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— Franks & Zalev - This Week in Family Law

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Alberta *May* Be Joining the Section 19 Club?

For the last 20 years, Alberta has been somewhat out of step with the rest of Canada in the interpretation of "intentional un/underemployment" in section 19 of the *Child Support Guidelines*. Unlike in the rest of Canada, in *Hunt v. Smolis-Hunt* (2001), 20 R.F.L. (5th) 409 (Alta. C.A.), the Alberta Court of Appeal decided that, to impute income under s. 19 of the *Guidelines*, there had to be "proof of a specific intention to undermine or avoid support obligations, or circumstances which permit the court to infer that the intention of the obligor is to undermine or avoid his or her support obligations." (para. 42) That is, in Alberta, proof or inference of specific intent to avoid support obligations was required.

That has been the law in Alberta since 2001 - an odd situation given that the *Child Support Guidelines* are a Federal enactment and should attract uniform interpretation across the country.

Recently, some Alberta courts have tried to move away from the need to show specific intention. See for example, *Keating v. Keating* (2017), 5 R.F.L. (8th) 126 (Alta. C.A.); *MacDonald v. Brodoff* (2020), 42 R.F.L. (8th) 278 (Alta. C.A.) (where the Alberta Court of Appeal recently suggested it might be time to reconsider *Hunt*); and *Smith v. Gulka* (2020), 37 R.F.L. (8th) 452 (Alta. Q.B.) (where Justice Yungwirth proposes to depart from the "specific intention" requirement and helpfully summarizes the law in other Canadian provinces).

As a general rule, leave to reconsider a binding precedent will be granted in very limited circumstances: *R. v. Effert*, 2010 CarswellAlta 820 (C.A.). However, in *Peters v. Atchooay*, 2021 CarswellAlta 1574 (C.A.), the Alberta Court of Appeal officially accepted the invitation to reconsider its decision in *Hunt v. Smolis-Hunt*, as part of the recipient's appeal of an order retroactively reducing the payor's child support arrears.

Now, we must wait and see . . .

Right Decision - But We Pity the Court That Has to Figure Out Child Support . . .

British Columbia Birth Registration No. 2018-XX-XX581, Re (2021), 55 R.F.L. (8th) 298 (B.C. S.C.) - Wilkinson J.

In *British Columbia Birth Registration No. 2018-XX-XX581, Re*, following case law from Ontario and Newfoundland, Justice Wilkinson of the B.C. Supreme Court ordered that a second mother in a polyamorous "triad" relationship be declared a legal parent, in addition to the first mother and the father.

Olivia, Eliza and Bill lived together in a committed polyamorous relationship for several years. Bill and Eliza had been in a committed relationship since the early 2000s. In 2016, they began a polyamorous "triad" relationship with Olivia, which meant, according to the Court, that, "they each [had] a relationship with one another and each of their relationships with each other [were] considered equal." In 2018, Eliza and Bill became the biological parents of a child, Clarke, and the three agreed that Olivia would be another parent to Clarke. In their way, however, was s. 26 of the *Family Law Act*, S.B.C. 2011, c. 25 (the "*FLA*").

Section 26 of the *FLA* reads:

> **Parentage if no assisted reproduction**
>
> 26 (1) On the birth of a child not born as a result of assisted reproduction, the child's parents are the birth mother and the child's biological father.

As a result of s. 26, Bill and Eliza - and *only* Bill and Eliza - were named as parents on Clarke's birth registration. A child conceived through assisted reproduction can have three legal parents, while a child conceived through sexual reproduction cannot.

The application to add Olivia as a parent was opposed by the Attorney General of B.C., a curious position to take given the result of similar cases in Ontario and Newfoundland.

The three putative parents had three main arguments:

- The court could make a declaration as to parentage for Olivia under s. 31 of the *FLA*, which says that if there is a "dispute or any uncertainty" as to whether a person is or is not a parent the court can make an order declaring whether a person is a child's parent.

- The court could make a declaration as to parentage using its *parens patriae* jurisdiction to fill a "gap" in the statutory regime in furtherance of its duty to protect children. [The inherent *parens patriae* jurisdiction of the Court is preserved in s. 192(3) of the *FLA*.]

- The Court could find that s. 26 of the *FLA* violated the *Charter*.

By the time of the application, Olivia had played an extremely active role in Clarke's life for the 2-1/2 years since his birth - to the extent of any parent, including taking unpaid "parental leave" to stay at home.

