SUPREME COURT OF YUKON

Citation: *M.P.T.* v. *R.W.T.*, 2008 YKSC 94

Date: 20081208
S.C. No. 06-D3924
Registry: Whitehorse

Between:

M.P.T.

Petitioner

And

R.W.T.

Respondent

Before: Mr. Justice L.F. Gower

Appearances:

Peter Morawsky	Counsel for the Petitioner
Christina Brobby	Counsel for the Respondent
Kathleen Kinchen	Child Advocate

REASONS FOR JUDGMENT

INTRODUCTION

[1] The respondent father has applied for variation of a Consent Corollary Relief Order made on June 16, 2008 ("CCRO"), principally with respect to child support, following a change in the amount of time that the two children currently reside with each parent. The older child, B., now lives with the father full time, and the younger child, S., shares her residency equally between the parties. The petitioner mother consents, on certain conditions to variations to the CCRO to reflect the current residency of the children, but

disagrees with the amount of consequential child support which should be payable. She also disputes the father's claim for special costs on this application.

ISSUES

1. Which provisions of the *Child Support Guidelines* govern these facts?

2. Should I look to the most recent evidence of the respective incomes of the parties to determine the child support payable, or the incomes referred to in the CCRO, just over five months ago?

3. What amount of child support is payable?

4. If the father is successful in whole or in part on the application, should special costs be payable by the mother?

SUMMARY OF FACTS

[2] The two children in the matter are B., age 13, and S., age seven. The father and mother began living together in February 1993, married in December 2002, and ultimately separated in February 2007. The mother is presently 36 years old and the father is 34. Until recently, the mother was self-employed as a consultant in the professional coaching and facilitation field. As I understand it, she worked in that capacity in 2006, 2007 and for part of 2008. On or about September 2, 2008, she took a term position as an administrative assistant with the Government of Canada, Department of Fisheries and Oceans. Her term position with Canada ends January 11, 2009. If it is renewed, the mother will continue working there. If it is not, the mother has deposed that she will seek to get her consulting business going again, or obtain other employment, or both.

[3] The father has worked for the Yukon Government, Department of Highways and Public Works, for about four and a half years. He is presently stationed in Whitehorse in the position of Heavy Equipment Operator II.

[4] Pursuant to the CCRO, the parties share joint custody of the children, but they were to reside primarily with the mother. The father was to have access every second weekend, plus half of each school holiday, as well as at other specified times. The father was to pay child support in the amount of $923 per month for both children until June 30, 2009, based upon an agreement that his income for child support purposes was $61,637. The mother's income for the purposes of assessing the children's special and extraordinary expenses was agreed upon at $52,414. The parties further agreed that the child support payable by the father would be varied according to the *Child Support Guidelines* on July 1st each year, based upon his previous year's income and annual, mutual financial disclosure . The father also agreed to pay lump sum spousal support to the mother in amount of $7,500. The mother was entitled to retain the matrimonial home upon paying the father $95,000, less the set-off for the lump sum spousal support.

[5] Curiously, an incident occurred on June 8, 2008 which resulted in the child B. residing on a full-time basis with the father and his current partner. Apparently the parties did not anticipate that change of affairs would be long lasting, as their respective counsel agreed to and filed the CCRO only a few days later, on June 16th . However, B.'s intention to reside with her father has remained to date.

[6] Further, as a result of B. residing full-time with the father, S. has expressed a desire to reside equally between the homes of the parties in order that she can spend more time

with her sister. I gather that arrangement has been agreed to by the parties and has recently been put into place.

[7] As a result of the change in B.'s living arrangements, the father's counsel wrote to the mother's counsel on or about July 15, 2008 seeking a variation in the amount of the child support payable by him (although this assertion was not supported by a copy of the correspondence, it was undisputed by the mother). A child advocate was appointed for both children, has interviewed them, and is generally supportive of the changes in the residency of the children. On September 23, 2008, the child advocate wrote to the parties' counsel respecting the change in B.'s residency status and raising the issue of the consequent necessary change to the child support payable.

