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

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Neshkiwe v. Hare Update - An Early End to a Long and Winding (and Bumpy) Road that Would Have Likely Led to Ottawa

Neshkiwe v. Hare, 2020 CarswellOnt 11441 (C.J.) - Finlayson J.

We previously discussed the important constitutional issues that were being raised in this custody case between a mother, a father, and the M'Chigeeng First Nation, and indicated that unless the parties were able to resolve the matter, there was a good chance that it was going to wind up before the Supreme Court of Canada.

We recently learned that shortly after Justice Finlayson fixed a very early trial date, appointed *amicus*, and ordered the mother and the M'Chigeeng First Nation to pay the father more than $20,000 in costs (see the July 13, 2020 edition of *TWFL*), the mother and the M'Chigeeng First Nation agreed to withdraw their constitutional claims. As a result, the case is going to proceed as a regular custody case. However, the interplay between custody and access legislation and s. 35(1) of the *Constitution Act, 1982*, which provides that "[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed", is an issue that keeps coming up (see e.g. *Beaver v. Hill* (2018), 17 R.F.L. (8th) 123 (Ont. C.A.)), and is going to eventually have to be resolved by the courts.

Whether by Protection Order or Conduct Order - Just Stop It!

A.B. v. C.D. (2020), 35 R.F.L. (8th) 16 (B.C. C.A.) - Bauman C.J.B.C., Groberman and Fisher JJ.A.

In this fascinating case, the British Columbia Court of Appeal confirmed that a parent cannot interfere with a minor child's decision to undergo medical treatment if the minor child is capable of giving, and has given, informed consent, and the child's doctor agrees that the treatment is in the child's best interests.

The case also deals with using protection Orders and conduct Orders to prevent a parent from communicating with a child in a manner that could be harmful to him or her and from publishing information about the child.

The Facts

AB was a transgendered teenager who was biologically female. However, AB started identifying as male at 11 years old, and started socially transitioning when he was 12.

After he started socially transitioning, AB saw a psychologist who concluded that he met the diagnostic criteria for gender dysphoria, and was a good candidate for hormone therapy. AB's psychologist referred him to a pediatric endocrinologist, who also agreed "that masculinizing hormone treatment was both reasonable in the circumstances and in AB's best interests." AB and his mother signed the necessary consents for hormone treatment, but the father refused to do so.

After several months of trying to communicate with the father without success, AB's pediatric endocrinologist advised him that, pursuant to s. 17 of the *Infants Act*, minors are permitted to consent to their own medical treatment without a parent's permission and that, as AB's doctors had concluded that AB was capable of consenting, the father's permission was not required.

The father responded to this letter by starting a proceeding in the Provincial Court, and bringing an *ex parte* motion to prevent AB from pursuing treatment. The motion was granted, and a temporary Order was made prohibiting AB from seeking treatment.

After the *ex parte* Order was granted, AB and his mother commenced a proceeding in the Supreme Court for an Order confirming that AB was entitled to make his own medical decisions. The father responded by seeking a further injunction against AB, the mother, AB's lawyer, AB's doctors, the Ministry of Education, AB's school district, and various counsellors and officials at AB's school.

The matter came on for a hearing before Justice Bowden, who made an Order confirming that AB was capable of making his own medical decisions, and dismissing the father's request for an injunction. Justice Bowden also made freestanding declarations that:

- It was in AB's best interests to be "acknowledged and referred to as male, both generally and with respect to any matters arising in these proceedings, now or in the future and any references to him in relation to this proceeding, now or in the future, employ only male pronouns"; and to be "identified, both generally and in these proceedings by the name he has currently chosen, notwithstanding that his birth certificate presently identifies him under a different name."

- "AB is exclusively entitled to consent to medical treatment for gender dysphoria and to take any necessary legal proceedings in relation to such medical treatment[.]"

- "Attempting to persuade AB to abandon treatment for gender dysphoria; addressing AB by his birth name; referring to AB as a girl or with female pronouns whether to him directly or to third parties; shall be considered to be family violence under s. 38 of the *Family Law Act*." (The father had been engaging in these activities).