It was undisputed that, "Clarke [was] being raised by three loving, caring, and extremely capable individuals." Every child should be so lucky. (Although we pity the court that has to determine child support obligations in the event of a separation with a shared 3-way parenting regime; a case for another day.)

The Attorney General argued that the Court could make a guardianship order in favour of Olivia. However, the Court found that a guardianship order does not replace a parentage order because there are clear differences between being a parent and being a guardian:

> [46] As the parties all note, parentage determines lineage and a child's rights on intestacy, citizenship, potential access to parental leave, and certain financial obligations, among other things. However, and perhaps most importantly, the key difference between parentage and guardianship is that parentage is immutable: the relationship between a parent and their child cannot be broken. Accordingly, there are practical and symbolic differences between parentage and guardianship such that guardianship is not a "cure-all" for Olivia.

The Attorney General also used the favourite argument of governments: allowing a declaration of parentage for a third legal parent would "open the floodgates" to parentage declarations in the future - as if all-of-a-sudden all of the population is going

to become part of a polyamorous relationship; all they had been waiting for was the ability of the Court to declare parentage. Justice Wilkinson cleverly noted that people usually go to court to *avoid* parental responsibilities, not *embrace* them.

As there was really no "dispute" or "uncertainty" as to Clarke's parentage, s. 31 did not apply. His biological parents were Eliza and Bill, and the *FLA* does not contemplate a child having a third parent, *unless* the child had been conceived using assisted reproduction.

While this case did present a challenging issue, Justice Wilkinson had the benefit of some prior judicial thought.

In *A. (A.) v. B. (B.)* (2007), 35 R.F.L. (6th) 1 (Ont. C.A.), a similar Ontario case, the Ontario Court of Appeal held that parentage is a symbolic indicator of a parent-child relationship, and is a "lifelong immutable status."

In *C.C. (Re)* (2018), 7 R.F.L. (8th) 346 (N.L. S.C.), a similar case in Newfoundland, the Court allowed three members of a polyamorous relationship to be declared "parents."

And, although not considered by her Honour, in *H. (D.W.) v. R. (D.J.)* (2013), 34 R.F.L. (7th) 27 (Alta. C.A.), a similar case in Alberta, the Alberta Court of Appeal held that two separated men (who had been the parents of a child) and the genetic mother could all be parents.

The Attorney General argued there was no gap in the *FLA*. Rather, the legislature specifically intended to limit the parents of a child conceived through sexual intercourse to their biological parents. The legislature could have contemplated polyamorous relationships in the legislation, but they specifically did not.

However, Justice Wilkinson found that she could avail of her *parens patriae* jurisdiction. After a deep dive into Hansard, her Honour determined that there was a "gap" in the *FLA*. When it was enacted, the legislature did not contemplate the possibility that a child might be conceived through intercourse yet have more than two parents. "Put bluntly, the legislature did not contemplate polyamorous families." The *FLA*, Justice Wilkinson determined, did not adequately provide for polyamorous families in the context of parentage.

As a result of this decision, it is now possible for three legal parents to be appointed by the court with regard to a child conceived in a polyamorous relationship.

And, le voilà . . .

Usually a "Battle of Experts" Requires More than One Expert

Abu-Shaban v. Abu-Shaban (2021), 55 R.F.L. (8th) 286 (Ont. S.C.J.) - Smith J.

Justice Smith's succinct reasons in *Abu-Shaban* provide a helpful summary of the applicable principles when considering a request to reopen a family law trial to introduce further evidence.

On the date of separation, the husband owned a 1/16th interest in a property in the Gaza Strip (the "Gaza Property").

In 2019, the wife's expert prepared an expert report wherein he opined that the husband's interest in the Gaza Property had a value of approximately $560,000 USD on the date of separation.

Unbeknownst to the wife, in 2020, the wife's expert also prepared a report for the husband stating that his interest in the Gaza Property had actually only been worth $400,000 USD on the date of separation.

For reasons that are not entirely clear, the husband did not disclose the second report until the second day of the trial. In any event, since the expert's contradictory opinions cast serious doubt on his expertise and ability to comply with his obligations to the court, Justice Smith agreed to adjourn the trial to allow the parties to retain new experts.

When the trial resumed, the wife's new expert opined that the Gaza Property had a value of approximately $600,000 USD on the date of separation, while the husband's new expert opined that it had a value of approximately $300,000 USD.

