

Enforcing Court Orders

Summary:

Sometimes, even though the court has made an order, one of the parties does not obey the order. That person is said to be breaching the court order. What can the other party do? That depends on what kind of order is being disobeyed.

Child Support or Spousal Support Orders

If the child or spousal support order is registered with the Maintenance Enforcement Program (MEP), which is usually the case, the MEP will enforce the order. There is no cost to the person receiving support. The Maintenance Enforcement Program is a government agency that can collect the money owed under the Court Order. The recipient of support payments is known as the payee. The person who is making the payments is known as the payor (debtor).

After a Court Order or Separation Agreement has been registered with the MEP, the designated officer will advise the payor in writing that the order or agreement is being enforced by the MEP and that support payments must be made through the MEP.

The MEP can collect ongoing support payments that are to be made periodically or in a lump sum. The MEP can also collect any arrears of financial support. However, the MEP cannot change the amount of support that is being paid. MEP can only enforce the existing obligation.

If a payor is not making the payments as set out in the Court Order or agreement that has been registered with the MEP, there are many options available to the MEP to collect the payments.

The MEP can work with employers, banks and the provincial and federal governments to collect support payments on a payee's behalf. They can:

- Garnish a payor's wages
- Garnish a payor's bank account(s)
- Garnish other income or payments, for example, Employment Insurance Benefits, Pension income, GST rebates, Income Tax Returns
- Seize and sell a payor's property

Lesson Plan Overview

Family law is an area of law that deals with family relationships, and the rights and responsibilities associated with the creation, transformation, or discontinuation of those relationships.

This lesson plan introduces students to the concept of enforcing family law court orders. The objectives of this lesson are to understand the options to enforce child and spousal support and custody and access orders.

Discussion Questions and Activities:

1) Find 3 recent media articles that deal with abduction of children. What legislation was used? What happened?

2) Can you think of any other methods the Maintenance Enforcement Program should be able to use to collect support payments?

3) Name some countries where *The Hague Convention on the Civil Aspects of International Child Abduction* is not in force.

4) Provide the students with the *Scott v. Bilan* case.

Review the discussion questions.

5) Provide the students with the *Singh v. Pierpont* case.

Review the discussion questions.

6) Provide the students with the fill in the blank questionnaire.

Glossary

Breach – disobeying a court order.

Central Authority – In Manitoba, the Manitoba Department of Justice is the Central Authority for the *Hague Convention on the Civil Aspects of International Child Abduction*.

- Suspend a payor's driver's licence
- Suspend or deny a payor's passport
- Have a defaulting payor who has arrears attend a Show-cause hearing. This means that the payor has to go to court and tell the court why the payor is not wilfully in default of the order. The court may, order that the payor pay a fine or incarcerate the payor if the court is not satisfied with the information the payor provides. .

Not all enforcement actions are appropriate in all cases. The designated officer has discretion to decide which actions are necessary or advisable for the purposes of collecting support payments.

If a Court Order for financial support has been granted in Manitoba, it can be filed in another Canadian province or territory or another country and enforced in that jurisdiction, provided it is a reciprocating jurisdiction. A reciprocating jurisdiction is a Canadian province or territory, or another country that has an arrangement with Manitoba to work together to ensure that financial support payments are collected. Court Orders for financial support that are granted by courts in reciprocating jurisdictions are enforceable in Manitoba.

A support Order made outside of Manitoba and registered in Manitoba by the MEP under *The Inter-Jurisdictional Support Orders Act* can be enforced in Manitoba through the MEP. The orders also have to be registered with the Court of Queen's Bench in Manitoba.

Reciprocating jurisdictions include: all provinces and territories in Canada, all states in the United States, District of Columbia, Puerto Rico, American Samoa, Guam, U.S. Virgin Islands, United Kingdom – England, Wales, Jersey, Scotland, Guernsey, Alderney & Sark, Isle of Man, Northern Ireland, Austria, Malta, Slovak Republic, Czech Republic, Norway, Switzerland, Germany, Poland, Ghana, South Africa, Zimbabwe, Hong Kong, Singapore, Australia, Fiji, Barbados, New Zealand, and Papua New Guinea.

