

# SUPREME COURT OF YUKON

Citation: *Rogers v Director of Maintenance Enforcement Program*,  
2023 YKSC 69

Date: 20231221  
S.C. No. 23-A0074  
Registry: Whitehorse

BETWEEN:

CARL EUGENE (GENE) ROGERS

PETITIONER

AND

DIRECTOR OF MAINTENANCE ENFORCEMENT PROGRAM  
AND MINISTER OF JUSTICE

RESPONDENTS

Before Justice K. Wenckebach

Appearing on his own behalf

Carl Eugene (Gene) Rogers

Counsel for the Respondents

Kelly McGill

## REASONS FOR DECISION

### OVERVIEW

[1] In 2003, the Ontario Superior Court ordered the Petitioner, Carl Eugene Rogers, to pay child support and spousal support. There have been subsequent orders varying the terms of payment, and Mr. Rogers is no longer obligated to pay child support.

However, Mr. Rogers continues to owe spousal support in the amount of \$1,600 per month. Moreover, he has accumulated about \$461,295 in arrears as of November 2, 2023. The support orders were registered with the Yukon Maintenance Enforcement Program when Mr. Rogers moved to the Yukon, and MEP has taken enforcement proceedings against Mr. Rogers.

[2] Currently, Mr. Rogers is on social assistance. Because MEP has a policy that it will not garnish social assistance payments, it is not garnishing his social assistance income. However, Mr. Rogers will be turning 65 years old soon. At that point, social assistance will require him to apply for Canada Pension Plan payments and Old Age Security. Mr. Rogers is concerned that MEP will begin to put that money towards his support payments.

[3] He has this concern because, unlike social assistance, MEP does not have a policy that it will not garnish Federal payments to individuals. Rather, it assesses each circumstance on a case-by-case basis. Additionally, although the *Maintenance Enforcement Act*, RSY 2002, c 145 (“*MEA*”), allows for regulations that would permit payors to retain a minimum income, no regulations have been enacted. As well, MEP does have a federal intercept on Mr. Rogers. Mr. Rogers is, therefore, worried that once he begins receiving CPP and OAS, MEP will retain the entirety of his income.

[4] Mr. Rogers has therefore brought this petition. He is seeking that the court stay enforcement actions by MEP until such time as the Commissioner in Executive Council enacts certain regulations. He is also seeking an order of *mandamus* that the Commissioner in Executive Council enact regulations. Finally, Mr. Rogers seeks that there be an assessment of the orders based on actual earnings, including assessing the earnings of his former spouse.

[5] For the reasons set out below, I dismiss Mr. Rogers’ petition.

## **ISSUES**

[6] Because Mr. Rogers linked his request for a stay with the enactment of regulations, it will be helpful to address whether the Court can require the

Commissioner in Executive Council to enact regulations before considering Mr. Rogers' request for a stay. The issues will be addressed, therefore, as follows:

- A. Can the Court order the Commissioner in Executive Council to enact regulations?
- B. Can I stay enforcement on spousal support and arrears payments in the form requested by Mr. Rogers?
- C. Can the Court order an assessment of the orders?

[7] Counsel to MEP submitted that the recipient of the support payments, Katherine Rogers, should have been included as a party. In the normal course that would have been required because her legal interests are affected by the proceedings. In this case, however, I have ultimately determined not to consider Mr. Rogers' petition on the merits. It is therefore not necessary to name Ms. Rogers as a party.

- A. Can the Court order the Commissioner in Executive Council to enact regulations?

[8] Mr. Rogers seeks that the Court order the Commissioner in Executive Council to enact regulations in accordance with s. 22 of the *MEA*. Under s. 22, when the Commissioner in Executive Council prescribes a minimum income, the director of MEP can only collect or retain income for payment of support that is in excess of the minimum income level. Here, the Commissioner in Executive Council has not prescribed a minimum income. MEP therefore has discretion as to how much income to garnish or hold back from a federal intercept.