At the end of the nine-day trial, Justice Smith reserved.

While the decision was under reserve, the wife learned that the husband's brother, who also had a small interest in the Gaza Property, had recently sold his interest, and that based on the sale price, the husband's interest would have a value of approximately $500,000 USD.

The wife brought a motion to reopen the trial to allow her to introduce evidence about the recent sale, and argued that it would assist the Court in determining the value of the husband's interest.

The husband opposed the motion. He argued that since the parties had separated in 2016, a sale in 2021 would not assist the Court in determining the value of his interest in the Gaza Property on the date of separation. The husband also claimed that the recent sale was not reflective of fair market value as the brother had sold his interest in "a hostile fashion, in a direct effort to threaten the siblings' ability of selling their respective shares."

The starting point for dealing with a request to reopen a trial is Justice Grant's decision in *Scott v. Cook*, 1970 CarswellOnt 253 (H.C.) at para. 12. In that case, Justice Grant determined that before judgment has been entered, a party seeking to reopen a trial based on newly discovered evidence "must show that the evidence he seeks to adduce is such that, if it had been presented at trial, it would *probably* have changed the result", and that "such evidence could not have been obtained by reasonable diligence before the trial."

The test from *Scott v. Cook* was approved by the Supreme Court of Canada in its 2001 decision in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 CarswellOnt 3357 (S.C.C.). However, the Court also made it clear that although there is a discretion to reopen a trial, it must be used "'sparingly and with the greatest care' so that 'fraud and abuse of the Court's processes' do not result."

More recently, in *Malkov v. Stovichek-Malkov* (2018), 15 R.F.L. (8th) 255 (Ont. C.A.), the Ontario Court of Appeal found that the following list of factors, which were originally set out by Justice Murray in *Catholic Children's Aid Society of Toronto v. R. (M.)* (2014), 64 R.F.L. (7th) 470 (Ont. C.J.), were "helpful . . . for a trial judge to consider when entertaining a party's request to reopen her case":

> [14] . . .
>
> • At what stage of the trial is the motion made?
>
> • Why was evidence not adduced during the party's case? Did the party intentionally omit leading the evidence earlier? Or did the evidence only recently come to the party's attention, despite diligent earlier efforts?
>
> • What is the prejudice to the defendant? A defendant might have conducted his case differently if he had known and had an opportunity to investigate the evidence which is the subject of the motion.
>
> • Can any prejudice be remedied in costs?
>
> • How would a reopening of the case affect the length of the trial? How much evidence would have to be revisited?
>
> • What is the nature of the evidence? Does it deal with an issue which was important and disputed from the beginning, or with a technical or non-controversial point? Does it merely "shore up" evidence led in chief?
>
> • Is the proposed new evidence presumptively credible?

Furthermore, where, as in *Abu-Shaban*, the trial has concluded but a decision has not yet been released, the standard for reopening the trial is somewhat relaxed in that it "does not include whether the fresh evidence could affect or have an influence on the result." As Justice Nakatsuru recently explained in *Brasseur v. York*, 2019 CarswellOnt 10838 (S.C.J.) at para. 47:

> [47] In my opinion, **where a decision has not yet been rendered, the need for finality does not require the evidence to have "probably" changed the result if it had been presented at trial. I emphasize that no decision has yet been made. There is no "result" to speak of.** The judge may be at a very preliminary stage of adjudicating the case in their mind. In these circumstances, **to have a test that makes reference to a likelihood that the fresh evidence could have affected the result is premature if not illogical. Furthermore, when the parties do not know the result, any dangers associated with permitting parties to present fresh evidence is not as acute**. Thus, in my view, provided a judge finds it in the interests of justice to do so, the judge may properly exercise the discretion to receive fresh evidence. [emphasis added]

See also *Jackson v. Vaughan (City)*, 2009 CarswellOnt 152 (S.C.J.) at paras. 22-23.

After considering these principles, Justice Smith was satisfied that the wife had moved promptly when the new information came to her attention and that the husband would not be prejudiced.

With respect to relevance, while in most cases information about the value of a property five years after separation would not be particularly relevant with respect to determining its value as of separation, Justice Smith was satisfied that it was relevant and material in this particular case given that:

- The husband's expert had given evidence that his conclusions were based, in part, on the facts that no one would be interested in buying a 1/16th interest in the Gaza Property, and that the husband's interest could not be sold in any event as the property was "completely seized by the Court" in Gaza; and

- The evidence from the parties' experts was "largely based on their own personal subjective experiences rather than some concrete comparable date", and had been "unable to provide the Court with any evidence of comparable properties that were sold in or around 2016."

