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— Franks & Zalev - This Week in Family Law

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Contents

Certificates of Pending Litigation; Limitation Periods for Trust Claims in Land; and Please Wash Those Dirty Hands

Khan v. Taji, 2020 CarswellOnt 15864 (S.C.J.) - Charney J.

The "Clean Hands Doctrine" seems to be more honoured in the breach than in the actual application of the principle. But in this case, a plaintiff was denied a Certificate of Pending Litigation because of her dirty hands. The case also dealt with the limitation period for claiming an interest in land.

The plaintiff, Leila, brought a motion for a Certificate of Pending Litigation (a "CPL") on two properties: the Baker Property and the Norbury Property.

In the main action that was commenced on September 1, 2020, Leila sought a declaration against her siblings and parents, recognizing her beneficial interest in the Baker Property and the Norbury Property. Leila was never on title on either of the properties, but claimed a beneficial interest in the properties by way of either an express trust or a purchase money resulting trust.

Leila alleged that she provided all, or a significant portion, of the purchase price of the Norbury Property. She also alleged that she provided a significant portion of the purchase price of a property on Horstman Street (the "Horstman Property"), which was sold, the proceeds of which could be traced directly to the Baker Property.

Leila married her husband (not a party to the proceeding) on September 2, 1994. They separated in December 2010. While not a party, Leila's marriage was central to her narrative of the events giving rise to the case.

The Properties

During her marriage, Leila alleged that she purchased two properties: the Norbury Property (in 1997) and the Horstman Property (in 1999). However, neither of those properties were registered in her name.

Leila alleged that, while she was the beneficial owner of each of these properties, they had been registered in the names of various family members "to protect her from losing her personal assets as part of any equalization payment or property division in the event of a marital break down". Leila asserted that her intention in registering the properties in the names of her brother and father was to "afford me a means of protecting my assets in case of a marital breakdown between myself and [my husband] by creating a trust around the title to the properties."

On November 16, 1999, one day prior to the closing of the Horstman Property in her brother's name, her brother executed an Acknowledgment stating that he held title in trust for Leila. He also executed an Undertaking not to transfer or encumber

the Horstman Property without Leila's prior written consent. Leila alleged that her brother breached the terms of the Acknowledgment and Undertaking on February 19, 2008, when he transferred title in the Horstman Property to their sister without Leila's consent.

Leila's sister sold the Horstman Property in June 2010, and kept the proceeds of sale, depositing $250,000 into personal GICs in her name. Leila was not repaid her initial investment in the property. Subsequently, the proceeds were used by her sister to purchase the Baker Property.

Leila pled similar facts with respect to the Norbury Property. She alleged that she purchased the Norbury Property in January 1997, and despite the fact that only she contributed to the purchase, title to the Norbury Property was taken in the name of her father - again to shield it from any equalization claims made by her husband should they separate. Title to the Norbury Property was subsequently passed between Leila's family members for no consideration.

Leila's Family Law Act Financial Statement

True to her stated intention, when Leila and her husband separated in March 2010, Leila did not disclose that she had an interest in either the Norbury Property or the Horstman Property. Nor was there any suggestion that her sister owed her any money from the sale of the Horstman Property, which sold on June 28, 2010.

Leila commenced an action on September 1, 2020, claiming declarations of beneficial interests in the properties. The defendants disputed Leila's claims entirely. To preserve her rights, Leila brought this motion for a CPL with respect to both properties.

Test for Granting a CPL

Justice Charney first reviewed the test for granting a CPL as set out in s. 103 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43. The applicable principles were recently summarized by Justice Schabas in *Marmak Holdings Inc. v. Miletta Maplecrete Holdings Ltd. et al.*, 2019 CarswellOnt 13348 (S.C.J.) at para. 14:

> The moving party must demonstrate that there is a triable issue with respect to the moving party's claim to an interest in the Property . . . The Court must consider all relevant factors between the parties, including whether damages would be a satisfactory remedy, and balance the interests of the parties in exercising its discretion equitably.

The threshold is whether the plaintiff can show a triable issue - not that s/he is likely to succeed: *Perruzza v. Spatone*, 2010 CarswellOnt 646 (Ont. S.C.J.). The triable issue must, however, relate to the plaintiff's interest in land, not simply a right that would lead to an award of damages. That is, an interest in land must be a possible remedy at trial based on the evidentiary record on the motion.

Notably, granting a CPL is a discretionary and equitable remedy.

