Case Name:

C.M.M. v. D.G.C.

Between
C.M.M., Applicant, and
D.G.C., Respondent

[2014] O.J. No. 1767

2014 ONSC 2356

239 A.C.W.S. (3d) 552

46 R.F.L. (7th) 48

2014 CarswellOnt 4859

Divisional Court File No. 57/14

Ontario Superior Court of Justice
Divisional Court

A.L. Harvison Young J.

Heard: April 1, 2014.
Judgment: April 15, 2014.

(53 paras.)

Family law -- Maintenance and support -- Child support -- Considerations -- Agreement -- Children born outside marriage -- Application by child -- Practice and procedure -- Parties -- Independent representation of children -- Appeals and judicial review -- Of interim or interlocutory orders -- Motion by child for leave to appeal interim orders in child support proceeding allowed to limited extent -- Parents had child after brief relationship and negotiated agreement whereby father paid $37,500 and would have no contact with child -- Child, age 15, contacted father's family seeking support and filed application without mother's involvement -- Leave to appeal order requiring appointment of litigation guardian was granted, as case was novel, there was reason to doubt correctness of order, and matter was of public importance -- Leave to appeal refusal of interim support and disbursements and other procedural matters refused -- Family Law Act, s. 33(1).

Motion by the child for leave to appeal interim orders made in a child support proceedings. The child, age 15, sought child support from the respondent, her biological father. The child's mother played no role in her daughter's claim. The parties had a short relationship. They negotiated and executed a written agreement that provided for a lump-sum payment of $37,500 by the father to the mother. It provided that the father was to have no contact with the child. Both parents were represented by counsel. In 2013, the child wrote the father's family asking for financial support to attend private school. She subsequently applied for child support. The child sought leave to appeal orders appointing a litigation

guardian, dismissing her request for interim support and disbursements, dismissing her request to strike portions of the father's affidavit and answer, requiring identification of the parties by initials, and restraining the child from contacting the father's family.

HELD: Motion dismissed on all but one ground. The case was novel in that the child resided with her mother and had not withdrawn from parental control. The issue of whether a litigation guardian was required in such circumstance was a matter of unsettled law. There was a basis to doubt the correctness of the motion judge's decision in interpreting the intersection of the Family Law Rules and the Rules of Civil Procedure to conclude a litigation guardian must be appointed. The matter was of public importance, as the absence of a litigation guardian requirement could encourage child support litigation at the de facto initiative of the custodial parent without accountability for costs on their part. Conversely, a litigation guardian requirement compromised a child's interests where a custodial parent was unwilling or unable to pursue a child support claim. Leave was thus granted on the litigation guardian issue. There was no basis for leave to appeal the other aspects of the order, as there was no basis to doubt the correctness of the decision.

Statutes, Regulations and Rules Cited:

Child and Family Services Act, R.S.O. 1990, c. C.11,

Child Support Guidelines, O. Reg. 391/97=, s. 7

Children's Law Reform Act, R.S.O. 1990, c. C.12,

Family Law Act, R.S.O. 1990, c. F.3, s. 31(2), s. 33(1), s. 33(2)

Family Law Rules, O. Reg. 114/99, Rule 1(7), Rule 2, Rule 2(1), Rule 4, Rule 24(12)

Rules of Civil of Procedure, R.R.O. 1990, Reg. 194, Rule 7, Rule 62.02(4), Rule 62.02(4)(a), Rule 62.02(4)(b)

Counsel:

Jeffrey Wilson, for C.M.M.

Harold Niman and Vanessa Amyot, for D.G.C.

Andrea Luey, for Justice for Children and Youth.

Samantha Preshner, Children's Lawyer.

Courtney Harris, Attorney General of Ontario.

[Editor's note: An amended judgment was released by the Court April 17, 2014. The changes were not indicated. This document contains the amended text.]

