

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Power v. Power*, 2020 NSSC 397

Date: 20201202

Docket: 1201-059120; SFH-D 035445

Registry: Halifax

Between:

Joseph Patrick Power

Petitioner

v.

Angela Rose Power

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: December 1, 2020

Oral decision rendered: December 2, 2020

Counsel: Brian F. Bailey for Joseph Power
Igor S. Yushchenko and Tyler Chiasson, Articled
Clerk, for Angela Power

By the Court

[1] Mr. Power was arrested and brought to Nova Scotia under a warrant for his arrest that originated in a contempt proceeding. He remains in custody under a warrant of committal granted by Justice Beaton. Whether he remains in custody in my process is important in case he might be released from the custody imposed on him by Justice Beaton's warrant.

- Mr. Power has been found in contempt of a court order. At the time of this finding in September 2015, he owed something in the region of \$250,000 in child support for his son and daughter.
- Mr. Power didn't attend court in October 2015 for the penalty phase of the contempt proceeding.
- Mr. Power didn't appeal my contempt finding. The decision in *Lamb v. Hoffman*, 2001 NSCA 150, demonstrates that an appeal from a finding of contempt can be made before the penalty phase of the contempt proceeding.
- For the past five years, Mr. Power has evaded the court.

[2] Mr. Power asks me to release him pending the penalty hearing.

[3] In deciding whether Mr. Power should be released from custody or remain in custody, the real issue is what means of securing Mr. Power's attendance at the penalty phase are justified?

[4] When I assess the options, I'm concerned, obviously, with which option will secure his attendance *and* which option imposes the least onerous consequences on Mr. Power. While keeping Mr. Power in custody will certainly ensure his attendance, he shouldn't remain in custody unless there is no lesser way to ensure his attendance.

[5] Mr. Power proposes that he be released and:

- he'd sign a release order
- his parents, Tom and Anita Power, would sign a release order
- he'd remain in Nova Scotia, living at his brother-in-law's home in Lower Sackville

- he'd surrender any passport he has to the Family Division of the Supreme Court
- he would be required to report
- his parents, Tom and Anita Power, would act as sureties for an amount that I would set (he proposes something in the range of \$400,000)
- and on the breach of any condition, he'd be arrested, and his parents could be liable to forfeit the surety amount that I set.

[6] Ms. Power proposes that Mr. Power remain in custody.

[7] Under Civil Procedure Rule 89.11(6) I'm referred – in a roundabout way – to section 515 of the *Criminal Code*.

[8] Specifically, Rule 89.11(6)(1) refers to an alleged contemnor. It mentions “a person against whom a contempt order is sought”. To be clear, Mr. Power is *not* an alleged contemnor being brought to court for a contempt hearing. Mr. Power *has already been found* in contempt.

[9] Regardless of that distinction, the considerations in subsection 515(10) of the *Criminal Code* are relevant. Of the considerations there, counsel have directed me to the primary and tertiary considerations. They agree there's little, if any, relevance to the secondary consideration.

[10] Before I discuss those considerations, I want to make clear that I have considered Mr. Yushchenko's legal arguments, but I have not considered any of the representations he has made about factual matters. No witness provided any evidence about those factual matters.

[11] I turn now to considerations in subsection 515(10) of the *Criminal Code*.

Primary consideration – Is detention necessary to ensure Joseph Power's attendance at court?

[12] Implicit in Joseph Power's proposal that his parents will be involved, is the idea that he wouldn't default on them – that he wouldn't jeopardize his parents' home or their finances.

[13] I don't accept this.

[14] When Mr. Power appeared before me in 2014 and 2015, he lived in Hammonds Plains with his second wife, who was employed, and their son, who was then 7 or 8 years old. Mr. Power's departure shows he is willing to significantly disrupt the lives of his closest family members so that he could avoid the court.

Tertiary consideration - is detention necessary to maintain confidence in the administration of justice?

[15] Fundamental to the administration of justice is that parties involved in litigation come to court and participate when their dispute is being decided. At this most fundamental level, Mr. Power's actions undermine confidence in the administration of justice: he has ignored the penalty phase of the court process.

Conclusion

[16] I am satisfied on a balance of probabilities that Joseph Power's detention is necessary to ensure his attendance at his pending penalty hearing. His failure, without any excuse whatsoever, to attend the original penalty hearing scheduled for October 23, 2015, coupled with the fact that he eluded the authorities for over five years, despite the existence of a Canada-wide warrant for his arrest since June 2019, in the absence of any contrary credible evidence, compels me to conclude that the only way to ensure his attendance at the penalty hearing is to deny his request for interim judicial release.

[17] I order him remanded into custody until the date which we'll set now for penalty hearing.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia