ONTARIO

Superior Court of Justice

(Name of Court)

Court File Number
FS-20-16365

at

393 University Ave., Toronto, ON, M5G 1E6

(Court office address)

FACTUM OF THE INTERVENOR ONTARIO ASSOCIATION OF CHILD PROTECTION LAWYERS

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PART I – OVERVIEW

> "There is nothing magical about state care. The state does not possess a magical means to create environments of care that guarantee a child's best interests. The state often fails as a parent….In dealing with the social context surrounding the constitutional rights of a child, we cannot overlook the lessons learned from erroneously assuming institutions always protect a child's best interests. The history of care provided by mission schools, orphanages, correction facilities, and foster homes contains ample tragic examples of why the best interests of children cannot be left to the exclusive discretion of an institution."
>
> *In the Matter of R.A.*, 2002 YKTC 28, at paras. 128, 130

> "The current child welfare system was not designed for the most marginalized people we serve, and so we must recommit ourselves to fixing it. We need to re-examine our policies, practices, workplace cultures, and the very structures within which we work to ensure better outcomes for Black and First Nations, Inuit, and Métis children, youth, and families. We also need to look inward, as individuals, and build our capacity and competencies to unpack our own racist and oppressive views."
>
> Personal Reflections on Recent Events and Systemic Racism, Nicole Bonnie, CEO of Ontario Association of Children's Aid Societies, June 3, 2020

1. This appeal is focussed on how the COVID-19 pandemic should impact the legal test for temporary parental in-person access to children in child protection cases under the *Child, Youth and Family Services Act* (the "*CYFSA*"). This case appears to be the first Ontario appeal court to consider how the child protection justice system should balance the fundamental importance of an ongoing parent-child relationship with the health risks of the COVID-19 crisis.

2. In trying to safely manage the unprecedented and unique risks of COVID-19 infection, the learned motions judge declined to take an oversight role in deciding when and in what manner in-person parental access would be appropriate or should be restored. The learned motions judge delegated this decision to the Children's Aid Society of Toronto (the "Society"). The learned motions judge rationalized this delegation by reference to the Society's statutory duty to protect the health of children within the Society's ambit, which are those children in Society care or in the care of a kin caregiver under a supervision order. The explicit rationale of the court was that as the Society has a statutory duty to protect children, the Society can be trusted with this delegated authority.

3. It is the experience of the members of the Ontario Association of Child Protection Lawyers (the "OACPL") that in new child protection applications initiated during this pandemic, children's aid societies are routinely seeking temporary parental access orders that are not only at their discretion, but which explicitly

include the pre-emptive right of the society to suspend in-person access if the society believes such access would place the child at risk of contracting COVID-19.

4. Prior to the emergence of the pandemic as a unique complicating factor, there was already an ongoing judicial debate over the propriety of a child protection court delegating access decisions to a children's aid society. There are two opposite and competing lines of cases in the child protection context as to whether a court has this authority. The pandemic has magnified this debate.

5. The OACPL submits that the preferred line of cases is that which finds that a court has no authority to leave fundamental issues of access in the discretion of the Society. The OACPL submits that giving a children's aid society discretion over significant issues of temporary access, especially in the context of the high stakes impact of COVID-19, is improper and dangerous for the following reasons:
   a) Temporary parental access decisions profoundly affect the rights of parents and children under section 7 of the *Charter of Rights and Freedoms* (the "*Charter*"). The parent-child relationship is a fundamental one. Decisions regarding interim parental access carry significant importance to the emotional and psychological health of the children, the attachment between the parent and child, and the ability of the parent to demonstrate their parenting strengths and improvements. Restricted temporary parental access can cause emotional harm to children and can set the child on a path to losing his or her family.
   b) Temporary access determinations are an essential element of the court's discretion even when faced with extraordinary circumstances such as the pandemic. The perhaps trite legal axiom that hard cases make bad law may apply to the learned motion judge's decision – during the COVID-19 pandemic, the decision about facilitating face-to-face access can be complex, but those complexities should be assessed head-on by the court on proper evidence, not simply passed on to the Society. The delegation also carries the danger of a perception that temporary access is a privilege bestowed by the Society rather than a cardinal right of the family.
   c) By delegating fundamental issues of access to the Society, the court authorizes these decisions to be made based on whatever criteria and evidence the Society deems fit. The learned motions judge assumed that the Society will be making the decision as to the safety of in-person access visits driven only by their duty to act in the children's best interests and based solely on reliable evidence. This is a dangerous and faulty assumption. The Society has competing and sometimes conflicting duties to foster parents, to kin and kith caregivers, to other families who exercise access, to Society staff including drivers and access supervisors, and to the public at large. The Society also has litigation

