Courts of Justice Act

FACTUM FOR DIVISIONAL COURT

BETWEEN

DEIRDRE MOORE — *Appellant (mother)*

and

CHILDREN'S AID SOCIETY OF OTTAWA — *Respondent*

(IF COURT AGREES, JONATHAN KISKA COULD ALSO BE ADDED AS A RESPONDENT)

FACTUM OF THE APPELLANT

MOTION TO ADDUCE FRESH EVIDENCE

Opening Remarks

This *Child Youth and Family Services Act* ("*CYFSA*") matter may be one of the worst cases of domestic-violence-without-the-bruises that the Superior Court of Justice has ever seen. The ***gross negligence*** carried out by the Children's Aid Society of Ottawa ("CAS") in order to support the abusive father, Jonathan Kiska ("Kiska"), to the utter demise of the mother, Deirdre Moore ("Moore"), is both scandalous and undeniable.

PART ONE – ISSUES TO BE ARGUED ON MOTION

The Appellant, ("Moore") shall argue that:

1. Regarding fresh and/or new evidence:
    a) A significant amount of evidence could not have been produced for the 20201110 Summary Judgment Motion ("SJM") due to:
        i. Malicious prosecution and detention of Moore by Ottawa's Crown Attorney's Office in the weeks leading up to the SJM,
        ii. Financial abuse by Moore's former spouse, Kiska, who benefitted from the SJM outcome,
        iii. Denied access to the evidence to which Moore was legally entitled but refused by the CAS; namely, an up-to-date, unredacted copy of the family's complete 2013-2020 CAS file,
        iv. A last-minute, malicious, "piggy-back" Motion brought by Kiska on the day that respondents SJM materials were due to which Moore felt obligated to attempt to refute,

v. Negligence, breach of fiduciary duty to Moore's children ("S.K. and C.K.") and/or bias against Moore by the lawyer appointed by the Office of the Children's Lawyer ("OCL") who neither served nor filed any substantial materials but delivered scathing arguments against Moore during the SJM which were impossible to fully refute there and then,

vi. Negligence, breach of fiduciary duty to S.K. and C.K. and/or bias against Moore by the CAS which delivered voluminous materials laden with hearsay, errors, omissions and malicious obfuscation merely 2½ weeks before Moore's responding materials were due,

vii. Inadequate counsel in the weeks leading up to the SJM,

viii. Limited access to required court resources as reduced hours and skeleton staff at the Ottawa Courthouse was the norm during the global pandemic of COVID-19 and

ix. Some of the fresh evidence was not available at the time of the SJM including, but not limited to:

   a. confirmation of Moore's mental fortitude by a therapist,

   b. confirmation of CAS's unlawful child apprehension,

   c. evidence of Kiska's collusion with CAS Executive Director, Kelly Rayond ("Raymond"), who circumvented process for Kiska's benefit,

   d. evidence of Kiska's lies to the OPS during July 2019 so that Moore would be charged for criminal harassment, denied bail and placed under a non-communication order with S.K. and C.K.,

e. evidence that the 20190408 protection order was interlocutory, had expired 20190806 and was not a final order as the CAS informed the court during the SJM and

f. the fact that significant criminal charges have been dropped by the Crown.

b) The fresh and/or new evidence is relevant.

c) The fresh and/or new evidence is material.

d) The fresh and/or new evidence is credible; plus, when considered altogether, it demonstrates Moore's mental fortitude, intelligence and incredible endurance versus the well-documented allegations that she "lacks capacity" and suffers from some debilitating, chronic, severe mental illness.

e) The fresh and/or new evidence bears upon **multiple** potentially decisive issues at trial.

f) It is in the public's best interest that the fresh and/or new evidence be heard and considered by the court so that it can:

i. produce a **citable decision** that can be relied upon by other victims of domestic violence and/or child protection agencies,

ii. produce an outcome that will act as a **deterrent** for other negligent so-called "child protection" agencies and rogue government-appointed "children's lawyers" and/or their agencies across Canada,

iii. be used by **Cowessess First Nation** as an example of why they need to assume all aspects of child welfare for their people as soon as possible.[1]

[1] Trudeau signs agreement returning child welfare responsibilities to Cowessess First Nation (July 6, 2021)

2. The CAS (and other parties) may argue that Moore's evidence is inadmissible, irrelevant, immaterial and/or not credible.

PART TWO – OUTLINE OF THE FACTS

Why was a SJM against the mother scheduled in the first place?