[9] I conclude that I cannot make an order requiring the Commissioner in Executive Council to enact such a regulation.

[10] The Legislature and the Commissioner in Executive Council, which are called the “legislative branch”, and the court have distinct roles. The legislative branch makes policy choices and enacts laws. The court interprets and applies the laws. The court does not have the authority to direct the legislative branch as to how it should set policy or enact legislation, except in circumstances involving Constitutional violations (*Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 at para. 118).

[11] The decision about whether to make regulations is a purely political decision (*Friends of the Earth v Canada (Governor in Council)*, 2008 FC 1183 at para. 40, aff’d 2009 FCA 297). It is not the court’s role to order the Commissioner in Executive Council to enact a regulation prescribing a minimum income a payor would be entitled to keep.

B. Can I stay enforcement on spousal support and arrears payments in the form requested by Mr. Rogers?

[12] Mr. Rogers seeks that I make an order staying enforcement of the proceedings against him, until such time as the government enacts regulations prescribing a minimum income.

[13] I conclude that I do not have the authority to order a stay as requested by Mr. Rogers. I also conclude that Mr. Rogers’ request is premature.

*Authority of the Court to Grant the Stay*

[14] The Court has, through s. 32 of the *MEA*, the authority to stay enforcement proceedings against a payor. However, the *MEA* gives the Court very limited authority to grant stays. In particular, in my opinion, s. 32 does not give the Court the authority to grant permanent stays.

[15] Section 32 does not explicitly state that the court may order temporary stays only. However, s. 32(2) provides that arrears continue to accrue even when a stay has been granted. A permanent stay, on the other hand, is final. It terminates proceedings and any consequences that could arise from the proceedings. Section 32(2) of the *MEA* precludes any stay from being permanent because it provides only partial relief to the payor. The intention of the legislation is, therefore, to restrict the court to granting temporary stays.

[16] Mr. Rogers is not seeking a permanent stay but seeks a stay that would remain in place until such time as the Commissioner in Executive Council enacts regulations about minimum incomes. However, just as I cannot order the Commissioner in Executive Council enact regulations, I also cannot grant a stay pending the enactment of regulations. Granting a stay in such circumstances would either amount to an attempt to pressure the government to enact regulations, or to exempt Mr. Rogers from having the legislation apply to him. I would be treading into the political decisions about whether the regulations should be enacted. Thus, I cannot order a stay until such time as regulations about minimum income are enacted.

[17] The result would be that the stay would be permanent. I therefore conclude that I cannot grant Mr. Rogers the relief he is seeking.

*Prematurity*

[18] I also conclude that Mr. Rogers' petition is premature. Right now, Mr. Rogers receives social assistance; he does not receive CPP or OAS. MEP has no information about what his income will be once he is on CPP and OAS. It has made no decision about whether or how much of his income it will direct to his support obligations. There

is also no evidence before me about what Mr. Rogers' income will be once he transfers to CPP and OAS. Mr. Rogers is seeking a relief for an issue that is both theoretical and without an evidentiary basis. Thus, even if I do have the ability to grant a stay, this would not be an appropriate case in which to make an order.

C. Can the Court order an assessment of the support orders?

[19] Mr. Rogers also seeks that the Court order MEP to assign a forensic accountant to assess the support orders and arrears based on Ms. Rogers' actual earnings, RRSPs and the value of her real property. However, what MEP does is enforce support orders. It cannot change the orders. If Mr. Rogers is seeking that the support orders themselves be changed, he must apply to vary them through the *Divorce Act*, RSC, 1985, c 3 (2nd Supp).

[20] During oral submissions, Mr. Rogers expressed frustration with the legal system and indicated that he believes an application to vary the support orders would be fruitless. Whether or not an application to vary a support order should be successful is not for me to say. However, ultimate relief from the obligation to pay support cannot be achieved through proceedings against MEP.

[21] I therefore dismiss Mr. Rogers' petition.

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WENCKEBACH J.