1 **A.L. HARVISON YOUNG J.**:-- This is a motion for leave to appeal that arises from a number of orders made by D. Wilson J. on January 24, 2014

2 The unusual background of this motion may be briefly summarized. The applicant, C.M.M., is a 15 year-old girl who is seeking child support from her biological father, the respondent, D.G.C. C.M.M. lives with her mother, J.M. Although she has been named as a party, J.M. has not played any role in her daughter's claim.

3 C.M.M. was born in 1998 after J.M. unexpectedly became pregnant after a relatively short relationship with the respondent. J.M. and D.G.C. negotiated and executed a written agreement (the "Agreement") that provided for the payment of a one-time lump sum of $37,500 by D.G.C. to J.M. It also provided that D.G.C. was to have no contact with the child whatsoever. Both J.M. and the respondent were represented by experienced counsel at that time.

4 The money was paid and the father played no role in the birth or life of C.M.M., as stipulated by the Agreement, until the applicant wrote to the respondent's mother in February 2013. In that letter, the applicant asked for "your family's financial support for fees at Havergal College for the commencement of my high school years". The application that gives rise to this motion was commenced shortly thereafter.

5 On December 12, 2013, a number of motions and cross-motions were heard. The motion judge subsequently made a number of determinations that are listed in "Appendix A" to these reasons.

Motions Before this Court

6 The applicant seeks leave to appeal from most, though not all, of the motion judge's orders listed in Appendix A.

7 The applicant child seeks leave to appeal from the following orders:

(1) That the applicant appoint a litigation guardian in these proceedings;
(2) Dismissing the applicant's request that the respondent father pay interim child support;
(3) Dismissing the applicant's request for interim disbursements;
(4) Dismissing the applicant's request that portions of the respondent's affidavit and Answer be struck;
(5) That the parties be identified by initials; and
(6) Restraining the applicant from contacting the respondent's family.

8 In the materials filed on the motion before this court, the applicant took the position that if she was unsuccessful in obtaining leave to appeal on the litigation guardian issue, she would seek an order permitting the matter to proceed without a litigation guardian pursuant to the court's *parens patriae* jurisdiction, or pursuant to a Notice of Constitutional Question that she has filed. Justice for Children and Youth sought leave to intervene with respect to the constitutional issue, and the Attorney-General (Ontario) filed responding materials.

9 As a further alternative, the applicant would seek an order appointing the Office of the Children's Lawyer (the "OCL") as her litigation guardian.

Preliminary Issue

10 At the beginning of the motion hearing before this court, counsel agreed that if leave was granted on the litigation guardian issue, the alternative relief sought by the applicant, namely that she proceed without a litigation guardian or that the OCL be appointed, would not require submissions. Similarly, they agreed that in the event leave was granted on the litigation guardian issue, submissions on the constitutional argument would not be necessary.

11 After hearing submissions from the applicant and respondent on the leave to appeal grounds, I advised the parties that I would be granting leave to appeal on the litigation guardian issue with reasons to follow. Accordingly, it was unnecessary to hear from the OCL, the Attorney General or Justice for Children and Youth, and the applicant's claim for alternative relief was not argued. I advised the parties that I would be reserving my decision on the issues of interim support and interim costs, but dismissing the balance of the motion grounds.

12 After considering the parties' submissions and the relevant law, I have concluded that leave to appeal should be denied on all issues except for the litigation guardian issue. These are my reasons.

The Test for Leave to Appeal

13 Rule 62.02(4) of the *Rules of Civil of Procedure*, R.R.O. 1990, Reg. 194 provides that leave shall not be granted to appeal from an interlocutory order of a judge of the Superior Court of Justice unless one of the following conditions is satisfied:

(a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or
(b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted.

14 As has been held in a number of cases, this court need not actually doubt the correctness of the decision. It is sufficient that its correctness be "open to very serious debate": see *Zagdanski v. Zagdanski*, [2002] O.J. No. 3415 (Div. Ct.), at para. 16; and *Major v. Major* (2009), 71 R.F.L. (6th) 422 (Ont. Div. Ct.), at para. 6.

