

WARNING

**Section 87(8) of the *Child, Youth and Family Services Act, 2017*, S.O. 2017,
c. 14, Sched. 1 may apply:**

Prohibition re identifying child

87(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

COURT OF APPEAL FOR ONTARIO

CITATION: Children's Aid Society of London and Middlesex v. T.E.,
2023 ONCA 270
DATE: 20230418
DOCKET: COA-22-CV-0074

Pepall, van Rensburg and Benotto JJ.A.

BETWEEN

Children's Aid Society of London and Middlesex

Applicant (Respondent)

and

T.E., J.G., and L.D. (on behalf of Oneida Nation of the Thames)

Respondents (Respondents)

Jessica Gagne, for the appellant, T.M.¹

Randolph C. Hammond, for the respondent Children's Aid Society of London and Middlesex

A. Julia P. Tremain, for the respondent T.E.

Katherine Hensel, Debra Snider and Kristie Tsang, for the respondent J.G.

Nicole Hill-Dolson, for the respondent L.D. (on behalf of Oneida Nation of the Thames)

Tammy Law, for the respondent O.T.

Sarah Clarke, for the intervenor Association of Native Child and Family Services Agencies of Ontario

¹ T.M. and O.T. were not parties to the original applications, so they do not appear on the title of proceedings. However, they fully participated in the appeal as appellant and respondent, respectively.

Heard: December 16, 2022

On appeal from the order of Justice Paul J. Henderson of the Superior Court of Justice, dated August 5, 2022.

COSTS ENDORSEMENT

[1] The appellant seeks partial indemnity costs of the appeal against the three individual respondents in the amount of \$1000 each and against the Oneida Nation of the Thames in the amount of \$15,000.

[2] After considering the written submissions we have concluded that no costs will be ordered against the parents and the aunt who are the individual respondents. We do however consider it appropriate in this case to order costs against the Oneida Nation.

[3] This court looks to the *Family Law Rules*, O.Reg.114/99 and its underlying principles to provide guidance as to costs: *Selznick v. Selznick*, 2013 ONCA 35. Under those rules, while there is a general presumption that costs are awarded to the successful party, the same presumption does not apply in a child protection case or to a party that is a government agency: rules 24(1) and 24(2). At the same time, rule 24(3) explicitly retains the court's discretion "to award costs to or against a party that is a government agency, whether it is successful or unsuccessful".

[4] An important factor for this court to consider is whether the agency was respectful of the rights and dignity of the children and parents involved in the case: *Children's Aid Society of the Region of Peel v. L.M.*, 2022 ONCA 379.

[5] The costs submissions of L.D. on behalf of the Oneida Nation incorrectly asserts that “costs cannot be awarded to or against Oneida, whether it is successful or unsuccessful”. The submissions also assert that the appellant should be deprived of her costs because of her unreasonable behaviour. In this regard the submissions contain statements attacking the appellant’s character, her personal life and her “questionable morals”. These statements are both unsworn and unproven and disrespectful of the appellant. We also take into account that the appellant was required to bring a contested motion in this court to continue access to the child pending the appeal.

[6] We therefore order costs to be paid to the appellant by the respondent Oneida Nation of the Thames in the amount of \$10,000.

“S.E. Pepall J.A.”

“K. van Rensburg J.A.”

“M.L. Benotto J.A.”