1. Justice Tracy Engelking ("Engelking"), a former employee of the CAS, is heavily biased against Moore, though she has no idea why.
2. During assignment court held on 20200828, after going through the motions of scheduling a 12-day trial, Engelking asked the clerk to schedule a 1-day Summary Judgment Motion:

> "All right. So now I want a summary judgment date well in advance of the trial, perhaps in the beginning of November, even in October if there is one." (See page 21 of 20200828 hearing **transcript included as an exhibit at Affidavit #5, Exhibit AC.)**

3. **Engelking did this even though the CAS had request a motion date to schedule a motion for the appointment of a Public Guardian and Trustee! ." (see Affidavit #5, Exhibit AC page 3)**
4. This, in itself, given Engelking:
    a. has been the case management judge for the Kiska v. Moore divorce since she won her **precedent-setting motion in 2017 (**Kiska v. Moore, 2017 ONSC 6872**),**
    b. has had access to the 11-volume, evidence-laden divorce file for the past three years,
    c. had received OCL's 2018 Report which documented Moore as the superior parent who should receive sole custody and

d. has now seemingly passed off case management duties to colleague Justice Pamela MachEachern

supports Moore's allegation made at paragraph 1.

5. Though not specifically referenced to Engelking's bias, evidence that supports paragraphs 2-4 above has already been served and filed for this Motion.

Why did the SJM judge make (1) errors in law, (2) errors in fact and (3) errors in law and fact so that the decision could be successfully appealed?

6. SJM judge Justice Mary Fraser ("Fraser") appears to have been duped by Kiska, the CAS and the OCL who presented oral arguments and written testimony that was laden with hearsay, errors, omissions and malicious obfuscation.
7. Moore was prevented from "putting her best foot forward".

What happens if all of Moore's fresh and/or new evidence is adduced by the court for her appeal of the SJM?

8. Moore will use it to evidence that Fraser made errors in law, errors in fact and errors in law and fact.
9. In doing so, Moore will reveal, at a minimum, the degree of malice that has been employed by Kiska, the CAS and the OCL to completely remove Moore from the lives of S.K. and C.K.
10. It will also reveal that S.K. and C.K. have been totally gaslit (i.e. psychologically abused) into believing that Moore is severely mentally ill and that they have effectively lost her as their mother (i.e. emotional abuse).
11. It is possible that not only would the SJM be dismissed, the court could rule in Moore's favour and grant all of the orders that she requested at the SJM.

12. If the SJM is merely dismissed, the court could also order that Family court grant Moore an order with specified **minimum access** to S.K. and C.K. as that should never have been sub-delegated to the CAS in the first place.

13. On 20190408, Justice Calum MacLeod ("MacLeod") made an error in law and should not have sub-delegated minimum access to the CAS:

> "Nothing in the language of sections 104 or 105 of the *CYFSA* either explicitly or implicitly includes the power to sub-delegate the decision as to terms or conditions of access to a nonjudicial actor such as a Society. That power is statutorily reserved to a judicial decision-maker."[2]

14. (That Moore's former family law attorney, Gonen Snir ("Snir"), did not recognize this and appeal the order when he was retained in November 2019 is noteworthy.)

PART THREE – THE LAW

Fresh and/or new evidence is permitted on appeal

15. Section 134(4)(b) of the *Courts of Justice Act* ("CJA") provides that:

> "Unless otherwise provided, a court to which an appeal is taken may, in a proper case, … receive further evidence by affidavit, transcript of oral examination, oral examination before the court or in such other manner as the court directs; … to enable the court to determine the appeal."

16. Pursuant to rule 38(29) of the Family Law Rules, a motion to admit further evidence on appeal may be brought under s. 134(4)(b) of the *CJA*.

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[2] J.S.R. v. Children's Aid Society of Ottawa, 2021 ONSC 630 **[para. 5]**

Moore's fresh and/or new evidence passes the test for admission

17. The test for the admission of fresh evidence on appeal in child protection cases was discussed by the Supreme Court of Canada ("SCC") in Catholic Children's Aid Society of Metropolitan Toronto v. C.M.[3] and involves consideration of the following factors:

    a. Could the evidence have been adduced previously?

    b. Is the evidence highly relevant?

    c. Is the evidence potentially decisive to a best interests' determination?

    d. Is the evidence credible?

