SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Armoyan v. Armoyan*, 2015 NSSC 174

Date: 2015-06-15
Docket: SFHISOA 080027
Registry: Halifax

Between:

Lisa Armoyan

Applicant

v.

Vrege Sami Armoyan

Respondent

Judge:	The Honourable Justice Theresa M. Forgeron
Heard:	April 29, 2015 in Halifax, Nova Scotia
Written Release:	June 15, 2015
Counsel:	Harold Niman and Leigh Davis for the Applicant Gordon Kelly and Stacy O'Neill for the Respondent

By the Court:

Introduction

[1] $1,601,984.12 is a deeply, disturbing quantity of maintenance arrears for one person to amass. Yet, that is the amount of maintenance that Vrege Armoyan has skillfully avoided paying, despite his legal obligations. Lisa Armoyan filed a contempt application to force Mr. Vrege Armoyan to pay all maintenance arrears. Mr. Armoyan did not consent.

Issues

[2] The following issues will be determined in this decision:

- Has Ms. Armoyan proven, beyond a reasonable doubt, the elements of civil contempt?
- Are there discretionary reasons why this court should not grant a contempt order?
- Is Mr. Armoyan shielded from a contempt finding because of procedural and technical irregularities?

Background

[3] On October 26, 2012, the Florida Circuit Court issued a Final Judgment of Dissolution of Marriage, which contained a number of child and spousal support obligations. Mr. Armoyan was ordered to pay monthly spousal and child support to Ms. Armoyan of $29,612, while maintenance arrears were calculated at $703,067, all amounts based on American currency. In addition, Mr. Armoyan was ordered to pay itemized educational and health expenses for the children. Finally, Mr. Armoyan was ordered to pay costs of $1,201,217.47, together with forensic accounting fees and costs of $273,375.

[4] The specific maintenance provisions of the Florida order are set out at para. 58, of pgs. 25 to 28, of the judgment, which provides, in part, as follows:

> G. Child support outstanding is currently $441,105.00. The Husband is required to pay that sum forthwith. This Court directs the State of Florida through its support enforcement and disbursement unit, and all other agencies (State Attorney's Office,

Department of Revenue, and the like) to forthwith use whatever resources are available to said agencies to collect this sum on behalf of the Wife for her children.

H. The Husband is required and enjoined to continue effective November 1, 2012 and continuing thereafter each and every month until further order of the Court, the Husband is required to pay as and for child support the sum of $15,000.00 per month to be paid on the first day of each month effective as of November 1, 2012. Payable to and mailed to State of Florida Disbursement Unit, P.O. Box 8500 Tallahassee, Florida 32314-8500. Each payment shall include the Obliger's NAME, SOCIAL SECURITY NUMBER, and the CASE NUMBER specified above.

I. The child support as stated in paragraph 42 supra shall not be less if one or any of the children reaches the age of 18, dies, or becomes emancipated. It shall remain the same until the youngest child reaches age 18, dies, or becomes emancipated. This Court finds that the Husband's stipulation for the ability to pay support, and the children's needs will remain as ordered whether there is one (1) minor child or three (3) minor children.

J. The Husband be and hereby is ordered to pay health insurance on behalf of the Wife and the children according to its tenor as it becomes due until further order of the Court or until his child support is no longer required as stated in paragraphs 42 and I supra. His failure to pay health insurance as stated, or if the health insurance does not cover said expense on behalf of the Wife and children, the Wife shall provide the invoice to the Husband at the following address by U.S. mail: 6009 Quinpool Rod., 10th Floor, Halifax, Nova Scotia, Canada, B3K5J7. The Husband shall have ten (10) days in which to pay the invoice or reimburse the Wife, whichever the writing may indicate for the reasonable and necessary medical, dental, orthodontia, or drug prescription expenses for the Wife and/or the children until further order of the Court. All of which are non-taxable to the Wife and non-deductible to the Husband.

K. In addition to the foregoing, the Husband is enjoined and required to pay all reasonable and necessary medical, dental, orthodontia, and drug prescriptions for the children not covered by health insurance (*nun pro tunc* to October 20, 2009) as and for additional child support until further order of the Court or until his child support is no longer required as stated in paragraphs 42 and I supra. If there are any outstanding amounts through November 1, 2012 not otherwise addressed in previous orders of this Court, the Wife shall file an affidavit as to said amounts. Unless the Husband personally appears before this Court on a uniform motion calendar within ten (10) days from the affidavit to object (if any), said amounts will be determined to be valid and an order will issue requiring payment.

