SUPREME COURT OF YUKON

Citation: *Brown v. Canada (Attorney General)* 2019 YKSC 21

Date: 20190515
S.C. No. 17-A0188
Registry: Whitehorse

BETWEEN

CHRISTOPHER BRENT BROWN (CHRIS RO-BRO)

PETITIONER

AND

THE ATTORNEY GENERAL OF CANADA,
GOVERNMENT OF YUKON,
GOVERNMENT OF ONTARIO,
AND
SUSAN KULIN

RESPONDENTS

Before Mr. Justice P. Kane

Appearances:
Christopher Brown — Appearing on his own behalf
Kelly McGill — Counsel for the respondents, Government of Yukon and Susan Kulin

REASONS FOR JUDGMENT

INTRODUCTION

[1] The Government of Yukon ("Yukon") and Ms. Kulin (the "Respondents") by application dated May 28, 2018, seek an order striking out Mr. Brown's Petition and dismissing this proceeding pursuant to Rules 20(26)(a),(b) and (d) of the *Rules of Court* of the Supreme Court of Yukon, O.I.C., 2009/65, ("*Rules of Court*") as amended, on the following grounds:

a. the Petition is a prohibited collateral attack of an Ontario court order requiring Mr. Brown to pay child support for his daughter, this order has

not been appealed nor sought to be varied, is thereby an abuse of process and should therefore be struck out pursuant to Rule 20(26)(d);

b. the allegations in the Petition pursuant to Rule 20(26)(a) are vague, disclose no reasonable claim, lack particulars and do not plead material facts to support any recognizable cause of action; and

c. this proceeding is vexatious pursuant to Rule 20(26)(b) and exhibits characteristics of stereotypical vexatious litigation including collateral attack, hopeless proceedings, failure to honour court ordered obligations and advancing Organized Pseudo-Legal Commercial Argument ("OPCA") litigation strategies which have been recognized as inherently vexatious.

[2] Mr. Brown opposes the dismissal of his Petition.

[3] Upon argument of the Respondents' application to dismiss, Mr. Brown sought leave to amend the Notice of Application appended to his Petition. The Respondents oppose the court granting leave to amend the appended Notice of Application on the grounds that:

a. leave to amend a pleading should only be granted where the defect can be cured by amendment; and

b. the proposed amended Notice of Application:

i. does not address or cure the fact that the Petition is a collateral attack and therefore an abuse of process;

ii. discloses no reasonable cause of action and is certain to fail;

iii. fails to plead material facts to support its claims; and

iv. employs vexatious OPCA litigation techniques.

[4] This Court granted Mr. Brown an extension of time to file responding material on June 28, 2018, as to the Respondents' arguments that leave to amend the Notice of Application should be denied.

[5] The amendments sought in the proposed amended Notice of Application overall are not significant. The proposed amendments for the most part expand, clarify and correct details in the original Notice of Application annexed to the Petition.

[6] Determination whether to grant leave to amend however requires consideration and determination of the Respondents' central challenges as to the validity of this proceeding and whether it should be dismissed. The Court therefore will first determine the challenges to this proceeding as plead and depending on that result, then determine whether to grant leave to amend.

The Proceeding

[7] Mr. Brown commenced this proceeding on March 28, 2018, by way of Petition. The Petition does not allege a cause of action, damages or facts. It merely attaches a lengthy Notice of Application as an appendix and Mr. Brown's affidavit.

[8] This proceeding against the Attorney General of Canada was dismissed without costs on May 17, 2018, on the consent of all named parties.

[9] The Attorney General of Ontario filed no pleadings or response to this Petition, has not attorned to this jurisdiction and did not attend on argument.

[10] The central underlying issue in this proceeding is quite simple. Mr. Brown opposes paying the court ordered child support for his daughter. He seeks to have that child support order set aside and to have the legislative provisions enacted to enforce payment of court ordered child support declared invalid on the basis that such court

ordered support and the legislative provisions to enforce that order allegedly breach his rights under Canadian legislation and international conventions.

[11] Rather than appealing that court ordered child support or seek a variation thereof, Mr. Brown instead seeks invalidation of that child support order and legislation enacted to enforce payment thereof.

Relief Sought

[12] Mr. Brown in his Notice of Application, seeks numerous remedies which include the following pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms,* Part 1 of the *Constitution Act*, 1982 (the "*Charter*"):

a. relief and compensation for breach of his right to security of the person thus denying him equity as an Individual before the law, under s. 7 of the *Charter*;

b. a declaration that the Orders SC#17-B0053, MEP#2591 and the Ontario child support order 69/10 (the "Support Order"), are of no force or effect pursuant to s. 52 of the *Charter*;

c. the return of stolen property from the commencement of Orders SC#17-B0053, MEP#2591 and relief and compensation against unreasonable seizure of his property (money) as well as documented unlawful actions that were threatened against his Property (home/land) under s. 8 of the Charter; and

d. relief under s. 9 of the *Charter* against the documented, implied, arbitrary imprisonment pursuant to the *Maintenance Enforcement Act* ("*MEA*"), s. 145,.

[13] Mr. Brown in his Notice of Application seeks additional remedies including:

a. relief and compensation for ignoring his evoked right of self-determination pursuant to the *International Covenant on Civil and Political Rights* (the "*ICCPR*") and Article 1(1) of the *International Covenant on Economic, Social and Cultural Rights* (the "*ICESCR*") and not respecting that right under Article 1(3) of both covenants;

b. relief and compensation for knowingly and unlawfully seizing money under orders SC #17-B0053, MEP #2591 and Ontario Superior Court Order 69/10 from his primary source of subsistence under the *ICCPR* and Article 1(2) of the *ICESCR*;

c. a declaration that s. 145 of the *MEA*, specifically imprisonment after 90 days of non payment, is of no force and effect under Article 11 of the *ICCPR*;

d. relief and compensation for engaging in an act aimed at the destruction of many of his fundamental human rights under Article 5(1) of the *ICCPR* and that the offending Acts, statutes and orders are not recognized or recognized to a lesser extent under Article 5(2);

e. relief and compensation for ignoring his declaration of status as an "Individual" and holding him in servitude to a monarchy under the status of an incorporated person, in contravention of Articles 8(1) and 8(2) of the *ICCPR*. Such salary garnishment violates Article 8.3(a) of the *ICCPR* in obliging him to perform forced labour for the Yukon Maintenance Enforcement Program (the "MEP") as they have threatened to extort every

source of his income (subsistence) including that of his wife, which would constitute theft from her;

f. relief and compensation for ignoring his right to security of the person, thus denying him of equity before the law under Article 3 of the *Universal Declaration of Human Rights* ("*UDHR*");

g. relief and compensation for ignoring his declaration that he was not invoking his right to recognition as a person before the law under Article 16 of the *ICCPR* and Article 6 of the *UDHR*, but rather was evoking his right to recognition as an "Individual" (Natural Person) before the law under his full legal capacity;

h. relief and compensation for the arbitrary interference in his ability to maintain his family and home, pursuant to Article 17 of the *ICCPR* and Article 12 of the *UDHR*;

i. relief for the failure to recognize his rights pursuant to Articles 2(1) of the *ICCPR* and the *ICESCR*;

j. relief and compensation for impairing his right to enjoy and fully use his natural wealth under Article 47 of the *ICCPR* and Article 25 of the *ICESCR*;

k. relief under Canada's obligation pursuant to s. 50 of the *ICCPR*;

l. relief and compensation for the documented threat of arbitrary deprivation of his property, contrary to Article 17(2) of the *UDHR* and consequently the ignorance of his right pursuant to Article 17(1) of the *UDHR* to own

property alone and not in association with the corporations of Canada or Yukon;

m. relief and compensation for interfering with his remuneration thus preventing he and his family from having an existence worthy of human dignity, contrary to Article 23(3) of the *UDHR*;

n. relief and compensation for ignoring his right to security of the person and threats against enjoyment of his property, contrary to s. 1(a) of the *Bill of Rights*;

o. relief and compensation by declaring him to be a “verified income source”, thereby denying him his right of equality and protection before the law as an Individual pursuant to s. 1(b) of the *Bill of Rights*;

p. relief and compensation for operating an unlawful seizure of his property under Acts and statutes, (namely the Yukon *MEA*, the *Family Responsibility Act*, and any act referenced within them that they claim to draw their force of law from) that do not expressly declare that they operate notwithstanding the *Bill of Rights* and are therefore in violation of s. 2 of the *Bill of Rights*;

q. relief and compensation against the respondent Ms. Kulin for failing to respond, in support of the MEP claims, to his written communications, or disproving his claims but instead arbitrarily filing an unlawful civil action (the “Registration Order”) resulting in theft of his property. As a result of which he filed this proceeding and is filing a complaint against her under Article 9(3) of the *Declaration on the Rights and Responsibility of*

Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the "*DRRI*");

r. relief and compensation by way of his complaint being promptly reviewed and to obtain a decision in accordance with law including compensation due as there have been multiple violations of his fundamental rights and freedoms by these actions as well as the enforcement of the eventual decision and award, all without undue delay under Article 9(2) of the *DRRI*;

s. relief in the form of an effective remedy and protection from these violations of law, pursuant to Article 9(1) of the *DRRI*;

t. relief and compensation against Ms. Kulin for threatening to and acting against his human and fundamental rights even though she will not be subjected to any adverse action or punishment for evoking her right not to do so, pursuant to Article 10 of the *DRRI*;

u. relief and compensation for Canada's failure to educate its law enforcement officers, namely Ms. Kulin, regarding human and fundamental rights guaranteed by Article 15 of the *DRRI*;

v. relief and compensation in the amount of $2.5 million Canadian from both the Corporation of Yukon and the Corporation of Canada for the multiple above violations of his fundamental rights and freedoms as declared in this application; and

w. relief and compensation in regards to Ms. Kulin in the amount of $2 million for knowingly violating his above fundamental rights and freedoms, unless she too was a victim of Canada's failure to educate individuals as to their fundamental rights, freedoms and international law; in which latter case, he seeks production of her affidavit expressing her heartfelt apology and a declaration that she, and other officers working in the MEP, should be required to participate in an educational program as the fundamental rights and freedoms of Canadians and her obligations towards such individuals.

Family Responsibility Act

[14] Mr. Brown relies upon several of his affidavits or notices he sent to officials of the Yukon MEP including Ms. Kulin in preparation for and to enhance his arguments in the Notice of Application, including:

a. an Ontario Statement of Live Birth for Christopher Brent Brown, as to which he declares that he is no longer a child of that Province and assign all his fundamental rights to the security back from the Registrar General to himself;

b. an Ontario Birth Certificate, which he alleges evidences the artificial person surety, CHRISTOPHER BRENT BROWN (Security of the Person) CUSIP number B 165805, registration number 79–05–024624;

c. his online and published notice of his Canadian Claim of Recognition for Christopher–Brent: Ro-Bro (Christopher Brent Brown Ontario Statement of Life Birth Number 024624); and

d. his February 6, 2018, one hundred and sixty-two paragraph "Canadian Claim of Recognition, Declaration of Understanding and Claim of Rights Affidavit of Truth", which recites various sections of Canadian legislation such as the *Charter*, the *Bill of Right*s, the *Code*, provisions of international conventions together with his interpretation thereof in support of his rights and freedoms and provides an address to which the recipient may reply should they disagree with his interpretations of his rights therein.

[15] In short, Mr. Brown asserts that his rights identified in the above legislation and international conventions ratified by Canada, supersede and invalidate:

a. the legislative requirements that he financially support his child;

b. legislated remedies to enforce and recover arrears of court ordered child support; and

c. the Support Order requiring him to pay child support, its registration in the Yukon as the Registration Order and that the challenged provisions of the *MEA* enabling enforcement of that court ordered child support, therefore be declared invalid and set aside.

Background

Ontario Support Order

[16] Mr. Brown commenced family law proceedings in the Ontario Superior Court in Woodstock, Ontario, in 2010 against H.L.V. regarding their daughter who was born on October 18, 2007. The issues in that family law proceeding included custody of their daughter and Mr. Brown's obligation to pay child support.

[17] Relevant to this application to dismiss this proceeding is the fact Mr. Brown has not included the above court ordered recipient of the child support in this proceeding whose interests are directly in issue.

[18] The Ontario Superior Court of Justice in the above family law proceeding granted a final order dated January 8, 2016, being the Support Order, pursuant to Minutes of Settlement signed by Mr. Brown and the mother on the same date. Pursuant to the Support Order:

a. Mr. Brown and H.L.V. were granted joint custody of the child with the child to reside primarily with her mother;

b. Mr. Brown received specified terms of access with the child;

c. Mr. Brown is required to pay $444 monthly child support to the mother in accordance with the *Child Support Guidelines* (Yukon table) based upon Mr. Brown's 2014 then annual income of $50,724;

d. Mr. Brown is required to contribute towards the child's special and extraordinary expenses proportioned to their respective income levels pursuant to s. 7 of the *Child Support Guidelines*;

e. Mr. Brown owed child support arrears in the amount of $1,380 as of December 1, 2015;

f. Mr. Brown was again ordered to pay the mother the unpaid $3,000 costs awarded by the court on August 17, 2012; and

g. the child support as ordered was to be enforced by the Ontario Director, Family Responsibility Office ("FRO"), with the amount owing and ordered to be paid to the Director for remittance to H.L.V.

[19] Mr. Brown was represented by legal counsel at the time he signed the above Minutes of Settlement and consented to the Support Order. His representation by legal counsel at the time impairs his pleading that Canada failed its alleged legal obligation to provide him with legal education as to such legal matters thereby entitling him to the relief sought in this proceeding.

Yukon Enforcement

[20] The Government of Yukon operates the MEP to facilitate enforcement of child and/or spousal support orders made by courts in the Yukon and elsewhere, including Ontario. The Ontario equivalent of MEP is FRO.

[21] The Yukon MEP on September 22, 2017 received a copy of the Support Order from and a request by FRO that the MEP assist to enforce the Support Order's requirement that Mr. Brown pay the child support as ordered because he now resided in the Yukon.

[22] Ms. Kulin was assigned this request from FRO in her capacity as an enforcement officer in the MEP office. The MEP internal file number assigned in this case is #2591, which Mr. Brown seeks to have struck as part of the relief claimed.

[23] MEP on September 22, 2017, sent the Support Order to the Supreme Court of Yukon, as required by s. 17 of the *Interjurisdictional Support Orders Act*, S.Y. 2001, c. 19, (the "*ISO*"). Pursuant to s. 18(1) of the *ISO*, that Support Order must then be registered by the Yukon court, which occurred, including the opening of the Supreme Court of Yukon court file: No. S.C. No.: 17-B0053, which Mr. Brown seeks to have struck.

[24] Upon registration in the Supreme Court of Yukon, that Support Order, pursuant to ss. 16, 17 and 18(2) (a) of the *ISO*, has the same effect as if it was a Yukon Support Order.

[25] The court notes that Mr. Brown is entitled pursuant to s. 25 of the *ISO* to bring an application before a Yukon court to vary the Support Order so registered under s. 18 of the *ISO*.

[26] Relevant to the issues before the Court is the fact that Mr. Brown does not allege nor seek a declaration of constitutional invalidity of any provision of the *ISO*, which converted the Ontario Support Order into a Yukon Support Order.

[27] Without argument or authority as to the constitutional validity of the *ISO*, or how the opening of a court file somehow constitutes harm, Mr. Brown seeks a declaration that the Yukon court file S.C. No. 17-B0053 be struck.

[28] As a MEP employee, Ms. Kulin wrote to Mr. Brown on October 6, 2017, notifying him that the Support Order had been registered with MEP and that he should commence paying the monthly child support ordered to MEP commencing September 1, 2017, as well as $2,091 of child support arrears owed under the Support Order.

[29] Mr. Brown sent two registered documents to MEP on October 24 and 31, 2017, disputing his obligation to pay child support based on his rights under the *Charter* and international conventions, unless MEP provided him with what he considered to be satisfactory evidence refuting his declared *Charter* and international convention rights.

[30] In this first document, Mr. Brown conditionally accepts that he is Christopher Brent Brown and that he owes $2,091 in child support “upon proof of claim” by MEP of numerous things including the following:

a. that I am a “Person” and not a human being;

b. that you know what a “Person” actually is, legally speaking;

c. upon proof of claim that you know what THE TERRITORY OF THE YUKON actually is, legally speaking; and

d. that the Canadian Government is in fact a *de facto* government, and even admits as such, which makes me a human being not lawfully obligated to comply with your acts and statues if I do not consent to do so, is that not true?

[31] Mr. Brown in this document then lists 26 questions he states MEP must prove as to whether it may enforce payment of child support as ordered. He quotes sections of the *Charter* and international covenants approved by Canada as to whether the Yukon MEP had authority to seize his assets, garnish his wages and cancel his driver’s license. The MEP October 6, 2017 letter to him refers to none of these remedies should he default in paying child support.

[32] The questions he poses in this document include:

a. Whether the debt MEP speaks of is a Civil or Criminal Matter?

b. Do you know the difference between Legal and Lawful? Illegal and Unlawful?

c. Is the “maintenance enforcement program” MEP actually a separate, sub-contract company acting on behalf of the court?

d. Your correspondence indicates “It is best for you and your family if you make your payment voluntarily.” Am I lawfully obligated to make payments to your company? Am I lawfully obligated to contract with you?

> Or do you need my consent to be able to take any legal action against me the human?

[33] Mr. Brown in this document then answers the questions posed, many of which are included as "statements of law" in his Notice of Application.

[34] Mr. Brown in this document states that the October 6, 2016 letter of notice from MEP is written in legalese and not in English, which is the only language he communicates in and comprehends. Accordingly, he states he did not have full disclosure nor a full understanding of what he was contracting to do. He further states that the Support Order was based on legislation written in a different language, which thereby makes that contract void on the issue and therefore unenforceable.

[35] Mr. Brown concludes this document stating:

a. MEP will have five days to respond by sworn affidavit with written proof of its claim and answer the 34 questions posed by him;

b. he will pay the child support if MEP meets the above requirements; and

c. if MEP fails to provide such evidence within those 5 days, it shall be deemed "General Acquiescence and acceptance of my claims … and estoppel will be in effect".

[36] Mr. Brown then signs this document as "Christopher-Brent of the Family Ro-Bro" and directs MEP's response and evidence be sent by registered mail to "Chris:Ro-Bro" at a post office number in the "Yukon Republic, On the Land of Canada."

[37] Mr. Brown, one week later on October 31, 2017, sent MEP a Notice of Non-Response Affidavit of Truth in which he declares that given MEP's failure to respond

and provide evidence within his 5-day limit, “estoppel is in effect and you [MEP] are contracted to accept my Claims as if you had made them yourself under Law.”

[38] Mr. Brown, in this second document, then provides more answers to his 34 questions listed in his initial document to MEP. His statements in this second document include that:

a. MEP cannot prove that he is a person because it will not create Joinder by obtaining any identification from him because he is not lawfully required to present identification unless he has committed or is about to commit a crime;

b. Black’s Law Dictionary’s definition of a person is a corporation, a fictional being thereby necessitating MEP’s need for “Joinder” as a corporation cannot affect a human being;

c. the Corporation of the Yukon Territory is a business and the acts and statues of the Canadian Government only apply to employees of the Corporation of Canada;

d. as a human being, he is not lawfully obligated to comply with Government Acts and statues unless he consents thereto;

e. MEP of the Yukon Government is a sub-contracted company in the form of a “court bulking center” to which he has no legal obligation to make payments to or contract with and that without Joinder or consent, MEP cannot act upon him as a human being;

f. the Support Order was written in a different language which makes that Contract void on the issue;

g. MEP is committing fraud on a daily basis and is destroying families with its unlawful crimes; and

h. MEP is not lawfully allowed to garnishee his employment wages, as such wages are a primary means of subsistence for himself and his family.

[39] The above documentation from Mr. Brown relates directly to his denial that he is a participant in the OPCA movement and whether this proceeding is an abuse of process, as addressed below.

[40] Mr. Brown failed to pay the court-ordered child support to MEP. MEP as a result on November 6, 2017, sent a garnishment order pursuant to the Yukon *MEA* to the Department of Finance of the Government of Yukon, which is Mr. Brown's employer and the "identified income source," not himself as he alleges.

[41] That November 6, 2017 garnishment order is signed by Ms. Kulin. It states that MEP has authority pursuant to the Yukon *MEA* to garnish remuneration owed to Mr. Brown by any income source and directs the monthly deduction of the $444 of child support, plus 25% from his net income towards the then $1,029 support arrears, be forwarded to MEP.

[42] Ms. Kulin, on behalf of the Yukon Director of MEP, wrote to Mr. Brown on November 6, 2017 and attached the Garnishment Order. Ms. Kulin's letter and the attached order advised that:

a. MEP was empowered under the Yukon *MEA* to garnishee remunerations due to a respondent from any income source, including himself; and

b. Mr. Brown was being served with the enclosed garnishment order to collect money he owed for family support.

[43] Ms. Kulin sent a second letter on November 6, 2017 advising that the Garnishment Order had been served on the Government of Yukon, Department of Finance. In this letter Ms. Kulin advised that:

a. the garnishment order may be withdrawn if Mr. Brown provided a voluntary payment arrangement to MEP; and

b. MEP could not change the amount of the Support Order but could negotiate repayment terms as to the accumulated arrears thereunder.

[44] MEP received the first payment under the garnishment notice on November 23, 2017. The garnishment notice remained in place pursuant to which the monthly child support plus a stated amount towards arrears were forwarded to MEP up to and including May 2018. The amounts received were thereupon forwarded by MEP to FRO on behalf of and to the claimant.

Yukon *Maintenance Enforcement Act* (“*MEA*”)

[45] The Yukon *MEA* contains enforcement provisions for the collection of court-ordered support made in the Yukon and in other jurisdictions, which would include Ontario.

[46] Section 2 of the Yukon *MEA* establishes a Director of Maintenance Enforcement who has the duty of enforcing maintenance orders filed in the Director’s Office. The Director is granted power to commence and conduct a proceeding and take steps for the enforcement of maintenance orders directed to be paid to the Director for the benefit of the support claimant.

[47] The person entitled to receive the maintenance payments pursuant to a maintenance or support order includes FRO and entitles it to file that maintenance order

with the office of the Director as “claimant”, pursuant to ss. 1(1) and 3 of the Yukon *MEA.*

[48] The MEP Director, pursuant to s. 5, is entitled to enforce the maintenance order filed with that office.

[49] The person required by court order to pay support pursuant to s. 8 must remit payment to the Director who is thereupon required to forward payments received to the claimant.

[50] The Yukon *MEA* Director under s. 13, may commence proceedings available to the support claimant including:

a. under the Yukon *Garnishee Act* (s. 14);

b. registration of the maintenance order in the Yukon’s Land Title’s Office and sale of the property so charged (s. 25);

c. to obtain a writ of execution and sale of real or personal property pursuant to the Yukon *Executions Act* (ss. 23 to 26);

d. for the appointment of a receiver (s. 27);

e. to cause the defaulting payor to appear before a judge for a show cause hearing (s. 28); and

f. for the imposition of a penalty under the Yukon *MEA*.

[51] A maintenance order pursuant to s. 14 of the Yukon *MEA* may be enforced by a garnishment order issued by the Director requiring that an income source of the respondent deduct and forward the amount specified in the garnishment order of any remuneration due to the respondent.

[52] The evidence is that the only enforcement remedy exercised was the garnishment of Mr. Brown's salary in accordance with the Support Order pursuant to s. 14 of the Yukon *MEA*, just as a claimant could have done under the *Garnishee Act*, R.S.Y. 2002, c. 100 ("*Garnishee Act*").

[53] The *MEA* Director has not but could :

a. commence proceedings to obtain a writ of execution against any property owned by Mr. Brown, which could lead to its disposition to satisfy the debt (s. 13 and ss. 23-26);

b. cause Mr. Brown to attend a show cause hearing, which might expose him to possible imprison for up to 90 days if the court is satisfied he had the financial ability and had failed to pay the support ordered (s. 28); or

c. serve Mr. Brown with notice that failing his satisfactory compliance within 21 days, the Registrar of motor vehicles may be requested to suspend, cancel or restrict his operator's licence (s. 29).

[54] Mr. Brown seeks a declaration of constitutional invalidity of these potential remedies in sections 13, 14, 23 to 26, 28 and 29 of the Yukon *MEA*.

