

FRO ENFORCEMENT AS AN A2J BARRIER

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Operating in a jurisdiction where students are not permitted to represent clients in Family Court, the Queen's Family Law Clinic (QFLC) uses a limited scope retainer to maximize the number of clients served while also providing students with a challenging and dynamic learning opportunity. In the course of their work at the QFLC, the staff and students have come across a significant and largely unknown gap in access to justice. It usually comes about when a support payor suffers a catastrophic financial downturn and the *Child Support Guidelines*, if applied, would have the payor owing far less

than required by the existing child support order. A change to the court order is required and, due to the complex nature of even the simplest court process, such a change to the order is beyond the capacity of the payor as a self-representing litigant. Despite having little or even no income, these clients do not qualify for the assistance of Legal Aid due to the nature of their main matter – a Rule 15 Motion to Change seeking a reduction in child support. Unable to retain a lawyer, the payor cannot bring their support obligation in line with their new circumstances. Arrears accumulate, sometimes for years or even decades, and enforcement measures ensue; meagre incomes required for the necessities of life are subject to garnishment, driver's licenses are suspended, and some payors even find themselves under threat of incarceration.

The impact of this issue can be far-reaching and among our clients have been: parents ordered to pay support even when they themselves have assumed care of the children for whom the support is payable, parents whose children are grown and have children of their own, and parents who are paying support for a child who has been adopted out of the support recipient's care. The perception that these payors are simply "deadbeat dads" pervades their efforts to get any form of assistance with changing the existing order. This negative perception continues into the court process, notwithstanding the fact that many of these clients suffer from debilitating physical, mental, or emotional challenges that prevent them from being able to work and that they have, in fact, no obligation per the *Child Support Guidelines*.



In many of these cases, a significant amount of time has passed since the support recipient and payor have been in contact, and the support payor often does not know where the recipient can be located for service. Therefore, before bringing an action to change the support order, the payor has to first ask the court for an order permitting service via a method other than personal service. Meanwhile, the Family Responsibility Office (FRO) continues to enforce on the obligation, taking money that, but for the existing order, the support payor would not owe. Once the money is collected from the

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FRO ENFORCEMENT AS AN A2J BARRIER - continued

payor, it is disbursed to the recipient. That money, once disbursed, is difficult or even impossible to retrieve, resulting in the client overpaying support. In cases that have carried on for years, that overpayment is often calculated in the tens of thousands of dollars. The FRO will not halt these enforcement measures without a court order, and so the QFLC works with the client to achieve a stay of all enforcement efforts so as to at least prevent an even larger overpayment by the client. Finally, once those two motions have been heard, the QFLC and the client are then in a position to bring the Motion to Change the original and still ongoing child support order and request an adjustment to the accumulated arrears.

We have found that student caseworkers are well-positioned to tackle this complex, interrelated set of challenges that they have come to call The Trifecta – a combination of a Motion for Substituted Service, a Motion to Stay Enforcement, and a Motion to Change. In doing this work, law students are able to have a measurable impact on the lives of challenged (and often challenging) clients while also learning to prepare, issue, serve, and file documents, track and meet deadlines, and engage a variety of counsel and community agencies.

In the Spring, we had the opportunity to discuss these files and present our work to the national conference of the Association of Canadian Clinical Legal Educators (ACCLE), and following that were invited to present for a “Lunch & Learn” for Legal Aid Ontario. Through this evolving project we are exploring problems and solutions and bringing the perspectives of lawyers, students and, through those, that of these vulnerable and underserved clients.

For those interested in learning more, our presentation is available for viewing at:
www.youtube.com/watch?v=11fzhCwzTJY&feature=youtu.be.

We are continuing to move forward with next steps for the project and we welcome your feedback. You can also look for our presentation at the 56th Annual AFCC Conference in 2019.

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