Given Leila's claim for a beneficial interest in both properties by way of express trust or resulting trust, there was no doubt that she was claiming an "interest in property." But could Leila show a "triable issue"?

Limitation Period

The main argument advanced by the defendants was that the 10-year limitation period in s. 4 of the *Real Property Limitations Act*, R.S.O. 1990, c. L.15 ("*RPLA*") for claiming relief against the properties had expired. If that was so, there was no triable issue. As helpfully summarized by the Ontario Court of Appeal in *McConnell v. Huxtable* (2014), 42 R.F.L. (7th) 157 (Ont. C.A.) at para. 15: "No person shall bring an action to recover any land, but within ten years next after the time at which the right to bring such action first accrued to the person bringing it."

As this was "an action to recover land", the 10-year limitation period applied. (The Court of Appeal in *McConnell v. Huxtable* was clear that the *RPLA* applied not only to claims for possession, but also to claims for ownership based on resulting trust.)

The question then became, when did the limitation period start?

The defendants argued that the limitation period for the Norbury Property began to run either in 1997, when the Norbury Property was purchased and the trust allegedly created, or in January 2004, when Leila's father transferred 50 percent title in the Norbury Property to Leila's brother, contrary to the terms of the alleged trust.

In *Sinclair v. Harris*, 2018 CarswellOnt 16149 (S.C.J.), Justice Nakatsuru held that the 10-year period began to run the very day the resulting trust was created; that was the date on which the right to bring the action first accrued. See also *McVan General Contracting Ltd. v. Arthur*, 2002 CarswellOnt 2875 (C.A.). In the alternative, Justice Nakatsuru held that the right to recover the land accrued when the property was sold and the funds were not repaid.

Of the two possible dates, Justice Charney preferred the date the property was sold, primarily because he felt it best accorded with the reasoning in *McConnell v. Huxtable*, where the Court of Appeal held that the limitation period to claim a *constructive* trust began on the date of separation, not the date on which the funds were advanced or other contribution made.

Following *McCracken v. Kossar*, 2007 CarswellOnt 1079 (S.C.J.), Justice Charney also accepted that the discoverability principle in s. 5 of the *Limitations Act, 2002*, applied to s. 4 of the *RPLA*.

Therefore, Leila's right to bring an action for the recovery of land "first accrued" when one of the defendants violated a term of the alleged trust (or, in the case of concealed fraud, "the time at which the fraud was or with reasonable diligence might have been first known or discovered").

For the Norbury Property, Leila's right to bring an action for the recovery of land first accrued in January 2004, when her father transferred half the property to her brother. This transfer was contrary to the terms of the oral trust agreement alleged by Leila. As Leila did not issue her Statement of Claim until September 1, 2020, she was well out of time.

The defendants argued that Leila was also out of time with respect to the transfer of the Horstman Property from Leila's brother to her sister on February 19, 2008. However, Justice Charney had no evidence as to when Leila actually discovered the transfer, and the Statement of Claim alleged that the transfer was done without Leila's knowledge. Accordingly, Justice Charney held that there was still a triable issue with respect to Leila's claim to an interest in the Baker Property.

And now on to the "dirty hands."

Equitable Considerations

Having determined that he *could* order a CPL to issue for the Baker Property, Justice Charney then considered whether he *should* exercise his discretion to do so.

It is always open to the court to consider the "Clean Hands Doctrine" when someone claims a discretionary equitable remedy: *Morguard Residential v. Mandel*, 2017 CarswellOnt 2732 (C.A.) at paras. 18 and 28. A party seeking an equitable remedy must come to court with "clean hands."

The Clean Hands Doctrine has become more and more restricted in application over the years. While it is often mentioned, it is rarely actually applied. Its application now requires that the misconduct considered relates directly to the conduct in the transaction before the court: *2324702 Ontario v. 1305 Dundas*, 2019 CarswellOnt 4787 (S.C.J.) at paras. 17-22, aff'd 2020 CarswellOnt 7693 (C.A.).

Here, Leila's argument was that both properties had been registered in the names of family members to shield the properties from any equalization claims made by her husband if they separated. In the words of Justice Charney, "[t]his was a fraudulent intention," and Leila carried out this fraudulent intent when she swore her Financial Statement in her family law proceeding, omitting her interest in either of the properties.

