

## **Playing With Fire: Contempt and The Problem With Ignoring Court Orders**

### **The Issue**

A simple rule prevails in lawsuits – follow Court Orders and try to stay ahead of your lawsuit obligations.

What can happen, then, if you fail to follow the Court’s Order(s) in your lawsuit?

What are the penalties? How can this affect your lawsuit?

### **Why This Matters**

Lawsuits are not easy. They tend to become a real battle psychologically and emotionally upon the litigants, as well as taking a financial toll.

Sometimes, as a result of negative developments in a lawsuit, a party does not wish to comply with their lawsuit obligations. Financial disclosure of your personal situation or of your small business is a very common hurdle for people.

To understand better the ups and downs of litigation, it’s important to be clear about your responsibility to comply with the Rules of Civil Procedure and also Court Orders, in advance.

### **The Details**

The recent case of [Nashid v. Michael, 2012 ONSC 675 \(CanLII\)](#) is a divorce case which unfortunately provides a helpful illustration of the type of problems which can arise if one party does not comply with their obligations and then, despite warnings, fails to comply with Court Orders. The party in trouble here is the wife, Dr. Nabila Nashid, a dentist who was required (under the Court rules governing divorces) to provide financial disclosure of her dentistry

practice in regards to asset division issues and the upcoming matrimonial trial to determine those issues.

### **Possible Sanction – Being Found in Contempt of Court**

Unfortunately, Dr. Nashid failed to respond to repeated Court Orders requiring her to provide financial disclosure as part of the matrimonial litigation. This included valuation of her dental practice and disclosure of all sources of income and expenses.

In August, 2011, Dr. Nashid was found in contempt - [Nashid v. Michael, 2011 ONSC 4713 \(CanLII\)](#) – based on the three part test:

[22] The court must apply a three-pronged test in order to determine whether there has been contempt:

(i) the order that was breached must state clearly and unequivocally what should and should not be done;

(ii) the party who disobeys the order must do so deliberately and willfully; and

(iii) the evidence must show contempt beyond a reasonable doubt. Any doubt must be resolved in favour of the person who is alleged to have breached the order (Prescott-Russell Services for Children and Adults v. G. (N.), [2006] O.J. No. 2488 (C.A.)).

Despite finding Dr. Nashid in contempt, the Court gave her one ‘last chance’ and did not strike her pleadings. Instead, Dr. Nashid was given three weeks to provide the financial disclosure previously ordered.

### **Possible Sanction – Pleadings Struck, You Lose the Lawsuit**

Unfortunately for Dr. Nashid, she did not comply with the Order in full and she was also unable to respond fully to the next 5 Court hearings (all arising from her contempt) due to ill health - [Nashid v. Michael, 2012 ONSC 675 \(CanLII\)](#). The medical evidence she provided as to her ill health – mental stress, major depression – was also incomplete. Finally, on January 12, 2012, the Court ordered that Dr. Nashid’s pleadings be struck and that, unless Dr. Nashid applied back to the Court for standing to participate in the lawsuit, her ex-husband would be allowed to proceed to an uncontested Trial.

Of course, proceeding to an uncontested Trial means that the ex-husband would essentially "win" on each and every point, including asset division, etc.

### **Points to Take Away**

It is important for you to understand, early in the lawsuit process, as to what will be expected of you.

For example, in a personal injury case (i.e. car accident or slip and fall), if you are suing for money and claiming income loss or inability to work, then you must provide financial disclosure to support your claims.

This generally means at least providing your income tax records for a few years prior to the accident up to the date of the Trial.

Problems generally arise for people who work in a cash business and have unreported their income. Other people who, for whatever reason, have not filed a tax return also have to deal with this issue up front.

The best advice is to disclose any problems to your lawyer early in the lawsuit process about this issue (as your lawyer will be asking these questions very early on), in order to develop a strategy to deal with the problems in advance.

### **More Background Information**

For related illustrations of this issue, please visit our website for further information:

- Our blog – March 27, 2009 - [Default on Your Car Lease and...Go To Jail?](#)

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