[55] Following receipt from MEP of the notice of garnishment, Mr. Brown by registered mail sent MEP copies of numerous documents on November 14, 2017, which include agreements, a power of attorney and PPSA security agreements, from and to himself and using variations of his name, including the following:

a. Notice of Cease and Desist, Notice of Understanding, Clarity and Intent, in which he identifies himself as "Christopher-Brent:Ro-Bro©, the living, breathing human being, am the Administrator, Secured Party Creditor, and

Beneficiary of the C'est Que Vie Trust Numbered CHRISTOPHER BRENT BROWN© Cusip number B165805". Mr. Brown in this document, as administrator of and as the secured party of the above trust, demands that MEP cease any action "against the Juristic Person CHRISTOPHER BRENT BROWN© or the use of the artwork CHRISTOPHER BRENT BROWN or any derivatives thereof" which violate the agreements enclosed. MEP had 10 days to withdraw the unlawful garnishment order containing his copyright, failing which he would bill MEP per violation;

b. Notice of Common Law Copyright/Security Agreement dated September 6, 2017, reserving copyrights to his name and variations thereof including CHRISTOPHER BRENT BROWN© to Christopher-Brent:Ro-Brown as a secured party;

c. a September 6, 2017, 10-page security agreement for $10 billion between himself as debtor to Christopher-Brent Ro-Bro© as creditor, which conveys a security interest to himself in things such as his birth certificate, his social insurance account, his drivers' licence, his passport, his bank accounts, all land and his personal property;

d. an October 6, 2017 indemnity agreement from himself to his copyright self;

e. a September 15, 2017 Power of Attorney from himself as debtor authorizing himself as Christopher-Brent:Ro-Bro as secured party to conduct all business, tax and legal affairs of himself as grantor of the power of attorney;

f. a September 11, 2017 security agreement registered under the *Personal Property Security Acts* of Ontario and the Yukon of all his assets, from himself to Christopher-Brent of the family Ro-Bro; and

g. confirmation of a September 4, 2017 registration under the *U.S. Uniform Commercial Code* of a security agreement from himself of all of his assets to Christopher Brent Ro-Bro.

[56] Mr. Brown had no intention of paying the child support he had consented to in the Support Order. He spent September 2017 preparing the above documentation in an attempt to distance and shield his income and assets against execution of the consent Support Order, which he now no longer wished to pay.

ANALYSIS

[57] This proceeding was commenced by Petition which claims no remedies, relief or the grounds relied upon other than "regarding a constitutional question" as described in the attached Notice of Application.

[58] The lengthy Notice of Application seeks the above numerous heads of relief which include several claims for damages and a request that specified legislation be declared constitutionally invalid.

Petition Versus Statement of Claim

[59] Pursuant to Rule 10(1)(a), (b) and (c) of the *Rules of Court*, a Petition shall be filed where:

a. an application is authorized to be made to the court;

b. the sole or principal question at issue is one of interpretation of an *Act*, statute or regulation; and

c. the petitioner is the only person who is interested in the relief claimed or there is no person against whom relief is sought.

[60] Mr. Brown is not the only person interested in the relief claimed as the financial interests of the custodial mother are in issue. Significant damages in addition are sought against Ms. Kulin and the Government of Yukon.

[61] As defined under Rule 1(13):

a. an “action” means a proceeding commenced by statement of claim;

b. a “proceeding” includes an action or originating application but does not refer to a petition; and

c. this proceeding was not commenced by application.

[62] Rule 8(1) states that every proceeding shall be commenced by statement of claim, except where otherwise authorized under legislation or the *Rules of Court*.

[63] The above *Rules of Court* indicate that this proceeding should have been commenced by way of statement of claim.

“Family Responsibility Act” and Rule 20(26)

[64] The Court may order a pleading or petition to be struck out or amended on the ground that the proceeding as pled:

a. discloses no reasonable claim;

b. is vexatious;

c. may prejudice or delay the fair trial or hearing of the proceeding;

d. is otherwise an abuse of process; and

e. the court may grant judgment or order the proceeding to be stayed or dismissed and the costs of the application to be paid as special costs.

[65] In addition to the above relief, the Notice of Application states a declaration is sought that the "*Maintenance Enforcement Act, Family Responsibilities Act*" are constitutionally invalid. The citation for such legislation is not indicated.

[66] It is clear from the pleadings that the *Maintenance Enforcement Act* is the Yukon *MEA*. The "*Family Responsibilities Act*" however is not identifiable legislation. The Notice of Application contains no citation for that unidentified legislation nor cites any specific breach of his rights thereunder. Neither the Yukon nor Ontario has legislation entitled *Family Responsibility Act*, thereby preventing its further consideration

Collateral Attack

[67] Yukon and Ms. Kulin submit this proceeding is an abuse of process for several reasons including the fact it constitutes a collateral attack of the order to pay child support.

[68] Mr. Brown's argument based upon the *Charter*, the *Bill of Rights*, the *Criminal Code of Canada* and international conventions approved by Canada, constitutes a collateral attack of the Support Order, which he consented and entered into while represented by legal counsel, rather than appealing or seeking to vary the same.

[69] This attack of the Support Order includes:

a. Mr. Brown's request that such order be declared invalid; and

b. that the legislated mechanisms to enforce that court ordered support obligation be declared invalid.

[70] The Supreme Court in *R. v. Wilson*, [1983] 2 S.C.R. 594 ("*Wilson*"), held that a court order stands unless set aside on appeal or lawfully quashed. Such order may not be attacked collaterally. A collateral attack is an attack made in a proceeding whose

objective is the reversal, variation or notification of the order or judgment: *Wilson*, p. 599 and *Grenon v. Canada*, (*Attorney General*), 2007 ABQB 403 ("*Grenon*"), para. 11.

[71] The Supreme Court in *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 ("*Danyluk*") paras. 18-20, discussed the need for finality and stated:

> [18] The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry. An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.
>
> [19] Finality is thus a compelling consideration and judicial decisions should generally be conclusive of the issues decided unless and until reversed on appeal. …
>
> [20] The law has developed a number of techniques to prevent abuse of the decision-making process. One of the oldest is the doctrine of estoppel *per rem judicatem* …. The bar extends both to the cause of action thus adjudicated …. as well as precluding relitigation of the constituent issues or material facts necessarily embraced therein. … Another aspect of the judicial policy favouring finality is the rule against collateral attack …

[72] The Supreme Court in *British Columbia (Workers' Compensation Board) v. Figliola,* 2011 SCC 52, ("*WCB"*) at para. 28, described the rule against collateral attack as follows:

> [28] The rule against collateral attack simply attempts to protect the fairness and integrity of the justice system by preventing duplicate proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route…

[73] As to the need for finality in litigation, the court in *Grenon* relied upon *Danyluk* in support of the principle that the specific object of the subsequent proceeding need not be the reversal, variation or notification of the order or judgment. It is sufficient if the subsequent proceedings are aimed at bringing the judgment or order into question: *Grenon*, paras. 12-14.

[74] The court in *Ernst & Young Inc. v. Central Guaranty Trust Company*, 2006 ABCA 337 ("***E&Y***"), held that the appropriate test as to collateral attack is not whether the claimant was trying to vary or nullify the prior order, but whether the raising of the particular issue would render a prior order which had not been appealed nonsensical: para. 50.

[75] The rule against collateral attack extends to collateral attacks based on constitutional grounds, as in the present case: *Carpenter Fishing Corp. v. Canada*, 2002 BCCA 611, ("***Carpenter***") para. 8.

[76] The father in *Grenon* submitted he did not intend to attack the divorce judgment or his child support obligation. He had argued before the Tax Court that the *Income Tax Act* breached his s. 15(1) *Charter* right to equal protection and treatment under the law as the recipient of child support was entitled to a deduction; however, he as payor was not entitled to a deduction. The court concluded that if the father was successful in this litigation, that conclusion would undermine his divorce decision which required him to pay child support. The Court found that a proceeding seeking a decision that certain parts of the divorce judgment were arrived at in an unconstitutional manner, questions, or seeks to vary that judgment: *Grenon*, paras. 20, 26 and 27.

[77] A collateral attack occurs when a litigant commences a proceeding, including a constitutional challenge, which would have the result of burying, nullifying or rendering nonsensical an order or decision made in a prior proceeding involving that litigant. The court in determining whether a proceeding is a collateral attack is not limited to the stated purpose of the subsequent proceeding and may examine the result of that proceeding. The court in *Grenon* struck the proceeding as the collateral attack therein constituted an abuse of process: *Grenon*, paras. 28, 32 and 33.

[78] The rule against collateral attack attempts to protect the fairness and integrity of the justice system by preventing duplication of proceedings, namely preventing a party from using an institutional detour to attack the validity of an order by seeking a different result, from a different forum, rather than through the designated appellate or judicial review route: *Meads v. Meads*, 2012 ABQB 571, para. 50.

[79] The Court in *Wood v. Yukon (Highways and Public Works)*, 2016 YKSC 68 ("*Wood*"), held that the action was the plaintiff's attempt to appeal her alleged wrongful dismissal which she had no right to appeal. Further, the Court found that the action was a collateral attack of the decision of the Yukon Workers Compensation Health and Safety Board Appeal Tribunal which had not been appealed and constituted a collateral attack of the decision of the Director of Human Rights to terminate the investigation of her complaint of discrimination: *Wood*, para. 41.

[80] The court in *Wood* concluded such collateral attacks constituted an abuse of process, as held in *Willow* where that court struck a claim which was a collateral attack of an administrative decision that is subject to appeal or judicial review, and although pled as "breaches of duty, failure to perform legal obligation, negligent supervision and

torts"; the essential character of the complaint was the plaintiff's belief he had been wronged by decisions which could be but were not challenged in a different forum: *Wood*, paras. 41-43.

[81] Mr. Brown seeks that the Support Order be declared of no force and effect. That is a direct collateral attack. An appeal or variation of the Support Order are not available in this proceeding.

[82] This Petition and Application is also a prohibited collateral attack of the Support Order in seeking to strike the legislated measures in the Yukon *MEA* to enforce that support ordered obligation. An order requiring monthly payment that cannot be enforced is rendered meaningless.

[83] The above direct and indirect collateral attacks of the Support Order are also improperly brought without making the beneficiary or payee of that order, whose rights are directly impacted, a party to this proceeding.

[84] Based on the above jurisprudence and analysis, this proceeding should be dismissed as a prohibited collateral attack of the Support Order.

[85] This proceeding has a number of additional problems, which this Court will now review.

International Conventions and Declarations

[86] Amongst the numerous remedies sought, Mr. Brown's attack of the Support Order, his request that the enforcement provisions of the Yukon *MEA* be declared invalid and his claims against Yukon and Ms. Kulin, are based upon the statement of his rights in Canadian legislation, namely the *Charter*, *the Canadian Constitution*, 1982 (the

"*Constitution*"), the *Bill of Rights* and the *Code,* as well as several international conventions and declarations.

[87] As to those international conventions and declarations, Mr. Brown relies upon the above cited provisions as to rights in the *ICCPR*, the *ICESCR*, the *UNHR* and the *DRRI*.

[88] Mr. Brown's reliance upon his rights under Canadian legislation and in international conventions are presented in isolation and exclude reference to and the balancing of his rights with those of his dependent daughter and the mother payee under such legislation and conventions. He ignores other relevant provisions in the conventions and incorrectly presents his stated rights therein as paramount over those of his child and legislation dealing with her competing rights.

[89] Mr. Brown relies upon the Supreme Court of Canada decision in *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 ("*Divito*"), as to his rights in international conventions.

[90] The appellant in *Divito* was extradited to the United States where he pleaded guilty to drug offences and was sentenced to prison. He applied to serve his American sentence in Canada. The Minister pursuant to the *International Transfer of Offenders Act*, S.C. 2004, c. 21 ("*ITOA*"), refused permission to return to Canada to serve the prison sentence here.

[91] The appellant in *Divito* had applied unsuccessfully to the Federal Court and argued that, as a Canadian Citizen, the Ministerial discretion in the *ITOA* was unconstitutional and breached his s. 6 *Charter* mobility right to enter and remain in Canada. His application to that court was refused.

[92] Mr. Divito appealed unsuccessfully to the Supreme Court of Canada, which held that s. 6(1) of the *Charter* does not confer a right to Canadian citizens to serve their foreign sentences in Canada.

[93] Mr. Divito at the Supreme Court argued that Article 12 of the *ICCPR*, which prohibited arbitrarily preventing a person to enter their country, permitted him serving his detention in Canada.

[94] The Supreme Court determined that Mr. Divito's past criminal activity justified the rejection of his request to return to Canada, thereby limiting his mobility rights under s. 6 of the *Charter* and Article 12 of the *ICCPR*.

