IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Herrington* v. *Herrington,* 2004 YKSC 27

Date: 20040408
Docket No.: S.C. No. 01-B0082
Registry: Whitehorse

Between:

JEANETTE MARY HERRINGTON

Petitioner

And

LYALL DOUGLAS HERRINGTON

Respondent

Before: Mr. Justice R.S. Veale

Appearances:

Jeanette Mary Herrington	On her own behalf
Lyall Douglas Herrington	On his own behalf
Lenore Morris	For Director of Maintenance Enforcement

REASONS FOR JUDGMENT

INTRODUCTION

[1] This case calls out for legislative amendments to the provisional orders procedure for variation of child support. It is not unique. It is yet another example of the inefficient use of judicial resources and delay that occur in applications for variation of support where the applicant spouse resides in one jurisdiction and the respondent spouse in another. The problem is that the applicant spouse presents one side of the story to a

judge who makes the provisional order without the benefit of the respondent spouse's evidence. It would be an unusual case that does not succeed at this stage.

[2] The provisional order and supporting evidence are then transmitted to another judge (the confirmation judge) who presides where the respondent spouse resides for confirmation or refusal. The confirmation judge has the advantage of seeing both sides of the story but not in the traditional sense that both parties appear and make submissions on conflicting evidence. In some cases, the confirmation judge hears only the new evidence of the respondent spouse without a response from the applicant spouse and renders the confirmation order which confirms, denies or varies the decision.

[3] In other cases, the confirmation judge sends the matter back to the provisional judge for further evidence, resulting in further delay. In the present case, the confirmation judge (B.C.) denied confirmation and returned the case to the provisional court (Y.T.) instructing that the respondent spouse give evidence by affidavit or by telephone. That was a wise decision as it stopped the transfer of the case back and forth between the two courts and permitted one judge to hear submissions and evidence from both parties.

[4] Fortunately, the parties in this case have accepted the jurisdiction of this court to make the final decision. This process has taken two years to decide an issue that would take one to two months if it had been heard by one judge hearing all the evidence in the first instance. The current procedure is a waste of judicial resources and a great frustration to the parties.

[5] I have set out sections 17 – 19 of the *Divorce Act,* R.S. 1985 (2nd Supp.), c. 3 in Endnote A. Section 17 deals with variation applications and sections 18 –19 deal with provisional and confirmation orders.

THE UNDISPUTED FACTS

[6] Mr. and Ms. Herrington were married on November 15, 1971, in White Rock, British Columbia.

[7] There were three children of the marriage:

(i) Lyall was born April 6, 1972. He died in a work accident in July 1992 at age 20. He turned 19 years of age on April 6, 1991.

(ii) Jason was born May 17, 1974. He turned 19 years of age on May 17, 1993.

(iii) Christine was born on December 28, 1978. She turned 19 years of age on December 28, 1997.

[8] They were divorced on March 31, 1982. Ms. Herrington was granted custody of the three children.

[9] Mr. Herrington was ordered to pay child support in the amount of $150.00 per child commencing April 1, 1982, until the children reached the age of 19 or became self-supporting, making a total monthly child support payment of $450.00.

[10] Mr. Herrington did not pay child support from April 1982 to August 1992. Payments made in the 1990's were generally court enforced as opposed to voluntary payments.

[11] He states that he sobered up in 1989. He started alcohol treatment and counselling in December 1989 and has been sober since that time.

[12] In July 1990, Mr. Herrington filed an application in Alberta to reduce child support to $50.00 per child per month and to rescind outstanding arrears then in the amount of approximately $43,200.00 as of June 30, 1990. That application was dismissed. The dismissal was not appealed.

[13] The present application by Mr. Herrington was filed on March 4, 2002, when Jason and Christine were long since self-supporting. He had counsel for the provisional application.

[14] The arrears of child support are $38,939.58 as of February 1, 2004. This number does not include some interest calculations that occurred when Mr. Herrington briefly returned to British Columbia. The Yukon does not add interest to arrears.