After Justice Bowden released his decision, AB's doctors started receiving threatening phone calls, and threatening posts started appearing online "analogizing AB's medical treatment to child abuse, perversion and even pedophilia", and advocating violence against AB's doctors. As a result of these threats, Justice Marzari granted a publication ban for the protection of AB's doctors.

When the father did not comply with the publication ban, AB applied for, and obtained, a protection Order restraining the father from trying to persuade him not to pursue treatment, referring to him as a girl directly or to third parties, or publishing or sharing any "information or documentation relating to AB's sex, gender identity, sexual orientation, mental or physical health, medical status or therapies", with certain enumerated exceptions such as his lawyer.

The father appealed to the British Columbia Court of Appeal. The Attorney General of British Columbia and six other organizations intervened on the appeal (the Provincial Health Services Authority of B.C., Justice Centre for Constitutional Freedoms, the Association for Reformed Political Action, Egale Canada Human Rights Trust, the West Coast Legal Education and Action Fund, and the Canadian Professional Association for Transgender Health).

Preliminary Issues

Before delving into the merits of the appeal, the Court of Appeal had to deal with two preliminary questions:

1) Whether the Court should refuse to hear the father's appeal because he had repeatedly breached the Orders under appeal, including giving interviews in breach of the publication ban; and

2) Whether the appeal was moot because AB had already begun hormone treatment and had gone through changes he said were irreversible.

The Court of Appeal recognized that it could, in appropriate circumstances, refuse to allow a party who was in breach of a court order to proceed with an appeal: *Larkin v. Glase* (2009), 2009 BCCA 321, 70 R.F.L. (6th) 263 (B.C. C.A.) at para. 34; and *B. (K.P.) v. R. (A.S.)*, 2016 CarswellBC 2611 (C.A.) at para. 37. However, it declined to exercise its discretion in this case "given the importance of the issues raised in this appeal and the fact that our focus at all times must rest on the best interests of AB, we would not decline to hear from [the father] on the appeal."

The Court also declined to exercise its discretion not to hear the appeal on the basis that it was moot because of the importance of the issues, and because the appeal dealt with more than just the question of whether AB should be able to continue receiving hormone therapy:

> [79] Turning to the mootness issue, we acknowledge that the evidence indicates physical and mental health risks associated with a discontinuance of treatment by AB at this time. However, **we would decline to make a determination as to whether this case is moot, given that we would regardless consider this an appropriate case to hear in an exercise of the court's residual discretion in the mootness analysis**: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 (S.C.C.) at 358-363; *R. v. Rajaratnam*, 2019 B.C.CA 209 (B.C. C.A.) at para. 117.
>
> [80] In any event, **the order impacting [the father]'s interactions with AB and others touching the issue of AB's transition are not moot and the appeal in any event would proceed in respect of those matters**. [emphasis added]

The Declarations

The Court of Appeal determined that Justice Bowden had erred in making the bald declarations referenced above (e.g. that it was in AB's best interests to be "acknowledged and referred to as male, both generally and with respect to any matters arising in these proceedings"), and that courts should generally not make freestanding declarations about a child's best interests:

> [119] If we view s. 37 of the *FLA* as countenancing the making of a bald "best interests" declaration in the matter of the provision of "health care services", we are risking the court's interference with the best interests determination, which is, by statute, entrusted to the child's "health care provider". **In our view, s. 37 deals only with considerations to be taken into account in "the making of an agreement or order . . . respecting guardianship, parenting arrangements or contact with the child". The provision does not contemplate freestanding judicial declarations as to the "best interests of the child" that are unconnected with agreements or orders respecting guardianship, parenting arrangements, or contact**. In particular, where a child has consented to health care in accordance with s. 17 of the *Infants Act*, s. 37 of the *FLA* does not furnish a court with authority to enter upon a de novo consideration of the child's best interests in respect of medical treatment. [emphasis added]

AB's Ability to Consent to Health Care

The main issue that the Court of Appeal had to grapple with was whether Justice Bowden had erred in allowing AB to undergo hormone therapy. The starting point for the Court's analysis was s. 17 of the *Infants Act*, which provides that:

> 17(1) In this section
>
> > **"health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care**;
> >
> > "health care provider" includes a person licensed, certified or registered in British Columbia to provide health care.