L. Private school tuition in full on behalf of JA at Blyth Academy located at 146 Yorkville Avenue, Toronto, Ontario, M5R1C2 until JA is age 18, dies, or becomes emancipated, whichever event shall first occur. In addition to the tuition, all books, fees, uniforms, rooms and board at said institute as they become due. And to pay travel

> expenses to and from school to the Toronto Pearson International Airport, and an airline ticket round trip from Toronto Pearson International Airport to Ft. Lauderdale Hollywood International Airport for the following holiday periods and other school breaks: ….
>
> M. As and for equitable distribution, the Husband shall pay to the Wife the sum of $17,82,293.00 within ten (10) days from the date of this Final Judgment.
>
> N. The Husband shall pay durational alimony to the Wife in the amount of $14,612.00 per month non-taxable to Wife and non-deductible to the Husband, which shall be due on 1st day of each month, commencing on November 1, 2012, and shall be paid until such time as the Husband has completely paid the $17,827,293.00 equitable distribution awarded to the Wife as stated in paragraph M supra.
>
> O. Alimony outstanding is currently $261,962.00. The Husband is required to pay that sum forthwith. This Court directs the State of Florida through its support enforcement and disbursement unit, and all other agencies (State Attorney's Office, Department of Revenue, and the like) to forthwith use whatever resources are available to said agencies to collect this sum on behalf of the Wife for her children.
>
> P. The Husband shall be responsible for all of the Wife's attorney's fees and costs in the amount of $1,201,217.47, and the forensic accounting fees and costs in the amounts of $273,375.00. Said sums shall be paid within ten (10) days of the entry of this Final Judgment. Separate findings as to amounts are entered separately (so as to allow for an executable judgment). But, are incorporated herein.

[5] Mr. Armoyan refused to pay maintenance as ordered. Mr. Armoyan told Ms. Armoyan, via email, that he would never pay the Florida support order, and especially to the Florida maintenance enforcement agency.

[6] Mr. Armoyan began to send Ms. Armoyan about $10,000 per month in September 2012. From time to time, Mr. Armoyan threatened to stop paying the money, and on occasion, made the cashing of cheques difficult by placing holes in the account number. Mr. Armoyan also gave money directly to the children, although Ms. Armoyan was unable to quantify the exact amount because she did not receive the money.

[7] Ms. Armoyan did not consent to Mr. Armoyan's unilateral decision to disregard the court order. To the contrary, she constantly insisted that the order be followed.

[8] The Florida order was registered in Nova Scotia on February 23, 2013 pursuant to the provisions of the *Interjurisdictional Support Orders Act*, SNS 2002 c. 9, as amended. Florida is a reciprocating jurisdiction as confirmed in s.2 (j) of

the *ISOA*, and s. 14 of the *Interjurisdictional Support Orders Regulations, NS Reg.73/2003.*

[9] Section 19(6)(a) of the *ISOA* states that once an order is registered, the order is to be filed with the Director of Maintenance Enforcement and enforced in accordance with the *Maintenance Enforcement Act*, SNS 1994-95, c. 6. Section 18 (1) of the *MEA* states that during the period of enforcement, all maintenance must be paid to or through the Director. Section 18(1) provides as follows:

> 18 (1) Notwithstanding the requirements of the maintenance order, where a maintenance order is being enforced by the Director, the payor shall, subject to subsection (3), make all required payments to or through the Director.

[10] On March 11, 2013, Mr. Armoyan applied to set aside the registration of the Florida order. The hearing of the application to set aside was adjourned pending the outcome of an appeal on jurisdiction.

[11] On September 10, 2013, the Nova Scotia Court of Appeal confirmed the jurisdiction of the Florida Circuit court to decide maintenance issues by decision reported at **Armoyan v. Armoyan**, 2013 NSCA 99. Fichaud, J.A. held that Florida was "the fairer and more efficient forum on the issues of child support and spousal support": para 312. Further, at para. 302, Fichaud, J.A. held that neither the record, nor the submissions, identified any substantive obstacle to the enforcement of the Florida maintenance order in Nova Scotia. The Nova Scotia Court of Appeal awarded costs of $306,000; Mr. Armoyan has not paid this award.