15 Throughout his submissions on behalf of the applicant, Mr. Wilson relied on rule 62.02(4)(a), arguing that with respect to every issue (with the exception of the interim disbursements issue), the applicant had met that limb of the test

for leave in that there were conflicting decisions on the point. With the possible exception of the litigation guardian issue, which I will discuss in more detail below, I do not agree that the applicant was able to point to conflicting cases within the meaning of Rule 62.02(4)(a).

16 An exercise of discretion that has led to a different result because of different circumstances does not constitute a "conflicting decision" within the meaning of rule 62.02. In *Comtrade Petroleum Inc. v. 490300 Ontario Inc.* (1992), 7 O.R. (3d) 542 (Div. Ct.), Montgomery J. made the following comments for the court, at p. 544:

> [W]e feel it is necessary to make some comment on the manner in which subrule (a) has been interpreted. An exercise of discretion which has led to a different result because of different circumstances does not meet the requirement for a "conflicting decision". It is necessary to demonstrate a difference in the principles chosen as a guide to the exercise of such a discretion.

1. <u>The Litigation Guardian Issue</u>

17 The motion judge rejected the applicant's argument, which Mr. Wilson also reiterated forcefully before this court, that the *Family Law Rules*, O. Reg. 114/99 provide an entire scheme for a child suing a parent for support, and that recourse to the *Rules of Civil Procedure* is therefore unnecessary. The motion judge concluded that Rule 7 of the *Rules of Civil Procedure* operates in the circumstances, and requires that the applicant be represented by a litigation guardian.

18 The motion judge based her conclusion on this issue on a number of grounds. First, she relied on Rule 1(7) of the *Family Law Rules*, which confers a broad discretion on courts to refer to the *Rules of Civil Procedure* to address matters not specifically dealt with by the *Family Law Rules*. She noted that there are many examples of this, citing the case of *Himel v. Greenberg*, 2010 ONSC 4084, 93 R.F.L. (6th) 384. She found that the issue of the appointment of a litigation guardian was not clearly addressed, citing the decision of *Zabawskyj v. Zabawskyj* (2008), 55 R.F.L. (6th) 36 (Ont. S.C.), at paras. 41-42 of the endorsement:

> This case involved a family law application in which an 81 year old woman claimed a trust interest in property owned by her husband who was 85. Both of the parties were deemed incapable of instructing counsel. As a result, the wife moved for an order appointing the Public Guardian and Trustee as litigation guardian while the son of the father moved for an order appointing him as his father's representative.
>
> In ruling on the motions, the judge noted that a "special party" is a person who is mentally incapable of instructing counsel and mentally incapable of understanding information or issues in the litigation. He went on to state, at para. 12, "Rule 4(2) of the *Family Law Rules* provides that a court may authorize a person to represent a special party if the person is appropriate for the task and willing to act as representative. This rule is somewhat terse. As a result, courts have tended to rely on Rule1(7) of the *Family Law Rules* to look to Rule 7 of the *Rules of Civil Procedure* where a more detailed framework exists for considering the issue of the representation of mentally incapable person in litigation. Applying the Rule 7 framework to issues of mental capacity in family law litigation makes sense. It ensures a consistency of practice and jurisprudence on the issue, thereby affording parties needed guidance" I agree.

19 The motion judge also considered the policy considerations at play, finding that there were sound policy reasons for interpreting the legislation in this manner. She noted that the applicant's mother had been made a party by the respondent, but had not responded to the litigation. Given that the outcome of the application was by no means certain, it would be unfair to the respondent if the applicant, who has no source of income or assets, was essentially insulated from any costs awards that might be ordered: see paras. 45-47.

<u>The Parties' Submissions</u>

20 On behalf of the applicant, Mr. Wilson argued strenuously that the motion judge erred in her application of the *Rules of Civil Procedure* to the *Family Law Rules*. He submitted that there are conflicting decisions on whether a person under the age of 18 requires a litigation guardian when suing a parent for support.

