



Contracts Concerning Children Are Not Legally Binding

by Jodi L. Wyman

Most people understand the concept of contempt of court. If a person defies a court order or instruction from a Judge, they can be punished. Penalties can range from a reprimand or fine or even time in jail.

The issue of contempt of court becomes more complicated in family law. Court orders are probably breached in family law cases more than any other, yet traditionally there have been few contempt orders actually made. The problem is the nature of domestic law – things are never straightforward.

For example, some parents who have court-ordered access with their children are denied access on a regular basis. They can bring a motion asking that the other parent be found in contempt of court. But what if the child has disclosed abuse? What if at the start of the weekend visit the parent arrives intoxicated? What if the child has a very important school event or tournament? What if the child is fourteen years old and just does not want to go? What if the parent has not exercised their access for months and then suddenly shows up?

Even if a Judge feels there is enough evidence to find that the custodial parent was in contempt in court in refusing a visit, then what? A reprimand may not change anything. A large fine could only hurt the child if he or she then has to do without. Punishing a parent with jail would certainly be traumatic for the child and create more conflict.

As well, in cases where access is refused by a parent who genuinely feels their child will be abused or in danger, there are few penalties that would convince them to place their child in harm's way.

In the most extreme cases, with long-standing and inexcusable breaches of court-ordered access, Judges can order a change in custody of the child. If the Judge feels the only way the child will be able to have a relationship with the other parent is to switch custody, they can do just that. One can only imagine how upsetting this could be to the child however.

Contempt of court is a little clearer when a parent has been ordered to pay child support. If they have not paid, they are

breaching the court order. If they cannot afford to pay, the order must be changed. Until it is changed, they are in contempt of court.

The problem is an old legal principle that the court's contempt power should not be used to force the payment of money.

The Supreme Court of Canada recently addressed this very issue. Although it agreed that a contempt of court finding cannot be used to force someone to pay child support, the court can order that a payor provide security for their support amounts. That security order can then be enforced with a contempt of court finding. In that particular case, the payor was a wealthy man planning to flee the country. The court ordered him to post security in the amount of \$150,000 to secure his support obligations. When he did not do so, he was found in contempt of court and jailed.

This contempt of court option is now open to the court as a further tool to assist in the enforcement of court orders.