positions that are often contradictory to increases to parental access: if a children's aid society is seeking a final order of extended society care with no parental access, will that position influence the Society's decisions regarding temporary access? Further, the assumption that the Society will base its decisions on appropriate evidence is highly questionable. In all of the reported COVID-19 child protection access cases in Ontario, it appears that not one children's aid society has submitted reliable expert evidence on the specific risks of COVID-19 in access visits or on how in-person access visits could be structured to reduce the risk. This leads to a justifiable query about whether the Society is in any preferred or special position to decide when in-person access is safe.

d) In exercising discretion provided to children's aid societies, implicit and explicit bias significantly affect the decision-making, especially bias linked to systemic racism in the child protection justice system. We know that Indigenous, Black and otherwise racialized children are disproportionately targeted by children's aid societies and by the child protection justice system. There is evidence to suggest that this disproportionality can be partly attributed to conscious or unconscious discriminatory bias at the worker-level or the agency-level. The arguable benevolence of the motives of Society workers should not overshadow the impact of systemic racism and class and social stereotyping on the exercise of Society discretion. One defence against bias is for judges to be the ones to make important decisions, and for those decisions to be based strictly on proper admissible evidence without resort to speculation, myth and stereotype. There needs to be a tight connection between decision-making and evidence. Delegating decisions to children's aid societies hides that connection in the shadows of bureaucratic decision-making, leaving it subject to possible institutional and individual bias.

PART II – FACTS

The decision under appeal - *Children's Aid Society of Toronto v. O.O.*, 2020 ONCJ 179

6. The OACPL adopts the facts as set out by the appellants in their respective factums.

7. With respect to the specific issues raised by the OACPL in this appeal concerning the learned motion judge granting discretion to the Society to decide when in-person access would be reinstated, the learned motion judge made the following relevant statements in the judgment:

a) "Counsel for the society relies on several child protection cases where the court has recognized the society's responsibility to comply with COVID-19 considerations for all children in their care and that this responsibility extends to limiting children's activities in favour of social distancing and limiting community and/or face to face interactions as much as possible. This responsibility extends to all of the people providing care and/or services to the children in care as well as foster parents, kin care

providers and any other children in those placements. I adopt this reasoning and accept the principle that child protection agencies have a Statutory duty and mandate to protect children in their care and act in their best interests." [at para. 78]

b) "The pandemic is evolving quickly and there is much that is unknown. Precautions that were deemed appropriate even a week ago are subject to change and becoming more stringent." [at para. 83]

c) "The court has an oversight duty to ensure that orders are made that do not jeopardize the safety and health of children that are before the court. This is extremely important in child protection cases where a break-down in the viability of the kin home would result in most cases in the child being placed in society care." [at para. 85]

d) "The medical information and recommendations with respect to precautions the public need to take with respect to COVID-19 changes almost daily. The primary recommendation at present and for the next few weeks at least appears to be that everyone should stay home as much as possible." [at para. 91]

e) "The information about how this virus is spreading is still evolving. It is accepted that even if a person is asymptomatic, he or she can still spread the virus. Although it is rare that children are affected, there have been reported case [sic] of young children and adults of every age becoming infected." [at para. 92]

f) "I accept that the society takes its duty and responsibility seriously and will act in good faith. Although the society will ensure the safety and well-being of this infant it also recognizes its duty to ensure that parents have a meaningful relationship with their child and will reinstate face to face contact with it is safe to do so." [at para. 98]

g) "Due to the ongoing COVID-19 pandemic, face to face visits in the grandparents' home will resume upon being deemed safe by the society." [at para. 100(4)]

8. As outlined in the above paragraph, the result of the motion was a denial of in-person access and a delegation to the Society of the decision to resume in-person access "upon being deemed safe by the society."

