

# UNIFORM COURT ORDERS COMPLIANCE ACT

(1992 Proceedings at page 40)

## Introduction

The annotated version of the proposed *Uniform Court Orders Compliance Act* prepared by Professor G.L. Bladon, University of New Brunswick Law School, is published in the 1991 Proceedings of the Conference as Appendix E. The annotations set forth in detail the background to the proposed statute as well as an analysis of the content and purpose of each provision.

Some of those proposals were amended after discussion. The present annotation indicates the changes that were made to the 1991 version. These annotations read together with those published in Appendix E of the 1991 Proceedings provide a complete analysis of the final version of the Uniform Act.

### 1. Interpretation

#### 1. In this Act,

"compliance order" means an order made by a court for the purpose of imposing a sanction under this Act;

"court order" means an order, judgment, or any other determination made by any court in a civil proceeding and includes an order, judgment, or other determination of a non-judicial body that by law may be [filed, entered and recorded in the (appropriate court in the enacting jurisdiction) and enforced as a judgment of that court], if the order, judgment, or other determination has been [filed, entered and recorded];

"party" means a party to a civil proceeding in which a court order is made.

### 2. Application of the Act

- 2(1) This act applies to a court order that requires a party to do, or to refrain from doing a particular act other than the payment of money.
- (2) This Act governs the procedure for obtaining a compliance order.

**COMMENT:** (i) Subsection (1) was amended to make it clear that the Act does not apply to court orders for the payment of money.

(ii) Subsection (2) was added as an alternative to the original section 3 by which the common law of contempt of court would have been expressly abolished. The purpose of the Act is to replace the common law procedure for dealing with failure or refusal to comply with a court order. The substantive common law of contempt will also be replaced to the extent that it is inconsistent with the Act. The rules of statute interpretation are relied upon for the latter purpose. While some vestiges of the common law may remain that should not prevent the Act from accomplishing its principal purpose which is to simplify and render more certain "that area of contempt which addresses non-compliance or 'mere' disobedience of non-monetary court orders".

### **3. Application for Compliance Order**

3. (1) A proceeding for the purpose of obtaining a compliance order shall be instituted by a party for whose benefit the court order was made.
- (2) A proceeding under this section shall be instituted by an order of motion.
- (3) [The statutes and rules of court of the enacting jurisdiction] in relation to interlocutory motions apply to motions under this section.
- (4) An applicant may discontinue a motion at any time prior to the court's determination in relation to it.
- (5) A motion under this section shall not be heard by the judge who made the court order in relation to which a compliance order is sought.
- (6) A person against whom a compliance order may be issued in a proceeding under this section is not a compellable witness in the proceedings.

**NOTE:** The procedures in each jurisdiction governing interlocutory motions are adequate to deal with motions under the Act. Consequently, it is not necessary to provide further, and possibly conflicting, procedural rules in the Act. Those provisions that are unlikely to be contained in the jurisdictions' procedural rules have been retained. Because of the potential severity of the sanctions that may be imposed, subsection (6) renders a person on whom such a sanction may be imposed a non-compellable witness in the proceeding.

### **4. Imposition of Sanctions**

- 4.(1) If, on a motion under section 3, the court determines that the respondent has failed or refused to comply with a court order, the court may make a

compliance order either to secure compliance with the order or to punish for the failure or refusal, or both.

- (2) The court shall not make a compliance order unless it is satisfied on a balance of probabilities that the respondent had knowledge of the court order and failed or refused to comply with it.
- (3) The court shall not make a compliance order if it is satisfied on a balance of probabilities that
  - (a) the respondent acted with reasonable care and due diligence in attempting to comply with the court order, or
  - (b) the respondent was not reasonably capable of complying with the court order.
- (4) The court shall not impose a sanction to secure compliance with a court order if it is satisfied on a balance of probabilities that the imposition of that sanction will be ineffective to secure compliance with the order.
- (5) The court shall not impose a sanction or punish the respondent if it is satisfied on a basis of probabilities that the failure or refusal to comply with the court order was attributable to an honest and reasonable failure by the respondent to understand as the relevant time the obligation imposed by the order.

**NOTE:** (i) The onus of proof is the generally applicable onus of "balance of probabilities". However, subsection 6(2) will prevent a court from imposing a term of imprisonment unless the criminal standard of proof has been satisfied.