As a result, Justice Smith granted the wife's motion.

You Mean We're Stuck Here???

Children's Aid Society of the Districts of Sudbury and Manitoulin v. C.R. (2021), 52 R.F.L. (8th) 207 (Ont. C.J.) - Kukurin, J.

Once a society initiates a protection application, what is the judicial test for leave to withdraw it and terminate all orders with respect to the child in question? That is the question pondered by Justice Kukurin in this case.

The mother supported the society's motion to withdraw. The father opposed it.

The Ontario Children's Lawyer representing the 8-year-old child ("A") opposed leave being granted at the time, but suggested it may consent later.

The Court had to consider the following issues:

> (a) If the granting of judicial leave to withdraw is an exercise of judicial discretion, what criteria must the court consider?
>
> (b) If the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1 (the "*CYFSA*") requires the court to hold a hearing to determine whether a child is in need of protection, on what facts or circumstances could, or should, a court rely to decline to hold such hearing and/or make that determination?
>
> (c) What prejudice, if any, and to whom, would result if leave to withdraw is granted?

(d) If leave is granted, what becomes of the claims made by respondents (or perhaps a child) in any Answer filed in the proceeding?

(e) Does the history of the litigation play any role in the decision whether or not to grant leave?

(f) Is there a public interest in holding the "finding in need of protection" hearing before granting the society leave to withdraw?

The child's mother had three successive partners and five resulting children, the oldest being 18 and the youngest being 2.

The mother had previous involvement with the society. Her first two children had been in the care and custody of their paternal grandparents for over five years. A had been the subject of family law proceedings since 2013, and the operative order under the *Children's Law Reform Act* (dated May 28, 2018) provided for joint custody with week-about parenting. Despite that Order, and because of the intervening child protection proceeding, A had been living with her father in Sudbury.

The current child protection proceeding arose out of the mother's relationship with her current partner and father of her youngest two children. The society apprehended those two children in September 2018. It was not entirely clear whether A, the focus of the case, was apprehended or not. Officially, she was not. However, submissions from society counsel at the motion for leave to withdraw suggested that she had been. In any event, A and her two younger half siblings were the subject to the society's child protection application that was first returnable in September 2018.

Less than three weeks later, there was a finding, on the consent of the mother and her partner, that the two younger siblings were children in need of protection. They were placed with the mother's sister, subject to a nine-month supervision order with conditions. The mother was granted access supervised in the discretion of the society. The mother and her partner then separated. A continued living with her father subject to an interim supervision order. No finding was ever made that A was in need of protection. In the meantime, almost 30 months had elapsed from the commencement of the application.

During that time, the mother took some steps to improve her circumstances to the point that the society returned her two youngest children to her, with a supervision order.

The society's motion, if granted, would have left the parties with no child protection order, and revived the domestic family law order that provided for shared week-about care of the child.

The father had filed an Answer and Plan of Care to the society's application. He asked for a deemed order for sole custody of A. He also wanted the mother's access to A to be supervised at a Child and Family Centre. In the alternative, he sought sole care and custody of A subject to a society supervision order. In either case, a finding that A was in need of protection was a pre-requisite.

The mother took the position that an order for leave to withdraw should be granted. As she and the father had not resolved the custody and access issues, the inference was that she wanted the domestic family order to once again become operative. (At the motion, the mother suggested that she and the father should schedule a Settlement Conference and try to negotiate terms of custody and access in the domestic family court.)

The society's position was that no protection concerns existed at the time, as evidenced by the fact that the two youngest children had been returned to the mother (although with a supervision order). The father of the two youngest children was no longer in the mother's life, and he had been, according to the society, a major reason why this case started. The society was content that all child protection orders terminate, and that A's mother and father deal with the issues of custody and access in family court. As noted by Justice Kukurin,

[16] In a nutshell, this society wants out. It has more needy clients than these and it prefers to expend its limited resources in assisting these more needy families and children. It does not intend to seek a finding that the child A is a child in need of protection and believes that she is not.

On behalf of the child, the OCL opposed the society's request for leave to withdraw. As the mother was then living in Kingston and the father was living in Sudbury, a withdrawal by the society would make the parties and the child subject to an order that provided for joint custody with a week-about schedule that was wholly unworkable. Furthermore, the child had no representation in the family law proceeding and would be without a voice.