[12] Mr. Armoyan appealed to the Supreme Court of Canada; leave was denied. Solicitor and client costs of $10,945 were awarded; Mr. Armoyan has not paid this award.

[13] Despite these rulings, Mr. Armoyan continued to litigate his application to set aside the registration of the Florida support order. Ms. Armoyan filed a summary judgment motion, which was granted on May 14, 2015 by decision reported at **Armoyan v. Armoyan**, 2014 NSSC 174. At para. 75 of the decision, this court held that "[a]ll issues surrounding the registration of the Florida support order are now "disposed of" within the meaning of s. 19(7) of the *ISOA*." Costs of $41,000 were awarded; Mr. Armoyan has not paid this award.

[14] Mr. Armoyan continued to ignore the Florida support order. Finally, in February and in March, 2015, Mr. Armoyan paid $12,485, Canadian funds, to the Director of Maintenance Enforcement.

[15] Ms. Armoyan's financial circumstances were dire. She therefore made application to withdraw from the Maintenance Enforcement Program so that she could personally pursue enforcement. The Director granted Ms. Armoyan's request to withdraw on March 20, 2015. Sections 12 (1) and (3) of the *MEA* envisage the Director granting an application to withdraw "on the basis of what is an effective method to ensure compliance with the order and having regard to the best interests of the parties and any beneficiaries under the order."

[16] Ms. Armoyan filed an application for contempt on March 5, 2015, followed by an amended application dated March 23, 2015.

[17] On March 11, 2015, a pretrial conference was convened. At that time, this court addressed Mr. Armoyan individually, by reviewing the procedural requirements and safe guards which would be engaged during the contempt hearing, in accordance with **Godin v. Godin**, 2012 NSCA 54. The court was satisfied that Mr. Armoyan fully understood and appreciated the court's comments.

[18] Ms. Armoyan filed an affidavit on March 5, 2015, which attached three other affidavits she previously filed. Ms. Armoyan also filed a supplemental affidavit on March 23, 2015.

[19] By correspondence dated March 16, 2015, counsel for Mr. Armoyan advised that they were withdrawing "any and all Affidavits filed on Mr. Armoyan's behalf in relation to the issue of contempt …" Consistent with that letter, Mr. Armoyan filed no other affidavits; he did not seek to provide any evidence at the contempt hearing.

[20] Ms. Armoyan's brief was filed on March 5, 2015; Mr. Armoyan filed a brief on March 16 and April 22, 2015.

[21] The contempt application was heard on April 29, 2015. Mr. Armoyan did not appear. The court adjourned for 50 minutes to enable counsel time to locate Mr. Armoyan. When court resumed, counsel for Mr. Armoyan confirmed the following:

- Mr. Armoyan was not present. Mr. Armoyan made no attempt to contact counsel to provide an explanation for his absence.
- Counsel advised that they had discussions with Mr. Armoyan wherein they re-enforced the principles that the court conveyed to Mr. Armoyan during the March 11 pretrial conference. They also reviewed potential consequences in the event a contempt finding was entered.
- Counsel advised that they had informed Mr. Armoyan, on more than one occasion, of his obligation to attend the April 29, 2015 contempt hearing.
- Counsel advised that they had informed Mr. Armoyan that they would seek to be removed as solicitor of record in the event Mr. Armoyan opted not to attend court on April 29, 2015.

[22] Counsel for Mr. Armoyan then made an oral motion to be removed as solicitor of record. The court refused to entertain Mr. Kelly's motion in the circumstances. The motion would be considered once Mr. Kelly filed a motion, affidavit and memorandum.

[23] The court proceeded in Mr. Armoyan's absence. Although there was no request for an adjournment, the court nonetheless reviewed the adjournment option. The court determined that a delay was not warranted in the circumstances, after balancing the prejudice to each of the parties and to the public.

