

ONTARIO COURT OF JUSTICE

B E T W E E N :

HAMILTON HEALTH SCIENCES CORPORATION

Applicant

— AND —

**D.H., P.L.J., SIX NATIONS OF THE GRAND RIVER CHILD
AND FAMILY SERVICES DEPARTMENT AND
BRANT FAMILY AND CHILDREN'S SERVICES**

Respondents

— AND —

THE ATTORNEY GENERAL OF ONTARIO

Moving Party

JOINT SUBMISSION OF THE PARTIES

D. Jarvis for the Applicant
P. Williams for the Respondents D.H. and P.L.J.
E. Montour for the Respondent
Six Nations of the Grand River Child and Family Services Department
M. Handelman / E. Capitano for the Respondent
Brant Family and Children's Services
S. Harris Office of the Children's Lawyer
M. Wilson / M. Fancy / S. Mathai The Attorney General of Ontario

After the release of this Court's decision, the family and the Government of Ontario started working together to expand the integrated health care team for J.J., the young girl with leukemia, to provide Indigenous and non-Indigenous treatment.

The child's core health care team initially consisted of a doctor and a traditional Haudenosaunee health care provider. This health care team was further supplemented by 2 additional participants: a senior pediatric oncologist recommended by Ontario, and a Haudenosaunee chief, who is also a practitioner of traditional medicine, invited by the family.

In March 2015, JJ's cancer, which had gone into remission, returned. The family met and concluded that chemotherapy, along with traditional Haudenosaunee medicine, which JJ had already been receiving, would be the best next step.

This Court's decision recognized that Haudenosaunee medicine is an integral aspect of Haudenosaunee identity as a people. It has the protection of the Canadian constitution, as an Aboriginal right, and must be respected.

By choosing not to appeal the decision, and instead engaging in a respectful conversation with the family and their community, the Government of Ontario has chosen dialogue and cooperation.

The parties are asking this court to clarify its decision in accordance with the draft order. The parties all accept that the jurisprudence permits a Court to clarify its decision in order to ensure that it is properly understood. The parties also agree that the best interests of the child are paramount and the Aboriginal right to use traditional medicine must be respected. Such a clarification will allow the family to proceed, with peace of mind and privacy, with treatment using the best that both medicines have to offer. This will also allow governments, agencies, hospitals and practitioners to continue having this conversation.

Specifically, the parties are asking this court to include the following clarification *[italicized]* to its decision :

[83] In applying the foregoing reasons to the applicant's s. 40(4) [of the Child and Family Services Act] application, I cannot find that JJ is a child in need of protection when her substitute decision-maker has chosen to exercise her constitutionally protected right to pursue their traditional medicines over the applicant's stated course of treatment of chemotherapy.

[83(a)] But, implicit in this decision is that recognition and implementation of the right to use traditional medicines must remain consistent with the principle that the best interests of the child remain paramount. The Aboriginal right to use traditional medicine must be respected, and must be considered, among other factors, in any analysis of the best interests of the child, and whether the child is in need of protection. Taking into account the Aboriginal right, and the constitutional objective of

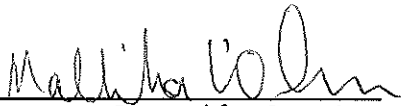
reconciliation and considering carefully the facts of this case, I concluded that this child was not in need of protection.

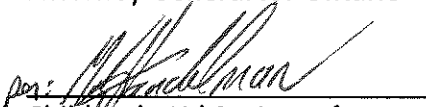
[83(b)] In law as well as in practice, then, the Haudenosaunee have both an Aboriginal right to use their own traditional medicines and health practices, and the same right as other people in Ontario to use the medicines and health practices available to those people. This provides Haudenosaunee culture and knowledge with protection, but it also gives the people unique access to the best we have to offer. Facing an unrelenting enemy, such as cancer, we all hope for and need the very best, especially for our children. For the Haudenosaunee, the two sets of rights mentioned above fulfill the aspirations of the United Nations Declaration on the Rights of Indigenous Peoples, which states in article 24, that "Indigenous peoples have the right to their traditional medicines and to maintain their health practices... Indigenous individuals also have the right to access, without any discrimination, to all social and health services."

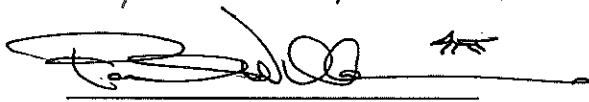
[84] The application is dismissed. This is not an appropriate case to consider costs.

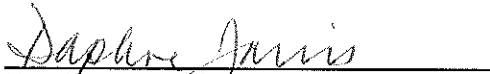
[85] I wish to thank all counsel for their efforts in this very difficult case.

Dated at Brantford, this 24th day of April, 2015



Attorney General for Ontario


Children's Aid Society of Brant


D.H., P.L.J. (Paul Williams)


Hamilton Health Sciences Corporation


Six Nations of the Grand River
Child and Family Services


Office of the Children's Lawyer