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Family Law Newsletters
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— Franks & Zalev - This Week in Family Law

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Contents

Delete and Desist

Children's Aid Society of Toronto v. O.G., 2025 CarswellOnt 10861 (C.J.) — Sherr J.

Issues: Ontario — Parenting — Social Media Posts

Justice Sherr's decision in *Children's Aid Society of Toronto v. O.G.* tackles the tension between free expression and the need to shield children and the justice system from harm. Confronted with the mother's online attacks (including posting photos of her child, private information about the father, excerpts from court filings, and insults to judges) his Honour offers a clear roadmap for how courts should respond when family law disputes spill over into social media.

At the same time, the decision highlights a broader problem we have flagged in earlier editions: a divorce action launched in 2019 remained unresolved until a full-blown crisis forced urgent intervention. It is a vivid reminder that when parenting cases drift for years, serious allegations and conflicting narratives can fester without a neutral judge assessing credibility and making the findings of fact needed to craft a safe, lasting parenting plan.

The parents married in Ukraine in 2006 and moved to Canada in 2008. After separating in 2018, the child lived primarily with the mother. The terms of separation remain unresolved, and a 2019 divorce proceeding in the Superior Court of Justice is scheduled for trial in September 2025.

Child protection concerns surfaced in 2020 when the mother alleged that the father had sexually abused the child, allegations that were never verified and led only to a temporary supervision order which was later withdrawn.

An equal-time schedule began in 2021, but Children's Aid Society ("CAS") referrals continued.

In 2023 the mother was charged with assaulting the father and placed under a peace bond.

In April 2024 the Superior Court asked the Office of the Children's Lawyer (the "OCL") to conduct an investigation under s. 112 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 which the OCL accepted. The trial, originally set for April 2025, was delayed to September 2025 to give the clinician time to complete the report.

Early in 2025 the child reported frequent physical abuse by the mother, showed clear signs of distress, and said she wanted to live with her father. Around the same time, the mother sent delusional emails questioning the identities of both the father and child, chased the father's car at high speed, was arrested and hospitalized under the *Mental Health Act*, R.S.O. 1990, c. M.7, and was later charged with throwing bricks.

In April 2025, after the mother's behaviour sharply deteriorated, CAS designated the father as the child's place of safety and commenced a protection application. The court issued a temporary, without prejudice order placing the child in the father's care, with the mother's access left to CAS discretion — but a minimum one hour weekly and subject to the child's wishes.

The child consistently refused visits while the mother continued troubling behaviour: questioning identities, breaching a restraining order by approaching the child at school, posting accusations on Facebook, and allegedly assaulting the paternal grandmother.

Because of the protection case, the OCL clinician halted the Superior Court parenting investigation, but provided a report documenting the mother's instability: circling the father's building in her car, bombarding the child with messages, threatening to call police, and displaying visible distress during visits. The child told the clinician she felt unsafe, described frequent physical abuse, and clearly wished to stay with her father.

CAS moved for an order keeping the child in the father's temporary care under its supervision, with the mother's access fully at CAS discretion for location, timing, and supervision.

Self-represented, the mother denied mental-health problems, downplayed her conduct, and argued that parenting issues should wait for the September 2025 Superior Court trial.

Because the child had been in joint care before CAS intervention, s. 94 of the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1 (the "*CYFSA*") required proof, on credible evidence, that the child would likely suffer harm in the mother's care and could not be protected by supervision: *Children's Aid Society of Ottawa-Carleton v. T.*, 2000 CarswellOnt 2156 (S.C.J.).

Justice Sherr found that standard easily met: involuntary hospitalization, refusal of treatment, delusional beliefs about identity, and repeated aggression toward the child and others. The child's statements were consistent, professionally corroborated, and even supported by the mother's own social media posts.

Those posts became a central concern. The mother published photos of the child and father, excerpts from court documents, and a video of a Superior Court appearance, along with private details such as the father's driver's licence and phone number. She named judges and caseworkers, calling the father a "pedo" and the judiciary "pedo supporters".

Before crafting his order, Justice Sherr reviewed the law governing harmful online content in cases involving children.