> 17(2) Subject to subsection (3), **an infant may consent to health care** whether or not that health care would, in the absence of consent, constitute a trespass to the infant's person, and **if an infant provides that consent, the consent is effective and it is not necessary to obtain a consent to the health care from the infant's parent or guardian**.
>
> 17(3) **A request for or consent, agreement or acquiescence to health care by an infant does not constitute consent** to the health care for the purposes of subsection (2) unless **the health care provider providing the health care**
>
> (a) **has explained to the infant and has been satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks** of the health care, and
>
> (b) **has made reasonable efforts to determine and has concluded that the health care is in the infant's best interests**. [emphasis added]

The evidence in the court below satisfied Justice Bowden that AB's consent to hormone therapy met the requirements of s. 17(2) of the *Infants Act*, and that AB's doctors had explained the benefits and risks of the treatment and correctly. Accordingly, the Court of Appeal had no difficulty concluding that, based on the evidence, there was absolutely no basis to interfere with his Honour's decision:

> [129] Critically, in the context of s. 17 of the *Infants Act*, **Bowden J. found that AB's consent was sufficient for the treatment to proceed** (at para. 54). He then concluded (at para. 56):
>
> > Having considered the form of consent signed by A.B. and the evidence of I.J., G.H. and A.C., **I am satisfied that A.B.'s health care providers have explained to A.B. the nature and consequences as well as the foreseeable benefits and risks of the treatment recommended by them, that A.B. understands those explanations and the health care providers have concluded that such health care is in A.B.'s best interests**.
>
> [130] **Essentially, and correctly in our view, Bowden J. approached the review of the s. 17 issue - whether AB had the capacity to consent under s. 17(2) of the *Infants Act* - with a deferential review of the actions and determinations of the health care providers** in purported compliance with the prerequisites to a valid consent set by s. 17(3).
>
> [131] **On the record here we see no basis to suggest that the judge's conclusion in this regard was in error** - as we indicated at the conclusion of argument. [emphasis added]

With respect to AB's doctor's conclusion that hormone therapy would be in AB's best interests, the Court of Appeal accepted that a court could, in appropriate circumstances, overrule a health care provider's decision about a minor's best interests under s. 17(3)(b) of the *Infants Act*. However, it also determined that courts are required to give these types of decisions *significant* deference, "given the legislative intent behind s. 17 to recognize the autonomy of mature minors and the expertise and good faith of the health care providers." And in this case, the Court found that there was no basis to interfere with AB's doctor's decision:

> [133] The larger question, however, is whether a consent given under s. 17 of the *Infants Act*, and in particular whether s. 17(3) has been complied with, is open to review by a court. In our view, the answer must be "yes". **The issues encompassed by s. 17 must be justiciable, but the jurisdiction is limited**.
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> . . . . .
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> [135] **Clearly "subject to s. 17" means subject to a lawful exercise of the rights accorded to mature minors under s. 17**. The lawful exercise of those rights requires a health care provider to assess whether the "infant" understands the nature, consequences, benefits, and risks of the proposed treatment, and whether the treatment is in that individual's best interests.
>
> [136] **The court's approach to that review must be deferential given the legislative intent behind s. 17 to recognize the autonomy of mature minors and the expertise and good faith of the health care providers.**

> [137] As referenced above, the relief sought in [the father]'s petition is vastly beyond the scope of permissible review of a s. 17 determination. **The *Infants Act* has made it clear that health care professions, not judges, are best placed to conduct inquiries into the state of medical science and the capacity of their patients when it comes to questions of minors' medical decision-making. The statutory deference accorded to health care providers appropriately protects minors' medical autonomy by providing a limited scope of review**. In this case, Bowden J.'s ultimate finding on this issue was made in accordance with this principle and within his limited jurisdiction. [emphasis added]

The Protection Order

The other substantive issue that the Court of Appeal had to decide was whether Justice Marzari had erred in making a protection Order against the father to try to control his behaviour.

