

Citation: ☼



Date: ☼
File No: 91744-1
Registry: Kelowna

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

JASON ACKERMAN

**REASONS FOR SENTENCE
OF
JUDICIAL JUSTICE BURGESS**

Counsel for the Crown:

T. DeSouza

Appearing on his own behalf:

J. Ackerman

Place of Hearing:

Kelowna, B.C.

Date of Hearing:

June 10, 2021

Date of Judgment:

June 23, 2021

[1] Submissions were made regarding sentencing on June 10, 2021 and I reserved my decision. This is my decision.

[2] Crown sought:

1. That Mr. Ackerman be processed for contempt of court and sentenced to five days in jail;
2. \$10,000 fine on count 1;
3. \$10,000 fine on count 2;
4. Payment of \$1,500 to Mrs. Patricia Nelson and \$1,500 to Ed Nelson;
5. That there be an order prohibiting Mr. Ackerman from entering any premises occupied by Pam Nelson or Edward Nelson, and non-communication order and a non-attendance order;
6. Costs of the proceeding in the amount of \$10,000.

[3] Crown correctly submitted that the court must consider general and specific deterrence in its sentence.

[4] As a Judicial Justice, I do not have the jurisdiction to sentence jail time. Crown submits that I can refer the matter to a Provincial Court Judge for determination. I decline to do that.

[5] While Mr. Ackerman did his best to live up to his opinion that everybody hates him, by being belligerent, rude, antagonistic, and obnoxious, in this hearing, while coming close, his behaviour did not add up to contempt. At time Mr. Ackerman behaved in a similar fashion to what the court referred to in *Meads v. Meads* 2012 ABQB 571 Organized Pseudolegal Commercial Argument litigants I prefer to refer to such litigants as "Oppositional Defiant Litigants."

[6] In the event that I considered Mr. Ackerman's behaviour to be contemptuous, I take the view that the court should first warn Mr. Ackerman of his contempt and give him an opportunity to purge his contempt. While there were multiple times that I had to raise my voice to Mr. Ackerman to get him to stop talking, and he did not, in my opinion, such did not amount to contempt. I decline to make such a referral to a Provincial Court Judge.

[7] Mr. Ackerman clearly has a long history of tickets being issued to him by the City of Kelowna for events taking place at the subject property. Clearly those tickets and corresponding fines have not had the effect of bringing Mr. Ackerman into compliance. Further, Mr. Ackerman pointed out several times, that he has over \$6,000 of outstanding fines that he has not paid to the City.

[8] Mr. Ackerman submitted that the fines should be in the range of \$1,000 per count. He submitted that he is having financial difficulty.

[9] In coming to my decision as to the proper disposition for Mr. Ackerman, I have considered the factors as set out by the City in paragraph 30 of their submissions,

- a. The education and sophistication of the defendant;
- b. Whether the defendant had discussed the conduct in issue with local government staff before undertaking the work;
- c. Whether the defendant was candid in dealing with local government;
- d. The attitude of the defendant towards local government;
- e. The extent of the contravention;
- f. The duration of the contravention;
- g. Acceptance or lack of acceptance of responsibility for the contraventions;
- h. Remorse;
- i. Whether the local government was "plagued" by similar bylaw contraventions;
- j. Profit from the conduct, and whether the fine would amount to a "licence fee";
- k. Whether the offence is the first offence and whether there is a history of bylaw contraventions;
- l. The harm done; and
- m. A person's means to pay.

[10] Clearly Mr. Ackerman is not a fool. He often would comment on his intelligence and his business experience. He knew what he was doing in renting out the subject property and that such rentals may result in noise complaints and knew that such was in contravention of the bylaws. Given the significant number of tickets the city has issued

to Mr. Ackerman and the large amount of outstanding fines he owes, and the Compliance Agreement he signed with the city, and his application to the city for a Bed and Breakfast licence, he had a history of dealing with city officials regarding these issues. Mr. Ackerman put forward his scheme to defeat the city's bylaws by purporting to have his short term renters sign a 30 day lease.

[11] While Mr. Ackerman has been found guilty of one count each for the noise and lack of business licence, clearly these actions were ongoing for a significant period of time, even years. Mr. Ackerman took no responsibility for his actions, instead attempting to deflect responsibility to others, including the Nelsons, who he submitted should have come to him and sorted things out. Over the duration of Mr. Ackerman's short term rentals, he has profited from his misconduct. Any disposition needs to be substantial to send the message to Mr. Ackerman and others, that such behaviour will not be tolerated and that this disposition is not the cost of doing business, or a "licence fee."

[12] Mr. Ackerman submitted that he does not have the means to pay and that he is going through foreclosure and COVID-19 has affected him. Mr. Ackerman gave no specific evidence as to his financial situation. Throughout the hearing, Mr. Ackerman often bragged that he made his living playing poker. Mr. Ackerman's house where the infraction took place, (the subject property) is in an upscale area. While there was no evidence as to the value and equity of the property, I conclude that the property should have some equity. Mr. Ackerman had significant profit from his short term rentals.

[13] I recognize the city's frustration in its dealings with Mr. Ackerman. However, I understand that this is the first time that the city has taken the long form information route with Mr. Ackerman regarding these issues and I therefore have concluded that the fines imposed not be the maximum.

[14] As pointed out, the fines must have a specific and general deterrence and not simply be an amount that appears to be a "licence fee."

[15] With respect to count 1, the fine will be \$6,000.00.

[16] Regarding count 2, the fine will be \$6,000.00

[17] I am not imposing a payment order for Mr. Ackerman to make a compensation payment to Mr. and Mrs. Nelson. It is expected that Mr. Ackerman will ensure that there are no further noise violations at the subject property.

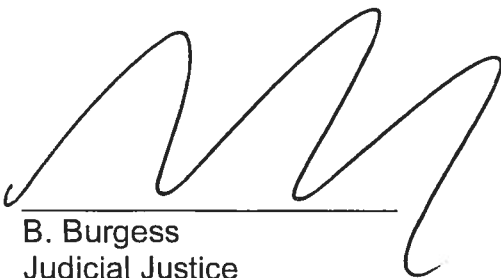
[18] Regarding costs, there should be a cost order. Mr. Ackerman delayed and prolonged the proceedings. His cross examination was frequently personally motivated, protracted, unnecessary and attack like in manner. The entire process was as a result of Mr. Ackerman's continued violations and ignoring of the fines imposed resulting in the City proceeding by way of "Long Form Information." In order to send the message to Mr. Ackerman and other citizens of Kelowna that such conduct is unacceptable and contrary to the law, there needs to be a significant costs award. I therefore order that Mr. Ackerman pay costs of \$6,000.00.

[19] I also order:

1. That pursuant to section 263.1(c) of the *Community Charter* that Jason Ackerman shall cease, be restrained and prohibited from using 698 Devonian Avenue, Kelowna, B.C., or any other property in the City of Kelowna, as short term rental contrary to the Business Licence Bylaw; and
2. that Jason Ackerman shall also cease all advertisement and marketing of short term rentals with in the City of Kelowna, including any online marketing on websites, applications, or social media.

[20] This order shall be in effect for one year pursuant to s. 263.1(2) of the *Community Charter*.

[21] I decline the City's request for the not enter, non-communication or non-attendance orders against Mr. Ackerman in relation to Pam and Edward Nelson. There was no evidence before the court upon which to make such an order.



B. Burgess
Judicial Justice