21 In addition, the applicant submitted that there is good reason to doubt the correctness of the motion judge's recourse to the *Rules of Civil Procedure*. The heart of the applicant's argument, which she also made before the motion

judge, was that it is unnecessary and wrong to resort to the *Rules of Civil Procedure* because the *Family Law Rules* operate as a complete code on the subject of representation of children. Because they do not impose a litigation guardian requirement, there is no basis for imposing such requirement.

22 Mr. Wilson pointed to subsection 33(2) of the *Family Law Act*, R.S.O. 1990, c. F.3 (the "*FLA*"), which allows a child to bring an application for child support. He also submitted that under the *Family Law Rules*, the applicant is not a "special party" within the meaning of the following definition from rule 2(1):

> "special party" means a party who is a child or who is or appears to be mentally incapable for the purposes of the *Substitute Decisions Act, 1992* in respect of an issue in the case and who, as a result, requires legal representation, but does not include a child in a custody, access, child protection, adoption or child support case.

23 On this view, the applicant falls within the exception contained in this rule. In other words, she is "a child in a child support case." The applicant further noted that a litigation guardian is not required where a child is involved in a child protection case under the *Child and Family Services Act*, R.S.O. 1990, c. C.11 or a custody and access case under the *Children's Law Reform Act*, R.S.O. 1990, c. C.12. She submitted that if the motion judge is correct, all of the circumstances in which children have counsel but no litigation guardian will need to be corrected.

24 On behalf of the respondent, Mr. Niman submitted that to begin with, rule 2(1) is a definitional section, but even if it is to be applied in this case, the applicant has misinterpreted the Rule. Rule 2, according to the respondent, is meant to apply to children who are *subjects* of a custody, access, child protection, adoption or child support case. It is not meant to apply to children who are parties to such cases.

25 According to the respondent, this is the only logical reading of the rule. A child cannot be a party to a custody, access, or child protection case of which he or she is the subject. He submitted this reading of the rule is consistent with the Supreme Court of Canada's approach to statutory interpretation, namely that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.": *Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27, at para 21.

26 Mr. Wilson submitted that the applicant's position on this issue is supported by the existence of a number of child support cases where minors have been permitted to claim child support without litigation guardians, citing *J.G. v. P.G.*, [1988] O.J. No. 3137 (Ont. Prov. Ct.) and *Kline v. Kline*, 2007 ONCJ 575 as examples.

27 While Mr. Niman conceded that there are cases in which children have been permitted to sue their parents for child support without a litigation guardian, he says that all of the cases relied on by the applicant involve children who had withdrawn (or allegedly withdrawn) from parental control within the meaning of s. 31(2) of the *FLA*. In this case, however, the child is living with her mother.

28 Mr. Niman argued that, in any event, a proper reading of Rule 4 supports the motion judge's view that there is a "gap" in the *Family Law Rules* because it is clearly contemplating legal *representation*, and not litigation guardians. At no point does Rule 4 mention a litigation guardian. In short, it is the *Rules of Civil Procedure* and not the *Family Law Rules* that addresses the issue of litigation guardians (as opposed to legal representatives or lawyers) in any situation involving children. Both parties cited policy considerations in support of their positions. Mr. Wilson argued that if a litigation guardian is appointed in this case, the litigation will be stymied because she is unable to find someone willing to act as litigation guardian for her.

29 The respondent referred to the following articulation of the purpose underlying the litigation guardian requirement from *Holmested and Watson: Ontario Civil Procedure*:

> The purpose of a rule requiring a litigation guardian for parties under disability is drawn for protection to the party, the other parties and the Court itself. The rule offers protection to the party by ensuring that a competent person with a duty to act for the party's benefit is there to instruct counsel and take steps in the litigation on the party's behalf. To the other parties, the rule offers the protection of a competent person who instructs counsel on how the proceeding is to be conducted, is responsible for costs and is responsible for seeing that the court's eventual judgment is obeyed. A litigation guardian offers assurance to the court that its process is not abused by or against a party under disability and that its order will be obeyed [D. McKay and G. Watson,

Holmested and Watson: Ontario Civil Procedure, looseleaf, vol. 2 (Toronto: Carswell, 1984-), p. 7-13].