Section 183 of the *Family Law Act* gives courts in British Columbia broad authority to make protection Orders to prevent family violence, which is defined in s. 1 as including:

> 1 . . . (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
>
> (b) sexual abuse of a family member,
>
> (c) attempts to physically or sexually abuse a family member,
>
> (d) psychological or emotional abuse of a family member, including
>
> (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
>
> (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
>
> (iii) stalking or following of the family member, and
>
> (iv) intentional damage to property, and
>
> (e) in the case of a child, direct or indirect exposure to family violence;

If a court is satisfied that family violence is likely to occur against an at-risk family member, which s. 182 defines as "a person whose safety and security is or is likely at risk from family violence carried out by a family member", it can then make one or more of the following Orders to protect the at-risk person:

> 183(3) . . . (a) a provision restraining the family member from
>
> (i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,
>
> (ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
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> (iii) following the at-risk family member,
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> (iv) possessing a weapon, a firearm or a specified object, or
>
> (v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;
>
> (b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;

(c) directions to a police officer to

(i) remove the family member from the residence immediately or within a specified period of time,

(ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or

(iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);

(d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(e) any terms or conditions the court considers necessary to

(i) protect the safety and security of the at-risk family member, or

(ii) implement the order.

The Court of Appeal concluded that Justice Marzari had erred in making a protection Order because, although the father's conduct had been inappropriate and contrary to AB's best interests, the evidence was insufficient to establish the existence of "family violence" within the meaning of s. 1 of the *Family Law Act*:

[171] **There is evidence that [the father's] refusal to acknowledge AB's gender is clearly hurtful to AB, but there is insufficient evidence in the record before both Bowden J. and Marzari J. that [the father]'s conduct was grounded by an intent to hurt AB or that his refusal to agree with AB's decision about the treatment was ultimately unresponsive to AB when AB wished to disengage**.

[172] **Without more, there was insufficient evidence in the unique circumstances here to ground a finding of family violence - that is, emotional or psychological abuse - as defined in the *FLA***. Significantly, neither judge conducted an analysis of whether [the father]'s conduct in relation to the name and pronouns he used with AB, and his discussions of AB's treatment choices, were sufficiently intentional or unresponsive to AB's communications with him to ground a finding of family violence. Bowden J. simply made a declaration that this constituted family violence without analysis (perhaps inadvertently as discussed above), and Marzari J. based this part of the protection order on this declaration.

[173] **It is not our intention to minimize in any way the pain that AB feels due to his father's refusal to accept his decision to identify as male and proceed with hormone treatment. It is also not our intention to condone [the father]'s conduct in refusing to engage with the medical professionals responsible for AB's care and refusing to engage in a more constructive way to communicate his views to AB**.

[174] **However, [the father] is entitled to his views and he is entitled to communicate those views to AB. As difficult as this is, this difference of opinion alone cannot justify a finding of family violence**. As set out above, the evidence shows that AB is a mature minor with the capacity to make his own decision about the medical treatment recommended at this stage, and such capacity includes the ability to listen to opposing views. It also includes the ability to disengage in conversations that he finds uncomfortable or offensive. In fact, the evidence available suggests that AB has done just that, and that [the father] has generally respected this decision to disengage.

[175] **In circumstances that do not fit squarely within the more obvious parameters of the family violence provisions in the *FLA*, it is our view that some caution should be exercised in identifying "psychological or emotional abuse" as constituting "family violence"**. This is especially important in cases such as this, which involve a complex family relationship stemming from a profound disagreement about important issues of parental roles and medical treatment. Moreover, a finding of family violence in such circumstances is inconsistent with the continuation of [the father]'s parenting responsibilities. [emphasis added]

We pause here to note that the main reason offered by the Court of Appeal here - the fact that the father's conduct was not grounded by an intent to hurt AB - does not, itself, appear to be grounded in the statute, which does not speak of "intent." It seems odd to, on the one hand, speak of the "pain that AB feels due to his father's refusal to accept his decision to identify as male" and to specifically refuse to condone the father's conduct, and then suggest that a protection Order is not warranted for lack of intention. It seems that the father here was doing far more than just "communicating his opinions" to AB.

