
Consultation: Civil Rules of Contempt 2022

FEBRUARY 1, 2022

**Ministry of Attorney General
Supreme Court and Family Rules Committee**

Contents

| | |
|---|----|
| Modernizing the Civil Rules of Contempt..... | 1 |
| Scope | 1 |
| Summary..... | 1 |
| Engagement..... | 2 |
| Options for Consideration..... | 3 |
| Procedures..... | 4 |
| Consultation | 5 |
| Appendix A | 6 |
| B.C. Supreme Court Civil Rules..... | 6 |
| B.C. Supreme Court Civil Rules..... | 9 |
| Rule 13-2 — Enforcement of Orders | 9 |
| Order to pay money to a person..... | 9 |
| Order for recovery or delivery of land | 9 |
| Order for recovery or delivery of property other than land | 9 |
| Appointment of receiver..... | 9 |
| Execution by or against person not a party..... | 9 |
| Remedy on non-compliance with mandatory order | 9 |
| Family Law Act..... | 10 |
| Enforcing orders respecting disclosure | 10 |
| Enforcing orders generally | 10 |
| Extraordinary remedies | 11 |
| Appendix B..... | 12 |
| Non-Contempt Remedies for Non-Compliance with Court Orders in BC..... | 12 |
| Additional Remedies | 12 |
| BC Supreme Court Family Rules and the <i>Family Law Act</i> | 13 |
| Enforcing orders under the <i>Family Law Act</i> | 13 |

Modernizing the Civil Rules of Contempt

British Columbia's justice system depends on respect for and compliance with court orders. An order issued by the court must be obeyed unless the order is set aside or reversed. A party who fails to comply with a court order may find themselves in contempt of the court.

Scope

This paper will discuss the British Columbia (B.C.) Supreme Court Civil Rules of contempt and whether they provide adequate procedures and remedies for when people do not obey court orders. Options where improvements to the Rules may be considered are identified in this paper and open for comment.

Summary

B.C.'s Civil Rules of Contempt are set out in Rule 22-8 of the *Supreme Court Civil Rules* (see Appendix A). This rule is arguably obsolete in that it does not accurately set out the range of remedies available at common law or what is often procedurally required. The current language of the Rules, suggesting an expedited application through affidavits only, is frequently inadequate. The remedies provided for in the Rules are solely punitive. Through the court's inherent jurisdiction, the remedies have expanded beyond the authority to order imprisonment or fines. Consequently, as a matter of common law, the Rules do not reflect the current reality of contempt proceedings.

For example:

- It is well established that proceedings in contempt engage s. 7 of the *Charter of Rights and Freedoms*, often requiring a more comprehensive process of cross-examination, *viva voce* evidence, and other procedures not contemplated by the current Rules (*Hokhold v. Gerbrandt*, 2016 BCCA 6; *Workers' Compensation Board of British Columbia v Skylite Building Maintenance Ltd*, 2018 BCSC 474); and

-
- Despite the mandatory language of Rule 22-8(1), the court has ruled that the range of penalties is wider than fine or imprisonment and includes other types of sentences, such as conditional and suspended sentences, that arise from the court’s inherent jurisdiction (*Law Society of British Columbia v. Carlisle*, 2014 BCSC 2362).

A cross-jurisdictional review of the rules of contempt provides comparison between B.C. and other provinces and territories. Several provinces, including Manitoba, Ontario, Newfoundland, Nova Scotia, Prince Edward Island and New Brunswick offer a broader rubric of remedies that the court may impose on a party(ies), expressly stated to include remedies such as house arrest, conditional or absolute discharges, payment of security, community service, orders for further compliance, and any other orders the court deems necessary. The court, in some of these jurisdictions, may also order that a person or party “do or refrain from doing an act” where compliance with the original order rather than punishment is the preferred remedy. In addition to the broad range of enforcement options, the Rules of some provinces provide more procedural guidance on commencing and conducting contempt proceedings.

One issue that should be highlighted is that the court always has inherent jurisdiction to address contempt of its orders - and so allowing a party to seek relief in contempt other than imprisonment could be seen as an impermissible limitation on the ability to imprison contemnors even when that relief is not sought.

Engagement

The Supreme Court Civil & Family Rules Committee (the “Rules Committee”) invites comments from the bar, litigants and members of the public on the B.C. Civil Rules of Contempt. The Rules Committee will review the results of this consultation and formulate a recommendation to the Attorney General. Pursuant to the *Court Rules Act*, the Attorney General will consult with the Chief Justice of the British Columbia Supreme Court before any amendments to the Rules are made.

Options for Consideration

The next steps to address these deficiencies will depend on contributions and comments from the bench, bar, litigants, and members of the public. The Rules Committee has identified aspects of the Rules that may require change.