[8] The CCRO was registered with the Maintenance Enforcement Program ("MEP"). On October 2, 2008, the father's counsel wrote to the mother's counsel stating that she understood that the latter had instructions to write to MEP to take no further enforcement action against the father and to hold any funds in trust pending a further court order or agreement between the parties. An email from MEP indicates that neither the mother nor her counsel had any contact with that office for any reason as of October 22, 2008.

ANALYSIS

1. Which provisions of the *Child Support Guidelines* govern these facts?

[9] This is an application to vary a child support order under s. 17 of the *Divorce Act*, R.S.C., 1985, c.3 (2nd Supp.). Before making such an order I must satisfy myself that there has been a change of circumstances since the making of the last child support order, which was the CCRO. Counsel agree that the change in the children's living

arrangements constitutes such a change of circumstances. Section 17(6.1) requires me to make the variation order in accordance with the *Child Support Guidelines*.

[10] The three general provisions of the *Child Support Guidelines* referred to by counsel on this application were the “presumptive rule” in s. 3, “split custody” in s. 8 and “shared custody” in s. 9.

[11] Section 3(1) generally specifies that the amount of child support for a child under the age of majority is the amount set out in the table, which in turn depends on the number of children involved and the income of the payor spouse.

[12] Section 8 states:

> “*Split custody*
> Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.”

[13] Initially, counsel for the mother submitted in his filed Response to the Notice of Application, as well as in his initial oral submissions at the hearing, that the matter be treated as one of split custody. However, after some further discussion, the mother’s counsel stated that the child support payable for B. should be determined under s. 3 of the *Guidelines* and the support payable for S. should be decided under the shared custody provisions in s. 9. That would appear to be the correct approach, since the split custody provision in s. 8 seems to apply only where there are two or more children involved and each parent has custody (or primary residency) of one or more of those children. In that scenario, the amount that each parent would notionally pay to the other for child support under the table is set-off against each other, such that the parent paying the greater

amount pays “the difference” to the other. Here, one child primarily resides with one parent, while the other splits her residency time equally between both parents.

[14] Shared custody, in s. 9 of the *Guidelines*, is a form of what was known as “joint physical custody”, where a child resides with one parent for 40% of the time or more, and the balance of the time with the other parent. In other words, the child very roughly shares their time equally with each parent. In particular, s. 9 states:

> “*Shared custody*
>
> Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
>
> (a) the amounts set out in the applicable tables for each of the spouses;
>
> (b) the increased costs of shared custody arrangements; and
>
> (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.”

[15] Section 9(a) directs the court to take into account the amounts of child support notionally payable by each of the parents according to the table. This part of the analysis results in a simple set-off as used for split custody under s. 8 of the *Guidelines*, and is generally referred to in J. MacDonald and A. Wilton, *Child Support Guidelines Laws and Practice*, 2nd ed. looseleaf (Scarborough: Thomson Carswell, 2008), at p. 9-4, as the preferred starting point for a section 9 analysis. However, the Supreme Court of Canada decision in *Contino* v. *Leonelli-Contino*, 2005 SCC 63, directs that all three of the factors set out in ss. 9 (a) to (c) must be considered in determining the resulting child support order. The majority decision of Bastarache J. was summarized by B.M. Joyce J. in *Franke*

v. *Franke*, 2008 BCSC 1145, at para. 30. I can do no better than to repeat the relevant portions of that summary:

> "* There is no presumption in favour of awarding the amount that would be payable under s. 3 of the *Guidelines* and no presumption in favour of reducing the amount downward from the *Guidelines* (para. 31).
>
> * The court should not use a formulaic approach to the application of s. 9 of the *Guidelines*. The specific language of the section warrants emphasis on flexibility and fairness. The weight of each factor will vary according to the particular facts of each case (para. 39).
>
> * Section 9(a) requires the court to consider the amounts set out in the applicable tables for each of the spouses. A simple set-off approach is a useful starting point, especially in cases where there is limited information and the incomes of the parties are not widely divergent but caution should be exercised against a rigid application of the set-off. The set-off amount must be followed by an examination of the continuing ability of the recipient parent to meet the needs of the child and *full consideration* must be given to the last two factors (paras. 41, 44, and 49).
>
> …
>
> * In analyzing s. 9(c), the court should keep in mind the objectives of the *Guidelines*, which require a fair standard of support for the child and fair contributions from both parents. What is of particular concern under s. 9(*c*) is the standard of living of the child in each household and the ability of each parent to absorb the costs required to maintain the appropriate standard of living in each circumstance (para. 68).
>
> * Some factors to consider under s. 9(*c*) are the actual spending patterns of the parents; the ability of each parent to bear the increased costs of shared custody (includes consideration of assets, liabilities, income levels, and income disparities); and, standard of living for the child in each household. (para. 69).
>
> * Given the broad discretion of the court conferred by s. 9(c), a claim by a parent for special or extraordinary expenses falling

> within s. 7 of the *Guidelines* can be examined directly in s. 9 with consideration of all the other factors (para. 71)." (my emphasis)

[16] I have omitted Joyce J.'s reference to the discussion in *Contino* about s. 9(b), as counsel for the mother in this application concedes that the provision is not at issue. Thus, I take it that the mother does not suggest there has been an increase in the parties' costs because of the shared custody arrangement for S. Rather, the mother's counsel submits that, after consideration of the initial set-off, I should focus on the evidence of the conditions, means, needs and other circumstances of each of the parents, found in their respective affidavits and financial statements.

[17] Counsel for the father seemed somewhat surprised by the mother's counsel's emphasis on s. 9(c) of the *Guidelines* in response to this application, as no previous notice had been given by him that s. 9(c) was at issue. Indeed, the mother's counsel initially focussed on the split custody provision in s. 8, which involves nothing more than a simple set-off. Had she known s. 9(c) would be argued, the father's counsel said that she would have presented further evidence on the point. She submitted that the evidence of the conditions, means, needs and other circumstances of each parent and of the children is insufficient in this case and that consequently I should focus my analysis on the simple set-off.

2. Should I look to the most recent evidence of the respective incomes of the parties to determine the child support payable, or the incomes referred to in the CCRO, just over five months ago?

[18] The next question I must decide before making the child support variation is whether to use the parties' historical income information, or the most current information. While the CCRO is less than six months old, it refers to incomes of the parties which now

appear to be out of date. The father's income was there stated to be $61,637 for the year ending June 30, 2009, and the mother's income for the same period was stated to be $52,414.

[19] The most recent information on the father's income appears as a Yukon Government pay statement dated October 22, 2008, which is attached to his financial statement. That document indicates that the father is paid on an hourly basis as a Heavy Equipment Operator II, which results in the father earning periodic significant amounts for overtime. The annual pay period for the Yukon Government follows the calendar year. Therefore, it is difficult to forecast precisely what the father might earn in total in 2008, because there are still about two months left in which he may earn further overtime income. However, as at October 22, 2008, the father's year to date income was $86,305.65. I gather from the Yukon Government website that there are five further pay periods in 2008 following the one ending October 22nd. As I interpret his pay statement, the father's basic earnings for each pay period would seem to be $2,211.20. That sum, multiplied by five additional pay periods would bring the father's total income for 2008 to $97,361.65, which would be inclusive of all additional allowances, but not inclusive any additional overtime hours.

[20] I note that s. 2 (3) of the *Guidelines* states:

> "Where, for the purposes of these Guidelines, any amount is determined on the basis of specified information, the most current information must be used. " (my emphasis)

Following that direction, I will rely on the father's most recent pay statement and find that his income for 2008 will be $97,361.65.