PART III – ISSUES

9. While there are many important issues raised in this appeal, so as not to duplicate the submissions of other parties and to make best use of its limited time for submissions, the OACPL is focussing on the following issue: **Did the learned motion judge have the authority to delegate to the Society the significant decision when temporary in-person parental access would recommence?**

PART IV – LAW AND ANALYSIS

Temporary Parental Access is a Fundamental Charter-Protected Right

10. The Supreme Court of Canada has held that the parent-child relationship is a fundamental one protected by section 7 of the Charter:

> The mutual bond of love and support between parents and their children is a crucial one and deserves great respect. Unnecessary disruptions of this bond by the state have the potential to cause significant trauma to both the parent and the child….While the infringement of a parent's right to security of the person caused by the interim removal of his or her child through apprehension in situations of harm or risk of serious harm to the child does not require prior judicial authorization for the reasons outlined above, the seriousness of the interests at stake demands that the resulting disruption of the parent-child relationship be minimized as much as possible….
>
> *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48 at paras. 72, 122

11. Even in domestic cases that do not trigger *Charter* protection of the relationship, Ontario courts have held that COVID-19 concerns only heighten the importance of the parent-child relationship. As Justice Pazaratz of the Superior Court of Justice, Family Court, stated in a now oft-cited case in COVID-19 jurisprudence:

> None of us know how long this crisis is going to last. In many respects we are going to have to put our lives "on hold" until COVID-19 is resolved. But children's lives – and vitally important family relationships – cannot be placed "on hold" indefinitely without risking serious emotional harm and upset. A blanket policy that children should never leave their primary residence – even to visit their other parent – is inconsistent with a comprehensive analysis of the best interests of the child. In troubling and disorienting times, children need the love, guidance and emotional support of *both* parents, now more than ever. [Emphasis in original]
>
> *Ribeiro v Wright*, 2020 ONSC 1829 at para. 10

Line of Cases #1: Courts Have Authority to Delegate Access Discretion to Society

12. In 2003, the Ontario Divisional Court held that a child protection court does have authority to order access in the discretion of a children's aid society. The court especially relied on a children's aid society having a duty of care and expertise to manage "day-to-day issues", and that the court was providing the society with "day-to-day discretion" as opposed to making more significant decisions about the access. The OACPL submits that in-person access is not a "day-to-day issue". The court also relied on a supposed benefit that providing the society with such discretion will avoid future access motions. The court explained its rationale as follows:

> The parent-child relationship is dynamic, always changing. Where an application for protection has been commenced, the relationship may also be difficult. Maximum flexibility is required to respond to the family's ongoing needs on a day-to-day basis. The parties should not have to return to court for

> every day-to-day access issue. That would not be in the children's best interest. The Society has the statutory mandate and the expertise to deal with these day-to-day issues. It is thus appropriate to leave the day-to-day discretion with it. Accordingly, we are of the view that…the court has authority to make an access order and as a term or condition to leave the day-to-day supervision, monitoring and decision-making to the Children's Aid Society.
>
> *H.(C.) v. Durham Children's Aid Society*, 2003 CanLII 57951 (ON SCDC) at paras. 19-21

13. While the Divisional Court praised the potential efficiencies of having fewer access motions because children's aid societies will be empowered to make decisions in their discretion, Justice Sherr of the Ontario Court of Justice has discussed the importance and propriety of access motions being brought to court on a regular basis when there is disagreement between the parents and the society on access:

> It is imperative in this process that the initial access order not stay frozen until trial, unless it would be unsafe for the child to change it. Families sometimes fail in the reunification process because no steps were ever taken to change the original access order. The failure to change temporary access places a trial judge in a difficult predicament….This means that the child must either be made a crown ward or returned to a parent who might only have had supervised access for two hours once each week since the child was apprehended. Even if the access was positive, how can the judge confidently return the child to a parent if he or she does not even know that the parent can safely parent the child for a full day? In a constructive child protection case, access is constantly being re-evaluated. Where it can safely be done, access should be gradually increased. This not only improves the parent/child bond, but gives the court some basis to assess whether the parent is capable of parenting the child on a full-time basis. In child protection cases, full family reunification is often achieved one hour at a time. This means that if the level of access is in dispute, the court should be receptive to access change motions. The goal should be to gradually increase a parent's access. Material change or compelling evidence that is necessary for the child to make the change should generally not be required.
>
> *Catholic Children's Aid Society of Toronto v. R.M.,* *2017 ONCJ 784* at paras. 77-80