## **5. Types of Sanctions**

- 5.(1) For the purpose of punishment, the court may impose a term of imprisonment not exceeding six months or a fine not exceeding (\$50,000), or both.
- (2) For the purpose of securing compliance with a court order, the court may impose one or more of the following sanctions:
  - (a) imprisonment for a fixed term, or for a term that is to continue until the order is complied with, not exceeding six months;

- (b) a fine in a fixed amount, or in an amount that is to accrue on a daily basis until the order is complied with, not exceeding [\$50,000] in total;
  - (c) an order for sequestration of assets of the respondent that is to remain in effect until the order is complied with;
  - (d) an order that the respondent provide the court with security to secure compliance with the order; and
  - (e) an order that the act which the respondent fails or refuses to do may be done at the respondent's expense by the applicant or by any other person appointed by the court.
- (3) In addition to the sanctions described in subsections (1) and (2), a compliance order may require the respondent to pay compensation for the loss, injury or damage suffered by the applicant as a result of the respondent's failure or refusal to comply with the court order.
- (4) An order made under this Act may include such provision for costs as the court considers just.

**NOTE:** The \$50,000 limit contained in subsection (1) and paragraph (2)(b) has been square bracketed to indicate that while such a limit should probably be imposed, its amount should be determined by the enacting jurisdiction.

## **6. Considerations on Imposition of Sanctions**

- 6.(1) In determining whether a sanction should be imposed to punish a respondent and, if so, the extent of the sanction, the court shall consider, among other things, evidence as to the nature and extent of any physical, mental, emotional or property damages sustained by any person as a result of the respondent's failure or refusal to comply with the court order.
- (2) Notwithstanding any other provision of this Act, the court shall not impose a term of imprisonment unless it is satisfied beyond a reasonable doubt of the existence of the grounds on which a sanction may be imposed.

**NOTE:** Subsection (2) prohibits a court from imposing a term of imprisonment unless satisfied beyond a reasonable doubt of the existence of the grounds on which a sanction may be imposed.

**7. Body Corporate as Respondent**

- 7.(1) Where the respondent to a motion under section 3 is a body corporate, the court may make a compliance order against a person who is a director or officer of the respondent either to secure compliance by the respondent with the court order or to punish the person, or both.
- (2) The court shall not make a compliance order against a person who is a director or officer of a respondent body corporate unless it is satisfied on a balance of probabilities that the court order has not been complied with and the person knowingly prevented such compliance or directed, authorized or assented to the respondent's failure or refusal to comply with the order.

**8. Absence of Respondent**

8. If a person against whom a compliance order has been issued cannot be found the court may, on motion without notice, issue a compliance order against the assets of the person which may be executed in the absence of the person.

**9. Suspension of Revocation of Order**

- 9.(1) When imposing a sanction to secure compliance with a court order the court may suspend application of the compliance order on such terms as it considers just.
- (2) Where a sanction has been imposed to secure compliance with a court order the court, on application by the respondent, may suspend application of the compliance order or revoke the compliance order, if it is satisfied that the respondent is willing to comply with the order, or that there is other just cause for doing so.

**10. Compliance Orders**

- 10.(1) A compliance order shall particularize the failure or refusal found and the purpose for which the sanction is imposed.
- (2) Unless the court directs otherwise, a copy of a compliance order and any order suspending it shall be served by the applicant on the respondent and any person affected by them.

**11. Appeal**

11. A person against whom a compliance order is made may appeal to [the appropriate court in the enacting jurisdiction in accordance with the rules of court or procedures governing criminal appeals].

**12. Referral to Attorney General**

- 12.(1) Where, in a proceeding under section 3, it appears to the court that the respondent has failed or refused to comply with a court order in a manner constituting a public depreciation of the authority of the court tending to bring the administration of justice into disrepute, it may refer that matter to the Attorney General for investigation.
- (2) A referral under subsection (1) does not prevent the court from continuing the civil proceeding and imposing a sanction for the purpose of securing compliance with a court order.
- (3) The court shall not impose a sanction to punish for failure or refusal to comply with a court order if a referral under subsection (1) is outstanding, or if the person has been prosecuted in respect of that failure or refusal.

**13. Continuation of Proceeding**

13. A court may allow a proceeding before it to continue notwithstanding that a party to the proceeding has failed or refused to comply with an order of the court.