Family Justice Review Committee

A program of the National Association for Public & Private Accountability
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The Archbishop Dorian A. Baxter, National Chairman

May 4, 2004

Attorney General for Ontario
Hon, Michael J. Bryant, AG
720 Bay St., 11th Floor
Toronto, ON M5G 2K1

Re: Suggested Improvements to Court Procedures

Dear Mr. Bryant:

The Family Justice Review Committee, a community-based organization dedicated to bringing accountability to the family and criminal law courts, would like to make a recommendation about changes to the way justice is dispensed.

While attending court proceedings, court observers have reported a recurring problem and we would like to bring it to your attention. We do this in hope that your ministry will provide a way to prevent it from happening again.

It is almost customary for judges to make a ruling in the form of a written endorsement after hearing submissions from both lawyers representing parties in family courts or a defence lawyer and the Crown in criminal courts. This practice frequently leads to unnecessary litigation and a waste of court time because judges make decisions with the information as they understand it up to that moment, without leaving room for clarification and/or corrections. This practice costs taxpayers and litigants large amounts of money unnecessarily.

To better describe our argument, we would like to make mention of two cases that were observed by court watch reporters. Names of cities have been changed, as we do not wish at this time to identify the judges given that the occurrence appears to be systemic rather than an individual practice.

In a criminal court, a man was seeking bail conditions from charges of having violated the terms of a peace bond. The Crown prosecutor insisted the man not come into contact with the complainant, who in this case was his wife. The lawyer for the accused offered to agree to some bail conditions, one of which specified that his client would keep a certain distance from the plaintiff. The prosecution took the extreme position of asking that the accused be prevented from being in the City of Oshawa (a nonsensical request given the lightness of the accusations against a man with no prior criminal record and no expressed fears by the complainant).

In this case, a person from the City of Ajax was examined as surety for the accused. The surety offered to provide housing for the accused and to supervise the behaviour of the defendant. The judge asked the surety some pertinent questions as to how he could guarantee that the accused

would comply with the terms of the bail conditions. He also posed questions to the defendant's lawyer and the accused himself. Finally, in expressing reasons for the judgment he was about to make, the judge mentioned that he found the surety reputable, trustworthy and capable of supervising the accused. He then read the Order and without giving opportunity for further questions bolted out of the room in a hurry as is so often the case. His judgment called for the accused to live with the surety and not to leave the city of Ajax. By this ruling, which at the extreme had the purpose of keeping the accused out of the City of Oshawa, the judge prevented him from going to his place of employment in Toronto. In fact, the ruling deprived the man from going anywhere else in Canada, a gross violation on several counts of this man's Constitutional rights.

Had the judge read aloud his intended ruling before making it final, and had he sought input from the parties involved as to how he understood their arguments, his Honour would have learned of the absurdity of preventing this man from going to work in Toronto and of the lack of benefit from preventing him from travelling anywhere else in the country. Other than keeping the accused from where the presumed victim resides, the ruling did not make sense. Furthermore, the judge would have learned that the victim worked in the City of Ajax, a mere 300 meters from the residence of the surety.

Since the parties are involved in a family court dispute involving their children, the accused feared that his wife would take advantage of denouncing him to police if he went to work. Since use of the police for the purpose of gaining the upper hand in family courts is a frequent occurrence, he was forced to quit his job; to the detriment of all.

It took 3 months, several communications between defence lawyer and Crown and two court appearances by the defendant, before the absurdity was corrected by the single restriction. The accused was now to keep away a specified distance from the presumed victim's residence and place of work.

The second example took place in Toronto and involved a man who brought a motion to a Superior Court of Ontario asking for Leave of the Court to commence proceedings in a lower court. The variation application involved Child Support, Custody and Access issues. This step had to be taken since there was a previous Order instructing him to do so.

The reasons for the motion clearly specified in point form that he was seeking Leave of the Court for each of the issues, namely variation of Child Support, Custody and Access Orders. The document listed each request separately.

Since the responding party to the proceedings did not oppose the granting of the Leave of the Court, the moving party was not allowed to address the court by the Madame Justice and was told that the court was going to make a judgment based solely on the written evidence presented. When she read the reasons for her ruling after she wrote them as an endorsement, she made many mentions related to Child Support and at the end she finally indicated that she was granting the Leave to vary the Child Support Order. She was about to bolt out of the room after declaring the end of the hearing session when the party seeking the Leave noted that there was no reference made to his request for Leave of the Court to vary the Custody and Access Order. The judge retorted that it was implied since she had made mention that "among other things" the father was seeking Leave to vary the Child Support Order. She then rudely left without paying attention to the argument that it was not clear enough and would not be accepted by the lower court.

In this case, the arrogant attitude of this Justice, which is rather common to many in the judiciary when in court sessions, added to her unspoken and unquestioned understanding of the issues. Had she not been too proud to admit to a reasonable mistake or had she not taken the attitude of being infallible, she could have corrected the Order by simply adding some words at the end of her endorsement. An example would be: "This Order includes Custody and Access". There was plenty of space to write the six words.

As predicted by the father, the vague wording caused having to seek clarification of the Order since the lower court was doubtful as to what the "among other things" term covered. Time and money was wasted, including the taxpayers', until the matter was clarified after several attendances to both courts. A matter that could have been solved in one single court appearance has resulted in a legal nightmare to both parties.

The court decorum restricting communications inside the courtroom, which tends to intimidate/prevent communications between lawyers and their clients because it requires low voice, compounds the possibility for misunderstandings. This problem is magnified in criminal courts since a defendant who is still in custody sits in the accused box, far from the person representing her/him.

A simple solution to this problem would be to instruct the judges of all Provincial courts to read and provide the interested parties with a copy of whatever their judgment is going to be and give them some time to discuss it; a fifteen-minute break will probably suffice for most cases. In short, give the judges the opportunity to correct a flawed ruling before declaring it final. In addition, some sensitivity training for judges on how to best treat litigants and the attending public may help provide a better service.

I do not make these observations from inside a vacuum. As the founding chairman of N.AP.P.A. (The National Association for Public and Private Accountability), in 1994, I speak from within the personal crucible of person suffering. After a successful custody battle for my two precious daughters that ended in 1987, I launched an unprecedented lawsuit against the Durham Children's Aid Society. It took me longer than the First World War and the Second World War combined to win my case in which the Durham CAS was found guilty of the grossest negligence, grossest incompetence, malicious prosecution and blackmail! You can find details in the judicial archives under Baxter v. Baxter and the Durham Children Aid Society.

It is my sincere hope and prayer that you will examine our recommendations and implement the necessary changes in an expeditious way as they are urgently needed to help make our courts much fairer, efficient and more user-friendly! We are looking forward to your reply.

Yours very truly,

Archbishop Dorian A. Baxter B.A., O.T.C., M. DIV.