[21] I would take a similar approach with respect to the mother's current income, however the father's counsel has submitted that I should consider an imputation of income against the mother under s. 19 of the *Guidelines*. The implicit basis put forward for imputation in this case was that the mother is currently "intentionally under-employed" and that therefore s. 19(1)(a) applies.

[22] The mother's financial statement includes a Government of Canada pay statement confirming that her current gross annual income would be $38,692, assuming she continues to be employed in that position for a period of 12 months. The mother has sworn that she chose to stop working as a self employed consultant because of the stress of the divorce and apparently began the term position with the Government of Canada on or about September 2, 2008. That term position will end January 12, 2009 and if it is not renewed, the mother has said that she would seek to get her consulting business going again, or take other employment, or both.

[23] It is important to note that the mother earned significantly greater amounts of income in 2007 and 2008, which I understand to be from her consulting business. Last year she earned a total of $52,414 and the previous year she earned $50,547.11. The father's counsel submits that the stress of the divorce is an insufficient reason for the mother to have stopped her more lucrative form of employment and that stress is commonly a factor affecting both parties in a divorce, since there are often mutual financial and emotional costs. I agree. The mother has put forward no objective evidence, medical or otherwise, to support her assertion that she was unable to continue with her more lucrative self employment. In my view, she had an onus to do so.

[24] In *Bennett* v. *Stoppler*, 2003 ABQB 723, the issue before the court was the potential division of matrimonial property. In that case the parties were each 55 years of age and had begun living together in 1997. They purchased a matrimonial home on an agricultural quarter section and began to build a farming operation. The husband concurrently operated an oilfield consulting business, working about 150 days each year in that business and about three to four months a year on the couple's farm. At the time of the application, he stated that he had not been employed recently "in part because of situational stress surrounding the disintegration of the relationship" (para. 10). Veit J., commented on the point at para. 13:

> "Mr. Stoppler has some health problems that are situational stress related to these proceedings. Nonetheless, he has not produced any evidence suggesting that this stress cannot be sufficiently relieved by medication, counselling or other treatment, to allow him to resume the work pattern which has been established throughout his life."

In my view, those comments are applicable to the case at bar.

[25] Consequently, I agree that the mother is currently intentionally under-employed and I impute her gross annual income for 2008 to be $50,000.

3. What amount of child support is payable?

[26] The next step in the overall analysis is to determine the amount of child support payable by the mother to the father for B., as she is now residing with him full time. Here, the mother's counsel appears to concede that I look to the table amount of child support for one child based per s. 3 of the *Guidelines*. Using an imputed income of $50,000, results in child support of $460 monthly.

[27] I must then go on to a s. 9 analysis to determine the child support for S. Under s. 9(a), the initial set-off is as follows. Based on the father's gross annual income of

$97,361.65, which I round up to $97,400, the amount of child support notionally payable by him for S. is $885. The amount of child support payable by the mother for S. would notionally be $460 (again, based on her imputed income of $50,000). Therefore, the difference payable by the father for S. after the set-off would be $425 monthly.

[28] According to *Contino*, supra, I must then move on to consideration of the factors in s. 9(b) and (c) of the *Guidelines*. Neither party has expressly suggested that there have been increased costs as a result of the shared custody arrangement for S., and therefore I find there is no need to consider s. 9(b).

[29] With respect to s. 9(c), I tend to agree with the father's counsel that the evidence here is less than satisfactory. According to *Contino*, the particular concern in s. 9(c) is the standard of living of the child in each household and the ability of each parent to absorb the costs required to maintain the appropriate standard of living in each circumstance. Some of the factors to consider under s. 9(c) in that regard are the actual spending patterns of the parents, the ability of each parent to bear the increased costs of shared custody, which includes consideration of assets, liabilities, income levels and income disparities. Here there is very little evidence regarding the actual spending patterns of the parents beyond their monthly statements of expenses. Further, there has been no suggestion that either parent has suffered increased costs as a result of the shared custody arrangement for S. While there are clearly differences between the income levels of the parties, those would seem to be appropriately accounted for by the initial set-off calculation. With respect to the assets of the parties, I note that the mother currently resides in the former matrimonial home, which she values at $280,000, with a mortgage of $207,000, resulting in net equity of about $73,000. While the mother claims to have