[95] The Supreme Court in *Divito* stated:

a. the *Charter* identified rights are to be defined generously in light of the interests the *Charter* was intended to protect: para. 19;

b. Canada's international obligations and relevant principles of international law are instructive in defining rights listed in the *Charter*, which should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified: paras. 22-23;

c. the international law inspiration for s. 6(1) of the *Charter* is generally considered to be Article 12 of the *ICCPR*, which has been ratified by Canada. The rights accordingly protected by the *ICCPR* provide a minimum level of protection in interpreting the mobility rights under the *Charter*. The right to enter Canada protected by s. 6(1) of the *Charter*

should be interpreted in a way consistent with the broad protection under international law: paras. 24, 25 and 27;

d. the s. 6(1) mobility rights should be construed generously but not literally. Canadian citizens lawfully incarcerated in a foreign jurisdiction cannot leave their prison to come to Canada, absent the foreign prisoner transfer provisions in the *ITOA*. That potential transfer does not create a constitutionally protected right to leave a foreign prison and enter Canada, nor impose a duty on Canada to permit all citizens to serve their foreign sentences in Canada. The provisions of the *ITOA*, which make a transfer to Canada possible, do not as a result represent a breach of s. 6(1) of the *Charter*: para. 48.

[96] The minority in *Divito* held that ensuring the security of Canada and the prevention of terrorism offences were pressing objectives, which in some cases may be served by refusing a transfer based upon the factors listed in the *ITOA*, which were not arbitrary, unfair or irrational considerations. The *ITOA* legislation therefore constituted a reasonable limit on the s. 6(1) *Charter* mobility right of Canadian citizens incarcerated abroad pursuant to s. 1 of the *Charter*: paras. 74, 78 and 84.

[97] *Divito* supports the principle that rights listed in the *Charter* or in international conventions approved by Canada may not be absolute. Specifically, such rights may be qualified by legislation dealing with the rights or protection of the general public, sections of the public or may be protected under s. 1of the *Charter*. It is not therefore enough to only consider the articulated rights of Mr. Brown.

[98] Mr. Sin in the case of *Sin v. Canada*, 2016 FCA 16 ("*Sin*"), applied to immigrate as an investor to Canada under the *Immigration and Refugee Protection Act* (the "*IRPA*"). The government terminated his application. He sued the Crown for damages for terminating his application for permanent residence in Canada. The *IRPA* states there was no right of recourse against Canada if an application was terminated. He argued however that that prohibition against suit must be read in light of foreign investment treaties and trade agreements, which Canada had signed.

[99] The proceeding by Mr. Sin, including the request for its pre-certification as a class action, was dismissed by the Federal Court, which he then appealed.

[100] The court in *Sin* relied upon *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817("*Baker*"). The Supreme Court of Canada in *Baker*, at para. 69, notes that Canada has ratified certain conventions and international instruments which recognize the importance of children's rights and their best interests. The Supreme Court then states that international treaties and conventions are not part of Canadian law unless they have been implemented by statute and because the convention in that case had not been implemented by Parliament; its provisions therefore had no direct application within Canadian law.

[101] The above principle was reiterated in *Kazemi Estate v. Islamic Republic of Iran,* 2014 SCC 62 ("*Kazemi*"), wherein the Supreme Court, at para. 149, stated that an article in a treaty ratified by Canada does not automatically transform that provision into a principle of fundamental justice, as Canada is a duellist system in respect of treaty and convention law. This means that, unless a treaty provision expresses a rule of customary international law or a peremptory norm; such provision will only be binding in

Canadian law if it is given effect through Canada's domestic lawmaking process. The Supreme Court in *Kazemi* noted that the appellant in that case had not argued nor established that their interpretation of the relevant International covenant they relied upon, reflects customary international law or that it was incorporated into Canadian law through legislation.

[102] The Federal Court of Appeal in *Sin*, at para. 15, concluded that Mr. Sin:

a. did not argue that the Canada–Russia Foreign Investment Promotion and Protection Agreement treaties ("FIPA") reflects customary international law;

b. acknowledged FIPA had not been implemented by a statue department;

and therefore concluded that:

a. FIPA was not part of the domestic law of Canada;

b. FIPA cannot amend an act of Parliament; and

c. the prohibition against suing Canada contained in the *IRPA* should not therefore be read in the light of the FIPA relied upon by the appellant.

[103] The case of *d'Abadie v. Her Majesty the Queen*, 2018 ABQB 298 ("*d'Abadie*") has a number of similarities to Mr. Brown's proceeding. Mr. d'Abdie was stopped, questioned and charged for driving his motor vehicle without a license plate which simply carry a marking of "PRIVATE Non-Commercial Use Only".

[104] The Attorney General moved to strike the application as an abuse of process. The court struck the proceeding.

[105] Mr. d'Abadie sought:

a. damages against the Receiver General regarding incidents where he was stopped in his vehicle by police and charged for driving without a license plate;

b. acquittal of two Provincial Court charges; and

c. an "Order to Safeguard Rights", namely the right to enjoy his life, liberty, enjoyment of use of property and not be arbitrarily detained and damaged by the Crown.

[106] Mr. d'Abadie argued that:

a. he was free to ignore motor vehicle legislation because that is "slavery";

b. he was detained when stopped by police which breached his s. 10(c) *Charter* right of *habeas corpus* and his *Charter* s. 7 right to liberty as he was not engaged in a crime; and

c. the police seizure of his vehicle constituted theft of his property contrary to his property rights protected by s. 26 of the *Charter* and Article 17 of the *UDHR* which states that everyone has the right to own property and not be arbitrarily deprived of that property.

[107] Mr. d'Abadie, like Mr. Brown, applied to amend his Originating Application to correct the responding parties and add to the information therein. The court denied leave to amend the Application in concluding his proceeding, with or without an amendment, was hopeless and was initiated and continued in bad faith because:

a. the application was a prohibited collateral attack in a civil court of criminal proceedings: para. 39;

b. the plaintiff sued the wronged parties in not suing the police who had stopped him;

c. the plaintiff had failed to provide adequate particulars for the alleged breach of his *Charter* rights: paras. 37 and 41;

d. the proceeding is based on futile and abusive OPCA concepts which have no legal meaning: para. 43;

e. the plaintiffs alleged immunity from legislation is an erroneous OPCA concept lacking legal merit: paras. 44-46; and

f. the plaintiff's Application is an illegitimate attempt to set aside, to step outside of Canadian law and be exempt of penalties for engaging in illegal activity: para. 47.

[108] Mr. d'Abadie argued that the *UDHR*, the *ICCPR* and the *ICESCR* are binding authorities, which supersede and restrict state authority through the *Charter*: ***d'Abadie***, para. 49.

[109] Like Mr. Brown, Mr. d'Abadie relied upon the Supreme Court's statement in *Divito,* at para. 50 that:

> As a treaty to which Canada is a signatory, the [*International Covenant on Civil and Political Rights*] is binding. As a result, the rights protected by the [*International Covenant on Civil and Political Rights*] provide a minimum level of protection in interpreting the mobility rights under the *Charter*. …

[110] The court in ***d'Abadie*** stated the above statement does not mean the Supreme Court thereby concluded that the *ICCPR* has a supra-constitutional status, but instead that Canadian domestic law should be interpreted in compliance with Canadian endorsed international treaties: ***d'Abadie,*** para. 51.

[111] The court in *d'Abadie* stated the Supreme Court in *Divito* was interpreting s. 6(1) of the *Charter* which states that every Canadian citizen has the right to enter, remain in and leave Canada and concluded that Canada therefore had explicitly implemented this "mobility right" in its domestic apparatus and that the Supreme Court looked to the *ICCPR* Article 12 to better define what that right actually entailed.

[112] The court in *d'Abadie* concluded the *ICCPR* in itself means nothing and it is only because Canada enacted law that created a corresponding domestic right which implemented Article 12 of the *ICCPR*, that such Article 12 became relevant in Canadian courts: paras. 51-53.

[113] The courts in *Kazemi* and *Sin* concluded that the provisions of international conventions approved by Canada relied upon were not established to constitute law in Canada as:

a. the covenant provision had not been enacted into law by Parliament; and

b. like Mr. Brown in the present case, Mr. Kazemi did not submit nor establish that the international treaty and provisions therein relied upon reflected customary international law.

[114] As part of his "wheelbarrow deposit" of arguments in this case, Mr. Brown made no submission as to which of the international conventions and declaration rights he relies upon have been enacted into law in Canada.

[115] The Court concludes that:

a. the rights to life, liberty and security of the person, as referenced in Articles 8, 9, 17.1 of the *ICCPR*, Articles 1.1 of the *ICESCR* and Articles 6,

9 and 12 of the *UDHR*, have been enacted into law in s. 7 of the *Charter* and s. 1(a) of the *Bill of Rights*;

b. the rights against unreasonable seizure in s. 8 of the *Charter* and the right to enjoyment of property and not be deprived of it except by due process of law pursuant to s. 1(a) of the *Bill of Rights,* enacts into Canadian law the rights to dispose of one's wealth, to not be deprived of one's means of subsistence and to fully enjoy one's natural wealth pursuant to Articles 1.2 and 47 of the *ICCPR* and Articles 1.1 and 25 of the *ICESCR*, the right to pursue one's economic development in Article 1.1 of the *ICESCR* and to not be arbitrarily deprived of property in the *UDHR*; and

c. the rights to liberty and against arbitrary detention and imprisonment and the right to seek judicial relief where a *Charter* right has been infringed, as provided in ss. 7, 9 and 24(1) of the *Charter* and s. 1(a) of the *Bill of Rights*, enacts into Canadian law the rights to liberty and judicial relief in relation to detention as provided in Articles 9, 12 and 17(2) of the *UNHR*, 9.1 of the *ICCPR* and 9.1 to 9.5 of the *DRRI*.

[116] The above Canadian enactments therefore, beyond any clarity provided by those international provisions, are the governing law of those subjects as to the issues in this case.

Failure To Plead Material Facts As To Alleged Breaches of Conventions

[117] Some of the provisions of the international conventions and declarations relied upon by Mr. Brown have not been enacted into Canadian law, are not legally relevant or

lack material facts to support such reliance and allegations. Instances thereof include the following:

a. the Respondents do not rely on these international conventions;

b. there are no allegations to support that Mr. Brown is in a state of slavery, servitude or compulsory labour; and

c. Mr. Brown has not been arrested or arbitrarily arrested without reason, been denied legal recognition as a person, nor is being subjected legally to discrimination or has suffered unlawful interference as to his privacy, his home or his family;

thus rendering Articles 5, 8, 9, 16, 17.1 and 17.2 of the *ICCPR* and Articles 6 and 9 of the *UDHR* irrelevant in this case.

[118] There are no facts alleged that:

a. Mr. Brown's right to dispose of his natural wealth is infringed by obligations arising from international economic cooperation; and

b. Canadian state governments have failed to enact legislation incorporating convention rights or exercised those rights in relation to Mr. Brown on a discriminatory basis or breached his right to have an adequate standard of living;

thus rendering Articles 1.2, 2.1, 2.2 and 11 of the *ICESCR* irrelevant in this case.

[119] There are no facts alleged in support of the bald allegations that:

a. Mr. Brown has been denied the right to own property;

b. He is not receiving just remuneration in his employment; or

c. his home or family has been subjected to arbitrary interference;

thus rendering Articles 12, 17.1 and 23.3 of the *UDHR* irrelevant in this proceeding.

[120] There are no allegations of fact to support the general allegations that Mr. Brown:

a. has been denied the right to complain to government officials; or

b. has been denied an effective judicial hearing or remedy for rights he alleges violation of;

thus rendering Article 9 of the *DRRI* irrelevant to this proceeding.

[121] There are no facts pleaded as to the alleged failure by the state to promote human rights through legislation, judicially and in education in Canada as required under Articles 14 and 15 of the *DRRI*; thus rendering those provisions irrelevant to this proceeding.

[122] The failure to plead material facts in support of the above alleged violations of international conventions contravenes the requirements of Rule 20(1), are intended to avoid Mr. Brown's legal obligation to pay child support, to delay or defeat the judicial enforcement thereof and are therefore struck.

Competing Rights Under International Conventions

[123] Mr. Brown in citing rights from international conventions and declarations as stated, ignores the rights of his daughter and that child's mother as recipient payee of the child support ordered.

[124] Recognition in international conventions and declarations of the child's and mother's competing rights and the corresponding obligations of Mr. Brown to pay child support, contradicts his isolation of and dependence upon his rights regarding the Support Order and enforcement of that child support obligation.

[125] The recognition in international conventions of Mr. Brown's obligation to provide child support informs the court in its consideration of the contested provisions of the Yukon *MEA*.

[126] The *ICCPR* states the following in its preamble:

> The States Parties to the present Covenant,
>
> Considering that, in accordance with the principles proclaimed in the *Charter* of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
>
> …
>
> Considering the obligation of States under the *Charter of the United Nations* to promote universal respect for, and observance of, human rights and freedoms,
>
> Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant…
> (emphasis added).

[127] Mr. Brown omits to refer to and reconcile his rights with the following rights of his daughter and his parental duty recognized in the *ICCPR*:

> *Article 23*
>
> 1.The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
>
> 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

> *Article 24*
>
> 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State (emphasis added).