30 This passage was cited with approval by Stinson J. in *626381 Ontario Ltd. v. Kagan, Shastri, Barristers & Solicitors*, 2013 ONSC 4114, 116 O.R. (3d) 202, at para 17.

Analysis

31 This is a novel case because it is normally the custodial parent who brings the application for child support. The applicant lives with her mother and has not withdrawn from parental control, as was the case in all of the support cases drawn to the court's attention in which a minor has claimed support from a parent. The question of whether those cases are applicable to the present case and/or whether they are correct to the extent that litigation guardians were not required is at the core of the question of whether the motion judge was correct. If those cases are applicable, then the applicant is correct in asserting that there are conflicting decisions. Given the novelty of this issue, it is desirable that leave to appeal be granted on this issue.

32 It is not necessary for the purposes of this leave application to decide whether the applicant has satisfied the "conflicting decision" test for leave set out in rule 62.02(4)(a) because I am of the view that there is, in any event, very serious debate as to the correctness of the motion judge's decision.

33 The motion judge's interpretation of the intersection of the *Family Law Rules* and the *Rules of Civil Procedure* led to the conclusion that a litigation guardian must be appointed in this case, despite the fact that there are cases involving minors who have withdrawn from parental control where such a requirement has not been imposed. She referred to these cases as "exceptional" in terms of the general rule that litigation guardians be appointed. Seen within the context of custody claims, these cases are indeed exceptional in the sense that child support claims are normally brought by the custodial parent. There is no case law involving situations like this where a child living with one parent takes the initiative to claim support from the other without any apparent encouragement or support to do so from the custodial parent. I note that these "exceptional" cases do not address the question of whether a litigation guardian was required. There is no indication that the question was raised at all, which undermines the applicant's argument that they stand for the proposition that a litigation guardian is not required when a minor seeks child support.

34 The question, then, is whether and/or why it is that a litigation guardian has not been appointed in cases where minors have withdrawn from parental control, but must be appointed in a case where the minor is claiming support from a parent without any involvement or apparent involvement of the custodial parent. The policy consideration that it is desirable and in the interests of the fairness and integrity of the legal system to have someone be responsible for costs would also appear to apply, at least in principle, to the case of a minor who has withdrawn from parental control.

35 For all these reasons, and given the absence of clear authority on the applicability of a litigation guardian requirement in such cases, I am satisfied that there is very serious debate as to the correctness of the motion judge's decision to order the appointment of a litigation guardian. I emphasize, however, that I am unable to say that I doubt the correctness of the motion judge's decision on this point.

36 I am also satisfied that the applicant has met the second limb of the test in Rule 62.04(b) with respect to the litigation guardian issue. The implications of this issue, as I have discussed, go far beyond the confines of this case. The fact that, as the respondent emphasized, the absence of a litigation guardian requirement could encourage child support litigation at the *de facto* initiative of custodial parents but without any accountability for costs on their part lies at the heart of the policy considerations to which the motion judge was very much alive. The respondent's position is that the mother has, in fact, been behind this litigation. On the other hand, the applicant submits that a requirement that a litigation guardian be appointed in a case such as this risks compromising the child's interests where a custodial parent is unwilling or unable to pursue a child support claim. There is no question that the proposed appeal on the litigation guardian issue involves matters of such importance that leave to appeal should be granted.

2. Should the Respondent be required to Pay Interim Child Support?

37 The motion judge declined to order the respondent to pay interim child support, noting that the language in s. 33(1) of the *FLA* is discretionary. As she acknowledged, although a parent cannot contract out of a child's right to support, it is not the task of the motion judge to scrutinize the merits of the application to determine whether it will ultimately be successful. The motion judge was not satisfied on the evidence that the applicant had established immediate need, noting that the applicant's affidavit evidence indicated that she sought funds to attend private school. Noting that

the respondent had given evidence that he had limited financial means, and that the applicant would not suffer prejudice, the motion judge declined to order interim support.