[24] Before hearing from Ms. Armoyan, the court, on its own motion, struck several sentences and paragraphs from the affidavits of Ms. Armoyan because such content was inadmissible hearsay, opinion, or speculation. Ms. Armoyan's affidavits were tendered, as was an e-mail letter from a Maintenance Enforcement Officer, and a copy of a cheque dated October 15, 2013. Mr. Armoyan's counsel elected not to cross examine. Ms. Armoyan's evidence was not challenged. Mr. Armoyan did not present evidence.

[25] Written submissions were received from the parties; Ms. Armoyan's counsel provided supplemental oral argument at the conclusion of the hearing.

[26] The court adjourned for written decision.

Analysis

[27] **Has Ms. Armoyan proven the elements of civil contempt?**

[28] *Position of the Parties*

[29] Ms. Armoyan seeks a contempt finding because Mr. Armoyan has not paid child and spousal maintenance as ordered. Ms. Armoyan states that Mr. Armoyan is in arrears of $1,601,984.12.

[30] Ms. Armoyan is at a loss as to what further steps she can realistically take to ensure compliance from Mr. Armoyan. Maintenance is her sole source of income. Ms. Armoyan's financial circumstances are desperate because Mr. Armoyan has chosen not to pay support. A contempt order must issue.

[31] In his submissions, Mr. Armoyan states that a contempt finding should not issue because he is paying some money to Ms. Armoyan and the children; and that he is shielded from a contempt finding for procedural and technical reasons. These submissions will be reviewed in the analysis discussed under issues 2 and 3.

[32] *Analysis and Decision*

[33] The Supreme Court of Canada reviewed the elements of contempt in **Carey v. Laiken**, 2015 SCC 17. Cromwell, J. held that the person alleging contempt, must prove the following three elements beyond a reasonable doubt:

- The order alleged to have been breached must state clearly and unequivocally what should and should not be done. An order may be unclear if it is missing an essential detail about where, when, or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning: para. 33.

- The party alleged to have breached the order must have actual knowledge of the order, although it may be possible to infer knowledge in the circumstances, or liability may be attracted by the willful blindness doctrine: para. 34.

- The party alleged to be in breach must have intentionally done the act the order prohibits or intentionally failed to do the act that the order compels: para. 35. It is not, however, necessary to prove that the alleged contemnor intended to disobey a court order. Instead, contumacy or lack thereof goes to penalty: para. 38.

[34] I find that Ms. Armoyan has proved the elements of contempt, beyond a reasonable doubt, for the following reasons:

- The Florida court order is clear and unambiguous. None of the terms are vague. The order unequivocally states what should be done. The order is not missing an essential detail about where, when, or to whom it applies. The order does not incorporate overly broad language. External circumstances have not obscured its meaning. The order states that Mr. Armoyan must pay monthly child and spousal support of $29,612 US, commencing November 1, 2012. Mr. Armoyan must pay child support arrears of $441,105 US. Mr. Armoyan must pay spousal support arrears of $261,962 US.

- Mr. Armoyan had actual knowledge of the order and its provisions. Indeed, Mr. Armoyan was unsuccessful in his application to set aside the registration of the Florida order.

- Mr. Armoyan intentional failed to pay the child and spousal support that he was ordered to pay, and has done so for many months.

[35] Ms. Armoyan has proven, beyond a reasonable doubt, that Mr. Armoyan has committed the three elements of contempt. A contempt finding should thus be entered, unless there are discretionary reasons which preclude the granting of a contempt order, or unless Mr. Armoyan is shielded from the granting of an order because of procedural and technical irregularities.

[36] **Are there discretionary reasons why the court should not grant a contempt order?**

[37] In **Carey v. Laiken, *supra,*** Cromwell, J. made the following relevant points about the discretionary nature of the power to issue a contempt order:

- The power to enter a contempt finding is a discretionary one. It is a power that should be used cautiously and with great restraint; it is an enforcement power of last resort: para. 36.

- Examples where the court may wish not to exercise its discretionary power, include if the alleged contemnor was acting in good faith and was taking

reasonable steps to comply, or in the alternative, where it would work an injustice in the circumstances of the case: para. 37.

[38] Ms. Armoyan has proven that the court should exercise its discretion by granting a contempt order. To do otherwise, would work an injustice, not only to Ms. Armoyan, and the children, but also to the public. This conclusion is reached for the following reasons:

- Mr. Armoyan was *not* acting in good faith. He was *not* taking reasonable steps to comply with the court order.