Justice Kukurin was clearly unhappy with the delays in the case. According to the *CYFSA* and the *Family Law Rules*, O. Reg. 114/99, the case involving A should have been completed by the end of January 2019. And his Honour blamed everyone involved, including the Court, for failing to promote the primary objective of the *Family Law Rules*, which is to deal with cases justly. According to Justice Kukurin, "Everyone has dropped the ball."

The society raised an interesting point: while the history of the matter would have, at one point, clearly supported a finding that A was in need of protection, A was no longer in need of protection. The society need not provide services where a child is not in need of protection at the time of the hearing.

With respect to the timing of a need for protection finding, in *Children's Aid Society of Hamilton-Wentworth v. R. (K.)*, 2001 CarswellOnt 5006 (S.C.J.), Justice Czutrin said:

> [73] I have come to the conclusion that the court should be free to consider whether the child is in need of protection at the commencement of the proceedings or at the hearing date, or for that matter some other date, depending on the circumstances. There cannot be an absolute rule as to the relevant date. This is consistent with the [*Child and Family Services Act*, R.S.O. 1990, c. C.11] and certainly consistent with the Supreme Court of Canada decision [*Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)* (1994), 2 R.F.L. (4th) 313 (S.C.C.)].

While Justice Kukurin accepted this as a correct statement of the law, he noted there was subsequent competing authority. In *C. (N.V.) v. Catholic Children's Aid Society of Toronto*, 2017 CarswellOnt 1376 (S.C.J.), Justice Wilson specifically referred to Justice Czutrin's reasoning and said:

> [57] I conclude that the wording of the section, common sense, and the case law support the interpretation that the finding of risk of harm, and hence the child's need for protection, **must be determined at the time of the hearing**.
>
> . . . . .
>
> [71] I conclude that section 37(2)(b) of the *CFSA* [the precursor to the *CYFSA*] is clear that the Society's onus is to prove on a balance of probabilities that a risk of harm is present at the time of the trial based upon relevant sufficient evidence. This evidence may date from both pre- and post-apprehension. [emphasis added]

However, Justice Wilson's view had not been adopted by most courts since then and was, more often than not, not followed. See, for example, the critique of Justice Wilson's reasoning in *Children's Aid Society of Toronto v. S.A.* (2017), 98 R.F.L. (7th) 497 (Ont. C.J.) (Justice Pawagi); *Children's Aid Society of Toronto v. S.M.T.*, 2018 CarswellOnt 13354 (C.J.) (Justice O'Connell); *Children's Aid Society of Toronto v. R.M.*, 2018 CarswellOnt 16748 (C.J.) (Justice Paulseth); and *Catholic Children's Aid Society of Toronto v. N.N.*, 2019 CarswellOnt 334 (C.J.) (Justice Zisman). Furthermore, sitting in appeal of Justice Paulseth's decision in *RM*, [*Children's Aid Society of Toronto v. RM* (2019), 24 R.F.L. (8th) 384 (Ont. S.C.J.)], Justice Horkins dismissed as a ground of appeal Justice Paulseth's failure to follow Justice Wilson on this particular issue of timing in *C. (N.V.)*. Justice Horkins was also of the view that the strict rule as to timing espoused in *C. (N.V.)* did not meet the needs of remedial legislation such as the *CYFSA*.

Justice Kukurin was of the view, as are we, that the more flexible view espoused by Justice Czutrin and Justice Horkins makes the most sense. It makes little sense to constrain the court to focus on *only* the circumstances at the time of the hearing. After all, the protection application was started for a reason. As noted by Justice Kukurin, focussing exclusively on the circumstances at the time of the hearing would also render s. 101(8) of the *CYFSA* redundant as a dispositional option:

> s.101(8) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part.

Justice Kukurin was concerned about the message the Court would be sending by granting leave to withdraw at this stage - that a society can let a case linger in limbo with a "without prejudice" order for well over two years; that it can delay a finding hearing without limit; and then ultimately ask the court to not hold one at all. Here, "the society should do what it should have done two years ago, and it should permit the court to do what it should have done two years ago."