[15] In 1993 and 1994, Mr. Herrington attended a college in the Northwest Territories to become an addictions counsellor. During that time, he received an education subsidy from Employment Insurance and he worked part-time in the summers.

[16] From January to April 1995, he attended Crossroads Treatment Centre (an alcohol treatment centre) in Whitehorse as a client and then for a training practicum.

[17] He worked as an addictions counsellor from August 1995 to May 1996 in Atlin, British Columbia for $14,547.00.

[18] In 1996, Mr. Herrington prepared an agreement proposing to pay all outstanding arrears by way of a minimum monthly payment of $150.00 on the condition that there was no enforcement by Maintenance Enforcement. Ms. Herrington did not sign it.

[19] He then worked for the Government of Yukon from October 1996 to June 1997, where he earned $23,215.57. In July 1997, he earned $2,078.00 with the Government of Yukon.

[20] He states that he did not have employment in 1998, 1999 and 2000 but did odd jobs and received employment insurance. His Canada Pension Plan Contribution statement indicates no pensionable earnings for 1998 to 2002. Interestingly, he paid $5,615.00 in child support in 1998, all deducted from employment insurance.

[21] He obtained full time employment as an addictions counsellor in 2001 and earned $26,623.51 before the centre closed. He earned an additional $3,797.61 as a counsellor in 2001.

[22] He received employment insurance of $551.00 bi-weekly after family order deduction by the Government of Canada in 2001.

[23] He expected to be employed in the spring of 2002 at $40,000.00 per annum as an addictions counsellor. He is presently employed by the Grey Mountain Housing Society as a counsellor for $38,000.00 per annum.

DISPUTED ALLEGATIONS OF MR. HERRINGTON

[24] At the provisional hearing in this court, Mr. Herrington made the following allegations:

1. that at the time the court order was made in 1982 he was a chronic alcoholic living on the streets with little or no income and no ability to pay anything.
2. that he never agreed to pay $450.00 per month child support and he had no idea why the court ordered him to pay that amount.
3. that he has little recollection of the circumstances of his life from 1982 to 1989.
4. that he worked sporadically from 1982 to 1992.
5. that he was not aware when the children actually became self-supporting, but he believed they all left the family home before the age of 19 years.
6. by way of his daughter Christine's affidavit, that she did not recall directly benefiting from any child support her mother received, except on one occasion when she gave her $50.00.
7. by way of his daughter Christine's affidavit, that Ms. Herrington used the child support money to purchase alcohol and continues to do so.

THE PROVISIONAL ORDER

[25] The chambers judge heard only the evidence of Mr. Herrington. He made a provisional order on March 27, 2002, cancelling all arrears, except for $8,000.00, suspending payments for six months and ordering the $8,000.00 arrears to be paid at the rate of $200.00 per month.

[26] The chambers judge accepted Mr. Herrington's claims that his addiction prevented him from making child support payments from 1982 to 1991, that he never agreed to the amount in question and he ended up living on the streets and in shelters.

[27] The chambers judge was impressed with the affidavit of the daughter. He concluded that to some extent she was supporting Ms. Herrington although he had no doubt that Ms. Herrington contributed to the expenses of raising the children.

[28] However, the chambers judge found at paragraph 13:

> … It is clear that on the basis of the minimal income of the applicant that the obligations imposed upon him, in hindsight, related to his income, were somewhat excessive. Other changes have occurred in that his children left the petitioner's care early in life, before their 19th birthdays and that rather than the petitioner using whatever money was received to support the children, she took money from the children to support herself and her habit or her illness.

[29] The precise finding of the chambers judge on the issue of material change of circumstances is set out in paragraph 16:

> It is my finding that there is a material change of circumstances when the total lack of income extends for an extensive period. There are further material changes of circumstance in the passing of the Federal Child Support Guidelines, in his recovery, his rehabilitation to the point where he is becoming self-sustaining and his strong desire to reunite with his children.