Even though many courts have refused to apply the Clean Hands Doctrine in similar or even more egregious circumstances, Justice Charney easily found that Leila's admitted fraudulent intention defeated her right to claim a CPL against her co-conspirators. According to Justice Charney, courts have "consistently" taken a hostile view of parties who attempt to enlist the court in support of their fraudulent schemes, based on the "principle that the court will not assist a suiter to obtain relief from the consequence of his own unlawful act": *Krys v. Krys*, 1928 CarswellAlta 117 (S.C.C.) at para. 18.

However, we would argue that the application of the Clean Hands Doctrine by the courts has been anything but "consistent." For example, see *Holtby v. Draper* (2017), 3 R.F.L. (8th) 367 (Ont. C.A.), aff'g 2015 CarswellOnt 17824 (S.C.J.), leave to appeal to SCC ref'd *Cheryl Draper v. Kenneth Holtby, et al.*, 2018 CarswellOnt 19675 (S.C.C.), where the Court did not invoke the Clean Hands Doctrine against the husband who had hidden assets from judgment creditors in previous litigation by putting them in his wife's name, and then later, against his wife, successfully claimed a resulting trust. However, this situation of non-application is almost identical to the situation in *Scheuerman v. Scheuerman* (1916), 2 R.F.L. Rep. 176 (S.C.C.), the "seminal case" of the application of the Doctrine.

In *Scheuerman*, the husband had agreed to purchase certain lands and, with the intention of protecting them from action by a judgment creditor, caused them to be conveyed to his wife based on an oral agreement with her that title would remain in her name until the judgment debt had been satisfied. That debt was subsequently paid by the husband, and upon discovering that his wife had sold the lands, he brought suit against the wife claiming the unpaid balance was his as she held the lands in trust for him. The majority of the Supreme Court held that the husband's fraudulent intention was sufficient to defeat his claim, even though his creditors had actually been paid. Sir Charles Fitzpatrick, C.J.C. said at paras. 3 and 6:

> But if it were necessary to hold that there was a resulting trust, in favour of the [husband], I do not think he is in a position to ask the court to enforce it. He can only make out his case by alleging his own unlawful intentions in making the conveyance to his wife.
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> . . . . .
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> I am prepared to hold that a plaintiff is not entitled to come into court and ask to be relieved of the consequences of his actions done with intent to violate the law and that though they did not and even could not succeed in such purpose.

Yet, almost the exact same conduct was allowed in *Draper*. It is, indeed, hard to reconcile the application and non-application of the Clean Hands Doctrine across the cases that do and do not apply it. However, in any case, its application is certainly justified in this case. One should not be allowed to rely on fraudulent intent, and a person should not be allowed to take different positions for different purposes, be those purposes tax, corporate, trust, or family. See, for example, *Black v. Black* (1988), 18 R.F.L. (3d) 303 (Ont. H.C.); *Doucette v. Hache*, 2010 CarswellNS 452 (S.C.); *Wu v. Sun*, 2010 CarswellBC 3253 (C.A.); *Rosenthal v. Rosenthal* (1986), 3 R.F.L. (3d) 126 (Ont. H.C.); *Fehr v. Fehr* (2003), 40 R.F.L. (5th) 71 (Man. C.A.); *Hu v. Li*, 2016 CarswellBC 3201 (S.C.); *Horch v. Horch* (2017), 1 R.F.L. (8th) 1 (Man. C.A.); *Schroeder v. Schroeder* (2002), 23 R.F.L. (5th) 361 (Man. C.A.); and *Este v. Esteghamat-Ardakani* (2018), 12 R.F.L. (8th) 120 (B.C. C.A.).

The law would certainly benefit from some clarification or consistency of application in this area. Lack of predictability only encourages such conduct and litigation.

In any case, here, Leila's conduct disentitled her to a CPL. Justice Charney was of the view that the Court should not assist Leila with an equitable remedy in the circumstances.

Too Good a Result Can Catch Up with You

Volcko v. Volcko (2020), 48 R.F.L. (8th) 1 (N.S. C.A.) - Bourgeois, Fichaud, and Van den Eynden JJ.A.

The Nova Scotia Court of Appeal's decision is important for two reasons. First, it reminds us that even though "fairness" might be *legally* irrelevant, it can matter *a lot* in family law cases. Second, counsel must always be attuned to the potential tax issues that can arise when dealing with retroactive and retrospective spousal support.

The parties (who appear to be "frequent fliers" in the Nova Scotia courts) separated in 2006 after a 16-year traditional marriage, and had two adult children together. During the marriage, the wife gave up her career selling bonds for JP Morgan and Scotia Capital Markets to stay home and raise the children, thereby allowing the husband to build a lucrative career as an executive with PCL Constructors Canada Inc. ("PCL") where he earned well in excess of a million dollars a year (he earned an average of about $1,400,000 a year between 2010 and 2012).