Analysis

38 I would not grant leave to appeal the motion judge's refusal to order interim child support in this case. The applicant has not met the test for leave in either limb of rule 62.02(4).

39 Section 33(1) of the *FLA* states that a court *may* order a person to provide support for his or her dependent. This language is clearly discretionary. The motion judge exercised her discretion in refusing to grant interim child support. I do not agree with Mr. Wilson's submission that a court must, on all applications under s. 33(1), record reasons for departing from the *Child Support Guidelines*, O. Reg. 391/97 (the "*Guidelines*"). The case he relies on as support for this proposition states only that where a court actually awards an amount that is inconsistent with the *Guidelines*, it must articulate reasons for doing so: see *Sodoski v. Dudgeon*, [2004] O.J. No. 5913. Here, the motion judge was not satisfied that eligibility for an award had been established.

40 As her reasons indicate, the motion judge was alive to the issues raised by the applicant. The combination of the fact that, in her view, the case's outcome was "by no means certain", and the fact that she did not find that need had been established, led her to decline to order interim support in these circumstances.

41 Despite the fact that the claim filed seeks child support as well as s. 7 expenses under the *Guidelines*, it is clear from the letter sent by the applicant to her paternal grandmother (in which she asked for financial help in attending Havergal) that the s. 7 aspect of the claim is an important element. The absence of any material filed by the mother to indicate her financial circumstances was thus a relevant factor to which the motion judge was clearly alive. In short, she found on the record before her that the applicant had not made out a compelling case for eligibility to child support. That finding was open to her on the record, and does not give rise to any reason to doubt the correctness of her decision not to grant interim child support. In addition, there are no conflicting decisions that could give rise to leave pursuant to rule 62.02(4)(a): see *Comtrade*. Accordingly, leave to appeal on this issue is denied.

3. Should the Applicant be Awarded Interim Disbursements?

42 The motion judge declined to award interim disbursements. She noted that the applicant sought $50,000 because she had no funds with which to proceed with the litigation. The motion judge recognized that she had the discretion under rule 24(12) of the *Family Law Rules* to order the payment of expenses in order to ensure that the process is fair to all parties. She held, however, that the $50,000 requested by the applicant, presumably to pay for a valuation of the respondent's income, was an "exorbitant amount as an estimate for preparation of such a report without some further explanation as to why the fees would approach that amount." She found that that the applicant had not demonstrated that it would be fair in the circumstances for the respondent to pay that amount. In her view, such an order would not level the playing field, but would result in financial hardship to the respondent. Taking into account this consideration as well as the novelty of the case and the fact that unlike many family law cases, it was not one in which the respondent could recoup the amount by means of, for example, a set-off against an equalization payment, the motion judge held that it would be unfair to order the interim disbursements sought.

43 The motion judge's decision was discretionary. It was, in my view, well-grounded and justified on the basis of the record before her for the reasons that she gave, as emphasized by Mr. Niman in the course of this motion for leave. She reviewed and considered the proper considerations to be applied in exercising her discretion in relation to an award of interim costs. I do not agree with Mr. Wilson that the cases he cited as "conflicting" are in fact conflicting cases. They involve exercises of discretion under different circumstances, and do not demonstrate different principles chosen to guide the exercise of that discretion: see *Comtrade*. I find no basis for the applicant's submission that the motion judge misapprehended the evidence that gives rise to any serious debate as to the correctness of her decision on this issue.

44 In short, I find no basis for granting leave to appeal on this issue. The test has not been made out, and the application for leave to appeal the refusal to order the payment of interim disbursements is denied.

4. Should Portions of the Respondent's Answer and Affidavits be Struck?

45 The motion judge declined to strike most of the impugned paragraphs. She acknowledged that all or part of any document may be struck out where it might delay or make it difficult to have a fair trial, is inflammatory, a waste of

time, a nuisance or an abuse of process. She characterized the impugned paragraphs as relating either to the circumstances surrounding the Agreement or the circumstances surrounding the respondent's lawsuit with his former firm.