Custody or Access Orders

A parent who is sharing custody or care and control of a child or has access rights to a child has the following options if the other parent breaches their rights:

- Out of court resolution through negotiation or mediation;
- Applying to court to vary the custody or access order; or
- As a last resort, applying for a contempt order.

Generally, arrangements for custody, access or care and control of a child are easier to enforce if there is a Court Order. If the other parent has breached any provisions of that Order, the parent should speak with a lawyer about options. However, there may be more urgent situations (for example, where the other parent is taking the child from Manitoba without permission) where the police should be contacted immediately.

Costs – an amount ordered by the court to compensate the successful party for some, or in rare cases, all legal costs.

Court of Queen's Bench Rules – regulations that set out the rules and forms of the Manitoba Court of Queen's Bench, including how forms and evidence must be presented to the court.

Designated Officer – The person at the Maintenance Enforcement Program who is responsible for files if the Maintenance Enforcement Program is enforcing a Court Order or agreement.

Habitual Residence – This is the jurisdiction where a child normally lives. It is a term used in *The Hague Convention on the Civil Aspects of International Child Abduction*.

The Hague Convention on the Civil Aspects of International Child Abduction – an international treaty that applies where the Convention is in force, providing for the return of a child under 16 wrongfully removed from their habitual residence or wrongfully kept in another country, where the parent left behind has custody.

Maintenance Enforcement Program – A government agency in Manitoba that enforces Court Orders or agreements dealing with child and spousal support.

Payee – or support recipient – a person who receives financial support payments through the Maintenance Enforcement Program.

Payor – or debtor – a person who makes financial support payments through the Maintenance Enforcement Program.

Reciprocating Jurisdiction – a jurisdiction with which the government of Manitoba has arrangements for the reciprocal registration and enforcement of support orders.

Relevant Law:

The Family Maintenance Act – sections 52, 54(1), (1.1), 55(1), (2)

The best course of action to take depends on how the custody/access rights have been denied and how serious the situation is.

If a child has not been returned after the other parent had access or care and control and there is a Court Order or agreement, the matter may be resolved through negotiation or mediation with the other parent. Family Conciliation provides a free mediation service. A lawyer may be able to speak with the other party's lawyer to work out a solution.

If there is no Court Order or agreement, mediation and negotiation may still be possible if both parents are willing to participate.

If there is no Court Order or agreement and the other parent is not allowing access or care and control it will be more difficult to enforce rights. The parent may need to apply for a Court Order.

If there is a Court Order but the terms for care and control or access are not clear, an application may have to be made to court to change the Order to make the terms specific. A Court Order with specific terms is easier to enforce.

Contempt of Court

If there is a Court Order for custody, access or care and control and the Order is not being followed by one of the parents, the other parent has the option of bringing an action for Contempt against that parent.

The option of filing a motion for contempt should only be used as a last resort after all reasonable steps have been taken to make sure that the other parent complies.

If the court finds that the other parent is in contempt of the Court Order it has the discretion to make orders including the following:

- Changing the times that the parents are with the children;
- Imprisonment of the party in contempt;
- Payment of a fine;
- Payment of costs;
- Imposing a suspended sentence - the guilty party will be placed on probation where they will have to follow several conditions for a period of up to 3 years;
- Ordering counselling /parenting courses; and
- Reimbursement of expenses, where access visits have been denied.

The parent found in contempt can purge the contempt by apologizing to the court and changing their behavior.

The Hague Convention on the Civil Aspects of International Child Abduction

<https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf>

Articles 1, 2, 3, 4, 5

The Queen's Bench Rules – section 60.10 (1) – (5)

The Child Custody Enforcement Act – sections 9(1) – 9(7), 10 (1) – (3)

Criminal Code – sections 282(1), (2), 283(1), (2), 284, 285, 286

Interjurisdictional Support Orders Act – section 43(1), (2), Regulation 10/2003

Costs

In the case of *Singh v. Pierpont*, the father disobeyed a custody order and took the child to Hawaii. The mother had to hire a lawyer there and travel to Hawaii on several occasions. The judge made an order that the father reimburse her for those expenses.

Child Abduction

If one parent takes, detains or conceals a child under age 14 from the other parent, that parent may be charged with abduction under the *Criminal Code of Canada*, whether or not there is a custody order. The police would, of course, investigate and would only lay a charge if all of the elements of the offence were made out.