In any case, as a result, the Court of Appeal set aside the protection Order. But that was not the end of the matter, as ss. 222, 225, and 227(c) of the *Family Law Act* allow courts in British Columbia to make conduct Orders without the need to establish family violence. These provisions of the *Family Law Act* provide that:

> 222. At any time during a proceeding or on the making of an order under this Act, the court may make an order under this Division for one or more of the following purposes:
>
> (a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;
>
> (b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
>
> (c) to prevent misuse of the court process;
>
> (d) to facilitate arrangements pending final determination of a family law dispute.
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> . . . . .
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> 225. Unless it would be more appropriate to make an order under Part 9 [Protection from Family Violence], a court may make an order setting restrictions or conditions respecting communications between parties, including respecting when or how communications may be made.
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> . . . . .
>
> 227. A court may make an order requiring a party to do one or more of the following:
>
> . . . . .
>
> (c) do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222 [purposes for which orders respecting conduct may be made].

Even though AB had not requested a conduct Order in either the court below or on appeal, the Court of Appeal concluded that it would be appropriate to make a conduct Order that required the father not to "directly or indirectly through a third party, publish information or provide documentation relating to AB's gender identity, physical and mental health, medical status or treatments" except with his own lawyer, AB's lawyer, the mother's lawyer, AB's doctors, his own doctors, and any other person authorized by AB or the court. The Court of Appeal also ordered that the conduct Order would remain in place for a year, but that its term could be extended if necessary.

The father argued that this type of Order would be inconsistent with his *Charter* rights and *Charter* values. The Court of Appeal disagreed with him because the *Charter* does not apply to private disputes and, as the Supreme Court of Canada confirmed in *Young v. Young* (1993), 49 R.F.L. (3d) 117 (S.C.C.), "the *Charter* guarantee of freedom of expression does not protect conduct that violates the best interests of the child test." Furthermore, while courts must always interpret legislation in a manner consistent with *Charter* values, unstructured and ad hoc appeals to "*Charter* values" are not appropriate: *E.T. v. Hamilton-Wentworth District School Board*, 2017 CarswellOnt 18540 (C.A.); *Gehl v. Canada (Attorney General)*, 2017 CarswellOnt 5673 (C.A.).

We agree with the Court of Appeal's decision not to allow the father to interfere with AB's ability to consent to a medical treatment that his doctor concluded would be in his best interests. Given the father's conduct, we also certainly understand why the Court made the conduct Order that it did. However, in our opinion, it should have allowed the protection Order to stand.

To Paraphrase the Clash: Must I Stay or May I Enforce Now?

Jackson v. Jackson, 2020 CarswellSask 64 (C.A.) - Richards C.J.S., Jackson J.A., and Tholl J.A.

This short decision from the Saskatchewan Court of Appeal clarifies the effect of a stay pending appeal. Unlike most provinces, in Saskatchewan the *Court of Appeal Rules* provide for an automatic stay pending appeal for many types of judgments. The trial was about custody and access.

The husband was not happy with the result at trial, and he filed a Notice of Appeal. By order dated August 27, 2019, Justice Caldwell lifted the automatic stay of execution that had been imposed by operation of Rule 15(1) of the *Court of Appeal Rules*. (In most provinces, the custody/access judgment would not be automatically stayed with the filing of a Notice of Appeal. Rather, in this case, the husband would have had to move for a stay pending appeal.)