46 I see no error of law in her characterization of the issues as they relate to this issue. The motion judge carefully considered the applicant's submissions and rejected them. I am unable to conclude that the applicant has satisfied the test for leave under either Rule 62.02(4)(a) or (b). The motion judge considered the facts of this case and concluded that the Agreement and its circumstances were not only relevant but critical to the issues in the application.

47 Accordingly, she declined to strike the impugned paragraphs (with one exception that is not in dispute in this motion for leave). In my view, the applicant has not cited any authorities that support the argument that there are conflicting decisions (see *Comtrade*) or that there is very serious debate as to the correctness of her decision. In any event, the issue does not go beyond the interests of the parties in this litigation. Leave to appeal on this issue is denied.

5. Should the Names of the Parties be Initialized?

48 The motion judge ordered that the parties' names be initialized on the basis that the respondent had demonstrated that if his children learned of the litigation, emotional harm could result. She declined to order that the court file be sealed.

49 In the course of oral submissions, counsel for the applicant withdrew this ground of appeal. Accordingly, I do not propose to address the issue any further.

6. Should an Order be Made Restraining the Applicant from Communicating with the Respondent's Family?

50 The motion judge ordered the applicant not to contact the respondent's family without his consent. She noted that the applicant had contacted the respondent's mother without any notice to the respondent. Given the circumstances, and given the order initializing the file in order to prevent harm to the respondent's children, a restraining order of this nature was warranted. The applicant submitted that there is good reason to doubt the correctness of the decision because there are no cases where an order of this nature has been imposed on a 14 year-old child seeking support from a parent. She submitted that the order was made without a finding that anyone feared for his or her safety. The applicant further submitted that in the only case where such an order was made, the court found evidence that an older child was actively attempting to alienate the child from a younger child: see *C.S. v. M.S.* (2007), 37 R.F.L. (6th) 373.

51 In my view, the record before the motion judge provided ample grounds for her to make an order restraining the applicant from contacting the respondent's family. This included the undisputed evidence that the applicant had contacted the respondent's mother without notice to him. It also included evidence that the applicant had participated in online discussions about the respondent and his personal life. His affidavit evidence stated that he feared his children might be harmed if they were to discover this information. In summary, I find no reason to doubt the correctness of the motion judge's decision to grant this order, and her decision in this regard is not open to very serious debate. The decisions cited by the applicant are fact-driven and do not constitute conflicting decisions within the meaning of Rule 62.02(4)(a): see *Comtrade.*

Conclusion

52 For these reasons, I would grant leave to appeal on the litigation guardian issue, and dismiss the application for leave on all other issues.

Costs

53 The parties may make brief written submissions to me within 60 days as to the costs of this motion on a timetable to be agreed upon between themselves.

A.L. HARVISON YOUNG J.

* * * * *

APPENDIX A
ORDERS MADE BY WILSON J.

In response to the applicantAEs motions, the motion judge ordered the following:

* That the respondent produce certain financial disclosure; and

* That both the respondent and applicant (on consent) be permitted to file expert reports outside of the time requirement in the Rules.

In response to the applicantAEs motions, the motion judge declined to order the following:

* That the respondent pay temporary child support;
* That the respondent pay interim disbursements in the amount of $50,000;
* That certain paragraphs of the respondentAEs Answer and Affidavits sworn November 1, November 8 and November 29, 2013 be struck; and
* Dismissing the applicantAEs motion for summary judgment dismissing the claims in paragraphs 6 and 7 of the respondentAEs Answer.

In response to the respondentAEs motions, the motion judge ordered the following:

* That the applicant be represented by a litigation guardian in the proceedings;
* That the partiesAE names by initialized. Wilson J. declined to order that the court file be sealed;
* That the applicant and J.M attend for questioning;
* Production of the file of Linda Silver-Drainoff, the solicitor who acted for J.M. when he signed the Agreement; and
* That the applicant refrain from contacting the respondentAEs family without his consent.