THE CANADIAN BAR ASSOCIATION
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Danièle Ménard
Federal Co-Chair,
Inter-jurisdictional Support Subcommittee
Department of Justice Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Tracy Morrow
Provincial Co-Chair,
Inter-jurisdictional Support Subcommittee
Department of Justice Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Mesdames Menard and Morrow:

RE: Provincial/Territorial Inter-jurisdictional Support Orders

I write as Chair of the National Family Law Section (CBA Section) in response to your letter of December 13, 2006, and apologize for the delay in responding. The CBA Section consists of lawyers specializing in family law from every jurisdiction in Canada.

You referred to the discussion at the CBA Section's November 2006 meeting about problems we experience with the Inter-jurisdictional Support Orders (ISO) process. CBA Section members familiar with the process were unanimous in identifying serious problems of delay and inefficiency. As requested, further elaboration is provided below:

1. Time Involved

There are often unexplained and lengthy delays from the time an ISO application is submitted in one jurisdiction to the date it is finally dealt with by a court in another. For example, a case submitted in NWT in early February 2006 has not yet been resolved by an Ontario court. As there is no reporting mechanism, the custodial parent waiting for a determination from another jurisdiction has no way to even assess the status of the application.

It takes lawyers about twice the time to fill out the required forms for an ISO application than to prepare a simple court application for support, which results in added costs for clients. In addition, ISO applications require clients to provide pictures and obtain information to identify respondents, which are not required for normal applications.

500 - 865 Carling, Ottawa, **ONTARIO** Canada K1S 5S8
Tel/Tél. : (613) 237-2925 **Toll free/Sans frais :** 1-800-267-8860 **Fax/Télécop. :** (613) 237-0185
Home Page/Page d'accueil : www.cba.org **E-Mail/Courriel :** info@cba.org

These are very difficult cases. The designated authority that receives the application does not then "represent" the applicant and the applicant does not have a lawyer in the "home" jurisdiction either, so settlement negotiations are impossible. Issues that might have been quickly settled between lawyers often take over a year, and many hours of court time.

2. Other Inefficiencies in the System

Given the lengthy delays, it is not uncommon for parents' circumstances to change before a matter finally gets to court. The system-imposed delay makes already challenging situations almost impossible to resolve.

To give an example, a parent made an application to the Alberta authorities for support from a parent in NWT. When the first hearing was held in NWT six months later, the child was living with the respondent's parents for an extended period of time. The hearing was adjourned to contact the applicant. Two months later when contact was made, the child had returned to live with the applicant. At the next hearing before the NWT court, the applicant's circumstances had again changed in that she had day care costs that she did not have eight months earlier. The hearing was adjourned to get new information. At the following hearing, the father had developed medical problems that forced him to take three months off work, consequently changing his financial circumstances. The case was adjourned to get updated financial information because of his illness. By the time the updated financial information was obtained, the child was back with the respondent's parents.

ISO files are generally handled by government lawyers who rely only on the application itself, with little to no information about the urgency or the human realities of the situation. ISO applications often seem to be added on to the regular workload of those lawyers, who do not necessarily have a background in family law. In addition, we question whether sufficient time is allocated to allow these matters to be expeditiously addressed.

3. Dual Actions

Where custody is also an issue, two separate applications in two courts must be commenced, one in the custodial parent's home jurisdiction to deal with custody, and one in the respondent's home jurisdiction to deal with support. This results in additional costs for the applicant. In areas where the population is particularly transient, like the North, this is not unusual. Legal aid is often unavailable for custody applications, so custodial issues are only addressed by default, which can lead to later problems.

4. Procedural Unfairness

The current process does not include an opportunity to cross examine or otherwise challenge either of the parties on an application, for example, if one party alleges that the other is under-reporting income. The applicant, typically the custodial parent, is not present at the hearing. In fact, after making the initial application, the applicant has virtually no control over the process. There is no obligation to even inform the applicant about progress of the file or reasons for delay.

Conclusion and Recommendations

If the ISO system is intended to get child support to custodial parents as fairly and expeditiously as possible, the current system is not working. Once the application is made, neither of the parties involved nor their representatives have control over the process. There is no way to resolve matters expeditiously by engaging the non-custodial parent in settlement discussions.

One solution would be for all child support applications to take place in the child's home jurisdiction, with service on the non-custodial parent being allowed *ex juris*. Non-custodial parents could be afforded a fair hearing by:

a) allowing an appearance by video conferencing or teleconferencing

b) providing the non-custodial parent with legal assistance through an independent office set up for that purpose in each jurisdiction, and those offices might also facilitate settlement discussions.

Even if a radical change is not considered feasible, changes are urgently needed. There should be a maximum of six months' delay in setting a hearing date, as any longer delay results in having to update financial and possibly other information. When delays occur, an update request should be mailed automatically to avoid later requests for that information. It should be possible to amend applications to deal with family changes over the course of the process. Further, each registry should have designated times for dealing with ISOs.

At a minimum, the designated authorities should be required to inform the applicant regularly on the status of the file. Lawyers working for the designated authorities should have the mandate and ability to enter into settlement negotiations or otherwise manage files. This would also allow changes in circumstances to be addressed quickly and efficiently, instead of adding more months to an already lengthy and cumbersome process.

We thank you for the opportunity to provide comments and would be happy to discuss our suggestions further, at your convenience.

Yours truly,

(Original signed by Gaylene Schellenberg for Elaine Keenan-Bengts)

Elaine Keenan-Bengts
Chair, National Family Law Section