- Mr. Armoyan had the financial resources to pay the support order. He chose not to do so. He chose to ignore a court order.

- The evidence proves that Mr. Armoyan accessed, possessed and controlled the following amounts of money between the registration of the Florida order in Nova Scotia on February 23, 2013 until the contempt hearing on April 29, 2015:

    - Between October and November 2013, Mr. Armoyan sold his Lamborghini for $105,000; a Dodge Charger for $17,000 and a Corvette for $62,000; he pledged shares in an Ontario company, together with placing chattel mortgages on his three remaining cars and three boats, for a cash influx of **$484,000.**

    - On October 15, 2013, Mr. Armoyan received **$2 million** from APL Properties Limited, which represented a tax free capital dividend.

    - On October 15, 2013, Mr. Armoyan received **$1 million** from his mother.

    - In 2013, Mr. Armoyan withdrew **$1.12 million** from his RRSP accounts.

    - On September 11, 2013, Mr. Armoyan received **$50,759.01** from his mother.

- On August 15, 2013, Mr. Armoyan received **$50,000** from his mother.

- On May 29, 2013, Mr. Armoyan received **$150,000** from his mother.

- On April 11, 2013, Mr. Armoyan received **$50,000** from his mother.

- In 2012, Mr. Armoyan withdrew **$1.473** million from his RRSP accounts.

[39] Not only did Mr. Armoyan refuse to pay the outstanding child and spousal support, he also strategically transferred the money out of this jurisdiction, and then encumbered his remaining assets. Mr. Armoyan is now judgment proof.

[40] The fact that Mr. Armoyan gave money to the children does not excuse his failure to comply with the court order. Child support was ordered to be paid to Ms. Armoyan, and not the children. Child support was ordered to be paid through the Florida enforcement agency, and then the Nova Scotia enforcement agency, when Ms. Armoyan's order was registered in Nova Scotia. At no time did Ms. Armoyan consent to a change in the payment amount or to the payment designate.

[41] Further, the fact Mr. Armoyan may have paid some of the post-secondary educational expenses of the children does not excuse his failure to comply with the court order. Post-secondary educational expenses were not included within the monthly amount as noted in para. I of the Florida support order.

[42] Mr. Armoyan had no authority to unilaterally decide the amount and method of payment. If Mr. Armoyan was dissatisfied, he could have appealed the order, or he could have filed an application to vary. The decision, however, to defy a court order is not an available legal remedy. Mr. Armoyan is not above the law.

[43] Self-help remedies, especially in the important area of maintenance, cannot be condoned. Mr. Armoyan had access to millions of dollars. Despite the clear and unambiguous provisions of the court order, and contrary to Ms. Armoyan's protests, Mr. Armoyan continuously refused to pay maintenance in the amount and manner stipulated.

[44] Enforcement by a means other than contempt is not possible because Mr. Armoyan is judgment proof in this jurisdiction. This court cannot sanction Mr. Armoyan's egregious defiance of a court order. As noted in **Carey v. Laiken**, *supra*, the rule of law is directly dependent on the court's ability to enforce its process and to maintain its dignity and respect. Given the absence of good faith, and given the compelling need for justice, the court must exercise its discretion by granting a contempt order, unless Mr. Armoyan is shielded because of procedural and technical deficiencies.

[45] **Is Mr. Armoyan shielded from a contempt finding because of procedural and technical deficiencies?**

[46] Mr. Armoyan states that he is shielded from a contempt finding, even if Ms. Armoyan proves the requisite elements of civil contempt. He provides three reasons in support of this contention; I will examine each individually.

[47] ***Order Registered with Director of Maintenance Enforcement***

[48] *Position of the Parties*

[49] Mr. Armoyan submits that a contempt finding is not available for arrears which accrued during the period when enforcement was in the hands of the Director of Maintenance Enforcement. Mr. Armoyan grounds his argument on **MacLellan v. Giovannetti**, 2012 NSSC 212.

[50] In contrast, Ms. Armoyan states that such an interpretation would create an absurd outcome, which is contrary to the spirit and intent of the *MEA*. Further, Ms. Armoyan notes that maintenance arrears also accrued before and after registration, and that contempt is, at a minimum, therefore an available remedy in respect of such arrears.

