Table of Contents

CHAPTER 1. HISTORICAL INTRODUCTION

§ 1:1 Justice uncloistered

CHAPTER 2. CONTEMPT OF COURT: GENERAL DEFINITIONS AND OVERVIEW

- § 2:1 Introduction
- § 2:2 Contempt
- § 2:3 Calculated
- § 2:4 Commit/Commital for contempt
- § 2:5 Contumacious/Contumacy/Contumelious
- § 2:6 Criminal versus civil contempt
- § 2:7 In facie vs. ex facie
- § 2:8 "Cite" for or in contempt
- § 2:9 Summary
- 2:10 Show cause and rule *nisi*
- § 2:11 Sub judice
- § 2:12 Scandalizing the court
- § 2:13 Strictissimi juris
- § 2:14 Bifurcated hearing/Bifurcation
- § 2:15 Ex mero (or proprio) motu
- § 2:16 Purge
- § 2:17 Implied contempt/Contempt by implication
- § 2:18 Contempt and the vexatious litigant

CHAPTER 3. CONSTITUTIONAL LAW AND CHARTER OF RIGHTS CONSIDERATIONS

I. THE AMBIT OF FREE EXPRESSION

- § 3:1 Balancing Freedoms
- § 3:2 Jurisdiction

II. EFFECT OF POTENTIALLY UNCONSTITUTIONAL ORDER

§ 3:3 Generally

The Law of Contempt in Canada

III. APPLICABILITY OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

- § 3:4 General applicability
- § 3:5 Freedom of expression: Charter s. 2(b)
- § 3:6 Fundamental justice
- § 3:7 Right to retain and instruct counsel, *Charter* s. 10(b)
- § 3:8 Right to be informed of specific offence charged: Charter s. 11(a)
- § 3:9 Self-crimination: Charter s. 11(c)
- § 3:10 Right to be presumed innocent: Charter s. 10(d)
- § 3:11 Right to jury trial: Charter s. 11(f)
- 3:12 Reverse onus and the presumption of innocence: Charter s. 11(d)
- § 3:13 Right to trial by independent and impartial tribunal: *Charter* s. 11(d)
- 3:14 Citation for contempt as a s. 24(1) remedy
- § 3:15 Renvoi: An invitation from a chief justice?

IV. INTERVENERS

§ 3:16 Generally

CHAPTER 4. JURISDICTION

I. WHICH COURT?

- § 4:1 Introduction
- § 4:2 Characterizing the contempt to decide jurisdiction
- § 4:3 What is a "court of record"?
- § 4:4 Conflict of laws: the "where" of the offence

II. JURISDICTION OVER WHOM?

- § 4:5 Jurisdiction over persons generally
- § 4:6 Indigenous peoples
- § 4:7 Judgment debtors
- § 4:8 Young persons
- § 4:9 Non-parties, and aiders and abettors
- § 4:10 Corporations, directors, and officers
- § 4:11 Unions and other non-corporate bodies
- § 4:12 Constructive intent in certain breaches of the *sub judice* rule
- § 4:13 Liability of the Crown and Crown officials

III. HEARINGS

§ 4:14 Timing of the hearing

TABLE OF CONTENTS

§ 4:15 Hearings before whom?

IV. ORDERS

- § 4:16 Consent orders
- § 4:17 Enforcement of foreign orders

V. APPEALS

- § 4:18 Appeals from rulings on contempt jurisdiction
- § 4:19 The Federal Court of Appeal

VI. PAROLE

§ 4:20 Generally

CHAPTER 5. PROCEDURAL CONSIDERATIONS

I. INTRODUCTION

§ 5:1 Proceedings generally

II. CONTEMPT PROCEEDINGS

- § 5:2 Availability of contempt proceedings
- § 5:3 Leave to commence a contempt proceeding
- § 5:4 Commencing proceedings; service and notice
- § 5:5 Sufficiency of the charging language
- § 5:6 Interveners

