

**Breach of Parenting Order****Mother awarded costs after father tries (and fails) to play hardball**By **Justyna Waxman**

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(November 26, 2019, 1:00 PM EST) -- *Mackie v. Crowther* 2019 ONSC 6431, a well-reasoned recent decision of Justice Alex Pazaratz, is the most recent of a long line of family court decisions that enforce the idea that court orders are not suggestions, but orders to be obeyed. In this case, Justice Pazaratz sends a strong message to parents and lawyers alike that "hard-ball" tactics in parenting cases are not only ineffective in achieving the desired result, but will result in adverse cost consequences.

This case involved a dispute over a very simple issue — the parents' attendance at their 9-year-old daughter's two hockey tournaments. Given that the tournaments happened to fall on each of the parents' respective weekends, it was surprising that this very narrow issue became the subject of litigation at all.

As it happened, the mother was forced to bring a motion enforcing the existing parenting order when the father sent an e-mail informing the mother that he intended to take the child to the second hockey tournament (which fell on the mother's weekend). To make matters worse, the father's lawyer then followed up with a letter to the mother's lawyer confirming, in no uncertain terms, that it was his client's intention to breach the terms of the existing parenting order by following through on this ill-advised plan.

It is noteworthy that the existing parenting order was based on terms that both parties had agreed to — and followed — for over four years.

The father finally agreed that the mother could attend the second hockey tournament on the morning they attended court to argue the mother's motion. Notwithstanding the resolution of this issue, the mother expressed concerns that given the father's actions, he could not be trusted to follow through with the agreement.

To ensure that the court order was followed, the mother sought an order for a peace officer enforcement clause, which would allow the local police to locate and apprehend the child should the father breach the court order by overholding the child.

The standard to be met before a court makes an order for a peace officer enforcement clause is a high one, as confirmed by Justice Pazaratz's earlier decision in *Patterson v. Powell* 2014 ONSC 1419. Before making a ruling on whether police intervention is necessary, a court requires evidence of the potential impact of police intervention on each member of the family unit, in particular, the children.

*Patterson v. Powell* also stands for the proposition that peace officer enforcement clauses are only appropriate in cases where a temporary solution is needed to remedy an existing breach; they ought not be used as a "long-term, multiple-use, open-ended on-demand enforcement tool."

If we consider a child's perception of a police officer as someone who deals with the "bad guys," it is unsurprising that courts are loath to place children in a position where they think of one of their parents as the bad guy. As Justice Pazaratz put it, the sanctions against parents to discourage inappropriate behaviour must "scare offending parents *without scaring the child.*"

Where did that leave Sara Mackie, who was (understandably) concerned that her ex would unilaterally withhold their daughter prior to the second hockey tournament? One could hardly blame her for wanting assurance that her parenting time during the weekend in question would not be compromised.

Justice Pazaratz's creative solution to this not-so-simple problem was twofold:

1. An order was made suspending all of the father's parenting time in the event he breached the order or did "anything to interfere with any aspect of the mother taking the child to the tournament;" and
2. An order was made requiring the father to pay the mother's costs in the sum of \$3,000.

While the quantum of costs ordered was likely much lower than the costs incurred by the mother to bring the unnecessary motion, the judge's intention was to warn the father (and all family law litigants) that courts will not stand for parents making unilateral changes to parenting orders, nor will it condone needlessly intimidating letters from lawyers. As Justice Pazaratz aptly stated: "Unreasonable parents need to understand that hard-ball tactics can backfire in a very expensive way."

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