In 2013, the trial judge ordered the husband to pay the wife $15,000 a month in spousal support starting on November 1, 2013. She also determined that the husband did not have to divide the $1,200,000 of shares he had in PCL because they were business assets (business assets are not divisible in Nova Scotia).

On appeal, the trial judge's support order was increased from $15,000 to $20,000 a month, which resulted in the husband owing the wife $70,000 in arrears for the period from November 1, 2013, until the time the Court of Appeal released its decision. However, the Court upheld the trial judge's decision that the husband's shares were a business asset.

Not long after the Supreme Court of Canada dismissed the wife's Application for Leave to Appeal, both parties filed variation applications to ask the Court to change the support order. The wife asked to increase the payments to $40,000 a month based on the *Spousal Support Advisory Guidelines*, and the husband asked the Court to terminate or reduce the payments because his income had fallen, and the wife had not made sufficient efforts towards self-sufficiency.

The hearing judge was satisfied that the husband had established a material change because his income had declined from an average of $1,679,992 from 2014 to 2016 and $1,556,581 from 2015 to 2017, to $868,000 in 2018.

But that was not the end of the analysis because, as the Supreme Court of Canada explained in *L.M.P. v. L.S.* (2011), 6 R.F.L. (7th) 1 (S.C.C.), even if the court is satisfied that there has been a material change, it must then decide what variation of the original order, if any, is required in the circumstances in light of that specific change:

> [47] If the s. 17 threshold for variation of a spousal support order has been met, a court must determine what variation to the order needs to be made in light of the change in circumstances. **The court then takes into account the material change, and should limit itself to making only the variation justified by that change**. As Justice L'Heureux-Dubé, concurring in *Willick*, observed: "A variation under the Act is neither an appeal of the original order nor a *de novo* hearing" (p. 739). As earlier stated, as Bastarache and Arbour JJ. said in *Miglin*, "judges making variation orders under s. 17 limit themselves to making the appropriate variation, but do not weigh all the factors to make a fresh order unrelated to the existing one, unless the circumstances require the rescission, rather than a mere variation of the order" (para. 62).
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> . . . . .
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> [50] In short, once a material change in circumstances has been established, the variation order should "properly reflect[] the objectives set out in s. 17(7), . . . [take] account of the material changes in circumstances, [and] consider[] the existence of the separation agreement and its terms as a relevant factor" (*Hickey*, at para. 27). **A court should limit itself to making the variation which is appropriate in light of the change. The task should not be approached as if it were an initial application for support under s. 15.2 of the *Divorce Act***. [emphasis added]

The hearing judge quickly disposed of the wife's request to increase support. The husband's income in 2018 was significantly less than what it had been during the trial in 2013. The mere fact that the *SSAG*, which were not considered during the initial trial, produced higher support payments based on the husband's income before it had precipitously declined, was not a basis to increase support: *Breed v. Breed*, 2016 CarswellNS 220 (S.C.) at para. 77. As we discussed in "Death to *Halliwell*" in the 2021-05 edition of *TWFL*, cases where the payor's income is greater than $350,000 a year require an individualized fact-specific analysis.

With respect to the husband's request for a reduction, at first glance one would think the dramatic decline in his income would warrant granting him at least some relief. However, the hearing judge dismissed the husband's request to reduce his support payments. She was satisfied there was at least some evidence that the husband had some control over part of his income, and

that the wife had not yet been fully compensated for the roles the parties adopted during the marriage. She also found that the husband could still afford to pay $20,000 a month in spousal support without issue.

The husband also asked the hearing judge to assist with issues he was having with the CRA regarding his claim to deduct the additional $70,000 in arrears that the Court of Appeal had ordered him to pay back in 2015. Apparently, the wife was refusing to claim this extra money on her taxes, and the CRA had disallowed the husband's claim for a corresponding deduction.

The hearing judge declined to weigh in on this issue, and noted, rightfully in our view, that "[i]t is not up to this Court to determine what would appear to be a dispute between the parties and Canada Revenue Agency."

The husband appealed, and argued that the hearing judge had not given sufficient weight to the reduction in his income and the wife's failure to make sufficient efforts towards self-sufficiency. As tends to happen in these types of cases, the Court of Appeal dismissed the appeal because it was not satisfied that the husband had established that the hearing judge had made a material error, seriously misapprehend the evidence, or made an error in law: *Hickey v. Hickey* (1999), 46 R.F.L. (4th) 1 (S.C.C.) at paras. 10-12. Support appeals, as we know, are difficult.