14. Justice Olah of the Superior Court of Justice found that there was authority to order access in the discretion of the society. Justice Olah stressed that this was a case of a "severely disturbed child", a 12-year-old boy who had already been made a Crown ward (the previous equivalent to extended society care), where "previous access orders which were rigidly structured did not work and in fact exacerbated the child's problems", and that maximum flexibility regarding access arrangements was required to meet the needs of this particular child.

> *Kawartha-Haliburton Children's Aid Society v. V. C.,* 2003 CanLII 2292 (ON SC) at para. 173

15. Justice Kukurin of the Ontario Court of Justice made an order of access in the discretion of the society in a case that he emphasized that the particular fact situation of that case required it, a fact situation similar to that faced in Justice Olah's decision discussed in the previous paragraph. This was also a case of a 12-

year-old boy with extreme special needs who was already a Crown ward, and for whom maximum flexibility for access was necessary. Justice Kukurin provides the following caution:

> Access orders leaving discretion to the society should ***not*** be the norm in child protection cases. They have their place and can be very practical. [Emphasis in original]

Children's Aid Society of Algoma v. B.(C.), 2003 CanLII 58169 (ON CJ) at para. 24

16. Justice Kukurin provides 2 examples as to when access at the discretion of the Society might be appropriate. First, on a first appearance in a child protection matter where a court is provided only with rudimentary information about a family, putting the court in no position to determine what access is appropriate. Second, in cases dealing with children with extreme special needs such as the case he was deciding and such as Justice Olah's case, where there was utility to maximum access flexibility due to the variability of the child's behaviour and treatment needs.

Children's Aid Society of Algoma v. B.(C.), 2003 CanLII 58169 (ON CJ) at paras. 24-25

17. Justice Katarynych of the Ontario Court of Justice has also held that there is some authority for this delegation, on the basis that nothing in the statute precludes it (although this is contrary to the reasoning in most cases on this issue that state that there has to be something in the statute that permits the delegation). Justice Katarynych warns that delegating access to the discretion of the society should generally only be done where there the parents and the society agree to it:

> If, however, that proposal [for access in the discretion of the society] is not the subject of an all-party agreement, such an order sets the stage for a perception that access is a privilege granted by the society and not a right of the child. It is particularly vulnerable to that perception when the parents mistrust the society's motives and actions.

Children's Aid Society of Metropolitan Toronto v. C.(L.), 1999 CanLII 15195 (ON CJ) at para. 16

18. Similar to Justice Kukurin and Justice Katarynych above, Justice Glenn of the Ontario Court of Justice has held there is some authority to delegate access in the discretion of the society, but stresses that such an order should not be frequently made and that there are inherent dangers to making such an order:

> Although it is clear from the recent Ontario Divisional Court decision…that the court has authority to make an access order to be in the discretion of the children's aid society, it is important that this discretion be exercised in a way that enhances the parent-and-child relationship. A rigid approach to the exercise of this discretion can at times do little more than lock the parents into a regime that sets them up to fail, or at least make it hard for them to succeed. The very reason that access is left to the society's discretion, however, is usually so that there can be flexibility in the arrangements. The fact that the discretion was exercised in this case in such a rigid manner should act as a reminder that this

type of order should be monitored by the court and not given out routinely.

Children's Aid Society of Huron County v. R.G., 2003 CanLII 68691 (ON CJ) at para. 62

Line of Cases #2: Courts Do Not Have Authority to Delegate Access Discretion to Society

19. In a case about parental access after a permanent guardianship order in a child protection case arising out of New Brunswick, the Supreme Court of Canada has discussed some of the practical dangers of leaving access decisions to the state:

> If the court has the power to "preserve" a right of access after adoption, a measure that is even more drastic and final than permanent guardianship, it would be illogical for it not to have the power to grant access when it makes the initial permanent guardianship order. This interpretation…is consistent with what was intended by the legislature, that is, the best interests of the child. Any other interpretation would leave the question of access entirely in the Minister's hands. This would not be desirable, in that the children might suffer, for example, from administrative oversights, lack of communication or tensions between the people involved.

