


Family Law News

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An Expression of an Unfulfilling Trial, A Case Comment on Bruni v. Bruni, [2010] Ont. S.C. 6568

If you have not yet read the case of *Bruni v. Bruni*, [2010] ONSC 6568, whether or not you practice family law, consider doing so. This case is sure to delight those of you who have become cynical through years of practice, as it comes across as a breath of fresh air with a sarcastic twist. The reported decision has generated a large amount of publicity in the media and has sparked a debate amongst lawyers and bloggers alike concerning the appropriateness of humour in the courtroom and in written decisions. The target of this critical analysis, the Honourable Mr. Justice Quinn of the Superior Court of Justice in St. Catharines, Ontario, is recognized for his vocal, and often critical, opinions both in the courtroom and in his written decisions. In the case of *Bruni* he now adds an element of comic genius to his written repertoire.

In order to fairly comment upon whether Justice Quinn's humour is found in the appropriate forum, it is necessary to look at the dispute over which he was required to adjudicate. The parties in *Bruni* were the type of high conflict litigants that makes family law practitioners question their field of choice, and lawyers of different practice areas thankful that it is not. It was the type of case fuelled by "intense", "mutual", "high-octane hatred" between former spouses. Within an 18-month period the Niagara Regional Police Service were drawn into their petty disagreements no less than fourteen times. There were allegations of death threats involving the Hells Angels Motorcycle Club. One can clearly garner the hatred each party felt for the other by reading the decision and morsels of their testimony contained therein. To top it off, the wife began a relationship with her husband's former best friend, which inevitably caused conflict.

By the time this case reached the courtroom for a seven day trial, two years after the commencement of the action, it is not surprising that the parties were both self-represented, and that the parties' two children were involved and impacted by the bitterness of the dispute. Most importantly, it is clear from the evidence of the parties that as a result of the actions of the mother, the parties' 13 year old daughter was completely and utterly alienated from her father.

There is no denying that the humour contained within the decision is brilliant. Amongst our favourites are the following:

- If only the wedding guests, who tinkled their wine glasses as encouragement for the traditional bussing of the bride and groom, could see the couple now (footnote: I am prepared to certify a class action for the return of all wedding gifts);

- Larry gave evidence that, less than one month later, Catherine, "Tried to run me over with her van" (footnote: This is always a telltale sign that a husband and wife are drifting apart);

- Catherine demanded $400.00 from Larry or her brother was "going to get the Hells Angels after me" (footnote: The court-

room energy level in a custody/access case spikes quickly when there is evidence that one of the parents has a Hells Angels branch in her family tree. Certainly, my posture improved. Catherine's niece is engaged to a member of the Hells Angels. I take judicial notice of the fact that the Hells Angels Motorcycle Club is a criminal organization and that the niece has made a poor choice);

- On October 18, 2007, a nautical theme was added. According to Larry: "Catherine's sister-in-law, yelled out her window that I was going to be floating in the canal dead";

- Sandra testified that Catherine "gave me the finger while driving on Bunting Road" (footnote: I am uncertain whether this would be considered a hand-held communication device, now illegal while operating a motor vehicle, under recent amendments to the Highway Traffic Act);

- (footnote: I confess that I sometimes permit a lengthier hiatus than the schedule of the court might otherwise dictate, in order to afford the parties an opportunity to reflect on the trial experience, come to their senses and resolve their difficulties like mature adults. It is touching how a trial judge can retain his naivety even after 15 years on the bench);

- (footnote: A finger is worth a thousand words and, therefore, is particularly useful should one have a vocabulary of less than a thousand words).

However, it is not the quality of the humour that has created the controversy. Even to Justice Quinn's critics it must be acknowledged that the decision is both intelligent and insightful. The real question is whether the bench was the appropriate stage. Perhaps, an appeal will determine this question.

In the writers´ opinions, the delivery was warranted. The bloggers who have openly called the trial judge "a clown" have undoubtedly not read the body of the decision in which the court is clearly expressing frustration with the inability and ineffectiveness of family courts to decide custody and access disputes which "require therapeutic intervention rather than legal attention". With two parties showing little respect for the judicial process and without any insight into their own behaviour, the court attempted to use laughter as an absolute last resort.

Some parental rights groups have been critical of the decision because the court clearly ruled that the mother interfered with the father's access and relationship with his daughter that the alienation was complete, yet did nothing to remedy this fact. Custody was granted to the mother and no access was ordered, unless the daughter herself chose to pursue it. This is certainly a very bitter pill to swallow by an innocent parent, but in the case of a 13 year old girl, whose feet will likely do the talking for her, and whom is now completely resistant to any form of therapeutic intervention, what other options remain? Justice Quinn was quite correct, "hatred has no legal remedy". While it is sad that two people could do this to their own children, Justice Quinn acknowledged that the court was left with no "feasible option" and he poignantly declares this in paragraph 131:

> "..... The hate and psychological damage that now prevail would require years of comprehensive counselling to undo. The legal system does not have the resources to monitor a schedule of counselling (nor should it do so). The function of Family Court is not to change people, but to dispose of their disputes at a given point in time. I preside over a court, not a church."

The last two lines of this paragraph are striking and resonate to the writers. Parties should be reminded of the confines of the court when choos-

ing to litigate instead of resolving their disputes through alternative means, such as mediation, negotiation, or collaborative family law. There is little hope that these two parties will read this decision and reflect on the irreversible negative influence that has occurred for their children directly because of their behaviour. Suggestions were made to the parties by the local Children's Aid Society, the Office of the Children's Lawyer and the Court prior to the conclusion of the trial, yet the recommendations fell on deaf ears. As lawyers, we may choose to use this decision as a warning to our clients and as a wake-up call as to the harm that may occur, if parties choose to act in an immature and self-centred fashion upon separation.

The judgement itself, which is over 40 pages in length, is legally solid. Are there any gems (other than the comic wit) that can be gained by family law practitioners? The answer is absolutely yes!

Justice Quinn concisely outlines the law concerning setting aside a separation agreement pursuant to s. 56(4) of the Family Law Act and the other provisions that the common law covers such as fraud, duress, undue influence, material misrepresentation and unconsiconability. This outline provides a nice skeleton for a practitioner seeking these claims on behalf of a client.

Justice Quinn sketches out the law relevant to determining spousal support but this case provides a twist by invoking the spousal conduct clause of s.33(10) of the *Family Law Act*. While there is little that the court could do to assist with the repair of the father/daughter relationship, the mother definitely did not get away unscathed as a result of this twist. The court penalized the mother for her horrendous parental alienation by invoking the spousal conduct clause of s. 33(10) of the *Family Law Act*:

> 33(1) The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

Justice Quinn noted that s. 33(10) is not restricted to pre-separation conduct and that the mother's conduct amounted to an obvious, unconscionable, and gross repudiation of the marital relationship. This is a rather ground-breaking approach, as it extends the marital relationship to include the relationship of the ex-spouses as co-parents of a child. The court therefore reduced what would otherwise have been an approximate $500.00 per month declining spousal support obligation to $1, thus, in effect fining the mother nearly $25,000 in this case for her deplorable conduct of alienating the child from her father.

Justice Quinn states that he has tried to ridicule as a last resort as the parties are immune to reason. One wonders whether this will be an effective medicine for the parties given past history. Nevertheless, at the very least it has sparked debate in the media and brought a chuckle to many family lawyers. The issue of costs is still open to be argued by the parties so perhaps we should all stay tuned for a *Bruni v. Bruni* part 2. Perhaps, that decision will start off with an homage to Abba's song, "Money, Money, Money". ■

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