunity afforded him in those 12 days to engage in the most egregious breaches of the anonymity orders and publication bans to date, leading to offending material being posted on American sites. Thus, C.D. ensured that he would be unable to purge his contempt at this hearing.

[43] By far the most serious breaches occurred sometime between March 4 and 16, 2021, as part of an interview C.D. gave to an organization called M.R., which publishes online in the United States. Along with the interview, C.D. gave that group the entire package of disclosure in relation to the criminal charge. That was posted online and remains readily accessible. In addition, there was a press release from C.D.'s lawyer about the upcoming surrender into custody. Most importantly, two medical documents related to A.B. were provided to M.R. by C.D. and posted online, where they remain accessible.

[44] Those two documents are a serious breach of the publication ban in relation to A.B., and a gross violation of his privacy interests. One is a December, 2018, letter written by G.H. to C.D. about A.B.'s proposed treatment, which refers to A.B. by his chosen first name. It is wholly unredacted. It is the same letter C.D. previously gave to The Federalist, conduct which he had previously denied.

[45] Most seriously, C.D. provided the complete and unredacted informed consent form from Children's Hospital signed by A.B., E.F., and G.H. in August, 2018. That document contains A.B.'s full name, both birth first name and chosen new name, his date of birth, and his personal health number.

[46] The Crown disclosure package included the unredacted order of Marzari J. granting anonymity to the healthcare providers. Thus the version posted online by M.R. contains the full names of all nine healthcare providers who were granted anonymity in this case.

[47] There are also links to C.D.'s GoGetFunding page, and references to it in the accompanying video interview. In that interview, C.D.'s full name is mentioned, as is that of I.J. C.D. stated in the interview that after the Court of Appeal decision, he decided that he would not follow the conduct order.

[48] Prior to his surrender into custody on March 16, 2021, C.D. gave three interviews to online broadcasters, two in Canada, Dan Dicks and Laura-Lynn Tyler Thompson, and a further interview to The Federalist, an American publication. The interview with Dan Dicks was given on the courthouse steps at the Nelson Street entrance. It refers to C.D. by his full name. C.D. stated that he had no intention of slowing down, and admitted past breaches of orders. He referred to the M.R. interview going viral, and also mentioned his interview with The Federalist.

[49] As noted in my earlier judgment, between March 4 and 16, C.D. altered his GoGetFunding page somewhat. He replaced the offending video with a different one, a speech he gave in the fall of 2020, in aid of Jenn Smith's campaign in the provincial election. Apart from the image of C.D. which breaches the publication bans, that video was largely compliant with court orders. However, in it, C.D. makes two telling admissions: First, he refers to the order of Justice Bowden, and his almost immediate breach by granting his first interview to The Federalist. Of greater significance, near the end of the interview, C.D. acknowledges ignoring orders telling him to keep quiet, but that his interviews kept disappearing in Canada. He then says: "but we were smarter, we sent everything to the States, made sure it was backed up on different platforms, you can find them anywhere."

[50] During The Federalist interview, done by telephone, C.D. stated that he did not regret his choice to speak out using his own name, nor his decision to use the names of G.H. and I.J.

[51] C.D.'s GoGetFunding page was not anonymized, thus bringing it into compliance with court orders, until after I ordered his detention.

[52] Based on the screenshots of that crowdfunding page presented by Crown on two different dates in March, it appears that C.D.'s online activities related to the arrest warrant played a significant role in his ability to raise funds. Then, there were large donations in the time between the bail hearing and my ruling. As of March 19, 2021, the total raised was just under $30,000, including two donations that very morning totalling $500. I am told by Crown that the number is now approximately $52,000, but I do not know what portion of that was raised post-anonymization.

[53] I was told little about C.D.'s background. He is 47 years old, divorced, with two children, A.B. being the younger. He lives alone, in Surrey, with his dog. He is a long-time federal employee, a mail carrier, and a former college athlete, having played hockey in Michigan during his time in university.

[54] C.D. has no criminal record, although he did receive a conditional discharge for assault in December 2013.

[55] Although criminal contempt is a common law offence, I must be guided by overarching principles of sentencing, largely now codified in the *Criminal Code*. Those include the principles of restraint and proportionality, and that a sentence should be similar to sentences imposed on similarly-situate offenders.