The police in Manitoba can only lay a charge in Manitoba if the child has been abducted in Manitoba. If, for example, one parent agreed to let the other parent take the child to another province or territory but then the other parent refused to return the child to Manitoba, a charge cannot be laid in Manitoba. The police in the other province or territory would have to be contacted.

A child cannot consent to be taken without the custodial parent's consent. Therefore the parent who has abducted the child cannot say that the child agreed not to go back to the other parent or did not want to go back to the other parent. (Section 286 of the Criminal Code).

It is a defence to a charge of parental child abduction if taking/detaining the child was necessary to protect the child or the person taking the child from danger of imminent harm.

The Child Custody Enforcement Act

The Child Custody Enforcement Act includes provisions to help enforce a custody/access order:

- It allows for an application to the Manitoba court to enforce provisions of a Manitoba/extra-provincial custody/access order and for the return of the child.
- It allows for an application to enforce access under a court order where access is wrongfully denied or is not being exercised.
- It allows the Manitoba court to make an order for a child to be located/apprehended for enforcement of a custody/access order.
- It allows the Manitoba court to make an order to provide the court with information about the child's whereabouts to enforce a custody/access order.
- It allows the Manitoba court to make orders to make it easier to enforce a custody/access order by using preventative measures (for example posting a bond, delivering the child's and parent's passport

and travel documents to the court or another named person.

If a Court Order was granted outside of Manitoba, an application can be made to the Manitoba Court of Queen's Bench to make that Order effective in Manitoba. However, if the court has evidence that the child did not have a "real and substantial connection" with the place where the Custody Order was granted it may choose not to recognize that Order.

If there is a Court Order for custody, access/care and control from outside of Manitoba, the court also has the power to grant a new Order if it is satisfied that the child did not have a "real and substantial connection" with the place where the Order for custody was granted but instead has a "real and substantial connection" with Manitoba or one or the other parent normally live in Manitoba.

The court will not enforce the order if there is concern that doing that would cause the child serious harm.

If a parent is denied access, even though the parent has a court order, or if a child is taken from a parent in breach of a Manitoba custody/access order, the parent may apply for an order for return to locate/apprehend/get information. If access is denied or is not exercised, the court may order the defaulting parent to reimburse the other parent's costs or require supervised access.

International Child Abduction

The Hague Convention on the Civil Aspects of International Child Abduction (The Hague Convention) is an international treaty. Manitoba has implemented this treaty. It applies where a child has been abducted by a parent and taken to another country where the treaty is in force between both countries.

The Hague Convention does not apply if a child has been abducted from one province or territory in Canada to another province or territory in Canada. *The Child Custody Enforcement Act* would apply to those situations.

It is very important to make a request as soon as possible after a child has been abducted or taken from Canada. This is important because the return of a child is more difficult if more than one year has passed since the child was taken from Canada. The court in the country where the child has been taken can refuse to have the child returned to Canada if the court finds that the child has become accustomed to living in the new country.

The court in the other country will only decide whether the child should be returned to Canada. The court will not make any decisions on custody or access.

The Hague Convention states that, generally a child who has been removed from their "habitual residence" (the country where the child usually lives), should be returned to that country. After the child is returned to the country where the child usually lives, the parents can deal with the custody/care and control or access dispute in that country based on what is in the child's best interests.

The Hague Convention states that there are some circumstances under which a child who has been taken from Canada to another in breach of a Court Order or agreement for custody/access does not have to be returned to that country. These circumstances include:

- If the one parent agreed that the child could be taken out of Canada
- If there is a risk that the child could be harmed if returned to Canada
- If the child does not want to return to Canada and it is agreed that the child is old enough to state his or her opinion.

If a child has been taken to a country where *The Hague Convention* does not apply or the parent does not wish to or cannot pursue a Return Application under *The Hague Convention*, the parent may be able to find a lawyer in the other country to help. A mediator or family or friends may also be able to help with the return of the child. The Central Authority for Manitoba is at the Family Law Section, Legal Services Branch of Manitoba Justice should be consulted. Other resources are Global Affairs Canada and the RCMP National Centre for Missing Persons.