[30] The chambers judge concluded at paragraph 20:

> … the history of this matter, the efforts of the applicant to overcome his addiction, the fact that the petitioner no longer needs the money to support the children, as well as the evidence that indicates that the arrears are overstated persuade me that I should allow the application retroactively to the extent of reducing the arrears to $8,000.

[31] There is no indication as to how the judge determined the reduction from $43,023.00 to $8,000.00. However, $8,000.00 represents approximately 18 months of support payments at $450.00 per month.

[32] The chambers judge did not refer to s. 17(4) of the *Divorce Act,* which requires the change in circumstances to have “occurred since the making of the child support order or the last variation order made in respect of that order”.

[33] I note that Mr. Herrington did refer to the fact that he had gone back to court in Alberta in 1990 seeking a reduction of child support and cancellation of arrears of $43,200.00. His application was dismissed.

THE CONFIRMATION ORDER

[34] The confirmation application was not heard until November 20, 2002, in Salmon Arm, British Columbia. Dohm, A.C.J., ascertained that Ms. Herrington did not agree with the provisional order and that she wished to be heard either in person or by affidavit.

[35] Thus, the provisional order was not confirmed and the application was returned to Whitehorse for another hearing. For reasons that are unexplained, this matter was not brought on for hearing in this court until December 16, 2003. Both Mr. and Ms. Herrington were self-represented on January 27, 2004 when I ordered that Ms. Herrington file an affidavit by February 20, 2004, and Mr. Herrington reply to it by February 26, 2004. The final application was heard March 2, 2004.

THE RESPONSE OF MS. HERRINGTON

[36] Ms. Herrington filed an affidavit and appeared at the hearing by telephone and made submissions. Mr. Herrington appeared as well and did not file an affidavit in response to Ms. Herrington's new facts but gave his evidence under oath and made submissions.

[37] Pursuant to s. 5(1)(a) of the *Divorce* Act, both parties consented to the jurisdiction of this court. I have therefore proceeded under s. 17(1)(a) of the *Divorce Act,* to make a final order rather than following the provisional and confirmation procedure set out in sections 18 and 19.

[38] Counsel for the Director of Maintenance Enforcement appeared as an interested party to assist the court.

[39] Ms. Herrington presented the following evidence that was uncontradicted by Mr. Herrington:

1. Mr. Herrington knew generally when the children became self-supporting; he attended Lyall's graduation in 1990 and in 1991 refused to help Lyall continue his education; he met Jason when he moved to Whitehorse in 1994 – 1995; he attended Christine's graduation in Salmon Arm in 1997. I have concluded that the children were not self-supporting and remained in Ms. Herrington's care and control until the age of 19 years.
2. Mr. Herrington knew or ought to have known about the child support in the amount of $450.00 per month because his lawyer proposed it

in a letter to Ms. Herrington's counsel dated September 17, 1981. The correspondence indicates he was employed at the time.

3. In February 1986, Mr. Herrington filed an affidavit to show cause why he should not be cited for contempt for failure to comply with the 1982 child support order, which was in arrears in the amount of 21,400.00 as of April 1, 1986. Contrary to his assertion in this court that he was a chronic alcoholic living on the streets, he swore in 1986 that he had been a student at the Columbia Academy of Broadcasting in Calgary from September 1983 to February 1986. On graduation, he was optimistic about finding employment.

4. He had a clear recollection of events in 1986 as he was living with a girlfriend and had a debt of $31,000.00 which included $15,000.00 in student loans. He was also able to describe his work from 1983 to November 1989, when he began residential treatment for alcoholism.

5. His statement that he worked sporadically from 1982 to 1992 was somewhat misleading when, in fact, he was attending school from 1983 to 1986. He was also supported by a girlfriend and was able to take the children on a houseboat trip for one week on Shuswap Lake in the summer of 1986.