[56] However, sentencing for criminal contempt also raises some unique considerations. Because public breaches of court orders are a direct attack on the rule of law, society as a whole is impacted by the behaviour. It is not a matter of a judge being personally offended, as was suggested by Mr. Linde, but rather the need to ensure that court orders are followed by the citizenry. No member of the public can decide when, in what circumstances, and which court orders to follow. Unless and until successfully appealed, court orders must be obeyed. They are part of the legal fabric of society, and thus the law. Without the ability to enforce court

orders, and if citizens were free to disregard them at will, there would not be democracy, but anarchy.

[57] Thus, in all cases of criminal contempt, the sentencing principles of denunciation and deterrence loom large. They play an extremely important role in all such sentencing proceedings.

[58] Another unique feature of sentencing in contempt cases is the potentially ongoing nature of the conduct. In many cases involving breaches of publication bans, if a contemnor purges their contempt prior to sentencing, that is a relevant consideration. As noted in this case, C.D. ensured that he would be unable to fully purge his contempt. He did so at a time when he was about to surrender himself into custody for allegations of additional, ongoing contemptuous behaviour, in addition to that previously alleged. He did so wilfully, with full knowledge of the implications of his actions.

[59] In this case, the specific orders which C.D. has repeatedly breached are limited publication bans and anonymity orders, made by two courts, designed to protect the privacy of various court participants, including most importantly, A.B., a vulnerable young person.

[60] Such bans are an incursion of the open court principle, but they are among the least intrusive such incursions. Limited publication bans, particularly in regard to the identity of vulnerable court participants, have often been recognized as appropriate by both Parliament and courts across Canada. Some are mandatory in the *Criminal Code,* to shield the identity of complainants in sexual cases. Others in that context, although discretionary, are almost routinely granted. In criminal cases involving confidential informers or accomplice witnesses, those bans occasionally are much broader. In family cases in this court, written judgments are often anonymized as a matter of style and practice to protect the privacy of the children of a failed marriage.

[61] The prevalence of such bans has not had an appreciable deleterious impact on the open-court principle, and the right of the public to know what occurs in courts. The media are able to meaningfully report even with such bans in place. Indeed, as can be seen by one of C.D.'s interviews with Frank Vaughan in this case, C.D. was able to get his message out to the public without breaching court orders. In many instances, he simply chose to disregard those orders for reasons which have never been explained.

[62] The importance of limited publication bans in relation to individuals' identities cannot be over-emphasized. The courts must have an ability to ensure compliance with such orders. In some cases, such as those involving confidential informers, it can literally be a matter of life and death.

[63] In the case of *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, the Supreme Court of Canada recognized the inherent vulnerability of children as court participants in the context of an anonymity order sought in a cyber- bullying case. The court took notice of the fact that trauma may be caused to children through cyber-bullying. Further, the court endorsed a statement from the Ontario Court of Justice that "the protection of the privacy of young persons fosters respect for dignity, personal integrity and autonomy of the young person."

[64] In all cases, those who come to the courts for assistance must feel that they have chosen a safe environment in which to resolve matters of dispute. Unfortunately, that has not occurred here. A.B. was required to seek the Court's imprimatur for his chosen medical treatments in this case. A.B. sought and was granted a limited publication ban and anonymity order, which C.D. then chose to simply ignore as and when it suited him. As noted in the victim impact information provided by A.B., "I followed the rules of the court orders. I don't know why my dad didn't have to." As a direct consequence, A.B.'s confidence in the courts has been shaken and diminished.

[65] So, too, in my view, would the confidence of right-thinking citizens fully apprised of the true facts of this case. I do not accept that C.D.'s intention was

otherwise than to attempt to undermine the authority of the courts and the overall administration of justice.

[66] Moreover, I expressly reject C.D.'s sworn assertion from March 10, 2020, that he had no desire to share information that would harm A.B. His conduct in sharing the personal, medical, and identifying information with M.R. prior to his surrender into custody reveals his true intentions.

[67] Indeed, when he testified on April 13, C.D. said in part, when asked if he would desist in his breaches of court orders, that he would do so, because he had gotten his message out, there was nothing more for him to do, and he would pass on the torch to others.