A list of options where improvements may be considered are highlighted below:

1. Amend the Rules to add other punitive options that more accurately describe the range of punitive measures.
 - The Rules could provide a list of remedies for the court to apply based on the severity of the non-compliance. The list would be non-exhaustive to avoid intruding on the court's inherent jurisdiction.
 - For example, the list of remedies could include:
 - a fine;
 - sequestration of some or all of a person's assets;
 - an order that the person abide by stated penal terms, such as house arrest, community service, or reparations;
 - a suspended penalty, such as imprisonment, sequestration, or a fine while complying with stated conditions
 - a term of imprisonment, if the person is an individual.
2. Amend the Rules to provide for a penalty that precludes imprisonment, similar to fine options available under the *Family Law Act* that do not include imprisonment and do not engage s. 7 of the *Charter* (see Appendix B).
 - Adopting and applying similar remedies allows for greater consistency between the *Supreme Court Family Rules* and the *Supreme Court Civil Rules*.
3. Amend the Rules to add injunctive relief as a potential remedy for non-compliance, outside of the contempt rule. This remedy could be aimed at compliance rather than punishment and could be drafted so as to not attract s. 7 procedural rights.

4. Other suggestions identified through consultation.

5. Do not make any changes.

- It has been suggested to the Rules Committee that modifications to the Rules of Contempt and related provisions are not necessary. The court has not limited itself to the remedies mandated in the current Rules and any modifications to “clarify” the authority may be seen to intrude upon the court’s inherent jurisdiction.

Procedures

For claims in contempt where imprisonment remains a potential remedy, add to the procedures required for bringing contempt to address s. 7 rights such as proof beyond a reasonable doubt, cross-examination, etc.

- Proceedings in contempt engage s. 7 of the *Charter of Rights and Freedoms*. The Rules could provide more guidance to parties regarding the process, that may include the possibility of cross-examination, *viva voce* evidence, and other procedures not contemplated by the current Rules.

Consultation

This consultation is being undertaken to assist the Rules Committee in considering changes that are responsive to the needs of the participants in the justice system.

The Rules Committee is initiating its review of the Rules of Contempt by inviting participants from the bar, litigants, and members of the public to bring their feedback and concerns forward, along with suggested solutions.

Please provide your input by email to
AGSupremeCourtRulesCommittee@gov.bc.ca.

We thank you in advance for your time and consideration on this complex topic. We look forward to being able to provide an effective and responsive approach to amending the Rules of Contempt as needed.

Appendix A

B.C. Supreme Court Civil Rules

Rule 22-8 – Contempt of Court

Power of court to punish

(1) The power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.

Corporation in contempt

(2) If a corporation wilfully disobeys an order against the corporation, the order may be enforced by one or more of the following:

- (a) imposition of a fine on the corporation;
- (b) committal of one or more directors or officers of the corporation;
- (c) imposition of a fine on one or more directors or officers of the corporation.

Security

(3) Instead of or in addition to making an order of committal or imposing a fine, the court may order a person to give security for the person's good behaviour.

Certain acts as contempt

(4) A person who is guilty of an act or omission described in Rule 12-5 (25) or 22-7 (5), in addition to being subject to any consequences prescribed by those rules, is guilty of contempt of court and subject to the court's power to punish contempt of court.

If person may be guilty of contempt

(5) If the court is of the opinion that a person may be guilty of contempt of court, it may order, by warrant in Form 115 directed to a sheriff or other officer of the court or to a peace officer, that the person be apprehended and brought before the court.

Power of court after apprehension

(6) If a person referred to in subrule (5) is apprehended and brought before the court, the court in a summary manner may adjudge the innocence or guilt of the person and punish the person for the contempt, if any, or may give the directions it thinks fit for the determination of the person's innocence or guilt and punishment.

If corporation may be guilty of contempt

(7) If the court is of the opinion that a corporation may be guilty of contempt of court,

it may order, by its warrant in Form 115 directed to a sheriff or other officer of the court or to a peace officer, that any director, officer or employee of the corporation be apprehended and brought before the court.

Power of court after apprehension

(8) If a director, officer or employee referred to in subrule (7) is apprehended and brought before the court, the court in a summary manner may adjudge the innocence or guilt of the corporation and punish the corporation for the contempt, if any, or may give the directions it thinks fit for the determination of the corporation's innocence or guilt and the punishment to be imposed.

Release of apprehended person

(9) The court may order the release of a person apprehended under subrule (5) or (7) on receiving an undertaking in Form 116 from that person.

Order for release

(10) A release order under subrule (9) must be in Form 117.

Proceeding for contempt

(11) A party applying for an order for contempt must serve the alleged contemnor with a copy of the filed notice of application and all filed affidavits in support of it at least 7 days before the hearing of the application.

Affidavit

(12) An application under subrule (11) must be supported by affidavit setting out the conduct alleged to be contempt of court.

