

Addressing Non-Compliance with Court Orders in Family Law: Recent Court of Appeal Guidance

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Non-compliance with court Orders in family law happens. Fortunately, remedies exist to address this conduct in a relatively swift, creative and effective way.

Contempt a Last Resort

Since contempt has been held to be a remedy of “last resort”, coupled with recent reminders from the Court of Appeal to cautiously approach contempt in “high-conflict family disputes” and to look to “other adequate remedies”, its important to understand what the alternative routes are: *Moncur v. Plante*, 2021 ONCA 462, <https://canlii.ca/t/jglbq>; *Hefkey v. Hefkey*, 2013 ONCA 44 <https://canlii.ca/t/h4c2d>.

Rule 1(8) of the Family Law Rules

In the recent decision, *Bouchard v. Sgovio*, a majority of the Court of Appeal outlined the reach of using Rule 1(8) of the Family Law Rules to address non-compliance: *Bouchard v. Sgovio*, 2021 ONCA 709, <https://canlii.ca/t/jjk9r>.

Paciocco J.A., for the majority, noted the wide application of Rule 1(8), including holding that:

1. The list of remedies under the Rule “is inclusive, not exclusive” (para. 49);
2. The “reach of the remedial orders that can be made is governed not by the itemized list in that rule, but by the general and broad language of the chapeau that precedes it, which provides that “the court may deal with the failure by making any order that it considers necessary for a just determination of the matter” (para. 49).
3. Rule 1(8) “provides broad discretion to courts to make orders it considers necessary to fully address a party’s failure to comply, a flexibility that is of particular importance when

the orders address the well-being of children” (para. 51).

4. Lastly, “if the remedy ordered addresses or “[deals] with the failure” to comply with the substantive order and the remedy ordered is found to be necessary to achieve the enforcement of the order being breached, that remedy is prima facie authorized by r. 1(8)” (para. 51).

Despite the broad nature of Rule 1(8), Paciocco J.A. recognized that there may be limits to its application, stating, without resolving the question “[f]or example, it may well be that the remedies that are provided for in r. 31(5)...cannot be imposed pursuant to r. 1(8), absent a successful contempt motion as contemplated by r. 1(8)(g)” (para. 52).

Lastly, Paciocco J.A. described the quickness in which Rule 1(8) can remedy a situation of non-compliance: “[a]ppropriately, where one parent wrongfully withholds a child from the other, in violation of a court order, r. 1(8) provides quick access to a remedy, including for example, make-up time with the child...The same holds true where parental alienation is frustrating a parenting order. When dealing with the best interests of a child, delay should be avoided as much as possible. Litigation about children is costly and procedural roadblocks should be avoided” (para. 56).

Overall, the majority outlined that non-compliance can be addressed under Rule 1(8) to remedy the situation.

Rule 1(8) and Creativity

Rule 1(8) can be resorted to, by the Courts, to provide a wide range of remedies to non-compliance in a creative fashion: *Levely v. Levely*, 2013 ONSC 1026, <https://canlii.ca/t/fw7xs>.

For example, the Court of Appeal has affirmed the striking of pleadings in certain circumstances: *Burke v. Poitras*, 2018 ONCA 1025 [amended to allow issues of custody and access] <https://canlii.ca/t/hwklc>; *Roberts v. Roberts*, 2015 ONCA 450, <https://canlii.ca/t/gjlc2>.

In other situations, Courts have used Rule 1(8) to appoint a receiver of property, surrender a passport, post security, and provide access to information: *Bouchard v. Sgovio*, 2021 ONCA 709, <https://canlii.ca/t/jjk9r>.

The reach of remedies under Rule 1(8) are an important consideration when addressing non-compliance with a Court Order, particularly where contempt is a remedy of last resort.

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