[68] Neither C.D. nor his counsel has ever explained the motivation to provide American online publications with A.B.'s medical and personal information, knowing that it would be potentially posted online in perpetuity.

[69] C.D. said in his testimony that he, as A.B.'s father, knows what is best for A.B. and could override A.B.'s wish to remain anonymous in this proceeding.

[70] C.D. has noted in interviews that he is offended that the healthcare providers, in particular G.H. and I.J., are hiding behind anonymity orders, and are undeserving of the court's protections. Thus, it appears that in providing their full names to M.R., C.D. has made himself the final arbiter of their desire for anonymity.

[71] C.D. has blatantly, wilfully, and repeatedly breached court orders, most particularly and disturbingly those related to the very limited publication bans covering things which might tend to identify the participants in this case. He has done so in an extremely public manner, and with full knowledge that he was violating court orders; indeed after being cautioned repeatedly about his behaviour.

[72] It is difficult to conceive of a more egregious set of facts. The aggravating factors are numerous. The only mitigating factors are the absence of a criminal record, the guilty plea, and an expression of remorse by C.D. at the conclusion of

proceedings. Even the guilty plea, which came on the eve of trial and in the face of an overwhelming Crown case, and the expression of remorse, which came only after it became clear to C.D. that the sentence might exceed 45 days, are of less weight than they might otherwise be. Nonetheless, they do count for something on the mitigation side of the scales.

[73] I have also considered the efforts of C.D., aided by Jenn Smith, to attempt to persuade various individuals to remove posted material post-incarceration. Unfortunately, despite what appears to be sincere efforts by Jenn Smith, both The Federalist and M.R. have refused.

[74] As to fit sentence, in my view the appropriate range is six to nine months' imprisonment.

[75] There are few cases even remotely comparable. Perhaps the closest is *R. v. Krawczyk*, 2010 BCCA 542, in which a recidivist, but elderly female environmental protestor was sentenced to 10 months' imprisonment. In that case, there were many prior convictions, and thus it is very different to the case at bar. However, in this case, the overall conduct was persistent, ongoing, and done after repeated warnings from courts that there might be consequences if it persisted.

[76] The conduct at issue here was also, in many respects, far more serious than that in *Krawczyk*. In this case, there was far greater impact or potential impact on the individual victims, in particular A.B. As noted, the breaches of all of the anonymity orders in this case are ongoing.

[77] Clearly a strong denunciatory sentence is required. Moreover, deterrence, both specific and general, requires that a prison sentence be imposed. Whatever one's views are of the efficacy of general deterrence, it has a definite role to play in sentencing for contempt. There is considerable evidence in this case that C.D. was, right up until midday April 14, thinking that he might be sentenced to up to 45 days' incarceration, and that he was willing to pay that price for what he called his acts of civil disobedience. He was not deterred by the prospect of a short jail sentence.

[78] In my view, likeminded members of the public should expect that if they are inclined to blatantly disregard court-ordered publication bans in a similar fashion, the sentence will be more readily measured in weeks or months than in days.

[79] As noted, I view the appropriate range of sentence to be six to nine months. I intend to impose a sentence at the very low end of that range, taking into account C.D.'s late expression of remorse, his belated efforts to purge his contempt, and the eloquent plea made on his behalf by Jenn Smith.

[80] I therefore fix the sentence at six months. I will deduct from that 46 days to account for time spent in pretrial custody. That leaves a sentence of four and one-half months, or 134 days.

[81] Please stand, sir. I sentence you to imprisonment for 134 days. You may be seated.

[82] I do not intend to impose a term of probation. I am satisfied from the defiant responses of some of the publishers to Jenn Smith's emails that letters from C.D. to them would serve no useful purpose. It appears that one Canadian publisher, Dan Dicks, may also be in breach of the publication bans. If that is so, he should attempt to bring himself into compliance, but I make no order in that regard since he is not before the court.

[83] I do consider that there should be a monetary component to the sentence, in lieu of a fine. The amount should be $30,000, which is the minimum amount of money C.D. collected through crowdfunding, in direct violation of court orders. I make an order that within six months of his release from prison, C.D. shall make a charitable contribution in the amount of $30,000 to Ronald McDonald House Charities, British Columbia and Yukon.

[84] That concludes my reasons.

“Tammen J.”