[128] Food, clothing, accommodation and education are essential elements required by and for the protection of children. Mr. Brown agreed in the Support Order to financially contribute to the cost of these necessities. The *Divorce Act*, the *Ontario Family Law Act* and the Yukon *MEA* are Canadian legislation which incorporate the above international convention rights of dependent children and the corresponding support obligations of their parents.

[129] The Yukon *MEA* enforcement remedies are legislative tools to ensure Mr. Brown contributes towards the cost of these necessities in accordance with his daughter's above internationally recognized rights.

[130] The *UDHR* relied upon by Mr. Brown states that every person has the right to a standard of living adequate for their wellbeing and the entitlement of children to special care and assistance and that they enjoy all social programs. That is the very care of this child that the Yukon *MEA* is intended to ensure is provided and not ignored. (emphasis added)

[131] Mr. Brown further omits to mention and reconcile his obligations for his daughter as contained in the United Nations Convention on the Rights of the Children, ("*UNCRC*") which Canada also ratified. That convention contains the following provisions:

> *Article 3*
>
> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> 2. States Parties undertake to ensure the child with such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
>
> *Article 27*
>
> 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
>
> 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
>
> …
>
> 4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements. (emphasis added)

[132] The obligation under these international conventions and declarations requiring parents like Mr. Brown to financially support their children have been enacted in Canada as indicated at the Federal, Provincial and Territorial levels.

[133] The Yukon *MEA* and its remedies are the very kind of legislative action envisaged and required in Articles 3(1) and (2) and 27(4) of the *UNCRC* which thereby

supports the challenged *MEA* provisions and enlightens the court's interpretation of Mr. Brown's *Charter* rights as to the challenged sections.

[134] The father in *Curle v. Curle*, 2014 ONSC 1077, issued a civil claim against the mother in addition to their family law proceeding. The court struck the civil proceeding as containing no reasonable cause of action and held the father was a vexatious litigant due to a list of enumerated vexatious traits including the numerous prior proceedings and ignoring adverse rulings, which were measures intended to wear down his opponent. Mr. Brown's default in paying the Support Order is his attempt to breach and ignore the Support Order ruling.

[135] Like Mr. Brown, Mr. Curle presented himself as a split/dual person and alleged that he had not waived his full legal and equitable title. He alleged, like Mr. Brown, violation of his rights under international law including, the *ICCPR*, the *UDHR* and the *United Nations Declaration of Human Rights* and the *Vienna Declaration and Programme of Action*.

[136] The court in dismissing the civil action held that the claim disclosed no cause of action as the family law issues of custody and property were governed by domestic statutory law such as the *Children's Law Reform Act* or the *Divorce Act* and not by the common law or international law: para. 14.

[137] Mr. Brown's reliance upon the selective sections from the *ICCPR*, the *ICESCR*, the *UDHR* and the *DRRI* misstate those as his absolute rights by omission and presents his rights as determinative. He fails to acknowledge and balance his rights with the rights of his daughter and his obligation to support that child as contained in the above

conventions approved by Canada, which have been enacted into child support and child support enforcement legislation throughout Canada, as required in internal convents.

[138] Mr. Brown's arguments based on the international convention provisions relied upon in seeking to set aside the Support Order and for a declaration of invalidity of the support enforcement provisions of the Yukon *MEA* are incorrect and have no legal merit.

Charter Rights

[139] Sections 24(1) of the *Charter* and 52(1) of the *Constitution Act* form the basis to seek relief for an infringed *Charter* right.

[140] Section 24(1) in the case of a breach or denial of a *Charter* right, entitles a person to seek a judicial remedy, which the court considers appropriate and just in the circumstances.

[141] Section 24(1) relates to unconstitutional acts of government agents operating under lawful schemes.

[142] Section 52(1) provides that the *Constitution of Canada* is the supreme law of this country and that any law that is inconsistent with the provisions of the Constitution is of no force and effect.

[143] Section 52(1) relates not to actions by government agents but rather, if established, where a law violates the *Charter,* in which case the court shall so declare thereby rendering that law null and void: *R. v. Ferguson*, 2008 SCC 6, para. 35.

[144] The pleadings of Mr. Brown ignore this distinction between s. 24(1) of the *Charter* and s. 52(1) of the *Constitution Act*, 1982.

[145] The court in *A.N.B. v. Alberta (Minister of Human Services)*, 2013 ABQB 97 ("*A.N.B.*"), as to the rights under the *Charter* quote s. 1 of the *Charter* which states:

> *The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. (emphasis added)

[146] The court in *A.N.B.* based on s. 1, stated that *Charter* rights in Canada are not absolute as Mr. Brown submits, and are subject to legal limitations and sanctions unless he can demonstrate those limitations are unconstitutional: *A.N.B.,* paras. 96 and 97.

[147] Mr. Brown's challenges based upon his rights pursuant to the *Charter*, the *Constitution* and the *Bill of Rights* are incorrectly presented as absolute rights and ignore several qualifiers in such legislation, just as he did in his reliance upon rights in international conventions and declarations.

[148] Mr. Brown's reliance upon the s. 7 *Charter* right to life, liberty and security of the person, states "except in accordance with the principles of natural justice".

[149] The right against seizure under s. 8 of the *Charter* relied upon, prohibits "unreasonable" seizure.

[150] The s. 9 *Charter* right prohibits "unreasonable" detention or imprisonment.

[151] The declaration of invalidity sought by Mr. Brown of the potential remedies under ss. 23 to 26 and 28 of the *MEA* are governed by s. 52(1).

[152] There is no legal basis as claimed under s. 52(1), to overturn the Support Order or its deposit in the opening of a Yukon court file. That court order and its filing in a new Yukon court file are not legislation, which is the subject of s. 52(1).

***Yukon Maintenance Enforcement Act* (*MEA*)**

[153] Mr. Brown seeks an order invalidating ss. 13, 14, 23 to 26, 28 and 29 of the Yukon *MEA* in reliance upon numerous provisions in the *Charter*, the *Bill of Rights*, the *ICCPR*, the *ICESCR* and the *DRRI*.

[154] The Yukon MEA contains provisions to prevent undue hardship. A court has jurisdiction under s. 32 to order a stay of enforcement proceedings if satisfied that such proceedings would cause unjustifiable hardship on the payor. Section 32 accordingly permits protection of payors against unjustifiable hardship and balances the above enforcement remedies.

[155] Mr. Brown does not seek a declaration of invalidity of the remedy to seek the appointment of a receiver under s. 27. If appointed, a court would determine the receiver's powers to realize against the debtor's assets, which normally includes possession and sale thereof which is a similar result to execution for the benefit of a judgment creditor under the *Execution Act*.

[156] It is relevant that recovery of court-ordered support arrears through the exercise of one of the Yukon MEA remedies in issue is for the exclusive benefit of and payment to the support payee. Monies recovered pursuant to these remedies are not for the benefit of or retained by the state and are not in payment of a fine or penalty imposed by the state.

[157] Monies recovered are applied in satisfaction of a judgment made under child support legislation and not merely under the Yukon *MEA*.

[158] Mr. Brown's request for a declaration of invalidity of ss. 23 to 26, if successful, would result in claimants with a court ordered child support, being unable to enforce that

right through the Director, even though such creditor parent, like any other judgment creditor, could recover payment directly under the Yukon *Garnishee Act* and the *Execution Act*. There is no rationale justifying such an inequitable result through the use of the *Charter,* the *Bill of Rights*, or otherwise.

Garnishment of Wages

[159] Section 24(1) accordingly is only relevant as to the garnishment under the *Garnishee Act* initiated by the Yukon MEP of a portion of Mr. Brown's salary in payment of his court ordered child support.

[160] Sections 13 and 14 of the Yukon *MEA* grant the MEP Director the right to seek garnishment for the same liability on behalf of the payee. Mr. Brown does not seek a declaration of invalidity of any provision of the Yukon *Garnishee Act*. Any financial or rights impairment arising upon garnishment in this case arises pursuant to the *Garnishee Act* which is not challenged, which s. 13 of the Yukon *MEA* makes available to the MEP Director's office.

Economic Interests Not Protected

[161] A number of courts have determined that one's economic interests are not protected by the *Charter*, including the s. 7 *Charter* right to life, liberty and security of the person which Mr. Brown relies upon: *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3, paras. 45 and 46; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927; *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, para. 66; A *& L Investments Limited v. Ontario (Minister of Housing)* (1997), 152 D.L.R. (4th) 692 (O.N.C.A.), para. 29; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, 2002 ABCA 131, paras. 128, 143 to 145, 147 and 149; *R. v. Werhun*, [1991] 2

W.W.R. 344 (M.B.C.A.); and *d'Abadie v. Her Majesty the Queen*, 2018 ABQB 298, para. 53.

[162] The majority in *B.C. Teachers' Federation v. Vancouver School District* No. 39, 2003 BCCA 100, held that economic interests, including matters related to employment, are not interests which engage the life, liberty and security of the person provisions under s. 7 of the *Charter*: *Willow v. Chong*, 2013 BCSC 1083 ("*Willow*"), para. 81.

[163] The court in *d'Abadie* held there is no domestic right to property or economic activities and interests: para. 53.

Garnishment and s. 7 of the *Charter*

[164] In *Gilliland v. Walker,* [1985] 19 C.R.R. 340 (O.N. Prov Ct. (Fam. Crt.)) ("*Gilliland*"), the respondent argued that the order sought for child support under *The Reciprocal Enforcement of Maintenance Orders Act, 1982,* of Michigan infringed s. 7 of the *Charter* as it restricted his rights to the free use and enjoyment of his earnings, leading to an intrusion on his lifestyle. Mr. Brown makes the same argument.

[165] The Court in *Gilliland* acknowledged that the *Charter* infringed to a certain extent on the respondent's s. 7 rights, but held that the proceedings resulting in the order complied with the principles of fundamental justice. As a result, the mechanisms provided by the *Act* did not infringe his rights.

[166] Similar garnishment provisions under the Alberta *Maintenance Enforcement Act* were found not to be constitutionally invalid in *Millar v. Millar* 2000 ABCA 100 *("Millar")* para. 10-16 and 18.

[167] The debtor under a Manitoba maintenance order in *Sen v. Sen,* 87 Man.R. (2d) 237 (M.B.Q.B.) unsuccessfully challenged the constitutional validity of the *Manitoba*

Family Maintenance Act pursuant to ss. 7, 9, 11(c) and 13 of the *Charter*. The court held the *Act* did not breach the *Charter* and stated that legislation "provides a comprehensive and balanced procedure" to ensure the payment of support such as the time frame in which the ability to pay is determined, the debtor's opportunities to challenge the arrears and the opportunity to make arrangements to pay such arrears. Sections 14, 20, 21, and 22 of the Yukon *MEA* contain such measures.

[168] The court in *Sin* concluded that had it found the *IRPA* legislation did breach *Charter* rights, it would have found those breaches permissible as being consistent with the principles of natural justice under s. 1 of the *Charter*.

[169] The garnishment pursuant to ss. 13 and 14 of the Yukon *MEA* of a portion of Mr. Browns' wages involve economic interests which are not *Charter* protected rights and constitute no *Charter* violation. His claims as a result of that garnishment is therefore dismissed for these reasons.

Execution and *Charter* s. 8

[170] Mr. Brown also alleges that the potential of filing execution as to any support arrears and the resulting possible sale of his real and personal property would violate his s. 8 *Charter* right against seizure of property.

[171] The absence of *Charter* protection as to his economic interests based on the above jurisprudence applies equally to Mr. Brown's economic interest in the event of the execution against his real and personal property pursuant to ss. 23, 24, 25 and 26 of the Yukon *MEA* for outstanding child support.

[172] In *Millar*, the appellant like Mr. Brown sought to have provisions of the Alberta *Maintenance Enforcement Act* declared unconstitutional pursuant to multiple sections of the *Charter*, including the s. 8 right against seizure.