6. A dispute between Ms. Herrington and her daughter occurred after Mr. Herrington's obligation to pay support for the daughter had terminated. This explains the daughter's bitterness towards Ms.

Herrington that no doubt led to the daughter's affidavit in this proceeding. However, I do not accept the allegation that Ms. Herrington did not apply what little support money she received to the children.

7. Mr. Herrington was not involved in the lives of the children until the 1990's and even then on a sporadic basis. Ms. Herrington was required to meet all the financial and emotional needs of the children including unexpected medical expenses, funeral expenses for Lyall in the amount of $6,465.95, pregnancy expenses for Christine and the expenses of a granddaughter.

[40] I find that the evidence of Ms. Herrington is to be preferred over that of Mr. Herrington as it was supported by documentation and uncontradicted by Mr. Herrington.

ANALYSIS

[41] The starting point for this application to cancel very significant arrears is s. 17(4) of the *Divorce Act*. The question to be asked is whether there has been a significant change in the circumstances of Mr. Herrington after the Court of Queen's Bench in Alberta refused to vary the award in 1990. The child support arrears stood at $43,200.00 on June 30, 1990. This court has no jurisdiction to go behind the 1990 order.

[42] Has there been a significant change in circumstances for Mr. Herrington since the 1990 order? In my view the most significant change has been a positive one in that he sobered up in 1989, was treated successfully and has remained sober ever since. This situation existed at the time of the 1990 order so there has not been a change in

circumstances not contemplated at the time of the 1990 order. (See *Willick* v. *Willick,* [1994] 3 S.C.R. 670 at para. 21.) It should also be kept in mind that Mr. Herrington's support obligation was declining in the 1990's as his children reached the age of 19. In April 1991, his monthly payment was reduced to $300.00. In May 1993, it was reduced to $150.00 per month. In January 1998, his child support obligations ended except for the issue of arrears.

[43] Mr. Herrington's submission is that he should not have to pay child support during the periods of time he was not working or earning enough to pay the full amount of support. To use his own words:

> My intent all along has been to pay. But I haven't been in a position to pay. That's my only … ever been my only argument. If I'm making large money then I don't mind paying the full amount. If I'm unemployed or at times when I was in the hospital or in a treatment centre I had no income, Sir. And I don't agree with being running up a debt when I have an inability to pay.

[44] There is no doubt that Mr. Herrington's income varied considerably during the 1990's. However, a negative change in income that is not long lasting is not a significant change in circumstances requiring a variation of child support. (See *Willick* v. *Willick, supra,* para. 21.) There was no long lasting period of unemployment except arguably the years 1999 and 2000. However, at that time, his obligation to pay monthly child support had terminated and the issue to be addressed is whether arrears, which do not attract interest, should be cancelled for the two year time period. In my view it should not result in termination of arrears, but rather a suspension of payment of arrears. That, in effect, is what has happened because he did not pay any arrears in 1999 and 2000.

[45] It may be argued that the introduction of the Child Support Guidelines on April 1, 1998 is an automatic change in circumstances as set out in s. 14 of the Federal Child Support Guidelines. While this may be the case, it does not automatically lead to a variation, particularly when Mr. Herrington is able to work and actually earns $38,000.00 per year.

[46] It could be argued that the children have long since left the care and control of Ms. Herrington and hence they will no longer benefit from the payment of the arrears. That may be so, but that argument has been addressed by the British Columbia Court of Appeal in *Berntzen* v. *Berntzen*, [1982] B.C.J. No. 121 (B.C.C.A.) at paragraphs 11 – 13 and approved again in *Victory* v. *Victory*, [1988] B.C.J. No. 564 (B.C.C.A.). In *Berntzen,* the father was seeking the cancellation of arrears during a period when he suffered from alcoholism. The court said at paragraphs 12 and 13:

> What remains then is the problem of the accumulated arrears. It seems apparent from the material which was before the Chambers Judge and to which we have been referred that the respondent has, by drawing on her capital and her income, met the requirements of her children in terms of their maintenance and has seen to their education. Because of the difficulties of alcoholism which were suffered by the appellant, he has not met those obligations.
>
> I think in these circumstances it would be unfair to continue the situation where a party not obligated to do so has met obligations to the children and relieved the party who has that obligation from his responsibility. This is not a case, in my view, where it can be said that there had been a hoarding of maintenance on the part of the respondent. It is not her maintenance that is being dealt with here, but rather the obligation of the appellant to maintain the two children of the marriage during the relevant period.

[47] The fact that the support obligation has ended does not relieve the paying spouse of his obligation. To do so, would result in a windfall to Mr. Herrington and a significant loss to Ms. Herrington.

[48] As Ms. Herrington stated, the payments of the arrears are her pension. It has already been established in *Richardson* v. *Richardson*, [1987] 1 S.C.R. 857, at paragraph 14, that the fact a spouse indirectly benefits from the child's support provides no basis to decrease the quantum of child support. Ms. Herrington no doubt benefits from the payment of child support arrears. However, she is simply recovering her losses from supporting the children when Mr. Herrington would not. I do not accept the argument that once the children no longer directly benefit from the payment of child support arrears, they should be forgiven. Applying that principle would encourage payor spouses who do not fulfill their child support obligations when the children need it the most. In my view, the payment of child support arrears in this case can only be reduced when the payor spouse has suffered a significant long-lasting change of circumstances affecting his ability to pay.

[49] It has been suggested that spousal misconduct in not applying child support at all for the benefit of the children could result in a reduction or cancellation of arrears. See *Turecki* v. *Turecki*, (B.C.C.A.) [1989] B.C.J. No. 267. In *Turecki,* the mother had deliberately prevented the child from receiving support by not informing the payor spouse of her whereabouts. That is not the case here and, in any event, I have not found any spousal misconduct on the part of Ms. Herrington regarding the application of child support. I do not accept the retrospective allegations of a daughter who has had a falling out with her mother.

[50] Generally speaking, courts do not require the recipient spouse to account for expenditures of child support. If serious allegations about a recipient spouse not applying child support to the children were accepted, then a court would consider a change in custody. Courts have no ability to play a supervisory role for the payor spouse. I have been unable to find any precedent for this view. I suspect it is because courts usually consider such evidence irrelevant and inadmissible, unless it is the kind of evidence that would affect a custody order.

[51] Finally, the words of Huddart, Co. Ct. J., as she then was, in *Barton* v. *Barton,* [1985] B.C.J. No. 776 (B.C. Co. Ct.) at para. 22, are worth repeating:

> If the courts are to respect the principle that parents share equally the responsibility for the care of their children, no result should be permitted that gives any appearance of favouring a parent whose efforts to fulfil that responsibility have been less than those of the other who shoulders it by dint of energetic and sustained application of his or her resources.

[52] For all of the above reasons, the application to vary the arrears of Mr. Herrington in the amount of $38,939.58 is dismissed. Mr. Herrington also sought the removal of the federal garnishee order. I see no reason to make such an order, as Ms. Herrington should have the benefit of any tax credit received from the federal government.

[53] The final issue is to determine what monthly payment should be made on the arrears. Mr. Herrington is 56 years old. There is some doubt as to whether the arrears will be paid in his normal working life. That would suggest that the guideline amount of $609.00 monthly would be the appropriate payment. However, as I am not making a variation order, the guidelines need not apply as set out in s. 17(6.1) of the *Divorce Act*.

[54] Mr. Herrington has been paying $200.00 per month which is clearly not an adequate payment. I find it appropriate to require payment of $450.00 per month, as ordered by the court in 1982. This would result in Ms. Herrington being paid the arrears of child support over a period of approximately seven years.