III. CONDUCT OF PROCEEDINGS

- § 5:7 Evidence
- § 5:8 —Affidavits vs. oral evidence
- § 5:9 —Evidence of witnesses in proceedings outside Canada
- § 5:10 Immediate committal for in facie contempt
- § 5:11 Summary procedure or prosecution by way of indictment?
- § 5:12 The timing of the proceedings
- § 5:13 Stay of contempt proceedings
- § 5:14 Guilty plea
- § 5:15 Bifurcation
- § 5:16 Proceeding by indictment
- § 5:17 Intervention by the attorney-general
- § 5:18 Reasons for judgment

THE LAW OF CONTEMPT IN CANADA

- § 5:19 Procedure where journalists refuse to identify sources
- § 5:20 Sentencing and appeals

IV. CONTEMPT ORDERS

- § 5:21 Effect of contempt order/Alternative sanctions
- § 5:22 Setting aside a contempt order
- § 5:23 Consequences of failure to purge a contempt

V. COSTS

§ 5:24 Generally

VI. COURTS

- § 5:25 The Federal Court of Canada
- § 5:26 The Tax Court of Canada
- § 5:27 The Supreme Court of Canada

CHAPTER 6. DISOBEDIENCE OF COURT PROCESS AND PROCEDURES

I. INTRODUCTION

- § 6:1 Some relevant statutory provisions
- § 6:2 What constitutes contempt "in the face of the court"

II. CONTEMPTUOUS BEHAVIOUR BY COUNSEL IN THE FACE OF THE COURT

- § 6:3 The *actus reus*: contumacious behaviour vs. "mere discourtesy"
- § 6:4 Failure to appear in court/"Double-booking"
- § 6:5 Contemptuous statements by counsel in the face of the court
- § 6:6 Solicitor's undertaking versus undertakings to the court (generally)
- § 6:7 Withdrawal from the record by counsel

III. WITNESSES

- § 6:8 Refusal to appear, testify, or answer particular questions
- § 6:9 Protection by journalists of sources and source documents
- § 6:10 Tampering with witnesses

TABLE OF CONTENTS

IV. INTOXICATION DURING COURT PROCEEDINGS

§ 6:11 Generally

V. DISRUPTING COURT PROCEEDINGS

- § 6:12 Disruption by persons lacking a right of audience
- § 6:13 Fighting in the courtroom
- § 6:14 Interruption of proceedings by a court employee

VI. OTHER CONTEMPTS OF COURT PROCESS AND PROCEDURE

- § 6:15 Generally
- § 6:16 Refusing to stand when a presiding judicial officer enters and leaves court
- § 6:17 Accusing the court of prejudice
- § 6:18 Obstructing access to the courts of justice or otherwise interfering with persons having business at the courts
- § 6:19 Contempt by abuse of process
- § 6:20 Courtroom attire
- § 6:21 Purging a criminal contempt

CHAPTER 7. DISOBEDIENCE OF COURT ORDERS

- § 7:1 No anarchical holiday
- § 7:2 Categorizing the offence: the mental element
- § 7:3 Contemptuous disobedience versus disobedience under *Criminal Code* s. 127
- § 7:4 The three-pronged test
- § 7:5 What is a court order?
- § 7:6 What is disobedience of a court order?
- § 7:7 Filing tribunal orders such that they "have the same force and effect as orders of the court"
- § 7:8 Potential offenders
- § 7:9 —Notice to parties in the litigation and/or named in the order
- § 7:10 "Any person or persons having notice"
- § 7:11 — Aiders, abettors, and third parties (including corporations)
- § 7:12 —Journalists
- § 7:13 —Enforcement of foreign orders (conflict of laws)
- § 7:14 Deadline for compliance with order
- § 7:15 The ambit of the order

THE LAW OF CONTEMPT IN CANADA

- § 7:16 Open, continuous, and flagrant defiance
- § 7:17 Ambiguous orders
- § 7:18 Orders wrong or ineffective in law—Generally
- § 7:19 —Orders "impossible of compliance"
- § 7:20 Conscientious objection to court orders
- § 7:21 Defence of necessity
- § 7:22 Family Law and Judgment Debt Orders
- § 7:23 Secondary picketing
- § 7:24 Effect of continuing breach: no right of audience
- § 7:25 Contempt of contempt orders