[173] Although the Court of Appeal in *Millar* did not make a determination, it doubted that garnishment of wages under that comparable support legislation constituted "seizure" under s. 8 of the Charter and stated:

> [11] Section 13 provides for the issuance of a continuing garnishee. Even adopting the broadest definition of the term "seizure", I doubt that garnishment falls within its scope. In *Thomson Newspapers Ltd. v. Canada (Director of Investigation & Research)*, [1990] 1 S.C.R. 425 (S.C.C.) at p. 505, La Forest J. considered the nature of a seizure and stated: "... the essence of a seizure was the taking of a thing from a person by a public official without that person's consent". A continuing attachment or garnishee does not involve the taking of any "thing" from a person. Rather, it is a court order which directs a third party who owes money to the judgment debtor to make the payment to the Court or, in this case, to the Director, rather than to the judgment debtor.
>
> [12] Moreover, it is doubtful whether s. 8 of the *Charter* applies to procedures adopted by the courts or by legislation for the enforcement of civil judgements, or tax assessments which, under the relevant legislation, have the effect of judgments. In *TransGas Ltd. v. Mid-Plains Contractors Ltd.* (1993), 101 D.L.R. (4th) 238 (Sask. C.A.), the Saskatchewan Court of Appeal refused to extend the protection of s. 8 of the *Charter* to a garnishee issued by Revenue Canada, pursuant to ss. 224(1.2) of the *Income Tax Act*, S.C. 1970-71-72, c. 63, for the purpose of collecting taxes withheld by the debtor but not remitted. The debtor, Mid-Plains Contracting, was not involved in the proceedings. The validity of the legislation was attacked by TransGas, the holder of a fund established under the *Builders Lien Act*, s.s. 1984-85-86, c. B-7.1, and other creditors of Mid-Plains who invoked s. 8 of the *Charter* and the distribution of legislative power. The appeal to the Supreme Court of Canada was dismissed," substantially" for the reasons given by Tallis J.A.: *TransGas Ltd. v. Mid-Plains Contractors Ltd.* (1994), 120 D.L.R. (4th) 715

> (S.C.C.), but it is not clear that s. 8 was considered by the Supreme Court. (Contra: see the British Columbia Court of Appeal in *British Columbia (Deputy Sheriff, Victoria) v. Canada* (1992), 90 D.L.R. (4th) 680 (B.C. C.A.) at p. 692 where, in obiter, the B.C.C.A. commented that s. 8 applied to enforcement proceedings under the *Income Tax Act*.) (emphasis added)

[174] The registration of a writ of execution against the real or personal property of a debtor similarly does not constitute taking that property from Mr. Brown. If such property is sold under execution, that sale occurs as part of a legislated process to satisfy a court determined debt owing by the judgment debtor and the payment thereof to the judgment creditor, not to the state. The state as to s. 8 of the *Charter* is not seizing property or its proceeds for itself.

[175] A potential execution against Mr. Brown's property resulting in the seizure of his property in satisfaction of arrears of court ordered child support is authorized by the Yukon *MEA* and the *Execution Act*. Such seizure is reasonable in principle given the adequate protections afforded to Mr. Brown in relation thereto under the Yukon *MEA*. A complete analysis cannot be concluded as no such execution has occurred. Whether any future seizure will be reasonable or excessive cannot now be determined.

[176] The potential registration and exercise of execution against property pursuant to ss. 13, 14 and 23 to 26 of the Yukon *MEA* are not a breach of Mr. Brown's s. 8 *Charter* right against seizure for the reasons articulated in *Millar*, paras. 11 and 12.

International Conventions

[177] There are no factual allegations to support contravention of Mr. Brown's rights under international conventions as to his rights to:

a. to own or dispose of property;

b. to be employed;

c. to earn an income; and

d. to not be held in servitude.

[178] Mr. Brown's reliance in isolation upon his such rights under such conventions are not supported by the required allegations of fact in his challenge as to the validity of ss. 23 to 26 of the Yukon *MEA*.

[179] The potential execution against his property pursuant to the Yukon *MEA* does not violate his rights under international convention, and as to s. 8 of the *Charter*, are fundamentally just and are protected pursuant to s. 1 of the *Charter*.

[180] Mr. Brown has failed to establish violation of his *Charter* rights under s. 24(1) as to ss. 13 and 14 of the Yukon *MEA*. He has in addition failed under s. 52(1) to establish a *Charter* violation by ss. 23 to 26 of the Yukon *MEA* and is not therefore entitled to a declaration of invalidity as to those remedies.

Restriction, Suspension or Loss of Driver's Licence

[181] The right of the Director to seek the restriction or cancellation of Mr. Brown's driver's licence under s. 29 of the Yukon *MEA* may only occur after a 21-day notice and Mr. Brown's failure to make satisfactory arrangements to comply in payment of the Support Order.

[182] The impairment of his driving privileges may be limited to permit Mr. Brown to drive for employment purposes under s. 29(4) of the Yukon *MEA*, thereby preventing a resulting risk of impairment of his employment and source of income.

[183] The right to drive a motor vehicle is not a right protected by the s. 7 *Charter* right to liberty and security of the person as argued by Mr. Brown: *Buhlers v. British*

Columbia (Superintendent of Motor Vehicles), (1999) 170 D.L.R. (4th) 344 (B.C.C.A.) ("*Buhlers*"), leave to appeal refused, 181 D.L.R. (4th) 7.

[184] The argument that interference with his use of motor vehicles breached his *Charter* rights pursuant to rights specified in the *UDHR*, the *ICCPR* and the *ICESCR* was rejected, as occurred in numerous previous decisions cited therein: *Buhlers* at paras. 85 to 90.

[185] *Westendorp v. Westendorp* (2000), 8 R.F.L. (5th) 225 (O.N.S.C.), involved an application to strike the driver licence cancellation and suspension provisions of the Ontario *Family Responsibility and Support Arrears Enforcement Act* following non-payment of support. The Court held that those legislative cancellation and suspension provisions did not violate s. 7 of the *Charter* as that legislation provided a procedural code in the event that the individual was faced with possible suspension of his or her driver's licence. The Yukon *MEA* contains similar procedural code protection.

[186] Mr. Brown has not met his onus under s. 52(1) to establish that he has any *Charter* right to a driver's licence, or that any potential restriction as to that licence pursuant to s. 29 of the Yukon *MEA*, violates his *Charter* rights and must therefore be declared invalid.

[187] Mr. Brown did not address and did not meet his onus to demonstrate that the balancing of s. 7 interests, namely his interests and those of society, struck by s. 29 of the Yukon *MEA,* violates s. 7 of the *Charter*: *R. v. Mills*, [1999] 3 S.C.R. 668 ("*Mills*"), paras. 65 and 66.

[188] The court for the above reasons cannot therefore conclude that s. 29 of the Yukon *MEA* risks violation of his *Charter* rights requiring a declaration of invalidity under s. 52(1).

Potential of Incarceration Up To 90 Days

[189] A defaulting payor of child support with capacity to pay that support is on a default hearing potentially at risk of imprisonment continuously or intermittently for up to 90 days pursuant to s. 28(6)(g) of the Yukon *MEA*.

[190] The possibility of imprisonment engages the s. 7 *Charter* right of liberty which is not to be deprived except in accordance with the principles of fundamental justice and the s. 8 right to not be imprisoned arbitrarily: *Mills*, para. 62.

[191] Mr. Brown once again did not address the onus and balancing of his and society's interests pursuant to s. 7.

[192] Imprisonment which could result on a show cause hearing or default proceeding pursuant to s. 28(6)(g) is not imposed for the purpose of redressing the wrong done to society at large. It is imposed to maintain internal discipline within the limited sphere of ensuring that family debtors obey court orders to support their children or spouses. It in that sense is not "a true penal consequence".

[193] Factors which distinguish this potential imprisonment from those involving a true penal consequence include:

(a) default proceedings under the Yukon *MEA* are not instituted by way of an information;

(b) there is no prosecutor. The parent of the dependent child, or a *MEA* officer on their behalf, is the person bringing Mr. Brown to court;

(c) such default proceedings relate to an alleged private, civil debt. Support arrears are not owed to society. When paid, the support is paid to the parent with the dependent child and not to society at large;

(d) the Support Order in issue was made pursuant to Minutes of Settlement and consent order agreed to by Mr. Brown;

(e) the possibility of time in jail has a grave personal consequence, but does not carry the social stigma and ostracism which attaches to incarceration after committing a criminal offence;

(f) imprisonment under s. 28(6)(g) or (h) of the Yukon *MEA* does not result in a criminal record; and

(g) imprisonment in this default proceeding is not intended as punishment, but rather as a coercive method of compelling compliance with a support obligation as determined by court order.

[194] The obvious intent of the statute is that debtors will pay their support obligation rather than go to jail. Section 11(8) of the *Support and Custody Orders Enforcement Act*, 1985, S.O. 186, c. 55 provides that serving time in custody does not discharge arrears which are owing: *Mancuso v. Mancuso* [1991] O.J. No. 1291 ("*Mancuso*").

[195] The following decisions explain some of the factors to consider in determining whether legislative provisions are in breach of the s. 7 *Charter* right of liberty "except in accordance with the principles of fundamental justice".

[196] The court in *Callison v. Callison* (1989), 36 B.C.L.R. (2d) 37 (B.C.S.C.), p. 44 stated:

> The "process" ..., is not, in light of the basic tenets of our legal system, fundamentally unjust. The alleged contemnor

> is given notice of the application to have him found in contempt. He is given time to prepare the case on his own behalf. He can bring any evidence that he wishes to the attention of the court. He is made aware of the case that he is expected to meet. He can seek leave to introduce viva voce evidence or leave to cross-examine on any affidavits. As such, the modified summary process does not, of itself, violate s. 7 of the *Charter*.

[197] In *Schnell v. Schnell*, [1988] 3 W.W.R. 447, at p. 457- 458, a judge of the Manitoba Queen's Bench (Family Division) ruled that the Manitoba enforcement provisions provided procedural and substantive fairness:

> Section 30 of the *Act* mandatorily provides that there be a show cause hearing. The hearing would consist in enquiries being made of the summonsed spouse to find out why the order in question was not being observed. The hearing must scrupulously observe the procedures of fairness consisting of a full ape impartial hearing and submissions of the parties or their representatives.
>
> After such an inquiry into the circumstances of the person in default the judge or master may make an order imprisoning that person for a period not exceeding 30 days. This decision is not arbitrary but based upon a reasoned response to the evidence and submissions of the parties, all of which accord with the "basic tenets of our legal system": Lamer J. in Re B.C. *Motor Vehicle Act*, at p. 503.
>
> This decision would be subject to review and redress, including the right of appeal ... In short, the enforcement proceedings are to be conducted in a full, fair and impartial manner, all of which would equate to and fulfil the requirements of fundamental justice.(emphasis added)

[198] In *Fedorychka v. Fedorychka* (1985), 44 R.F.L. (2d) 458, at p. 461, a Saskatchewan Unified Family Court Judge reached the same conclusion as follows:

> [9] … I do not find that any rule of fundamental justice is violated where a person ordered by the court to pay maintenance does not do so, and is obliged to give his reasons for not doing so in circumstances where he alone knows what the reasons are. In many of these cases, the

> parties live in different provinces and it is nearly impossible for the spouse in whose favour the maintenance order was made to find out what the income of the debtor spouse is or what his reasons are for not paying. In civil proceedings, a defendant will have judgement against him in many cases if he omits to appear or defend. In the show cause proceedings the applicant alleges arrears and that they have not been paid. Why should not the applicant succeed if the respondent does not explain his/her alleged contempt? It is not a part of the *Queen's Bench Act* that he/she must do so beyond a reasonable doubt, it is a question only of the preponderance of evidence. I therefore rule that s. 39.1 of the *Queen's Bench Act* and Pt. 49A of the Rules of Court do not violate s. 7 of the *Charter*.(emphasis added)

[199] In *Allen v. Morrison* (1986), 4 R.F.L. (3d) 113 (O.N. Dis.Ct.) at 142, the court stated:

> In a "show cause" proceeding, the debtor must establish inability to pay and must make full disclosure. More is required than a mere showing of inconvenience or difficulty, and it is not sufficient to assert circumstances that, on a variation application, would produce a reduction in quantum. Payment of support is a moral and social duty, and where there is default, contumacious conduct may be punished by imprisonment. ... Further, read in its statutory context, s. 29 is primarily an enforcement provision, and the sanction imposed should not be to vindicate the dignity of the court, but, rather, should be remedial and coercive in nature. As courts have stated, the days of the debtor's prison are long gone, and the basis of the incarceration provision is the debtor's contemptuous behaviour in wilfully violating a court order. For this reason, it seems to me that the retention of imprisonment has been grounded, at least in large measure, on the premise that the debtor "carries the keys of his prison in his own pocket". [emphasis added]

[200] Section 29 of the *MEA* contains similar procedural to safe guard the interests of Mr. Brown in the event a default hearing occurs. The court however will examine whether possible imprisonment for up to 90 days under the *MEA* ordered at a default hearing is protected under s. 1 of the *Charter.*

Section 1 of the *Charter*

[201] Section 1 of the *Charter* states that *Charter* rights are guaranteed but subject to reasonable limits which are demonstrably justified.