New Brunswick (Minister of Health and Community Services) v. L. (M.), 1998 CanLII 800 (SCC) at para. 29-30

20. In a line of cases that are domestic cases involving delegation of access to a non-party, The Ontario Court of Appeal has held that the court cannot delegate access decision-making:

> All parties agree that the motions judge erred in delegating the actual determination of access to the LCAP. In making the order he did, the motions judge brought a third party into the picture in the hope that an independent professional could "reunite Mr. Strobridge and his children". While I can understand why the motions judge proceeded as he did, I agree that he erred in assigning to the LCAP the decision whether and under what circumstances access would be exercised. There is no statutory, or other, authority which would permit this delegation.

Official Guardian v. Strobridge, 1994 CanLII 875 (ON CA)

Also see *C.A.M. v. D.M.*, 2003 CanLII 18880 (ON CA) at para. 22; *Fergus v. Fergus*, 1997 CanLII 1723 (ON CA) at para. 45

21. This issue was most recently addressed in a child protection appeal decided earlier this year by Justice Harper of the Superior Court of Justice. Justice Harper concluded that the court has no authority to delegate access decisions to a party or to a non-party:

> The Society seeks an order that delegates the exercise of discretion as to whether there should be access with the mother to the respective fathers of the children. I am of the view that there is no authority to delegate the exercise of such discretion to either a non party or to a party. I am of the view that a court cannot and should not delegate its exercise of discretion when ordering access. It is the court that must

> balance and evaluate the evidence within the considerations of the factors set out in the statute. Expediency cannot override such considerations. I am also of the view that in certain circumstances, after the court has made the determination that access is appropriate it may be necessary to set out certain parameters and guidelines to a party who may be placed in a position of having to facilitate that access given the unique circumstances of each case that is presented to a court.
>
> *C.A.S. v. K.D.D.*, 2020 ONSC 511 at paras. 39, 45-46

22. In another child protection case, Justice Granger of the Superior Court of Justice, Family Court, has held that the court has no authority to delegate access to a Society. Justice Granger discussed that the potential efficiencies of a society discretionary order does not outweigh the importance and necessity of the court being the one making these fundamental decisions:

> In my view, there is no express authority to delegate the function of making an access order to the society just as there is no express authority to delegate the function of determining access to a parent in a custody dispute….Nor can it be said that there can be delegation by necessary implication. The court can make an order for access and can vary its order at any time. In addition, a court can define an access order. The fact that it may appear to the society to be more cumbersome or time consuming to have to come back to court to vary or define the terms of access does not mean that access can be delegated to the society by necessary implication. Supervision is a condition of access and, if the parties are unable to agree on whether there should be supervision and the type of supervision, it will be the responsibility of the court to determine whether there should be supervision of access and, if so, the terms and conditions of such supervision.
>
> *Children's Aid Society of London and Middlesex v. C.(G.)*, 2001 CanLII 28530 (ON SC) at para. 19

23. Also in a child protection case, Justice Perkins of the Superior Court of Justice, Family Court, has held that there is no such authority for a court to delegate access decisions to a Society, and discussed the need for the court to make access decisions:

> Can I make an order that leaves the CAS in charge of setting the frequency, duration and supervision or non-supervision of access? The short, clear answer is no….[I]f an access order is made, the court must make the order and the court — not others — may impose terms and conditions. It does not authorize the delegation of the terms and conditions, or for that matter the basic structure of access such as frequency, to another person or institution….There is a wealth of authority both at first instance and on appeal that precludes me from making the order sought for access in the discretion of the CAS.
>
> *Durham Children's Aid Society v. S.C.*, 2002 CanLII 62888 (ON SC) at paras. 151-152

24. In a further child protection case, Justice Goodman of the Superior Court of Justice held that there was no authority to delegate access decisions to the Society. Justice Goodman set out the concerns that having a litigant making access decision in their discretion is contrary to the goal and the need of having these decisions made in an objective and neutral manner.