In Ontario, s. 28(1)(c) of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12 ("*CLRA*") does not specifically mention social media posts, but it is a powerful section. It empowers a court in parenting cases to "make any additional order the court considers necessary and proper in the circumstances". You don't get much more wide open than that, and it has been used to prohibit negative postings and to require the removal of existing ones when the child's best interests demand it. For example, see e.g. *S.B. v. J.I.U.* (2021), 64 R.F.L. (8th) 386 (Ont. C.J.); *B.M. v. J.G.*, 2025 CarswellOnt 1442 (C.J.); *Catholic Children's Aid Society of Toronto v. B. (N.)* (2012), 21 R.F.L. (7th) 497 (Ont. C.J.); *Cooper v. Primeau*, 2018 CarswellOnt 893 (S.C.J.); *A.T. v. V.S.* (2020), 43 R.F.L. (8th) 94 (Ont. S.C.J.) at 45-50; *G.S. v. S.B.* (2025), 13 R.F.L. (9th) 152 (Ont. S.C.J.); *Children's Aid Society of Toronto v. N.E.*, 2023 CarswellOnt 4989 (C.J.).

In the child protection context, s. 87(8) of the *CYFSA* bars anyone from publishing or making public information that identifies a child who is a witness, participant, or subject of a proceeding, or that identifies the child's parent, foster parent, or family member. Subsection 142(3) makes a breach of s. 87(8) an offence punishable by a fine of up to $10,000, imprisonment of up to three years, or both.

Additionally, even where a post does not technically violate s. 87(8) — for example, when aimed at child-protection workers — courts have held they may still order removal to preserve the integrity of the process and control their own proceedings: see *Children's Aid Society of Toronto v. N.E.*, 2023 CarswellOnt 4989 (C.J.).

Justice Sherr readily found that the mother's social media posts breached s. 87(8) of the *CYFSA* by identifying the child and parents, posting excerpts of court documents, and naming potential witnesses and judges, all actions that indirectly revealed the child's involvement in the protection case. Justice Sherr emphasized that there is no reason children, parents, witnesses, or any participant in a child protection proceeding — including CAS employees, OCL counsel or staff, and court officials — should receive any less protection than participants in private family cases. He concluded that the mother's social media posts were designed to denigrate and intimidate the father, the clinician, the society, and court officials, and that he would have ordered their removal and prohibited future postings even if they had not technically fallen within s. 87(8).

To remedy the problem, Justice Sherr ordered the mother to delete all existing posts and permanently barred her from publishing *anything* — directly or indirectly — about the child, the father, any member of the father's family, society staff, OCL counsel, clinicians, or judges. He spelled out the potential consequences of defiance: prosecution under s. 142(3) of the *CYFSA*; contempt proceedings under Rule 31 of the *Family Law Rules*, including possible incarceration; procedural penalties under Rule 1(8) of the *Family Law Rules* ranging from costs to striking pleadings or postponing trial dates; and adverse parenting findings if non-compliance demonstrated poor judgment or a disregard for court orders. Justice Sherr was not kidding around.

Justice Sherr closed with a message that resonates far beyond this family:

> [84] The cyberbullying and the intimidation of children, parties, witnesses and other participants involved in child protection proceedings should not and will not be tolerated.

By ordering immediate takedown, imposing a permanent ban, and warning of fines, contempt, and even jail, the court underscored that Ontario's child protection process will not be held hostage to online outrage or the online rantings of an unhappy litigant.

That said, while a sweeping publication order was certainly justified here, we must also remain vigilant against overreach. Subsection 2(b) of the *Canadian Charter of Rights and Freedoms* guarantees freedom of thought, belief, opinion and expression, including freedom of the press and other modes of communication. That fundamental freedom is a vital check. Even as courts act decisively to protect children and the justice system from harm, they must stay alert to the risk that these powers could be used to silence legitimate expression in less extreme cases.

This case also exposes deeper systemic concerns. The trial of a divorce action launched in 2019 is not going to be tried until September 2025 at the earliest. Although the court requested the involvement of the OCL in April 2024, the clinician had not finished a report more than a year later. During that long delay the child remained in an unstable and possibly dangerous situation, and it ultimately took a full-blown crisis — police intervention, involuntary hospitalization of the mother, and a fresh protection application — for meaningful protection to be put in place.

