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DELIVERED BY EMAIL

Mr. William Humphrey – President of Bruce Law Association
Barrister & Solicitor
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Re: Submission to FOLA re: Interim Family Mode of Appearances

Dear Mr. Humphrey,
I hope this letter finds you well.

I am the Senior Legal Counsel at Bruce-Grey Child and Family Services. I write to you after consulting with my client (BGCFS) and after speaking with my two (2) esteemed co-counsel, Alanna Bernard and Ali Mirza. I have also spoken with our local judge, the Honourable Mr. Justice S.P. Harrison in an informal capacity. His Honour is aware that I will be sharing some thoughts with you.

I am hopeful that you would consider including my comments in the Law Association's submissions to FOLA.

I have had a chance to review the chart that was released by FOLA on Friday March 10, 2022, which contained the Honourable Chief Justice's proposal for resumption of in-person court attendances at the Ontario Court of Justice. I wish to voice some initial concerns with the proposal contained therein for child protection matters (pursuant to the *Child, Youth and Family Services Act*).

As you well know, the proposal essentially reverts back to in-person attendances for all *CYFSA* matters, except for Trial Management Conferences and Assignment Court. This is somewhat disconcerting and perplexing. I am struggling to understand the rationale behind this decision, especially when so many partners within the justice system (like myself) have voiced their support for a more flexible hybrid system for years now. I have no doubt that the intention behind this proposal was well-meaning, but I worry the impact may not be so.

The pandemic forced Ontario's legal system to launch into the 21st century, which was (in my humble opinion) long overdue. Over the past two (2) years, it has become abundantly clear that even in a virtual world, justice can still be done and seen to be done. I can appreciate that it was difficult for many of our respected judges to be catapulted into the virtual world, especially since many of them are self-proclaimed luddites. However, like the *Charter*, our judicial system is a living tree, and it must continue to grow and adapt to changing times. I am worried that the proposal presented on March 10, 2022 not only fails in this regard, but takes us backward to a more antiquated and less efficient time.

In an area of law that is already plagued by chronic delay and litigation slog, it is vital that we find new and creative ways to advance cases and achieve earlier desirable outcomes for the children and families we serve.

We are dedicated to the safety, well-being and quality of life of children and youth.

In the pandemic, we saw many parents attending court for the first time because they were able to do so by phone or by Zoom. To this point, I am worried that there will be some access to justice issues that arise out of this proposal. For example:

1. Many of our families and our Indigenous communities are marginalized and disenfranchised in various ways. They are also spread out over vast geographical regions. Travelling into court each time (especially in the winter) is simply not a safe or sustainable reality for many individuals. Even if the local judge requires the lawyers to attend all of the matters in person, it will be essential that other parties still have the option (dare I say, the right) to join by phone and / or by Zoom instead. I worry that simply leaving the ability to have a hybrid attendance up to a judge's discretion may not be sufficient, especially when we already know that the stated preference of many honourable judges is to proceed in-person on all / most matters; and
2. In rural areas like Bruce and Grey Counties, there are only a small number of lawyers who will represent a party in a child protection matter, and even fewer who will accept legal aid certificates. Conflicts are a recurring issue as well. One of the best things to come out of the past two (2) years, was the fact that a respondent had more options to choose from when selecting a lawyer. Parties have been able to retain counsel outside of our immediate jurisdiction. In Bruce-Grey for example, we have had lawyers from Ottawa, Toronto, Haldimand-Norfolk, London, and Guelph (to name a few) who have made themselves available to our community in ways like never before. This was only possible because those counsel were able to attend matters via Zoom. This also meant counsel were not having to claim mileage or stay overnight in a hotel, which reduced the costs invoiced to the client. This has been particularly important for counsel working under legal aid certificates, which limit the number of hours and available resources on a given file. This may no longer be possible if we go back to old ways.

From an Anti-Oppressive Practice perspective, there are some other equitable considerations. Namely:

1. Although the province may be reopening, the pandemic is not over. Children and families continue to feel the serious impacts of the past two (2) years – including increased challenges with mental health and addictions; educational deficiencies; grief from the deaths of those who fell ill from the virus; and other issues that may not fully manifest for years to come. Families are struggling, and child welfare supports are needed now – arguably - more than ever. Our BGCFS staff (social workers, administrative supports, lawyers, etc.) are feeling these affects in their professional lives as workloads continue to weigh heavy. But, it is important to remember that our staff also have to juggle the pandemic's affects in their personal lives too. As you may know, the majority of staff in the child welfare sector are women. Women have been disproportionately affected by the pandemic and many have had to make huge sacrifices – sometimes having to exit the workplace entirely - due to systemic barriers, including but not limited to lack of reliable childcare. I am very concerned that many of BGCFS' staff will be adversely affected if they are expected to attend court in person sometimes 1-2 times per week, where they typically sit around waiting all morning for their matters to be called. This will leave them with significantly less time throughout the work-week to complete their other tasks, which may lead to more over-time and more stress. This may inevitably impact their own wellness but also limit their availability to provide services to other families in need; and
2. Although it may seem like a more arbitrary consideration, gas prices are astronomically high right now. Expecting anyone – especially individuals who are already below the poverty line – to drive to and from court each time is not reasonable. Many people who interact with the child welfare system do not have the privilege to access a vehicle, never mind the affluence to fill the tank with gas. Our area does not have Uber or Lyft, and taxis are not available in many areas

of our community either. Requiring these parties to attend in person may simply extend them beyond their means; and

3. Based on a recent memo released by our local bench, another worry I have is with respect to the suggestion that parties may need to file 14B Motions 7 days in advance giving evidence to support a request to proceed via Zoom. Not only will this add more work to the pile, it will put many individuals in the unfortunate position of having to explain – in a semi-public court document - the systemic barriers they are facing and financial burdens they are under. This can be embarrassing and even traumatizing. Instead of putting the burden to prove their disadvantage on the person who is disadvantaged, I would suggest that the administration of justice should bear the responsibility of using its ample resources to remove these systemic barriers at the front end – in the proposal from the Chief Justice itself.

Finally, I question the rationale around having TMCs done virtually. Often, these are the most complex conferences we have, and settlement discussions are still had at them (pursuant to Rule 17(6)(a)). Why are they expected to be virtual when all other conferences are not? If anything, I would suggest that a case conference would be the more natural fit to hold virtually; especially since they are not required by the Rules in a child protection case and often, we forego them.

Based on the foregoing, I would implore FOLA to advocate on its membership's behalf and urge the Chief Justice to reconsider the default position for in-person attendances. I would ask FOLA to encourage the Chief Justice to find more creative ways to infuse concepts of equity, diversion and inclusion into the proposal – and do so in a more concrete way with some guarantees in place. I would ask FOLA to try to persuade the Chief Justice to reconsider the default position and allow for a more accessible hybrid model in child welfare matters. Although I continue to have faith in our system and those who sit in the seats of power, I worry that simply leaving the issue up to the discretion of each individual judge may result in more systemic inequities and inconsistencies across the province than would be defensible.

Thank you for your consideration,
Sincerely,



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