Rule 15(1) of the Saskatchewan *Court of Appeal Rules* states:

> 15(1) Unless otherwise ordered by the judge appealed from or by a judge, the service and filing of a notice of appeal does not stay the execution of a judgment or an order awarding mandamus, an injunction, alimony, or maintenance for a spouse, child or dependant adult. Unless otherwise ordered by a judge, the service and filing of a notice of appeal stays the execution of any other judgment or order pending the disposition of the appeal. (Forms 5a and 5b)
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> (2) Where leave to appeal from an interlocutory order is granted, the judge hearing the application may give directions as to staying proceedings.
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> (3) Where a writ of execution has been issued but is stayed after being issued because of an appeal, the appellant is entitled to obtain a certificate from the registrar that the execution of the writ has been stayed pending the appeal. On the deposit of the certificate with the sheriff, the execution of the writ is stayed but the execution debtor shall pay the sheriff's fees, and the amount so paid shall be allowed to the execution debtor as part of the costs of the appeal.
>
> (4) Where the execution of a judgment or order is stayed pending an appeal, all further proceedings in the action, other than the issue of the judgment and the taxation of costs under the judgment, are stayed unless otherwise ordered.

The husband did not move his appeal forward, and the wife filed an application at the Court of Appeal for an order requiring him to perfect it. On December 19, 2019, the Chambers judge ordered the husband to order the trial transcript by January 10, 2020, and to perfect his appeal within 45 days of receiving the transcript. Failing compliance, leave was granted for the wife to apply to the Court to dismiss the appeal.

The Chambers judge then further ordered that the Order was without prejudice to the right of each party to make further application pursuant to Rule 15 relating to the lifting of the ongoing stay of further proceedings in the Court of Queen's Bench. This, as detailed below, was ultimately the provision that caused confusion.

The husband did not order the transcript. Instead, he applied to vary the Order of the Chambers judge, on the basis that he was not given enough time to raise the funds he needed to pay for the transcript. The husband was asking for an additional 45 to 60 days to raise the funds necessary to order the transcript.

The wife argued that the husband had failed to comply with various terms of the Queen's Bench Order from the trial. She had not taken steps in the Court of Queen's Bench to enforce the trial judgment believing that she could not do so while an appeal was pending to the Court of Appeal. As it turns out, that belief was incorrect; and that incorrect belief was shared by the Chambers judge.

The Chambers judge gave the husband very little time (over the Christmas holidays) to order the transcript because he was under the impression that the wife was barred from taking steps to enforce the trial judgment until this appeal has been heard and decided:

> [14] One of [the wife's] concerns is to be able to obtain continuing relief from the Court of Queen's Bench with respect to "the ongoing failure by [the husband] to follow the existing [Trial Judgment]". [The husband's] affidavit takes issue with much of what [the wife] says in her affidavit. The detail of all of this is irrelevant except so far as it underscores that this appeal must move ahead promptly.
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> [15] The Stay Order lifts the stay of execution of the Trial Order. However, the stay of further proceedings in the Court of Queen's Bench continues, pursuant to Rule 15(4) of the Rules:
>
> > (4) Where the execution of a judgment or order is stayed pending an appeal, all further proceedings in the action, other than the issue of the judgment and the taxation of costs under the judgment, are stayed unless otherwise ordered. . . .
>
> [16] In simple terms, the effect of Rule 15(4) is to put in place a "freeze" on further proceedings in the Court of Queen's Bench so that the sand does not shift before this Court can perform its role as a court of review. All of this is complicated because a child is involved. The Court's concern must always be with the best interests of the child. I am therefore not prepared to see the prosecution of this appeal delayed unduly.

On review by a panel of the Court of Appeal, it was determined that the Chambers judge had mis-interpreted Rule 15(4). According to the reviewing Court, Rule 15(4) only applied when the execution of a judgment has been stayed. A stay could arise either by way of the operation of Rule 15(1) or by way of an order made under Rule 15(2). Here, the automatic stay of the trial judgment pursuant to Rule 15(1) had been lifted and, as a result, Rule 15(4) was not applicable. That is, Justice Caldwell's Order lifting the stay allowed the wife to enforce the trial judgment pending the resolution of the appeal.

As a result, the Chamber judge's concern regarding delay was misplaced, as the wife would suffer no prejudice if the husband had been given more time to perfect the appeal. The primary concern that motivated the Chambers judge - delay - was not really a concern at all.

As a result, the reviewing Court varied the decision of the Chambers judge, and gave the husband an extra 60 days to order the transcript.

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