> Yet, I do find it difficult to accept that the legislature ever intended to leave decisions regarding access to children in the hands of one of the litigants….While I can certainly understand some of the reasons why it would be efficient, time- or cost-wise, to delegate access issues to the society, children and their parents have a right, in my view, to have decisions in respect of access made in an objective and neutral manner. One would expect that it would be rare, if ever, that legislation would authorize a court to delegate its judicial functions to any third party who or which is a party to the litigation, when neutrality and objectivity are so vital to the decision-making process. In my view, simply put and at least on a final basis, the Act does not permit, either expressly or by implication, the court to delegate its authority to make orders in respect of access…to any person or entity, including the children's aid society.
>
> *Children's Aid Society of Toronto v. D. P.*, 2005 CanLII 5878 (ON SC) at para. 40

25. In another child protection case, Justice Reinhardt of the Ontario Court of Justice very strongly supported and explained the impropriety of leaving access decisions in the discretion of the society:

> …[I]t should be a source more of apprehension than of comfort. In…*Strobridge…*, the trial judge had delegated the discretion over access to a supposedly neutral third person, someone who was definitely not a party to the action. Despite this apparent arms-length relationship between this non-party and the litigants, the Court of Appeal in both cases was still opposed to the concept of delegation. How much more alarming then is the prospect that one of the litigants, whose neutrality cannot be presumed, should suddenly wield this discretionary dominion over the access to be enjoyed by the other litigants! Yet that is precisely the situation that arises when a court decides to allow access to the parents at the discretion of the local children's aid society. This perspective on the issue undermines one of the supposed benefits that the Divisional Court claimed for its ground-breaking decision — namely, the "convenience" of sparing the litigants the time and cost of repeatedly having to come to court to make adjustments to the access regime. That "convenience" seems questionable when parents with little sophistication and meagre financial resources feel compelled to accept the access terms meted out by an agent of the state, such as a children's aid society, that has an agenda that is less than sympathetic to the rights and interests of those parents.
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> *Children's Aid Society of Toronto v. B.O.*, 2003 CanLII 74523 (ON CJ) at paras. 46-47

Further Dangers of Delegating Temporary Access Discretion to Society

26. The learned motion judge's explicit rationale in delegating access decisions to the Society was that as the Society has a statutory duty to protect children, the Society can be entrusted with this delegated authority. This judicial assumption that the Society will make its decisions driven solely by this duty, and that the Society will base its decision on reliable information, is misplaced. Proper judicial oversight of the Society and of the child protection justice system requires that there be little to no judicial deference to Society decision-making. While it is agreed that the Society does have a statutory duty to protect children, the Society also is a litigant in the case, with a particular position on what is in a child's best interests, with no apparent special access to expert information about how in-person access could be structured to reduce

COVID-19 infection risks, with frailties in its decision-making processes inherent to any bureaucracy, and with a lengthy and disturbing history of systemic racism and bias in the Canadian child welfare system.

27. Indigenous, Black and otherwise racialized children are disproportionately represented in the child protection justice system. Although the issues that give rise to this over-representation are multi-faceted, there is evidence to suggest that this disproportionality can be partly attributed to conscious or unconscious discriminatory bias in CAS decision-making. Delegating important access decisions to the Society leaves those decisions susceptible to these pernicious influences. The best defence against the impact of this sort of bias is for judges to make these decisions on reliable and admissible evidence with reasoning that is transparent and reviewable.

> Interrupted Childhoods: Over-representation of Indigenous and Black Children in Ontario Child Welfare, Ontario Human Rights Commission, February 2018, at Chapter 4: Research on Racial Disproportionality in Child Welfare
>
> One Vision One Voice: Changing the Ontario Child Welfare System to Better Service African Canadians, Ontario Association of Children's Aid Societies, September 2016, at Chapter 3.3: Decision-Making Within Child Welfare Agencies
>
> Statement on Recent Events from Paul Rosebush, CEO of the Children's Aid Society of Toronto, June 3, 2020

28. While the Society has a duty to protect children, it also has other duties, including those to foster parents, kin and kith caregivers, other families and other children, Society staff and to the public at large. These duties can be competing, and sometimes conflicting, with the duty to protect a particular child in a particular case. For example, in this case, the Society has a duty to further the child's Charter-protected right to a relationship with his parents, while also having duties with respect to the health and safety of foster parents, the Society staff, and the child himself.