[55] I order that Mr. Herrington pay the arrears of $38,939.58 by way of monthly payments of $450.00 commencing May 1, 2004 and each month thereafter until paid.

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VEALE J.

Endnote A

Variation, Rescission or Suspension of Orders
17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

(a) a support order or any provision thereof on application by either or both former spouses; or
(b) a custody order or any provision thereof on application by either or both former spouses or by any other person.

Application by other person
(2) A person, other than a former spouse, may not make an application under paragraph (1)(b) without leave of the court.

Terms and conditions
(3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

Factors for child support order
(4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Factors for spousal support order
(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

Factors for custody order
(5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

Conduct
(6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

Guidelines apply
(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

Court may take agreement, etc., into account
(6.2) Notwithstanding subsection (6.1), in making a variation order in respect of a child support order, a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied
(a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
(b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

Reasons

(6.3) Where the court awards, pursuant to subsection (6.2), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall record its reasons for having done so.

Consent orders

(6.4) Notwithstanding subsection (6.1), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines on the consent of both spouses if it is satisfied that reasonable arrangements have been made for the support of the child to whom the order relates.

Reasonable arrangements

(6.5) For the purposes of subsection (6.4), in determining whether reasonable arrangements have been made for the support of a child, the court shall have regard to the applicable guidelines. However, the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the applicable guidelines.

Objectives of variation order varying spousal support order

(7) A variation order varying a spousal support order should

(a) Recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
(b) Apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
(c) Relieve any economic hardship of the former spouses arising from the breakdown of the marriage
(d) In so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

(8) [Repealed, 1997, c. 1, s. 5]

Maximum contact

(9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interest of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.

Limitation

(10) Notwithstanding subsection (1), where a spousal support order provides for support for a definite period or until a specified event occurs, a court may not, on an application instituted after the expiration of that period or the occurrence of the event, make a variation order for the purpose of resuming that support unless the court is satisfied that

(a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (4.1) that is related to the marriage; and
(b) the changed circumstances, had they existed at the time of the making of the spousal support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

Copy of order

(11) Where a court makes a variation order in respect of a support order or a custody order made by another court, it shall send a copy of the variation order, certified by a judge or officer of the court, to that other court.

Variation order by affidavit, etc.

17.1 Where both former spouses are ordinarily resident in different provinces, a court of competent jurisdiction may, in accordance with any applicable rules of the court, make a variation order pursuant to subsection 17(1) on the basis of the submissions of the former spouses, whether presented orally before the court or by means of affidavits or any means of telecommunication, if both former spouses consent thereto.

Provisional orders

Definition

18 (1) In this section and section 19, “Attorney General”, in respect of a province, means

(a) for Yukon, the member of the Executive Council of Yukon designated by the Commissioner of Yukon,
(b) for the Northwest Territories, the member of the Council of the Northwest Territories designated by the Commissioner of the Northwest Territories,
(b.1) for Nunavut, the member of the Executive Council of Nunavut designated by the Commissioner of Nunavut, and
(c) for the other provinces, the Attorney General of the province.

And includes any person authorized in writing by the member or Attorney General to act for the member or Attorney General in the performance of a function under this section or section 19;

“Provisional order” means an order made pursuant to subsection (2).

Provisional order

(2) Notwithstanding paragraph 5(1(a) and subsection 17(1), where an application is made to a court in a province for a variation order in respect of a support order and

(a) the respondent in the application is ordinarily resident in another province and has not accepted the jurisdiction of the court, or both former spouses have not consented to the application of section 17.1 in respect of the matter, and
(b) in the circumstances of the case, the court is satisfied that the issues can be adequately determined by proceeding under this section and section 19,

the court shall make a variation order with or without notice to and in the absence of the respondent, but such order is provisional only and has no legal effect until it is confirmed in a proceeding under section 19 and, where so confirmed, it has legal effect in accordance with the terms of the order confirming it.