This is not an isolated case, and it echoes a theme we have raised repeatedly in prior editions. Far too often parenting cases drift for years while serious allegations and conflicting narratives go unresolved. Without an early trial or focused hearing, no one is assessing credibility in real time or making the findings of fact that must guide safe, lasting parenting plans. What is needed — early and decisively — is a neutral judge hearing live evidence, testing credibility, and then crafting parenting arrangements that truly serve the best interests of the particular child in the particular case.

Oppression! The Game the Whole Family Can Play!

Fletcher v. Fletcher (2025), 16 R.F.L. (9th) 359 (Man. K.B.) — Abel J.

Issues: Manitoba — Oppression Remedy

Family law is no stranger to shareholder disputes. In "Some Lessons on Oppressions" in the July 25, 2022 (2022-27) edition of *TWFL*, we looked at *Fuentes v. Camino Construction Inc.*, 2021 CarswellOnt 6861 (S.C.J.) and *Berman v. 905952 Alberta Ltd* (2021), 59 R.F.L. (8th) 183 (Alta. Q.B.), two cases showing how a marital breakup can morph into a corporate war when spouses are co-owners. And in "Family Law and Corporate Law — Can't We All Just Be Friends?" in the August 25, 2025

(2025-30) edition, we reviewed the Ontario Court of Appeal's decision in *Chapman v. Ing* (2025), 15 R.F.L. (9th) 362 (Ont. C.A.), in which the court considered the marriage (or separation?) of corporate law and family law and the fact that corporate law does not "trump" family law.

Then, in the April 1, 2024 edition, "Wasting Away Again (with Oppression Claims) in Margaritaville", we looked at *Huntly Investments Limited v. Casa Margarita Enterprises Ltd.*, 2024 CarswellBC 177 (C.A.). Although not a family law case, it demonstrated that even a shareholder with as little as a 1.82% interest could successfully invoke the oppression remedy to force a buy-out when reasonable expectations were ignored.

Fletcher v. Fletcher offers another illustration of how these principles operate when family and business collide, and Justice Abel offers a good refresher on oppression in the family setting. Like *Fuentes*, *Chapman*, and *Berman*, *Fletcher* stems from a marital breakdown involving the shareholders of a closely held company. And like *Huntly*, it underscores the Supreme Court of Canada's message in *BCE Inc. v. 1976 Debentureholders*, 2008 CarswellQue 12595 (S.C.C.) ("*BCE*"), that oppression is an equitable remedy aimed at *fairness*, not technicalities. Justice Abel's decision shows how those principles play out when spouses weaponize a jointly owned business and the court must decide what is "just and equitable" for both family and corporate law purposes.

The husband and wife began cohabiting in 1999, married in 2002, and separated on April 1 2022. They have two adult children. During the marriage they operated Dean Fletcher Construction Inc. ("DFC"), a construction business based in southern Manitoba, each holding 50 percent of the shares.

In December 2022, the wife commenced a proceeding for the usual family-law relief. Both spouses also made claims for relief under s. 234 of the *Corporations Act*, C.C.S.M. c. C225 (the "*Corporations Act*"), each alleging that the other had run DFC in an oppressive manner. Section 234 empowers the court to "make any interim or final order it thinks fit" where it is satisfied that conduct has occurred that is "oppressive or unfairly prejudicial or that unfairly disregards the interests of any security holder, creditor, director or officer", and to "make an order to rectify the matters complained of." (Similar language is used in corporate statutes across the country, so this case should be of interest to all.)

As the Supreme Court of Canada explained in *BCE* at paras. 68-94, a court asked to grant oppression relief must answer two questions:

1) **Reasonable Expectations:** Does the evidence support the reasonable expectation asserted by the claimant?

2) **Violation:** Was that expectation violated by conduct amounting to "oppression", "unfair prejudice", or "unfair disregard" of a relevant interest?

On the first question, the claimant must show that the expectations said to be breached were reasonably held. Because such expectations are highly fact-specific, *BCE* provides guiding principles:

- Actual illegality is unnecessary.

- The remedy is grounded in fairness and equity, so courts look to business realities rather than narrow legal rights and technicalities.