[51] *Analysis and Decision*

[52] Section 7 of the *MEA* states as follows:

> 7 (1) No person, other than the Director, shall enforce a maintenance order during the time it is filed with the Director.

[53] That individuals may opt out of the enforcement process is contemplated in the *MEA* in several of its provisions. For example, s. 10 (1) contemplates parties opting out through a joint request. Section 10 (1) states as follows:

> 10 (1) Subject to subsection 11(1), the Director shall enforce a maintenance order filed with the Director unless the recipient files with the Director, within the time prescribed by the Director, a written consent signed by the recipient and the payor stating that they are opting out of the enforcement program.

[54] In addition, s.11 (1) of the *MEA* envisages the Director relinquishing enforcement where the recipient is taking measures to enforce the order. Section 11 (1) states as follows:

> 11 (1) The Director may decide not to enforce a maintenance order or a part of a maintenance order where
>
> > (a) it appears to the Director that the recipient is taking measures to enforce the maintenance order;

[55] Finally, the *MEA* foresees withdrawal by either the recipient or the payor as noted in ss. 12(1) and 12(3), which provide as follows:

> 12 (1) A recipient or payor may apply, in writing, to the Director to have a maintenance order withdrawn from enforcement by the Director.
> …
> (3) The Director, in determining whether to grant an application pursuant to subsection (1), shall make the determination on the basis of what is an effective method to ensure compliance with the order and having regard to the best interests of the parties and any beneficiaries under the order.

[56] The Director approved Ms. Armoyan's application to withdraw on March 20, 2015. I infer that the Director's response was appropriate as it represented the most effective method to achieve compliance. As a result, the Director's involvement is not necessary for the purposes of this contempt application.

[57] Further, I reject Mr. Armoyan's submission that Ms. Armoyan is precluded from seeking enforcement of maintenance arrears which accrued between February 23, 2013 and March 20, 2015, when the enforcement of the order was in the hands of the Director. There is nothing in the legislation or in the case law that supports such a contention. Section 7(1) of the *MEA* simply disqualifies any person, other than the Director, from pursuing enforcement during the time the order is registered. It does not preclude the enforcement of arrears after the Director is no longer involved.

[58] I am not prepared to read Mr. Armoyan's proposed restriction into the legislation. The *MEA* was not designed to shield payors from their failure to pay

child and spousal support. The *MEA* is a sword, fashioned to ensure compliance and collection of child and spousal maintenance. Mr. Armoyan's argument fails.

[59] ***Alleged Deficiencies***

[60] *Position of the Parties*

[61] Mr. Armoyan states that he is shielded from a contempt finding due to a number of procedural and jurisdictional deficiencies, as follows:

- The court's authority to grant a contempt order is restricted to that set out in the *Maintenance and Custody Act*, RSNS 1989, c. 160, as amended and the *Summary Proceedings Act*, RSNS 1989, c. 450.

- The Notice of Application did not reference the *ISOA*, *MCA* and the *SPA*.

- Mr. Armoyan was denied a fair hearing.

[62] Ms. Armoyan contests Mr. Armoyan's interpretation and conclusions. She notes that the *Civil Procedure Rules* apply to the Nova Scotia Supreme Court Family Division; any attempt to restrict their application is in error. In addition, Ms. Armoyan states that Mr. Armoyan was not denied a fair hearing.

[63] *Analysis and Decision*

[64] Mr. Armoyan's arguments are rejected. The Supreme Court of Nova Scotia Family Division has inherent jurisdiction as a superior court. The *Civil Procedure Rules* apply, including Rule 89.

[65] In addition, I found no authority to suggest that contempt, even contempt arising from an *ISOA*-registered order, is subject to the *SPA*.

[66] Further, the *ISOA*, *MCA* and *SPA* need not be referenced in the application or amended application for contempt.

[67] Finally, I find that Mr. Armoyan was not denied a fair hearing because of a lack of specificity or the failure to plead the *ISOA*, *MCA* and the *SPA*. The elements which compose a fair hearing, in the context of a contempt application, were discussed generally by the Nova Scotia Court of Appeal in **Godin v. Godin**, ***supra***. In dismissing the submission that the appellant was denied a fair hearing in

that case, Saunders, J.A. confirmed, at paras. 44 to 46, that the record proved the following:

- The appellant had proper notice, knew the case she had to meet, and suffered no prejudice.