Hearing

(13) The court may give directions as to the mode of hearing the application, including an order that the matter be transferred to the trial list under Rule 22-1 (7) (d).

Service of order not necessary

(14) If the court is satisfied that a person has actual notice of the terms of an order of the court, it may find the person guilty of contempt for disobedience of the order, even though the order has not been served on the person.

Suspension of punishment

(15) The court at any time may direct that the punishment for contempt be suspended for the period or on the terms or conditions the court may specify.

Discharge of person

(16) The court, on application by or on behalf of a person committed to prison for contempt, may discharge that person even though the period of the committal may not have elapsed.

Weekly review of person in custody

(17) If the court orders a person be committed without specifying in days, weeks or months the period of the committal, the sheriff must bring that person before the court at intervals of not more than 7 days, in order that the court may review the committal and determine whether relief as set out in subrule (15) or (16) should be granted.

B.C. Supreme Court Civil Rules

Rule 13-2 — Enforcement of Orders

Order to pay money to a person

(1) An order for the payment of money to a person may be enforced by writ of seizure and sale in Form 50.

Order to pay money into court

(2) An order for the payment of money into court may be enforced by writ of sequestration in Form 51.

Order for recovery or delivery of land

(3) An order for the recovery or the delivery of the possession of land may be enforced by writ of possession in Form 52.

Order for recovery or delivery of property other than land

(4) An order for the recovery or the delivery of the possession of any property other than land or money may be enforced by writ of delivery in Form 53 or 54 or by writ of sequestration in Form 51.

Appointment of receiver

(5) An order may be enforced by the appointment of a receiver under Rule 10-2.

Execution by or against person not a party

(6) A person not a party to a proceeding, who obtains an order or in whose favour an order is made, may enforce the order in the same manner as if the person were a party to the proceeding, and an order that may be enforced against a person not a party to a proceeding may be enforced against that person as if he or she were a party to the proceeding.

Remedy on non-compliance with mandatory order

(7) If a mandatory order or an order for the specific performance of a contract is not obeyed, the court, in addition to or instead of proceeding against the disobedient person for contempt, may direct that the act required to be done may be done so far as is practicable by the person who obtained the order, or by some other person appointed by the court, at the expense of the disobedient person, and on the act being done, the expenses incurred may be ascertained in such manner as the court may direct, and execution may issue for the amount so ascertained and costs.

Family Law Act

Enforcing orders respecting disclosure

213 (1) This section applies if a person

(a) fails to comply with

(i) an order for disclosure made under section 212 [*orders respecting disclosure*], or

(ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules,

within the time or in the manner required by the order or Rules, or

(b) provides information that is incomplete, false or misleading.

(2) In the circumstances set out in subsection (1), the court may do one or more of the following:

(a) make an order under section 212;

(b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;

(c) require a party to give security in any form that the court directs;

(d) make an order requiring the person described in subsection (1) to pay

(i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,

(ii) an amount not exceeding \$5 000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or

(iii) a fine not exceeding \$5 000;

(e) make any other order the court considers appropriate.

Enforcing orders generally

230 (1) Subject to section 188 [*enforcing orders respecting protection*], an order under this section may be made only if no other provision of this Act applies for the purposes of enforcing an order made under this Act.

(2) For the purposes of enforcing an order made under this Act, the court on application by a party may make an order to do one or more of the following:

(a) require a party to give security in any form the court directs;

(b) require a party to pay

(i) the other party for all or part of the expenses reasonably and

necessarily incurred as a result of the party's actions, including fees and expenses related to family dispute resolution,

(ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the party's actions, or

(iii) a fine not exceeding \$5 000.

Extraordinary remedies

231 (1) This section applies if

(a) a person fails to comply with an order made under this Act, and

(b) the court is satisfied that no other order under this Act will be sufficient to secure the person's compliance.

(2) Subject to section 188 [*enforcing orders respecting protection*], the court may make an order that a person be imprisoned for a term of no more than 30 days.

(3) For the purposes of subsection (2),

(a) a person must first be given a reasonable opportunity to explain his or her non-compliance and show why an order under this section should not be made,

(b) for the purpose of bringing a person before the court to show why an order for imprisonment should not be made, the court may issue a warrant for the person's arrest, and

(c) imprisonment of a person under this section does not discharge any duties of the person owing under an order made under this Act.

(4) If satisfied under section 61 [*denial of parenting time or contact*] that a person has been wrongfully denied parenting time or contact with a child by the child's guardian, a court may make an order requiring a police officer to apprehend the child and take the child to the person.

(5) If satisfied that a person having contact with a child has wrongfully withheld the child from a guardian of the child, a court may make an order requiring a police officer to apprehend the child and take the child to the guardian.

(6) For the purpose of locating and apprehending a child in accordance with an order made under subsection (4) or (5), a police officer may enter and search any place he or she has reasonable and probable grounds for believing the child to be.