CHAPTER 8. THE SUB JUDICE OR "PUBLICATION CONTEMPT" RULE

- § 8:1 The Times Newspaper case and the basic rule
- § 8:2 Prejudging the issues
- § 8:3 "Real risk" of prejudice
- § 8:4 Counsel speaking to media while proceedings are sub judice
- § 8:5 Renvoi: when to hold contempt proceedings
- § 8:6 Reform (or not) in the age of mass communication

CHAPTER 9. SCANDALIZING THE COURT: WHAT'S LEFT OF THE LAW?

- § 9:1 Justice is not a cloistered virtue
- § 9:2 Defining the offence
- § 9:3 The offence in Canada and constitutional considerations
- § 9:4 When the impugned cause is no longer sub judice
- § 9:5 Categorizing the offence
- § 9:6 The situation post-Kopyto

CHAPTER 10. CONTEMPT OF OTHER BODIES AND OFFICES

- § 10:1 Jurisdiction
- § 10:2 Tribunal orders filed for enforcement with the courts
- § 10:3 Other courts of record and court officers
- § 10:4 Contempts of parliament and legislatures

CHAPTER 11. DEFENCES: AN OVERVIEW

- § 11:1 Introduction
- § 11:2 Due diligence and inadvertence: R. v. Edge, the sequel
- § 11:3 Reasonableness and good faith/Alleged contempt based on legal advice/Lack of intent

TABLE OF CONTENTS

- § 11:4 Solicitor-client confidentiality and other professional ethical concerns
- § 11:5 The alleged contemnor did not know of the order or did not understand its terms
- § 11:6 The corporate veil
- § 11:7 Certain officials or bodies are not capable of prosecution
- § 11:8 Nonfeasance versus misfeasance
- § 11:9 Order is incorrect, null, etc.
- § 11:10 Order issued on consent and is therefore merely an agreement between the parties
- § 11:11 Breach not open, continuous, flagrant (re criminal contempt)
- § 11:12 Justifiable reason for refusal to testify
- § 11:13 Although material is published in violation of a publication ban or the *sub judice* rule, the material is true
- § 11:14 Critical remarks about the justice system or a judge are true
- § 11:15 The matter is no longer *sub judice* (regarding scandalizing the court)
- § 11:16 Insofar as the trial will take place in the distant future, the matter is technically not *sub judice*
- § 11:17 At the time of the alleged breach of the *sub judice* rule, the proceedings and testimony had been widely reported by other sources
- § 11:18 Necessity
- § 11:19 Mistake of fact
- § 11:20 Conscientious objection/Public interest
- § 11:21 Ineffective assistance of counsel
- § 11:22 Court shows contempt for its own process
- § 11:23 Parliamentary privilege

CHAPTER 12. PENALTIES/SENTENCING DIGEST

- § 12:1 The sanctions available
- § 12:2 Principles and procedure
- § 12:3 Aiders/Abetters of and third parties to the contempt
- § 12:4 The effects of purging the contempt and of an apology
- § 12:5 Credit for time served
- § 12:6 Range of sentence
- § 12:7 Procedure on appeal

Appendix 12A. A selected sentencing digest

The Law of Contempt in Canada

CHAPTER 13. APPEALS

- § 13:1 Generally
- § 13:2 "Unpurged" contempts
- § 13:3 Standard of review
- § 13:4 Certiorari
- § 13:5 Sentencing
- § 13:6 Stay of orders pending appeal
- § 13:7 The Youth Criminal Justice Act
- § 13:8 The Federal Court of Appeal
- § 13:9 The Supreme Court of Canada

APPENDICES

Appendix A.	Alleged Contempt of a Rabbinical Court: A Case in Point on How Law Evolves
Appendix B.	A Cautionary Scandalizing Prosecution, Thirty-Three Years Before <i>R. v. Kopyto</i>
Appendix C.	Select Glossary of Canadian French Terminology Pertaining to Anglo-American Contempt Law

Table of Cases

Index