What the Court of Appeal did not say in its reasons, but what we suspect was a key factor in its decision, was that the $20,000 a month that the husband had been ordered to pay back in 2015 was *significantly* less than what he would have owed had the *SSAG* been considered at that point. [1] It was also still completely within the *SSAG* range even based on the husband's reduced income. [2]

With the benefit of hindsight, it seems that the original support order was actually very favourable for the husband, especially since his income had continued to increase for several years after the trial, and the wife had not received any of his valuable PCL shares when the parties' property was divided. Accordingly, it is not surprising that despite the very significant drop in the husband's income, neither the Court of Appeal nor the hearing judge were persuaded that it would be fair to the wife to give the husband a reduction - at least not quite yet.

As he had done before the hearing judge, the husband also asked the Court of Appeal to weigh in on the issues he was having with CRA. In declining this request, the Court of Appeal pointed out that the husband should be dealing with this issue directly with the CRA, and in accordance with the Income Tax Folio that was created as a result of the Tax Court of Canada's decision in *James v. R.* (2013), 69 R.F.L. (7th) 342 (T.C.C. [General Procedure]) (which decided that court-ordered spousal support arrears are taxable/deductible). For further information about *James v. R.*, see Phil Epstein's comment on it in the 2015-46 edition of *TWFL*, and Andrew Freedman's annotation of it in the RFL, which is available on Westlaw at RFL-ART 370.

The Court of Appeal also noted that while the husband might have been able to ask it to clarify this issue after it released its decision in 2015, that Panel was now *functus*, and it would not be appropriate for the current Panel to clarify the order now.

This is an important reminder to *always* consider the potential tax issues that can arise when dealing with retroactive or retrospective spousal support. Since it is hard to predict what the CRA is going to do in some of these cases, and as dealing with the CRA can be a "challenge" at the best of times, it is sometimes best to just net out the tax when calculating what is owed. At the very least, however, one should make it clear in the *order* whether a retroactive or retrospective order is supposed to be deductible or not (and specify what is supposed to happen if the CRA ultimately denies a deduction that the parties anticipated would be accepted). (Pursuant to *James v. R.*, one can only deduct spousal support arrears beyond the beginning of the previous calendar year pursuant to a court order, not pursuant to an agreement.)

When is a $250 Costs Order Significant?

Nova Scotia (Community Services) v. J.P., J.W., R.M.K., 2020 CarswellNS 635 (N.S. S.C.) - MacLeod-Archer J.

We have written a lot recently about domestic cases where courts have ordered costs and used various other procedural tools to send the message that flagrant non-compliance with the rules will no longer be tolerated. Obviously, the hope is that if parties know that non-compliance will result in immediate and proportionate consequences, they will be far more likely to comply

with their obligations in the first place. In *Nova Scotia (Community Services) v. J.P., J.W., R.M.K.*, Justice MacLeod-Archer took the unusual, but important and commendable, step of ordering costs to try to send a similar message to a child protection agency that did not comply with the rules.

In Nova Scotia, the *Children and Family Services Act* and *Civil Procedure Rule* 60A require child protection agencies to file a Notice of Motion and affidavit providing current relevant evidence and a Plan of Care at least 10 days before a Prehearing Conference that has been scheduled as a result of a finding that the child is in need of protective services.

In this case, however, the Minister did not serve the necessary materials until 1:50 p.m. the day before the Prehearing Conference. As a result, the Prehearing Conference had to be adjourned.

Counsel for one of the parties, J.P., asked the Court to order costs against the Minister.

Justice MacLeod-Archer reviewed the leading cases about ordering costs against a child protection agency, including Justice Chappel's comprehensive decision in *Children's Aid Society of Hamilton v. L. (K.)*, 2014 CarswellOnt 8154 (S.C.J.), where her Honour reviewed and summarized the principles that apply when dealing with a request for costs against a child protection agency:

