


Family Law News

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Continuing Legal Education and Kraft Dinner : Making Ontario Works Work Harder

While searching for an article for this latest instalment of the Hamilton Law Journal we stumbled across another judgment of Justice Quinn of the Ontario Superior Court of Justice. This judgment, *C.L.E. v. K.D.*, [2010] O.J. No. 5488, tickled our fancy not because of Justice Quinn's humorous writing or the great undisclosed style of cause, but because of the interesting point of law concerning whether or not a non-party governmental agency could be held liable for costs associated with requiring a social assistance recipient to bring an application for child support.

The Applicant in this case is the mother of an eight year old child. The Applicant had been on and off social assistance a few times during the child's life and had never sought support previously. The Respondent was, perhaps, some random guy off the street, perhaps one of you, "but not the father" as Maury Povich would say. The Respondent in his Answer said that he did not know the Applicant, was unaware of the pregnancy, never had a relationship with the Applicant and never saw or heard of the child.

The Regional Municipality of Niagara is a government agency that has the responsibility for the administration of the Social Assistance System of Ontario Works and while not a party to this Application appeared to be intertwined at each stage of the litigation. The Region asserts that the pursuit of child support was delayed by the fact that the Applicant missed appointments and failed to respond to written requests from them. However, on February 24, 2010, the Applicant did answer a questionnaire indicating that she didn't know who the child's father was but that she was leaning towards K.D., the Respondent, being the child's father. In a telephone call on March 3, 2010, the Applicant said it was possible that K.D. was the father but that he wanted nothing to do with the child and had threatened her. The Applicant was referred to the Family Law Information Centre at the Court house to initiate an Application for support.

On April 23, 2010, the Applicant commenced the proceedings against the Respondent, K.D. She sought a Declaration that he was indeed the biological father, an Order for custody and child support. The Application was served substitutionally on the Respondent at his father's residence. This of course would alert his family to these legal proceedings. In obiter, Justice Quinn indicated that the only way that the Applicant would benefit from the Application was in the event that a child support award exceeded the social assistance that she was then receiving. Additionally, he had no doubt that if the Applicant refused to commence the Application, her social assistance would have been terminated. So realistically, eight years after the birth of her child the Applicant is between a rock and a hard place; she can either get money and bring an Application or be cut off from Social Assistance and not be able to feed her child. One wonders why she chose K.D. to target the Application against.

The Respondent had to attend a number of Court appearances and presumably lost income given that he was operating a small business. At the First Appearance, he spoke to the Ontario Works representative and advised that he might recognize the Applicant in that he saw her once at Court but that he did not believe that he had ever seen her before. Again, we are worried that this could be one of you, I mean how many people have seen you at Court that you might or might not recognize. In any event, a DNA test was arranged and the report excluded K.D., the Respondent, as the father of the eight year old. Our hearts go out to this guy, having to miss work, being accused of having a child eight years after its birth. Imagine what this must have done to any current spousal relationship he had. In his written submissions for costs, he spoke of the anxiety, intrusion in his private affairs and the distress and embarrassment caused to him, his family and his girlfriend by

these proceedings.

There is some confusion as to whether or not Ontario Works agreed or not to reimburse the Respondent for the cost of the DNA test, which seemed to delay and create the need for additional Court appearances.

At the third Court appearance, the Applicant was not present but the worker for the Region was. The Application was dismissed and the Respondent exonerated as he was not the father of the eight year old. At this time, costs were fixed payable to the Respondent in the amount of $1,006.25 representing DNA testing, out of pocket expenses and lost income.

There were five Court appearances in total. At the fourth appearance the question arose as to whether or not the Region could be responsible for the Respondent's costs and Justice Quinn requested written submissions on the issue of costs. The Region provided two Affidavits and a Factum and the Respondent provided five pages of 'well-written submissions'.

In his decision, after a review of the Ontario Works Act, 1997, Justice Quinn reviews the law when costs can be awarded against a non-party based on the case of *Television Real Estate Ltd. v. Rogers Cable T.V. Ltd*. (1997), 34 O.R. (3d) 291 (C.A.), at para. 16. Justice Quinn indicates that the Region is "ominously close to satisfying the requirements of *Television Real Estate Ltd. v. Rogers Cable T.V. Ltd*."; a) given that the Region itself had the status to bring the Application, b) the Region was far more likely to benefit financially from the Application than the Applicant herself and c) the Region expected to benefit without being exposed to liability for costs.

Justice Quinn recognized that the costs were modest in this case but it was the embodiment of an important principle. Justice Quinn writes at paragraph 56:

> Although every legal proceeding carries with it inevitable inconvenience and expense, the expectation that some or all of both will be offset by an award of costs is meant to discourage frivolous law suits and provide recompense to those wrongly sued. However, here, that is a hollow expectation, as the Applicant is, by definition, impecunious. At first glance, then, we have the perception of the Region, with a keen financial interest in the outcome of the Application, hiding behind a penniless Applicant with only the Respondent placed at financial risk in the proceedings. It hardly seems fair the Region expects to enjoy all of the benefits of this litigation without shouldering any of the liabilities, particularly when one considers the manifest injustice to the Respondent.

Since the Application was dismissed without testimony, the Judge found he was unable to determine the true role carried out by the region as he did not have viva voce evidence. Justice Quinn makes a list of the facts he thought would be important in determining whether or not the Region was jointly and severably liable for the costs. The parties were invited to obtain a date for a costs hearing, but seemingly encouraged to settle the issue between themselves. When noting up the case it does not appear that this issue was ever heard and one is left with the question of what happened? Did K.D. receive his costs? ■

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