

But for the Plan (Child Support)

From Self-Represented Litigant to Believer in Unifor Legal Services Plan

Anila (not her real name) was a single mom with three daughters and a modest income. She was upbeat, determined and articulate. But even with those skills, she was no match for Ontario's difficult family law system and its complex technicalities.

Anila's husband, Namesh (not his real name), was determined to thwart her efforts to make him pay child support. He denied responsibility for supporting the oldest child (who was not his, biologically, but whom he had treated as his own since she was three), and failed to disclose all of his income.

Anila had gone before a judge five times on her own. She obtained several court orders for income disclosure details, and an order for payment of post-secondary school expenses. She had even brought a motion to have Namesh found in contempt and sent to jail, all to no avail.

So, four years after their separation and 3 years after she started court proceedings, Anila finally turned to the Plan for help, and met with Wendy Napier, an experienced Family Law lawyer, and the Managing Lawyer at our Brampton Staff Office.

Wendy immediately scheduled a Case Conference and arranged to have previous court orders properly issued by the court, so that they could be enforced by Ontario's Family Responsibility Office (FRO). And when Namesh failed to provide all of the required income information for the Case Conference, Wendy scheduled a hearing on a motion for child support.

Namesh, who by now had hired his own lawyer, disputed every factual and legal aspect of the case. Because of the number of complex issues and disputed facts, the motions judge reserved his decision. The judge was careful, meticulous, and obviously very busy, because it took him over eight months to issue his 57 page decision, which awarded Anila increased support plus \$34,000 for arrears of support.

After five months, and an additional 41 pages of written reasons, the judge ordered Namesh to pay over \$19,000 in legal costs, citing the success of Anila's arguments, the complexity of the issues, and Namesh's unreasonable conduct in failing to produce information about his income and refusing to accept a lower settlement offer made before the hearing.

The costs award was based on an hourly rate of \$400, consistent with Wendy Napier's level of experience, and well above the Plan rate of \$110 per hour. This was possible because the Plan retainer expressly reserves the right for the Plan to share in a costs award that exceeds the client's actual payments. This helps to defray overall Plan costs.

In the result, since Anila's total expenses were approximately \$11,000, the remaining \$8,000, when collected, will be returned to the Plan.