29. In addition to the concerns about the factors that impact Society decision-making, there also is the concern that the Society has no special knowledge to determine when and in what manner the risk of COVID-19 infection can be acceptably reduced for in-person access. A review of all reported Ontario COVID-19 child protection cases reveals that no children's aid society has submitted reliable expert evidence regarding COVID-19 risks and how they impact in-person access (which is in contrast to a quick review of criminal cases where expert evidence has often been provided to courts regarding the issue of COVID-19 risks in prison settings). There is no reason to believe the Society possesses or will access the appropriate expertise in order to appropriately balance the benefits and risks of in-person access.

PART V – ORDER SOUGHT

30. The OACPL respectfully requests that this Honourable Court find that there is no authority for a court to delegate to a children's aid society significant decisions regarding temporary parental access in child protection cases, including the decision about suspension or ordering of in-person access. If there is to be any permissible delegation of decision-making to the Society, it should be rarely granted and it should be limited to situations where there is a consent of the parties, in cases that require maximum day-to-day flexibility, or for very short time-limited situations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th DAY OF JUNE, 2020

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David Miller and Lainie Basman
Counsel for the Proposed Intervenor,
Ontario Association of Child Protection Lawyers

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Children's Aid Society of Toronto v. O.O.*, 2020 ONCJ 179
2. *In the Matter of R.A.*, 2002 YKTC 28
3. Personal Reflections on Recent Events and Systemic Racism, Nicole Bonnie, CEO of Ontario Association of Children's Aid Societies, June 3, 2020
4. *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48
5. *Ribeiro v Wright*, 2020 ONSC 1829
6. *H.(C.) v. Durham Children's Aid Society*, 2003 CanLII 57951 (ON SCDC)
7. *Catholic Children's Aid Society of Toronto v. R.M., 2017 ONCJ* 784
8. *Kawartha-Haliburton Children's Aid Society v. V. C.*, 2003 CanLII 2292 (ON SC)
9. *Children's Aid Society of Algoma v. B.(C.)*, 2003 CanLII 58169 (ON CJ)
10. *Children's Aid Society of Metropolitan Toronto v. C.(L.)*, 1999 CanLII 15195 (ON CJ)
11. *Children's Aid Society of Huron County v. R.G.*, 2003 CanLII 68691 (ON CJ)
12. *New Brunswick (Minister of Health and Community Services) v. L. (M.)*, 1998 CanLII 800 (SCC)
13. *Official Guardian v. Strobridge*, 1994 CanLII 875 (ON CA)
14. *C.A.M. v. D.M.*, 2003 CanLII 18880 (ON CA)
15. *Fergus v. Fergus*, 1997 CanLII 1723 (ON CA)
16. *C.A.S. v. K.D.D.*, 2020 ONSC 511
17. *Children's Aid Society of London and Middlesex v. C.(G.)*, 2001 CanLII 28530 (ON SC)
18. *Durham Children's Aid Society v. S.C.*, 2002 CanLII 62888 (ON SC)
19. *Children's Aid Society of Toronto v. D. P.*, 2005 CanLII 5878 (ON SC)
20. *Children's Aid Society of Toronto v. B.O.*, 2003 CanLII 74523 (ON CJ)
21. Interrupted Childhoods: Over-representation of Indigenous and Black Children in Ontario Child Welfare, Ontario Human Rights Commission, February 2018, at Chapter 4: Research on Racial Disproportionality in Child Welfare
22. One Vision One Voice: Changing the Ontario Child Welfare System to Better Service African Canadians, Ontario Association of Children's Aid Societies, September 2016, at Chapter 3.3: Decision-Making Within Child Welfare Agencies
23. Statement on Recent Events from Paul Rosebush, CEO of the Children's Aid Society of Toronto, June 3, 2020