- The trial judge gave appropriate directions with respect to the conduct of the hearing, including setting a reasonable schedule for the filing of affidavits and the appearance of witnesses.

- The trial judge properly insisted that the contempt hearing be kept separate from the application brought by the respondent to vary access, recognizing that each carried different burdens of proof.

[68] The essential procedural requirements of a contempt proceeding are illuminated by the following comments of Gordon, J. in **Vale Inco Ltd v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 6500**, 2010 ONSC 3039 at para. 3, which states as follows:

> **3** Traditionally, the procedural protections afforded to an alleged contemnor faced with civil contempt have included the following:
>
> (1) The right to be provided with particularized allegations of the contempt;
>
> (2) The right to a hearing;
>
> (3) The right to be presumed innocent until such time as guilt is proved beyond a reasonable doubt;
>
> (4) The right to make full answer and defence, including the right to retain and instruct counsel, the right to cross-examine witnesses and the right to submit or call evidence;
>
> (5) The right not to be compelled to testify at the hearing.

[69] I find that Mr. Armoyan was granted a fair hearing, as confirmed by the following:

- Mr. Armoyan received notice of the application and amended application as repeatedly confirmed by his counsel.

- The hearing of the contempt application was kept separate from the hearing of the various other motions filed in the *Matrimonial Property Act* proceeding, given the distinction between civil and quasi-criminal proceedings, including the different burdens of proof, the presumption of innocence, and the procedural safeguards afforded to the alleged contemnor in contempt proceedings.

- Mr. Armoyan was provided with detailed particulars of the allegations. He knew the case he had to meet by virtue of the application, amended application, Ms. Armoyan's affidavits and brief filed in support. The fact that Ms. Armoyan was seeking a contempt finding because Mr. Armoyan was not paying spousal and child support, including maintenance arrears, was plainly and repeatedly set out by Ms. Armoyan. Mr. Armoyan was not taken by surprise. There was no prejudice.

- Mr. Armoyan was presumed innocent until the evidence proved his guilt beyond a reasonable doubt. The presumption of innocence was explained to Mr. Armoyan in the notice of application and amended notice of application, and by this court during the contempt pretrial. The presumption of innocence was applied during the hearing and in the decision-making process.

- The court advised Mr. Armoyan that he was not compellable to testify at the hearing. Mr. Armoyan elected not to testify.

- Mr. Armoyan was given the right to make full answer and defence, including the right to cross-examine witnesses and the right to submit or call evidence. Mr. Armoyan chose not to cross examine. Mr. Armoyan chose not to call any witnesses.

- The various submissions filed on behalf of Mr. Armoyan were reviewed, considered and evaluated, even though Mr. Armoyan failed to attend the hearing.

- This court insisted that the rules of evidence be applied, despite the fact that no objections were raised by Mr. Armoyan. The court, on its own motion, struck various portions of Ms. Armoyan's affidavits because their content was inadmissible.

[70] Mr. Armoyan's argument is rejected. There was substantive compliance of all procedural requirements, and, in particular, observance of *Charter* principles.

[71] ***Kienapple Defence and S. 11(h) of the Charter***

[72] *Position of the Parties*

[73] Mr. Armoyan submits that because he was convicted of contempt in Florida, s. 11(h) of the *Charter of Rights and Freedoms* and the principle in **R v. Kienapple**, [1975] 1 SCR 729 apply. He says a Nova Scotia contempt finding would violate his right not to be punished twice for the same offence.

[74] Ms. Armoyan disputes this assertion. She states that the **Kienapple** principle is not applicable; Mr. Armoyan's s. 11 (h) *Charter* right was not infringed.

