

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF

BETWEEN:

ST. ELIZABETH HOME SOCIETY (HAMILTON, ONTARIO)

Plaintiff
(Respondent)

- and -

THE CORPORATION OF THE CITY OF HAMILTON, THE REGIONAL
MUNICIPALITY OF HAMILTON-WENTWORTH, RUTH SCHOFIELD
and MARILYN JAMES

Defendants
(Respondents)

AND IN THE MATTER OF

THE CITATION OF KENNETH PETERS for contempt of court by the Honourable Mr.
Justice David S. Crane, Ontario Superior Court of Justice

Appellant

NOTICE OF APPEAL

Kenneth Peters appeals to the Court of Appeal for Ontario from the Judgment of Mr. Justice David S. Crane dated December 1 and 7, 2004 made at Hamilton, Ontario in respect of the finding of contempt of court and imposition of penalty against the Appellant (the "Judgment").

THE APPELLANT ASKS that the Judgment be set aside and that a finding be made that the Appellant was not in contempt of court, and such further and other order as counsel may request and this Honourable Court deems just;

THE GROUNDS OF APPEAL are as follows:

Failing to Protect Journalist's Confidential Source

1. The judge erred in that he never ruled it necessary for the Appellant to reveal a source to whom he had, as a journalist, made an undertaking of confidentiality but nevertheless directed him to answer a question posed by counsel that, in fact, would have that effect;
2. The judge erred in ruling that the answer to the question posed was necessary for the trial proceeding;
3. The judge erred in failing to properly balance the rights and interests of the Appellant as a journalist to protect a confidential source as against the need for such evidence in the trial proceeding;
4. The judge erred in failing to find that a privilege attached to the Appellant's confidential source in the circumstances;

No Opportunity to Reconcile Rights

5. The judge erred in failing to permit an adequate opportunity for the Appellant to consider his position following the judge's finding that the answer to the question posed was necessary;
6. The judge erred in failing to permit an adequate opportunity for the Appellant to consider his position before citing him for contempt;
7. The judge erred in failing to provide any opportunity for the Appellant to remedy the basis for the alleged contempt prior to the citation for contempt;
8. The judge erred in failing to provide any opportunity, prior to the citation for contempt, for the rights and interests of the Appellant as a journalist protecting his confidential source to be reconciled with the rights and interests of the party seeking the evidence;

Contempt Citation

9. The judge erred in immediately citing the Appellant for contempt when he took a reasonable and respectful position with respect to the question posed and no finding had been made by the judge requiring disclosure of the confidential source;
10. The judge erred in failing to find that the Appellant had good and sufficient reason to refuse to answer the question posed;
11. The judge erred in failing to consider, prior to the contempt citation, the Appellant's rights and interests as a journalist protecting his confidential source or the basis for his refusal to answer the question posed;

Finding of Contempt

12. The judge erred in failing, when making a finding of contempt against the Appellant, to properly take into account that the evidence sought had already come out at the trial proceeding through alternative means;
13. The judge erred in failing, when making a finding of contempt against the Appellant, to properly take into account that he had already sought and obtained a release from any undertaking of confidentiality from his source;
14. The judge erred in failing, when making a finding of contempt against the Appellant, to properly take into account that the issue underlying the question posed, namely the revealing of the Appellant's confidential source, was already moot;
15. The judge erred in failing, when making a finding of contempt against the Appellant, to properly consider the evidence before the court concerning the rights and interests of the Appellant as a journalist and the protection of his confidential source;
16. The judge erred in failing to consider submissions made on fact and law by counsel for the Appellant;

Procedural Issues

17. The judge erred in conducting the contempt proceeding in the manner he did when no parties to the trial proceeding took a position or favoured a contempt finding against the Appellant;
18. The judge erred in changing the procedure initially contemplated and characterizing the new procedure as one of civil, not criminal, contempt;
19. The judge erred in forcing on the contempt hearing despite the Appellant's request for additional time, thereby causing procedural and substantive unfairness to the Appellant;
20. The judge erred in failing to take proper procedural steps, from prior to the contempt citation right through to the finding of contempt against the Appellant, to protect the rights of the Appellant before the court, particularly in view of the fact that the Appellant was exposed to the risk of imprisonment;

Penalty

21. The judge erred in finding that the penalty of \$31,600.00 for costs thrown away by the parties in the trial proceeding should include counsel fees for the contempt hearing, even though they took no position with respect to the finding of contempt;
22. The judge erred in imposing the penalty of \$31,600.00 on the basis he did, thereby penalizing the Appellant's attempt to defend himself against the contempt citation by the judge;

23. The judge erred in imposing a penalty of \$31,600.00, which is substantially greater than any previous penalty against the media for contempt, and thereby deterring journalists from attempting to protect rights and interests recognized at common law and under the *Canadian Charter of Rights and Freedoms*;
24. The judge erred in imposing a penalty of \$31,600.00 that was excessive and unduly onerous in the circumstances, particularly in view of the fact that the question posed to the Appellant was then moot, the evidence sought had come out through other means and the Appellant had obtained a release from any undertaking of confidentiality; and
25. Such further and other grounds as counsel may submit and this Honourable Court permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS that the Judgement is a final order of the Superior Court of Justice.

December 22, 2004

Brian MacLeod Rogers
150 King Street West, Suite 2512
Toronto, Ontario
M5H 1J9

LSUC#: 18575G
Tel: (416) 593-2486
Fax: (416) 593-8494
Email: brian@bmrlaw.ca

Solicitor for the Appellant, Kenneth Peters

TO: The Honourable Mr. Justice David S. Crane
Ontario Superior Court of Justice
45 Main Street East
Hamilton, Ontario
L8N 2B7

AND TO: Falconer Charney Macklin
8 Prince Arthur Avenue
Toronto, Ontario
M5R 1A9

Julian Falconer
Tel: 416-964-3408
Fax: 416-929-8179

Solicitors for the plaintiff

AND TO: Evans & Associates
1201 – 1 King Street West
Hamilton, Ontario
L8P 1A4

John Evans, Q.C.
Tel: 905-523-5666
Fax: 905-523-8098

Solicitors for the defendants, The Regional Municipality of
Hamilton Wentworth, Ruth Schofield and Marilyn James

AND TO: Paterson MacDougall
Box 100, 2100 Queen Street West
Toronto, Ontario
M5C 2W5

Peter M. Jacobsen
Tel: 416-366-9607
Fax: 416-366-3743

Solicitors for the defendant, The Corporation of the City of Hamilton