In *Catholic Children's Aid Society of Toronto v. B. (D.)*, 2002 CarswellOnt 1868 (C.J.), Justice Jones listed several factors to consider when deciding whether or not to grant leave to withdraw. Then, in *Children's Aid Society of Algoma v. S. (A.)*, 2011 CarswellOnt 14131 (C.J.), Justice Kukurin added further factors of his own:

1. whether any continuing protection concerns exist;

2. whether all parties consent to the withdrawal;

3. the reasons for the withdrawal;

4. how the withdrawal would affect the fairness of any other pending custody litigation;

5. what is the real battle in the case about and what are the possible outcomes;

6. at what stage is the litigation, what are the timelines expectations and what demands on judicial resources;

7. if the withdrawal is opposed, what is the reason for the opposition and what is the evidence to support the reason; and

8. is there an alternative venue for resolving the issues.

In this case:

- The parties did not agree to the granting of leave to withdraw.

- The reason for the withdrawal was that the society did not see that there was any protection concern at present for the child. But that was not determinative of whether A was in need of protection under the statute. The timing of that determination, under the predominant case law, was not necessarily "now". A finding that a child was in need of protection could also be made on the facts that existed at the time the application was brought or at any time since then. Furthermore, the society could be wrong based on the evidence before the court.

- "Failing to proceed with a finding hearing with respect to A when a finding was made with respect to her two younger siblings in the same case grates on the court. It is like watching a film where an expected and necessary part of the story is just left out with no ostensible reason provided."

- "If the jurisprudence is correct, and if the factual circumstances at time of intervention can form the basis for a finding in need of protection, then the society's reason that no protection concern exists now is not a good reason to grant leave to withdraw."

- Fairness to the child militated against allowing a withdrawal. A made it clear, through her counsel, that she was opposed to the week-about joint custody regime which was precisely what granting leave to withdraw would bring about. And no one had commenced a Motion to Change the final order in the family case, meaning that a withdrawal would force the parties to start again from the very beginning.

• Given s. 101(8) of the *CYFSA*, all the society would have to do is to persuade the court, after a finding in need of protection was made, that no further court order was necessary, and it would be in the same position that it wanted to reach by withdrawing its application. It would then be entirely out of the case. If no finding in need of protection was made, the society would similarly be in exactly the same position as the case would be effectively ended. "It makes more sense to hold a finding hearing in a case that is this aged."

• The *CYFSA* mandates that the court hold a hearing to make a determination of whether a child is in need of protection when a society commences a child protection application. That "hearing" need not be a full-blown *viva voce* hearing. Other manners of hearing, such as summary judgment, focussed hearings, and mini-trials are also acceptable.

Ultimately, to the presumed chagrin of the society, the Court refused to "hold a finding hearing in the guise of a motion for leave to withdraw a child protection application, particularly on the kind of affidavit evidence that the society presents in this case." The society had to address why the evidence it filed in support of a protection finding for over two years should be ignored or discounted by the court, and why the father's evidence supporting a finding in need of protection should be discounted. Then perhaps the Court might consider granting leave to withdraw.

As a result, the society's motion was dismissed.

Surely, it will be rare for a court not to let a society withdraw a protection application. If a society determines that a child, once arguably in need of protection, is no longer in such need, it seems odd that a court would force the society to expend limited resources on a case that is not, in its view, necessary. However, the court does have supervisory jurisdiction over children, and much like cases where, having invoked the jurisdiction of the court, a court may not allow parties to just withdraw a custody/access application, a court may sometimes not permit the withdrawal of a protection application absent sufficient evidence. [See *Laliberte v. Jones* (2016), 89 R.F.L. (7th) 468 (Sask. Q.B.); *Sicard v. Pinney*, 2020 CarswellOnt 16844 (S.C.J.); *Richardson v. Richardson* (2019), 35 R.F.L. (8th) 265 (Ont. C.A.).]

In reading this particular decision, however, one does get the sense that the Court was effectively slapping the society on the wrist for allowing the case to linger:

> [53] . . . Courts have been said to provide oversight to children's aid societies which are given extensive powers to intervene in the homes and families of our province. The main justification for doing so is to protect the children in this province. This is a laudable and a noble purpose. But the actions of a society are prescribed by the law. The court is also required to comply with the law and in addition, it is entrusted with ensuring that societies act in accordance with the law. The community has an interest in whether a child is in need of protection whenever that determination is placed before the court. This court needs more in this case than the society has provided to grant a leave that will exempt the society and the court from carrying out their respective mandates relating to a finding in need of protection.

Thus endeth the lesson.