[202] The Supreme Court in *R. v. Oakes*, [1986] 1 S.C.R. 103 ("*Oakes*"), provides the framework to analyze whether legislative provisions contravene *Charter* rights in a justified or unjustified manner.

[203] The Supreme Court in *Oakes* held that:

a. Section 1 of the *Charter* has two functions:

- first, it constitutionally guarantees the rights and freedoms thereafter articulated in the *Charter*; and
- second, it states explicitly the exclusive justificatory criteria against which limitations on those rights and freedoms must be measured. Accordingly, any s. 1 inquiry must be premised on an understanding that the impugned limit violates constitutional rights and freedoms: para. 63;

b. the values and principles of a free and democratic society are the genesis of the rights guaranteed by the *Charter* and the ultimate standard against which a limit on a right must be shown, despite its effect, to be reasonable and demonstrably justified: para. 64;

c. the rights guaranteed by the *Charter* are not, however, absolute. It may become necessary to limit rights in circumstances where their exercise would be inimical to the realization of collective goals of fundamental

importance. For this reason, s. 1 provides criteria of justification for limits on the rights guaranteed by the *Charter*: para. 65;

d. the onus of proving that a limit on a right guaranteed by the *Charter* is reasonable and demonstrably justified rests upon the party seeking to uphold the limitation. Limits on the rights enumerated in the *Charter* are exceptions to their general guarantee. The presumption is that the rights are guaranteed unless the party invoking s. 1 can bring itself within the exceptional criteria, which justify their being limited. The onus of justification is on the party seeking to limit: para. 66;

e. the standard of proof under s. 1 is the civil standard, namely, proof by a preponderance of probability: para. 67;

f. invoking s. 1 for the purpose of justifying a violation of the constitutional *Charter* protected rights requires a very high degree of probability commensurate with the occasion: para. 68;

g. evidence is normally required to prove the constituent elements of a s. 1 inquiry and should be cogent, persuasive and make clear the consequences of imposing or not imposing the limit. There may however be cases where certain elements of the s. 1 analysis are obvious or self-evident such that evidence is not required: para. 68;

h. to establish that a limit is reasonable and demonstrably justified, two central criteria must be satisfied. First, the objective responsible for a limit on a *Charter* right must be sufficiently important to warrant overriding a constitutionally protected right. It is necessary that an objective at a

minimum relate to concerns, which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important: para. 69;

i. second, once a sufficiently significant objective is recognized, then the party invoking s. 1 must show that the means chosen are reasonable and demonstrably justified, which involves a proportionality test which will vary depending on the circumstances in each case. Courts will be required to balance the interests of society with those of individuals and groups, which involves three components. First, the measures adopted must be designed to achieve the objective and not be arbitrary, unfair or based on irrational considerations. They must be rationally connected to the objective. Second, the means should impair the right in question as little as possible. Third, there must be a proportionality between the effects of the measures responsible for limiting the *Charter* right and the objective, which has been identified as of "sufficient importance": para. 70; and

j. with respect to the third component of proportionality, the general effect of any measure impugned under s. 1 will be the infringement of a *Charter* right or freedom which is why resort to s. 1 is necessary. Even if an objective is of sufficient importance and the first two elements of the proportionality test are satisfied, it is still possible that the measure will not be justified by the purposes it is intended to serve due to the severity of the deleterious effects of a measure on individuals or groups. The more severe the deleterious effects, the more important the objective must be if

the measure is to be reasonable and demonstrably justified in a free and democratic society: para. 71.

[204] The minority in the Supreme Court in *Divito* agreed with the majority's dismissal of the appeal but held that the appellant's mobility rights were engaged: para. 53.

[205] The minority held that:

a. the Minister's refusal of consent to serve the balance of the sentence in Canada limited the citizens right to enter Canada guaranteed by s. 6(1) of the *Charter*, however those legislative provisions empowering the Minister to agree or disagree to the sentence being served in Canada were a justifiable limitation of the s. 6(1) mobility right under s. 1 of the *Charter*: para. 54;

b. as held in *Oakes*, to meet the constitutional justification requirements under s. 1, the legislative provisions which limit *Charter* rights must be reasonable limits prescribed by law and demonstrably justified in a free society. The party invoking s. 1 must demonstrate that:

(1) the infringing provision relates to a pressing and substantial objective;

(2) there is a rational connection between the objective and the infringement of the right;

(3) the chosen means interfere as little as possible with the protected right; and

(4) the salutary effects of the measures outweigh their deleterious effects: para. 68;

c. ensuring the security of Canada and the prevention of terrorism offenses were pressing objectives which may be served by refusing a transfer based upon the factors listed in the *IOTA*. The *IOTA* legislation therefore constituted a reasonable limit on the s. 6(1) *Charter* mobility rights of Canadian citizens incarcerated abroad: paras. 74, 78 and 84.

[206] The substantial and pressing objectives in the present case are the rights and need of dependent children to receive financial support from their parents, the common default is that obligation and the need to dissuade and remedy such defaults.

[207] As demonstrated by Mr. Brown's conduct in attempting to shield his assets against execution and the extremes advanced in this proceeding, some parents will go to any length to avoid payment of child support, which risks impairment to dependent and defenseless children. Potential imprisonment for 1-to-90 days should deter the risk from arising and deter avoidance when default occurs. That rationally connects the objective to the infringement and limits the infringement appropriately such that the salutary effects exceed the deleterious effects.

[208] There are further reasons why incarceration under s. 28(6) for up to 90 days is demonstrably justified in a democratic society.

[209] Section 28 of the Yukon *MEA* provides for a hearing after a payor has defaulted as to court ordered support. Issues on that hearing include ability to pay the ordered support and whether there are in fact arrears owing. The court may order payment unless satisfied the payor is unable to make such payments and may determine any variation application to vary court ordered support.

[210] The provisions of enforcement under the Yukon *MEA* do not involve public prohibitions. The loss of liberty which could occur in a default proceeding would not be as a result of the exercise of the prosecutorial power of the State.

[211] While the community has a general concern that support orders be obeyed, such matters are of a private, domestic nature, intended primarily to regulate conduct within a limited sphere of activity.

[212] Not all imprisonment constitutes a true penal consequence. While incarceration for default in paying support constitutes a loss of liberty, it is not a true penal consequence.

[213] *Mancuso*, involved constitutional challenges under ss. 7 and 11(c) and (d) of the *Charter* by a support payor on a default hearing under the Ontario *Support and Custody Orders Enforcement Act*, 1985, S.O. 186, c. 55. That legislation included jurisdiction to order detention for up to 90 days.

[214] The court in *Mancuso* held that:

a. Imprisonment which can occasionally result from a default proceeding is not imposed for the purpose of redressing the wrong done to society at large. It is imposed to maintain internal discipline within the limited sphere of ensuring that family debtors obey court orders to support their children or spouses. It is not "a true penal consequence".

b. Factors which distinguish this from ones carrying a true penal consequence include:

    i. default proceedings are not instituted by way of an information;

ii. there is no prosecutor. The parent of the dependent child, or a MEA officer on their behalf, is the person bringing Mr. Brown to court;

iii. who has brought the respondent to court; and

iv. default proceedings relate to an alleged private, civil debt. Arrears are not owed to society. When paid, the support is paid to the parent with the dependent child and not to society at large.

[215] The following substantive and procedural provisions applicable to s. 28 default examination and orders ensure that Mr. Brown will be dealt with in a manner which protects his rights and result in fundamental justice:

a. notice of the hearing and a statement of arrears must be served under s. 28 on Mr. Brown who is required to file a financial statement and appear in court;

b. at the default hearing, Mr. Brown has the opportunity to establish inability to pay and contest the statement of arrears which provides protection to debtors not normally available in other civil suits at this stage of proceedings;

c. there are several orders a Court can make under s. 28 which do not involve imprisonment. A debtor accordingly has full opportunity to satisfy the court that such other dispositions should be used rather than imprisonment;

d. s. 28(10) enables the court to vary the original order made under s. 28(6) if there is a material change in Mr. Brown’s circumstances. This provides added protection;

e. Mr. Brown has the right to file evidence, cross-examine and argue his case at the default hearing; and

f. independent of s. 28, Mr. Brown has the right to seek a variation of the Support Order on the basis of changed circumstances including inability to pay thereby affording him greater protection in such circumstances.

[216] The above procedures and protections afford Mr. Brown substantive and procedural due process resulting in fundamental justice as required by s. 7 of the *Charter*.

[217] Possible incarceration pursuant to s. 28(6)(g) of the Yukon *MEA* is in accordance with the principles of fundamental justice pursuant to s. 7 of the *Charter* and is a reasonable limitation on the rights of Mr. Brown pursuant to s. 1 of the *Charter*.

[218] Mr. Brown further submits the possibility of imprisonment for non-payment of child support violates Article 11 of the *ICCPR* and is therefore invalid.

[219] Article 11 of the *ICCPR* states:

> No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

[220] The Support Order is not a contract. The obligation to pay child support thereunder is not a contractual obligation.

[221] The right to liberty pursuant to Article 11 of the *ICCPR* in any event has been enacted in Canada by s. 7 of the *Charter* which governs.

[222] Section 28(6)(g) of the Yukon *MEA* is not constitutionally invalid under s. 7 of the *Charter*. Alternatively, it is a reasonable limit of that right pursuant to s. 1 of the *Charter*.

Canadian Bill of Rights

[223] With regards to the *Canadian Bill of Rights*, S.C. 1960, c. 44, Mr. Brown:

a. alleges violations of his right to equity before and protection of the law under s. 1(b); and

b. seeks a declaration as to s. 2 thereof because the Yukon *MEA* does not state it operates notwithstanding the *Bill of Rights* and is therefore of no force and effect.

[224] Subsections 1(a) and (b) of the *Bill of Rights* state:

> It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,
>
> (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
> (b) the right of the individual to equality before the law and the protection of the law;

[225] The *Canadian Bill of Rights* has been interpreted as simply recognizing and declaring existing rights: *Oakes*, para. 39.

[226] There is no merit to Mr. Brown's argument regarding the *Bill of Rights* for the following reasons:

a. the *Bill of Rights* only applies to federal laws and does not extend to provincial or territorial legislatures and authorities;

b. the non-exercise by Parliament of the notwithstanding provision in s. 2 as to Federal legislation is irrelevant to provincial and territorial legislation; and

c. the *Bill of Rights* only protects rights as they existed in 1960 prior to its passage: Robert J. Sharpe & Kent Roach, the *Charter of Rights and*

Freedoms, 6th ed. (Toronto: Irwin Law, 2017), at p. 17 [Sharpe and Roach]; *Hogg*, *supra*, note 3, at 35.2.

[227] Mr. Brown cannot obtain a declaration of invalidity of this Yukon *MEA* legislation on the basis of its violation of his rights protected by the *Canadian Bill of Rights.*

Ms. Kulin

[228] This proceeding as against Ms. Kulin is dismissed. The claims against her relate to her actions as an employee in the MEP office wherein she:

a. was assigned the request from FRO to collect the child support ordered to be paid to that Ontario agency;

b. opened a MEP file in her office and the Yukon court wherein she deposited the Support Order;

c. wrote to Mr. Brown directing his payment of the monthly child support as ordered to MEP; and

d. sent a garnishment notice or order to Mr. Brown's employer.

[229] Corporate officers and employees have no personal liability unless it is shown that their actions are tortuous or exhibit a separate identity or interest from that of the employer so as to make such act or conduct their own. The pleadings must contain allegations of fact to suggest the individual defendant did something independent from the corporation or that he or she was acting outside the scope of their employment: *Willow,* paras. 86 and 87; *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481 (O.N.C.A.); *Morriss v HMTQ*, 2001 BCSC 281; and *Rafiki Properties Ltd. v Integrated Housing Development Ltd.* (1999), 45 B.L.R. (2d) 316 (B.C.S.C.).

[230] Mr. Brown pleads nothing as to Ms. Kulin acting independent of MEP or outside the scope of her employment.

[231] Perhaps in recognition of the above principle, Mr. Brown in argument acknowledged he now limits the relief sought against Ms. Kulin to an apology.

CRIMINAL CODE OF CANADA

[232] Mr. Brown relies upon several sections of the *Criminal Code* in support of his position that enforcement of the Support Order via garnishment of his wages is illegitimate and unconstitutional.

[233] Mr. Brown has not been charged with an offence under the *Code.* The *Code* is not relevant legislation as to the obligation to pay child support or as to the right to garnish wages to collect payment of the Support Order. These are the only actions that have occurred in this case.

[234] Mr. Brown pursuant to s. 15 of the *Code* has not been charged or convicted of an offence. His failure to the Support Order is not "an act or omission in obedience to the laws for the time being made and enforced by persons in *de facto* possession of the sovereign power".