18. Furthermore, at page 167 in the first paragraph, the SCC held that "the particular nature of appeals in child protection legislation requires a **sufficiently flexible rule**, where an accurate assessment of the present situation of the parties, and the child in particular, is of crucial importance." [emphasis added]

19. Courts have also applied a more relaxed or permissive approach when considering whether to admit fresh evidence when required: Ontario's Superior Court of Justice ("SCJ") stated at **paragraph 16 in** Jackson v. Vaughan (City), 2009 CanLII 717 (ON SC) **that:**

> " Evidence that will likely be "conclusive of an issue" (Sengmueller), or evidence that "would probably have an important influence on the result of the case, though it need not be decisive" (Ladd v. Marshall cited in Sagaz) should be admitted, since failure to admit the evidence (assuming the rest of the test was met) would run the risk of "a **substantial injustice** in result" (Sengmueller)." [emphasis added]

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[3] Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.), 1994 CanLII 83 (SCC), [1994] 2 SCR 165 **[page 190, para. 2]**

Mandatory orders may be obtained from the judge on motion

20. Pursuant to Rule 40.01, an interlocutory injunction or mandatory order under section 101 or 102 of the *Courts of Justice Act* may be obtained on motion to a judge by a party to a pending or intended proceeding. R.R.O. 1990, Reg. 194, r. 40.01.

PART IV – ORDERS REQUESTED

Moore respectfully seeks the following:

1. an order that the court adduce her ***fresh*** evidence during her appeal of the 20201110 SJM decisions of Justice Mary Fraser.

2. an order that the court adduce the her ***new*** evidence during her appeal of the 20201110 SJM decisions of Justice Mary Fraser.

3. an order that the court hear and adduce as evidence brief oral testimony from Catherine Sullivan (regarding Moore's mental fortitude and the behaviour of the CAS and the OCL as it pertains to an SJM) during the appeal.

4. a mandatory order that the CAS provide an up-to-date, unredacted copy of Moore's complete CAS file in its entirety in paper and electronic form, free of charge, by November 12, 2021.

5. an order that the Appellant be reimbursed for costs of this Motion on a full-indemnity basis.

6. any other order that the court deems just and fair.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16th DAY OF JULY, 2021.

Deirdre Moore

July 16, 2021

Deirdre Moore ||| (613) 848-6832 ||| dmoore@pfi.rocks
215 Montreal Road, Ottawa, ON K1L 6C8

TO Children's Aid Society of Ottawa, 1602 Telesat Court, Ottawa, Ontario, K1B 1B1(via employees Brian Fisher and Victoria Dada ||| (613) 747-7800 ||| brian.fisher@casott.on.ca ||| victoria.dada@casott.on.ca)

ALSO TO Jonathan Kiska of 1244 Lampman Crescent, Ottawa, Ontario K2C 1P8 (via lawyer Cheryl Hess of Bell Baker LLP ||| 700-116 Lisgar Street, Ottawa Ontario K2P 0C2 ||| (613) 237-3444 ||| chess@bellbaker.com) IF the court agrees that this "co-Respondent" is even a legal participant instead of merely part of an extravagant circumvention of the Family Law Rules which defines a Respondent as a person and not "two people in a toxic divorce".

ALSO TO Office of the Children's Lawyer, 393 University Avenue, 14th Floor, Toronto, Ontario M5G 1E6 (via new lawyer Susan Galarneau ||| 613-830-7111 ||| seg@galarneauassoc.com)

ALSO TO Cedric Nahum, former CAS and criminal defense counsel of Appellant, 410-225 Metcalfe Street, Ottawa, ON K2P 1P9 ||| (613) 233-0330 ||| admin@cedricnahumlaw.com

Courts of Justice Act DC-088/2021

DEIRDRE MOORE and CHILDREN'S AID SOCIETY OF OTTAWA, JONATHAN KISKA

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ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OSGOODE HALL

130 QUEEN STREET WEST, TORONTO, ON M5H 2N5

FACTUM - MOTION TO ADDUCE FRESH EVIDENCE ON APPEAL

Appellant:

Deirdre Moore || (613) 848-6832 || dmoore@pfi.rocks
215 Montreal Road, Ottawa, Ontario K1L 6C8

Respondents:

Children's Aid Society of Ottawa, 1602 Telesat Court, Ottawa, ON K1B 1B1
self-representing via employees Brian Fisher and Victoria Dada
(613) 747-7800 || brian.fisher@casott.on.ca & victoria.dada@casott.on.ca

Jonathan Kiska (via lawyer Cheryl Hess of Bell Baker LLP) IF court agrees that this "co-Respondent" is even a legal participant instead of merely part of an extravagant circumvention of the Family Law Rules which defines a Respondent as a person and not "two people in a toxic divorce".
700-116 Lisgar Street, Ottawa ON K2P 0C2 || (613) 237-3444 || chess@bellbaker.com

Other Parties:
Office of the Children's Lawyer, 393 University Avenue, 14th Floor, Toronto, ON M5G 1E6 via new lawyer Susan Galarneau || (613) 830-7111 || seg@galarneauassoc.com

Cedric Nahum, former CAS and criminal defense counsel of Appellant, 410-225 Metcalfe Street, Ottawa, ON K2P 1P9 || (613) 233-0330 || admin@cedricnahumlaw.com