



## **Contempt in Family Law**

By Imogen Jenkins

Rule 10.52(3)(a)(i) of the *Alberta Rules of Court*, AR 124/2010 states:

*“A judge may declare a person to be in civil contempt of Court if the person, without reasonable excuse, does not comply with an order, other than an order to pay money, that has been served in accordance with the rules for service of commencement documents or of which the person has actual knowledge.”*

Rule 10.52(3)(a)(i) does not exclude orders with respect to parenting. If contempt is found, the penalties and sanctions found in Rule 10.53 are open to the Court, which include costs, fines, the ability to continue with their claim and imprisonment.

However, the Alberta Court of Appeal has instructed parties and decision makers in family law matters to look for functional solutions to an impasse, instead of using the power of contempt which may serve no practical purpose in family law litigation.

In the recent case of *Vavrek v Vavrek*, 2019 ABCA 325, the Alberta Court of Appeal promoted context-based solutions, rather than declarations of contempt, stating:

*“In our view, the chambers judge quite properly ordered the parties to take steps that would resolve the only issue in the litigation between them and refused to allow the parties to continue to litigate collateral issues, the resolution of which would serve no practical purpose in the litigation.”* (at para 10)

*“[...] the form of strict liability proposed by the appellant here would be a guillotine administered by the affronted party rather than a circumstance and context based assessment by the court.”* (at para 12)

In *Saunders v. Saunders*, 2017 ABQB 163, a parent refused to comply with a custody and parenting order and would not facilitate access for the other parent. Associate Chief Justice Rooke declined to hold the non-compliant parent in civil contempt, instead opting to make an order that had the goal of improving the relationship between the child and the denied parent. Justice Rooke ordered a Family Law Practice Note 7 Intervention Assessment to get at the underlying reasons why the parenting order was not complied with and to facilitate reunification between the child and the denied parent.

In *Salloum v. Salloum*, [1994] A.J. No. 304, Justice Veit provided helpful commentary on the Court’s caution to use contempt in family law cases, stating:

*“In ordinary civil law, it may be that mere breach of a court order is all that need be proved in order to establish contempt [...]*

*However, by long tradition, the court exercises restraint in family law cases. In*

*custody cases, the court usually requires an intentional breach of the court order [...]. The reasoning in these cases, which reasoning I adopt, is that restraint is appropriate, given the twin objectives of protecting both the best interests of the children and the administration of justice. As frustrating as it must be for a parent whose court ordered access is sterilized, the court's focus is on the interests of the children, not on the behaviour of parents. Children are better off if their parents are not in jail or paying fines.” (paras 18-19)*

Ultimately, even if a parent's non-compliance with a court order meets the test for civil contempt (as set out in Rule 10.52(3)(a)(i)), one should seek out practical solutions rather than filing an application for civil contempt against the offending party.