> [14] The following general principles apply when a claim is advanced for costs against a child protection agency:
>
> 1. **Child protection agencies do not enjoy immunity** from costs awards.
>
> 2. However, the starting point in analyzing a claim for costs against a child protection agency is that **child welfare professionals should not be penalized for carrying out their statutory obligation** to protect children.
>
> 3. The approach to costs as against child welfare agencies must **balance the importance of encouraging child protection professionals to err on the side of protecting children and the need to ensure that those professionals exercise good faith, due diligence and reason** in carrying out their statutory mandate.
>
> 4. **The high threshold of "bad faith" is not the standard** by which to determine a claim for costs against a child protection agency.
>
> 5. **Costs will generally only be awarded against a Children's Aid Society in circumstances where the public at large would perceive that the Society has acted in a patently unfair and indefensible manner.**
>
> 6. **A Society should not be sanctioned through costs for an error in judgment**, or in cases where the nature of the case makes it very difficult to weigh and balance the evidence and predict the legal outcome.
>
> 7. Important factors to consider in deciding whether costs against a Society are appropriate include the following:
>
> i. Has the Society conducted a thorough investigation of the issues in question?
>
> ii. Has the Society remained open minded about possible versions of relevant events?
>
> iii. Has the Society reassessed its position as more information became available?
>
> iv. Has the Society been respectful of the rights and dignity of the children and parents involved in the case?
>
> v. In cases involving procedural impropriety on the part of a Society, **the level of protection from costs may be lower if the irregularity is not clearly attributable to the Society's efforts to diligently carry out its statutory mandate of protecting children**. [emphasis added]

After considering these principles, Justice MacLeod-Archer called out the Minister for what she viewed as a chronic problem in her jurisdiction (at least anecdotally, jurisdictions all across Canada are also struggling with these types of problems):

[32] The late filing on August 4 demonstrates a **pattern which is evident in CFSA proceedings in this district generally. Late filings in child protection proceedings have become the norm**. Respondents' counsel are often left scrambling to review the documents with their clients, sometimes just minutes before the court appearance.

[33] In addition, **the Minister's orders are often filed late; in some cases the order isn't filed until immediately prior to the next docket date** (up to 3 months later). The vast majority of files scheduled for appearance days to deal with overdue orders, belong to the Minister. In these circumstances, one might ask: without a timely court order, how are parties to know what their legal obligations are?

[34] Finally, **late filings compound the problem of a busy court docket that is already dominated by child protection proceedings**. In addition to duplicate docket appearances due to adjournment requests, CFSA proceedings take priority over other family files scheduled for hearing, because they involve statutory time limits. So when a party contests the Minister's position in a CFSA proceeding, civil family files are "bumped" from the docket to obtain trial time. Given the number of CFSA trials held in this district, this has become a regular occurrence.

. . . . .

[36] Much has been written and said about access to justice in recent years. The cost of litigation is rising, and the complexity of matters has increased, leading to longer trials and heavier court dockets. **When materials are filed late, leading to an adjournment and the use of a second (and sometimes a third) time slot on an already busy court docket, it disadvantages everybody in the system**. All counsel have to prepare and appear a second time, which increases Legal Aid's costs and reduces its ability to respond to other client files. As the Court of Appeal stated in *Mosher v. Gosby*, 2016 NSCA 10 (N.S. C.A.):

> [17] . . . The Nova Scotia Legal Aid Commission has limited resources, which they use to help as many litigants as possible. These limited resources should not have to be wasted . . . [emphasis added]

Justice MacLeod-Archer recognized that she was not well positioned to determine the cause of the problem on the Minister's end. However, whether it was being caused because "institutional complacency has set in, because courts have been reluctant to order costs in child protection proceedings in the past", or because "more resources are required, in order for the department to meet its obligations under the legislation and the *Civil Procedure Rules*", it was a problem that "must be addressed." And, in order to try to make sure that the Minister got the message loud and clear, she ordered it to pay Nova Scotia Legal Aid $250 in costs - a monetary slap on the wrist.

While $250 is a nominal amount, costs orders against child welfare agencies are unusual enough that this order will hopefully get the Nova Scotia Government to realize that courts are no longer going to tolerate institutional delays in child protection matters. And if it doesn't, we suspect we will start seeing other judges do exactly what Justice MacLeod-Archer did here as part of the effort to pressure child protection agencies to change their behaviour, and to pressure provincial governments to provide child protection agencies with the resources they need to do their work properly.

Footnotes

1 Based on the husband's average income for 2015 to 2017 of $1,556,581, and the wife being imputed with an income of $50,000 a year, the *SSAG* provide for support between $30,000 and $40,000 a month after a 16-year marriage.

2 Based on the husband having an income of $868,000 a year and the wife being imputed with an income of $50,000 a year, the *SSAG* provide for support between $16,000 and $21,333 a month after a 16-year marriage.

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