[75] *Analysis and Decision*

[76] I reject the submissions of Mr. Armoyan. Neither s. 11 (h) of the *Charter*, nor the **Kienapple** principle can shield Mr. Armoyan from a finding of contempt. Section 11(h) of the *Charter* provides, in part, that "[a]ny person charged with an offence has the right … if finally found guilty and punished for the offence, not to be tried or punished for it again…" The **Kienapple** principle is described as follows in *Halsbury's Laws of Canada*:

> It is often the case that an accused person is charged with and found guilty of offences that have elements in common. Where the elements of two (or more) offences arising from the same transaction are the same or substantially the same, the *Kienapple* principle states that the trial judge should convict the accused of only the most serious offence and enter conditional stays of proceedings on the remaining offences. Two offences are substantially the same where there is a sufficiently close factual and legal nexus between them. The requirement of a factual nexus is usually satisfied where both offences arise from the same act of the accused. The requirement of a legal nexus is satisfied where "there is no additional and distinguishing element that goes to guilt in the offence for which a conviction is sought to be precluded" or where the lesser offence has no distinct additional elements. The requirement of no "additional or distinguishing element" may be satisfied where the legal elements of the two offences are strictly speaking different, but the element of one offence is a particularization of an element of another, or creates a

> different mode of committing the same offence, or is differentiated for reasons of social policy or problems of proof…[1]

[77] I find that the protection sought by Mr. Armoyan is not available for the following reasons:

- Mr. Armoyan must do more than assert that because the contempt offence is nominally the same in two jurisdictions, it must follow that **Kienapple** and s. 11(h) apply.

- In order to succeed, I must find that the elements of the offence are the same in both jurisdictions: **R v. Van Rassel**, [1990] 1 SCR 225, wherein McLachlin, J., as she then was, dismissed the applicability of s. 11(h) of the *Charter* and the **Kienapple** principle, by noting that the same act can give rise to different offences, different duties, and may involve different victims. See also **R v. Johnson** [1994] NBJ No 570, (NBCA); **R v. Chamczuk**, 2010 ABQB 434, varied on other grounds at 2010 ABCA 380; and **R v. Steinhubl**, 2010 ABQB 602, affirmed without reference to this point, at 2012 ABCA 260.

- I have no evidence that the contempt orders that issued from the Florida courts were based on the same elements of the offence of contempt currently before this court.

- In **Pro Swing Inc. v. Elta Golf Inc**., 2006 SCC 52, Deschamps, J., for the majority, noted the legal distinctions between the Canadian and American treatment of contempt, albeit in a different context. In Canadian law, contempt of court is not reducible to a dispute between the parties to an order; it is a quasi-criminal proceeding. Further, the invocation of the contempt power means that the administration of justice and the power of the court itself have been impacted: paras. 34 – 36. "In the U.S., according to *Gompers*, a civil contempt order is remedial only and is issued for the benefit of the complainant": para 50. I have no evidence that these distinctions are no longer valid.

---

[1] Hamish C Stewart, *Halsbury's Laws of Canada - Evidence* (2014 Reissue), at §HEV-216.

- Mr. Armoyan's failure to pay maintenance in conformity with the Florida order continued after the Florida contempt orders issued.

[78] I therefore find that Mr. Armoyan's reliance on s.11 (h) of the *Charter* and the **Kienapple** principle is without substance.

Conclusion

[79] A contempt order is first and foremost a declaration that a party has acted in defiance of a court order: **Carey v. Laiken**, ***supra***, para. 30. Ms. Armoyan has proven, beyond a reasonable doubt, that Mr. Armoyan has done so. The Florida order clearly and unequivocally states what should be done. Mr. Armoyan had actual knowledge of the order. Mr. Armoyan intentionally failed to pay spousal and child support in conformity with the court order, despite his ability to do so.

[80] There are no discretionary reasons why this court should not issue a contempt finding. To the contrary, justice demands that such an order issue.

[81] Mr. Armoyan is not shielded from a contempt order because of the prior involvement of the Director of Maintenance Enforcement, or because of procedural and technical irregularities. Mr. Armoyan was not denied a fair hearing. Finally, neither s. 11(h) of the *Charter*, nor the **Kienapple** principle afford Mr. Armoyan with the shield he seeks.

[82] A contempt order will therefore issue. The penalty phase of the contempt hearing is scheduled for **Friday, June 26, 2015 at 2:30 p.m.** Mr. Armoyan must attend in person. Mr. Armoyan is directed to take immediate steps to purge the contempt before the penalty stage of the hearing is engaged. Mr. Armoyan is directed to pay the outstanding child and maintenance arrears.

Forgeron, J.