Transmission

(3) Where a court in a province makes a provisional order, it shall send to the Attorney General for the province

(a) three copies of the provisional order certified by a judge or officer of the court;
(b) a certified or sworn document setting out or summarizing the evidence given to the court; and
(c) a statement giving any available information respecting the identification, location, income and assets of the respondent.

Idem

(4) On receipt of the documents referred to in subsection (3), the Attorney General shall send the documents to the Attorney General for the province in which the respondent is ordinarily resident.

Further evidence

(5) Where, during a proceeding under section 19, a court in a province remits the matter back for further evidence to the court that made the provisional order, the court that made the order shall, after giving notice to the applicant, receive further evidence.

Transmission

(6) Where evidence is received under subsection (5), the court that received the evidence shall forward to the court that remitted the matter back a certified or sworn document setting out or summarizing the evidence together with such recommendations as the court that received the evidence considers appropriate.

Transmission

19.(1) On receipt of any documents sent pursuant to subsection 18(4), the Attorney General for the province in which the respondent is ordinarily resident shall send the documents to a court in the province.

Procedure

(2) Subject to subsection (3), where documents have been sent to a court pursuant to subsection (1), the court shall serve on the respondent a copy of the documents and a notice of a hearing respecting confirmation of the provisional order and shall proceed with the hearing, in the absence of the applicant, taking into consideration the certified or sworn document setting out or summarizing the evidence given to the court that made the provisional order.

Return to Attorney General

(3) Where documents have been sent to a court pursuant to subsection (1) and the respondent apparently is outside the province and is not likely to return, the court shall send the documents to the Attorney General for that province, together with any available information respecting the location and circumstances of the respondent.

Idem

(4) On receipt of any documents and information sent pursuant to subsection (3), the Attorney General shall send the documents and information to the Attorney General for the province of the court that made the provisional order.

Right of Respondent

(5) In a proceeding under this section, the respondent may raise any matter that might have been raised before the court that made the provisional order.

Further evidence

(6) Where, in a proceeding under this section, the respondent satisfied the court that for the purpose of taking further evidence or for any other purpose it is necessary to remit the matter back to the court that made the provisional order, the court may so remit the matter and adjourn the proceeding for that purpose.

Order of confirmation or refusal

(7) Subject to subsection (7.1), at the conclusion of a proceeding under this section, the court shall make an order

(a) confirming the provisional order without variation;
(b) confirming the provisional order with variation; or
(c) refusing confirmation of the provisional order.

Guidelines apply

(7.1) A court making an order under subsection (7) in respect of a child support order shall do so in accordance with the applicable guidelines.

Further evidence

(8) The court, before making an order confirming the provisional order with variation or an order refusing confirmation of the provisional order, shall decide whether to remit the matter back for further evidence to the court that made the provisional order.

Interim order for support of children

(9) Where a court remits a matter pursuant to this section in relation to a child support order, the court may, pending the making of an order under subsection (7), make an interim order in accordance with the applicable guidelines requiring a spouse to pay for the support of any or all children of the marriage.

Interim order for support of spouse

(9.1) Where a court remits a matter pursuant to this section in relation to a spousal support order, the court may make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the making of an order under subsection (7).

Terms and conditions

(10) The court may make an order under subsection (9) or (9.1) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Provisions applicable

(11) Subsections 17(4), (4.1) and (6) to (7) apply, with such modification as the circumstances require, in respect of an order made under subsection (9) or (9.1) as if it were a variation order referred to in those subsections.

Report and filing

(12) On making an order under subsection (7), the court in a province shall

(a) send a copy of the order, certified by a judge or officer of the court, to the Attorney General for that province, to the court that made the provisional order and, where that court is not the court that made the support order in respect of which the provisional order was made, to the court that made the support order;
(b) where an order is made confirming the provisional order with or without variation, file the order in the court; and
(c) where an order is made confirming the provisional order with variation or refusing confirmation of the provisional order, give written reasons to the Attorney General for that province and to the court that made the provisional order.