- Not all conduct that harms a stakeholder amounts to oppression.

- Factors informing reasonableness include normal commercial practice, the nature and size of the corporation, the relationships among stakeholders, past practices, steps the claimant might have taken to protect itself, and any representations or agreements.

On the second question, the claimant must show that the unmet expectation involved wrongful conduct, causation, and harm within one of the overlapping concepts in s. 241:

- **Oppression** — the most serious wrongs: harsh, burdensome, or abusive conduct and abuse of corporate power.

- **Unfair Prejudice** — less egregious but still inequitable acts, like squeezing out a minority shareholder, concealing related-party transactions, or paying excessive directors' fees.

- **Unfair Disregard** — the least severe, covering conduct such as failing to prosecute claims, improperly reducing dividends, or withholding a shareholder's property.

These categories are not watertight compartments. As the Supreme Court noted in *BCE*, they often overlap, and the remedy ultimately turns on what is fair, just, and equitable.

Justice Abel first found that both spouses breached the reasonable expectation that DFC would be run for the company's benefit rather than for personal gain. Each treated the corporation's finances as a weapon — cutting off the other's access, shifting money between personal and corporate accounts, and engaging in retaliatory withdrawals; real corporate warfare.

The husband compounded matters by using corporate funds to pay off a $55,000 mortgage, renting out corporate property for his own benefit, and purchasing a $30,000 camper in the company's name without consulting the wife. The wife, for her part, publicly disparaged DFC on social media and removed the company laptop which was essential for estimating and quoting jobs and for invoicing.

On the second question — whether the conduct amounted to oppression, unfair prejudice, or unfair disregard — Justice Abel held that both spouses crossed the line. The husband ignored the wife's interests by unilaterally managing DFC's assets and payments, and making major financial decisions without her input. The wife likewise showed unfair disregard by publicly disparaging DFC and dealing with its assets without regard for the husband's rights.

Accordingly, each proved that the other engaged in conduct that was oppressive, unfairly prejudicial, or unfairly disregarded the other's shareholder interests.

Unlike cases where a court must untangle a jointly held company that both parties wish to keep, *Fletcher* presented a clearer path. The spouses agreed that the husband would buy out the wife's 50% interest and that DFC had a fair market value of $395,500, making the wife's share worth $197,750. They also agreed that, apart from the corporate shares, the husband owed the wife an equalization payment of $210,730.92 for their non-corporate assets.

The dispute lay in how the wife would be paid. The husband proposed to purchase her shares with personal funds, while the wife sought a transfer of a DFC-owned real property appraised at $230,000 as consideration for her shares, plus prejudgment interest.

Justice Abel found significant evidentiary gaps: there was no proof that the husband had taken steps to raise the cash to buy the shares, and no clear picture of the equity in the property the wife wanted transferred. To balance fairness with practicality, his Honour gave the husband three months to pay the $197,750 in cash plus interest. If he failed to do so, the court would hold a trial of an issue to decide whether the property should be transferred to the wife in return for her shares.

For that potential hearing, the parties were directed to file evidence on:

- the current mortgage balance for the property;

- the tax consequences to DFC of transferring the property to the wife;

- whether the wife's shares should be redeemed by DFC, returned to treasury, or transferred directly to the husband; and

- whether a shareholder can receive a corporate asset on a tax-free basis.

Fletcher v. Fletcher underscores that when spouses are co-owners, a personal separation can quickly become a corporate divorce, and the court will treat them as shareholders first. Justice Abel applied the *BCE* principle that oppression is an equitable remedy aimed at fairness, holding both spouses accountable for breaching their duty to act in the company's best interests.

For counsel, the message is clear:

- **Advise clients early** that every financial move during separation — whether shifting funds, signing leases, or posting online — may be scrutinized as shareholder conduct.
- **Document decisions and consult co-owners** to avoid the appearance of unilateral control.
- **Prepare evidence of financing or asset value** if a buy-out or asset transfer is likely, because gaps in proof can shape the remedy.

The case is a sharp reminder that when marriage and business collide, courts will look past family drama to enforce what is just and equitable between shareholders, and will look past corporate technicalities to ensure that which is just for separating spouses.

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