Appendix B

Non-Contempt Remedies for Non-Compliance with Court Orders in BC

In addition to Rule 22-8, Rule 13-2 provides a series of types of applications that may be brought to enforce an existing court order which has not been complied with. Rules 13- 2(1) to (7) are included in Appendix A as an example of Rules related to enforcement of orders, other than contempt. These enforcement options can provide an alternative to contempt for orders related to the payment of money or relating to property.

There are also Rules (particularly under Rule 22) that provide for striking of proceedings and other remedies for failure to comply with the Rules and orders relating to the Rules.

Additional Remedies

There are options in the Rules, and through legislation such as the *Court Order Enforcement Act*, RSBC 1996, c. 78, for enforcement of orders related to payment of money and transfer of property other than contempt. There is also the potential for procedural consequences for failing to obey orders related to extant proceedings, such as striking of pleadings, costs consequences, etc.

Despite the availability of these other options, the only remedy when asking for compliance with a court order in many cases is contempt. Common law requires parties to meet a “beyond a reasonable doubt” standard in a costly and adversarial process in an attempt to fix something that may not necessitate the full burden of these procedures. In addition, the available punishments for contempt, even as modified by the common law, may not be desirable or appropriate in some circumstances. Where compliance is sought rather than punishment, the procedures and remedies involved in a contempt proceeding may detract from parties’ willingness to seek enforcement of a court order that is not being obeyed. Compliance with court orders is essential to the civil and family justice system.

However, there are few alternatives to proceedings and penalties in contempt for failure to comply with court orders outside those for enforcing monetary judgments or property rights. Contempt of court is “a heavy, blunt tool” and is generally a measure of last resort (*Hokhold v. Gerbrandt*, 2016 BCCA 6).

BC Supreme Court Family Rules and the *Family Law Act*

The contempt provisions in the B.C. *Supreme Court Family Rules* are virtually identical to those contained in the *Supreme Court Civil Rules*. There are, however, additional Rules that provide parties with a mechanism to obtain relief (other than a contempt order) if the other party fails to comply with the Rules.

For example, Rule 5-1 (Financial Disclosure) of the *Supreme Court Family Rules* sets out a number of disclosure requirements to which parties must adhere. If a party fails to adhere to these requirements, the other party may apply to the court for relief.

Although one form of relief is punishment for contempt of court, the Rules outline other options including adverse inferences, attribution of income, and fines under the *Family Law Act (FLA)*. Fines and other remedies that empower the court to enforce compliance with orders in family cases are provided for under ss. 213, 230, and 231 of the *FLA*. These sections provide a useful comparator and possible alternative option for the civil law context.

Enforcing orders under the *Family Law Act*

Sections 231 and 232 of the *FLA* provide for two different types of compliance orders: one which includes imprisonment as an option, and one that does not. The option that does not include imprisonment, does not engage s. 7 of the Charter, but allows for a \$5,000 fine.

The *FLA* provides a number of options other than contempt to enforce court orders made in family law cases, including fines that are payable to the aggrieved party.

Sections 230 and 231 are intended to be used to secure compliance with orders made under the *FLA*. These sections are available where there is no other

mechanism under the *FLA* to enforce the order or bring the party into compliance.

There are very few cases in which courts have ordered fines or imprisonment under these sections, and there is no case law on the standard of proof required to do so. It is possible that s. 231 remedies would attract quasi-criminal Charter related protections and procedures, but that is less likely to be the case for the remedies under s. 230 of the *FLA*.

The B.C. Ministry of Attorney General has published notes on the *FLA*. It provided the following summary of section 230:

- Section 230 provides for general enforcement of orders made under the *FLA*.
- These remedies are similar to the Supreme Court contempt of court powers. This section promotes greater consistency between Provincial and Supreme Court remedies in family law cases.
- These remedies may be used only if there is no other provision under the *FLA* that applies for the purposes of enforcing an order. For example, the *FLA* provides for remedies specifically tailored to breaches of orders for parenting time and enforcement of those orders must be dealt with under that section.

With respect to s. 231, the Ministry provided the following summary:

- Section 231 allows for the limited use of two extraordinary remedies: police apprehension of a child and imprisonment. These two remedies may only be used when there is not a less severe remedy under the *FLA* that would be sufficient to secure compliance.
- Imprisonment may only be ordered after the person has had an opportunity to be heard.
- This approach balances the need to have more severe remedies available, with the recognition that other remedies are usually more appropriate in

family law cases. These extraordinary remedies should not be used regularly because they have such a negative impact on children, however, there are rare cases where a court may require them.

- The *FLA* provides a wide range of tools and remedies to ensure compliance with court orders that is sufficient in most cases.
- The majority of cases involving s. 231 of the *FLA* relate to the imposition of a police enforcement clause.