SUPREME COURT OF NOVA SCOTIA

Citation: D.A.O.. v. Children's Aid Society of Cape Breton-Victoria, 2004 NSSC 164

Date: 20040820
Dockets. Sn. No. 209949
Registry: Sydney

Between:

Minor Child, DAO, by his litigation guardian, W. O.

Plaintiffs/Respondents

vs.

The Children's Aid Society of Cape Breton-Victoria, Marie Boone, John Janega, Nora MacDonald, Doug Thorne and Shaun Butler

Defendants/Applicants

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Editorial Notice

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Restriction on Publication: **Section 94(1) of the *Children & Family Services Act***

Judge: The Honourable Justice A. David MacAdam

Heard: July 15, 2004, in Sydney Nova Scotia

Subject: *Civil Procedure Rule 6.03* - Litigation Guardian - undertaking to pay costs

Summary: The Defendant sought to have the litigation guardian removed on the basis he lacked the ability to respond to any order for costs, in view of *Civil Procedure Rule 6.03(6)(g)* which required the litigation guardian to acknowledge potential liability to pay personally any costs awarded against him or her or against the person under disability.

Issue: Whether pursuant to the *Rule,* it was necessary for the litigation guardian to demonstrate an ability to respond for any order for costs, or whether the rule only required the acknowledgment.

Result: There was nothing in the *Rule* that required the litigation guardian to demonstrate the ability to respond to costs. Absent a successful application for security for costs under *Civil Procedure Rule 42* it was sufficient to meet the obligations under *Civil Procedure Rule 6.03(6)(g)* that the litigation guardian make the acknowledgement even if, on his own evidence, he was not in a position at that point in time to respond to an Order for costs. Pursuant to the comments of North, J., in *Jones v.*

Evans, (1866), the impecuniousity of the next friend of an infant was not of itself sufficient grounds for removing him or requiring him to give security for costs.