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COURT OF APPEAL FOR ONTARIO

**RE: THE MINISTER OF NATIONAL REVENUE
(Applicant/Respondent) v. WAI KEUNG TSUI
(Respondent/Appellant)**

BEFORE: O'CONNOR A.C.J.O., SIMMONS and JURIANSZ J.J.A.

**COUNSEL: Jeffrey Leon and Laura Cooper
for the appellant**

**Kevin Dias and Aleksandrs Zemdegs
for the respondent**

**HEARD &
RELEASED**

ORALLY: December 21, 2006

On appeal from the order of Justice Michael G. Quigley of the Superior Court of Justice dated October 27, 2005.

ENDORSEMENT

[1] The motion judge was called upon to interpret the term “legal custody” in a trust agreement of two former common law spouses. In our view, the motion judge erred in holding he was “obliged” to give the phrase a meaning in accordance with s. 20 of the *Children’s Law Reform Act*. His task was to construe the meaning of these words in the context of the whole agreement in order to give effect to the intent and reasonable expectations of the parties. He failed to do so.

[2] As a result, it falls to this court to construe the agreement. We have concluded that when the parties referred to “legal custody”, they meant custody pursuant to a court order. We reach this conclusion because the agreement was drawn up by the parties themselves, without legal assistance. They must have intended the modifier “legal” to mean something more than the children simply living with one party on consent. There is no evidence that the parties were aware of the import of s. 20 of the *Children’s Law Reform Act* and they were not cross-examined on the point. Moreover, the reference to the payment being a “one time contribution to the would be housing expenses of the said

four children”, supports the conclusion that they intended the clause to take effect upon some permanent custody arrangement such as one ordered by the court.

[3] In the result, the appeal is allowed, the order below is set aside, and the sum of \$104,620.80 together with interest thereon is to be paid to the appellant.

[4] Costs are awarded to the appellant fixed in the amount of \$5,000, inclusive of GST and disbursements.

“D. O’Connor A.C.J.O.”

“Janet Simmons J.A.”

“R.G. Juriansz J.A.”