

# Legal Aid Case: Many Questions, Few Answers

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What's your taste in summer reading?

Whodunnits? Famous battles? Horror stories? You can find them all wrapped up in one at the following website - [www.canlii.org/en/on/onsc/doc/2007/2007canlii6240/2007canlii6240.html](http://www.canlii.org/en/on/onsc/doc/2007/2007canlii6240/2007canlii6240.html) - in which Justice Craig Perkins of Ontario's superior family court justifies the imposition of a publication ban on the case of M.S. vs C.S., now before the court of appeal.

This long document gives an approximate sense of the searing heat and negative energy that can be produced by two highly combative and determined people when love goes awry and parental rights are at issue.

As Justice Perkins describes the situation: "After more than four years of warfare between the parents, during which the children were dragged by both parents into the middle of their relationship issues, three of the parties' four children have left the mother's home for the father's home and no longer speak to their mother... Fearing the father and the other three children will work to cause the loss of her relationship with the fourth child, the mother has not allowed that child to see the father or the other three children. The couple's considerable assets, which would ordinarily be the children's inheritance, have been spent on legal fees. Both parents are emotional wrecks and are psychologically unfit to work."

That's the tip of the iceberg. The sordid accusations and counter-accusations, the courtroom drama, the contradictory character assessments on both sides, and the constantly tested loyalties of the children make for a riveting, but dispiriting tale of family implosion.

I wasn't planning to write about this case in itself. But then some rather unusual features of it came to my attention.

On grounds of legal errors, the father in the case, M.S., is appealing Judge Perkins' order that he and his three older children refrain from any contact with his now-adolescent daughter until she is 18 years old.

C.S.'s then-lawyer was served with the appeal documents in March. She ostentatiously attempted to refuse service, but was obliged to accept. The following morning, another lawyer – she cannot be named according to the ban, so I will call her Ms Parachute - telephoned the lawyer of M.S., advising him that she would be representing C.S. for the appeal.

Almost immediately thereafter, C.S. was awarded a certificate for legal aid to fight the appeal.

That's odd. Normally, Legal Aid prefers only to fund cases where serious constitutional issues are at stake where the Charter of Rights is involved, such as those arising during the course of Child Protection proceedings, while M.S. vs C.S. is a strictly private civil matter.

Moreover, Legal Aid is stingy: legal aid recipients – presumably at or near the poverty line - are usually awarded a certificate authorizing them for 19 hours' worth of services up to the first pre-trial, with any further legal services to be approved by Legal Aid.

But M.S. vs C.S. will likely involve, minimally, 150 hours just to read through its 25,000 documents, let alone perfect the appeal. A member of the legal community familiar with the case "conservatively" estimates the taxpayers' cost of the appeal at \$60,000-\$100,000.

And C.S. is not poor: Her present common law spouse makes \$60,000 a year, while C.S. receives \$57,600 in annual support, mostly spousal, of which \$36,000 is un-taxed. (There is also an allegedly available family trust – denied by C.S. - of \$100,000, which an upcoming probate search will (in)validate.)

But the fourth reason is where it gets really interesting. C.S.'s new lawyer, Ms Parachute, also happens to be a director of Legal Aid Ontario.

Many questions arise, the most obvious being: Why is a person with an income exceeding \$100,000 a year receiving legal aid in the first place?

For another, isn't it obvious that a director of Legal Aid advocating for someone receiving legal aid is in conflict of interest? She will be far too personally invested in the outcome of the case.

Finally, whether Ms Parachute was responsible or not for C.S. receiving her certificate, where is her professional judgment? Can she not see that the timing between her assumption of the case and the issuing of the certificate is a public optics scandal?

When the publication ban is lifted from this case, as is likely within a few months, Ms Parachute's and C.S.'s identity will be revealed. They would both be smart to do the right thing before – oh, let's say before some nosy journalist who's keeping abreast of events decides to "out" them at the first opportunity.