[235] Mr. Brown incorrectly relies upon s. 794(1) of the *Code* which states:

> No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information.

[236] There is no factual allegation of any "information" charging Mr. Brown with a criminal offence in this case.

[237] Section 8(3) of the *Code* states: "Every rule and principle of the common law that renders any circumstance a justification or excuse <u>for an act or a defence to a charge</u>

continues in force and applies in respect of proceedings for an offence under this *Act* or any other *Act of Parliament* ...” (emphasis added). Section 8(3) is irrelevant as there is no allegation of a criminal charge.

[238] Section 126 of the *Code* relates to wilfully doing anything or omitting to do anything that Parliament forbids or requires. That is irrelevant to this proceeding. Territorial legislation is in issue in this case.

[239] Section 127 of the *Code* creates an offence for everyone who disobeys a lawful order, other than an order for the payment of money. The Support Order is such an exception.

[240] Mr. Brown’s reliance upon the above provisions of the *Code* are irrelevant to this proceeding.

OPCA Litigation

[241] Mr. Brown’s pleadings reflect that he is without doubt an OPCA litigant. The indicia thereof include:

a. his use of alternate names, entities and invalid security interests from and to himself in an attempt to distance and protect his assets against execution, are intended to defeat his obligation to comply with legislative child support obligations and legislative enforcement measures;

b. his presentation and reliance upon multiple, voluminous and often incoherent arguments of little or no legal merit aimed at defeating and avoiding compliance with legislative requirements which undoubtedly result in extensive time and cost to opposing parties in review and preparation and further clog the court system;

c. his invalid argument that the "failure" to answer by affidavit his staged questions and statements constituted Yukon MEP's agreement by estoppel to his propositions and thereby prohibit the Yukon from denying his propositions and legal interpretations. Such are common OPCA tactics to impose a unilateral agreement on a target by claiming that the failure to refuse or refute the "agreement" constitutes an obligation: *Meads*, para. 474;

d. his demand that the Yukon MEP officers prove their authority to him failing which, such state authority are deemed to lack jurisdiction and legal standing, as rejected in the *Law Society of British Columbia v. Dempsey*, 2005 BCSC 1277 (B.C.S.C.), affirmed 2006 BCCA 161 and *Meads*, para. 489;

e. his argument that the respondent governments are corporations whose rights thereby are limited to those of a corporation: *Meads*, para. 384;

f. he has no obligations other than by way of contracts he has agreed to and entered into;

g. his use of the double/split personality concept: *Meads*, paras. 417- 422; and

h. his use of birth certificate documentation and the creation of a trust in favour of himself as beneficiary of the reinvested trust: *Meads,* paras. 435-438.

[242] Mr. Brown in argument reinforced this conclusion when he tried to explain that:

a. an “individual” is a living natural person, whereas the terms “person” in the *Charter* and “everyone” in the Criminal Code refer to artificial entities or persons, such as corporations;

b. his statement of live birth evidences that he is a natural person whereas his Birth Certificate refers to an artificial entity or person;

c. artificial persons are governed by statute. Natural persons are not governed by statute;

d. a natural person is governed by the laws of nature, such as do not kill another person, and only some of this natural law is contained in legislation; and

e. he as a natural person is not governed by legislation regulating an artificial person.

[243] The petitioner’s submission that the *ICCPR* permits him to choose not to be recognized as any class of person and therefore free of all government obligation and legislation, is a meaningless OPCA “strawman“ or divided/split person scheme: *Meads* paras. 326-330 and 445-447.

[244] The above noted OPCA arguments and tactics of Mr. Brown form the foundation of his proceeding and are illogical, incorrect and have no legal merit.

[245] The court in *Meads*, at paras. 624 and 625, stated:

a. the debate as to OPCA concepts and variations thereof is over as Provincial and Federal Courts of Appeal have uniformly upheld trial decisions in rejecting such concepts;

b. such OPCA arguments and concepts should be disposed of in as direct a manner as possible so that the rights of those targeted by the OPCA schemes are protected; and

c. in order to minimize misuse and waste of court and state resources and to signal that these schemes do not work and that the misuse of court procedures and processes in this manner will not be tolerated.

[246] Independent of the issues of abuse of process and vexatious litigation, this finding that Mr. Brown in this proceeding is an OPCA litigant does not determine whether the challenged legislation is unconstitutional. That must be determined on the basis of law: *B.(A.N.) v. Hancock*, 2013 ABQB 97 ("*B.(A.N.*")), para. 19.

Abuse of Process, Vexatious and Rule 20(26)

[247] The Supreme Court in *Toronto (City) v. C.U.P.E.*, Local 79, 2003 SCC 63 ("*Toronto*") paras. 35 and 37, stated that:

a. abuse of process at common law is a proceeding unfair to the point that it is contrary to the interests of justice;

b. courts have an inherent discretion to prevent an abuse; and

c. an abuse of process may be established where the proceeding is:

i. oppressive or vexatious; and

ii. violates fundamental principles of justice underlying the community sense of fair play and decency.

[248] The Supreme Court in *Toronto* held that the abuse of process doctrine:

a. evokes also the public interest in a fair and just trial process and the proper administration of justice; and

b. engages the inherent power of the court to prevent misuse of its procedure that would bring the administration of justice into disrepute.

[249] Canadian courts have applied the doctrine of abuse of process to preclude re-litigation in circumstances where the strict requirements of issue estoppel are not met but where allowing the litigation to proceed would violate principles such as judicial economy, consistency, finality and the integrity of the administration of justice: *Willow*, para. 102.

[250] Abuse of process under the British Columbia Rules or the court's inherent discretion, permits the court to prevent a claim proceeding which would violate principles of judicial economy, consistency, fidelity and the integrity of the administration of justice. A claim may be struck where it is a collateral attack on an administrative decision that is subject to appeal or judicial review. A claim may also be struck as an abuse of process where it is an attempt to re-litigate an issue already decided: *Willow*, para. 21. As determined, this proceeding is a direct collateral attack of the Support Order.

[251] The court in *Willow* held that the plaintiffs' claims in his subsequent civil action related to the fairness of the prior process, the basis for that decision and the actions taken by the defendants, should have been pursued by remedies available in the legislation and not in an action for damages. The court held that damage claims are not available as an alternative where a party has administrative law remedies available via judicial review. This applies equally to Mr. Brown's proceeding.

[252] The court in *Willow* concluded that the subsequent civil action for damages, instead of an appeal or judicial review, was an abuse of process and contained broad

allegations with insufficient material facts alleged. The claims as pled, did not establish a reasonable cause of action and were therefore bound to fail. The court therefore concluded that the damage claims constituted a prohibited collateral attack and must be struck as an abuse of process: *Willow*, paras. 40 to 48.

[253] The court in *Chutskoff Estate v. Bonora*, 2014 ABQB 389 ("*Chutskoff*"), held that a decision of another court cannot be varied except in the appropriate procedural context such as an appeal and that a collateral attack is frivolous and vexatious: paras. 97 and 98.

[254] The court in *Chutskoff* as to the concepts of vexatious and abuse of process held that:

a. vexatious is synonymous with abuse of process. A proceeding that is an abuse of process may be struck on that basis: para. 80;

b. the court has inherent jurisdiction to prevent abuse of court process and to strike out vexatious or abusive litigation that would be unfair to a party or would bring the administration of justice into disrepute: paras. 80 and 84;

c. the concept of abuse of process is a flexible tool to control misuse of court process. Abuse of process can arise in different contexts. There is no universal test or statement of law encompassing all of its examples: para. 84; and

d. the indicia of established stereotypic features of vexatious litigation include:

    i. collateral attack;

    ii. starting a proceeding to determine an issue already determined by a competent court;

iii. conducting a proceeding to circumvent the effect of a court order;

iv. hopeless proceedings which lack any reasonable expectation to provide relief;

v. seeking relief that is grossly disproportionate to any possible remedy;

vi. advancing incomprehensible arguments and allegation;

vii. failure to honour court ordered obligations such as failure to pay costs, failure to abide by court order or conduct intended to circumvent court orders; and

viii. advancing OPCA strategies: para. 92.

[255] The court in *Chutskoff* held that any of these indicia of vexatious litigation are a basis to classify a legal action as vexatious: para. 92.

[256] Abuse of process under Rule 20(26)(d) is broader than vexatious under Rule 20(26)(b) and includes circumstances where the court's process is used for an improper purpose which the court by its inherent jurisdiction may prevent. The court may strike pleadings, which attempt to use court process for an improper purpose: *Wood* paras. 17 and 47; *Acumar Consulting Engineers Ltd. v. Association of Professional Engineers and Geoscientists of British Columbia (APEGBC)*, 2014 BCSC 814, paras. 28 and 29; and *Chutskoff*, paras. 80-93, aff'd 2014 ABCA 444 (A.B.C.A.).

[257] The court in *Wood* held that a pleading is vexatious if it:

a. does not go to establishing the plaintiff's cause of action;

b. does not advance a claim known in law;

c. it is obvious the action cannot succeed; or

d. it would serve no useful purpose and would be a waste of the Court's time and public resources; or it is so confusing that it is difficult to understand what is pleaded: para. 16 and *Willow*, para. 20.

[258] The relevant British Columbia Rule in *Willow* stated that a pleading is vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance a claim known in law, if it is obvious that an action cannot succeed, or where it would serve no useful purpose and would waste the courts time and public resources. If a pleading is so confusing that it is difficult to understand what is being pled, it may also be frivolous or vexatious: *Willow*, para. 20.

[259] Collateral attack is one of the established stereotypic features of vexatious litigation, namely to determine an issue already determined or conducting a proceeding to circumvent the effect of a court order: *Wood*, para. 92; and *B.(A.N.),* para. 50.

[260] OPCA pleadings provide a helpful indication that a particular litigant has purposefully adopted vexatious pseudo-legal strategies intended to frustrate the operation of the court: *Meads*, para. 254.

Power To Strike

[261] The court may strike out pleadings which:

a. disclose no reasonable claim;

b. are vexatious; and

c. are an abuse of process: Rule 20(26)(a), (b) and (d).

[262] A court may strike claims or dismiss an action if it concludes that a pleading is frivolous, irrelevant, improper or an abuse of process: *Meads*, para. 587.

[263] The court has inherent jurisdiction to control its own process and prevent abuse thereof including striking the claim, the defence or the proceeding on that basis: *Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (O.N.C.A.) paras. 55 and 56, aff'd, 2002 SCC 63, [2002] 3 S.C.R. 307 and *Meads*, paras. 587 and 588.

No Reasonable Claim

[264] The court in *Willow* held that the test for striking a claim as disclosing no reasonable claim is contained in *Hunt v. Carey Canada Inc*., [1990] 2 S.C.R. 959 and. *R. v. Imperial Tobacco Canada LTD.*, 2011 SCC 42. The test is whether it is plain and obvious, assuming the facts pleaded are true, that the claim discloses no reasonable cause of action, has no reasonable prospect of success or whether the action is certain to fail. If there is a chance the plaintiffs might succeed, then they should not be driven from the judgment seat: *Willow*, para. 18.

[265] The court in *Wood* quotes *Willow* that the test for striking a claim as disclosing no reasonable claim is whether it is plain and obvious, assuming the facts pled or true, that the claim discloses no reasonable cause of action, has no reasonable prospect of success, or the action is certain to fail: *Wood*, para 47.

CONCLUSION

[266] The proposed amendments to the Notice of Application do not address or remedy the identified problems in this proceeding. The application seeking leave to amend accordingly is denied.

[267] This proceeding:

a. is a prohibited direct and collateral attack of the Support Order;

b. will be unsuccessful in seeking a declaration of constitutional invalidity of ss. 13, 14, 23 to 26 and 28 of the *MEA* or for the damages claimed, for all the reasons indicated;

c. is an abuse of process in its direct and collateral attack of the Support Order and in seeking to have the Yukon *MEA* enforcement provisions set aside in an attempt to render that Support Order meaningless;

d. has as its foundation numerous OPCA type theories which lack legal merit, are vexatious and constitute an abuse of process;

e. fails to plead the relevant facts in support of many of the claims presented;

f. will be unsuccessful at trial; and

g. should therefore be dismissed.

[268] This proceeding is dismissed.

COSTS

[269] Any party seeking costs shall serve and file written submissions in support of that cost claimed within 30 days from the date of this decision, including a draft bill of costs and outline of fees and disbursements claimed and a statement of the relevant law.

[270] Any written reply to the costs being claimed must be served and filed within 20 days after receipt of the written claim for costs, including any authorities relied upon.

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KANE J.