various other unsecured debts, the majority of those totally approximately $20,000 and relate to Revenue Canada, which the mother expects “will be considerably reduced”, once her bookkeeper prepares amended income tax returns. The balance of the mother’s unsecured debts is roughly comparable to the total unsecured debts stated by the father. While the father purchased a home as of September 2008, it would appear that its approximate value of $144,000 has been financed 100%, as that is the stated amount of his mortgage. Finally, although the mother apparently continues to owe the father $16,839.29 as part of the settlement achieved in the CCRO, that is pursuant to an RRSP spousal rollover, which I would not expect to have any significant impact on the current day-to-day finances of either party.

[30] Therefore, on the face of it, the mother currently enjoys over $70,000 in equity in the matrimonial home, while the father has virtually no equity in his home.

[31] The mother’s counsel argued that the father has obtained a significant benefit from the timing of the CCRO, which specified his income at $61,637 for the year ending June 30, 2009, when the father’s actual income for 2007 was $84,858.09, and was $93,269.57 in 2006. Thus, the argument was that the father should have been paying significantly more child support in 2006–2007 than the amount reflected in the CCRO. I agree with the father’s counsel that it would be a dangerous precedent to go behind the agreement of the parties on the terms of the CCRO. There may have been a number of factors which caused the parties to agree on the stated amount of the father’s income in that order which are not in evidence before me. For example, I note that the CCRO also included a provision that the father pay spousal support to the mother in a lump sum of $7,500.

Therefore, I decline to give any effect to the submission of the mother's counsel on this point.

[32] The mother's counsel also suggested that there is a significant annual deficit being experienced by the mother to the tune of over $18,000, while the father enjoys an annual surplus, and that this is an appropriate consideration under s. 9(c) under the *Guidelines*. I also reject that argument for three reasons. First, I have already imputed an annual income of $50,000 to the mother, which, contrasted with her current annual expenses of $56,935.08, would result in a deficit of $6,935.08, significantly less than $18,000. Second, although the mother concedes that she originally retained the former matrimonial home in anticipation of having both children reside with her on a primary basis, and budgeted for the receipt of $923.43 per month in child support, given the change in the children's living arrangements, she no longer needs the house, cannot afford to keep it and expects that she will be forced to sell it. If so, that will likely significantly reduce her monthly expenses, which currently include total housing costs of $1,443.33. Third, the fact that the mother currently suffers from a deficit on a monthly or annual basis, while the father enjoys a surplus, is largely due to the disparities in their respective incomes which has already been accounted for, in large part, by the initial set-off.

[33] In the result for S., I find that the standard of living for the child in each of her parent's households will remain roughly comparable if the father is required to pay child support for S. of $425 monthly, after the set-off.

[34] However, I must also bear in mind that pursuant to s. 3 of the *Guidelines*, the mother is now required to pay child support for B. to the father in the amount of $460 monthly. Therefore, subtracting the $425 per month payable by the father for S. from the

$460 per month payable by the mother for B., results in a difference of $35 monthly payable by the mother for B.

[35] The next step in this analysis is to address the extent of the overpayment of child support by the father since B. began to reside to with him on a primary basis as of June 8, 2008. Here, I agree with the father's counsel that it would be appropriate to begin the adjustment retroactively to June 15, 2008, as the midpoint of that month. I calculate the amount of the overpayment as follows:

1. Child support payable by mother to father for B., based on mother's imputed income of $50,000 = $460 per month.

(as of) June 15/08 (1/2 x $460)	$ 230.00
July	460.00
August	460.00
September	460.00
October	460.00
November	460.00
	$2,070.00

2. Child support payable by father to mother for S., based on father's income of $97,361.65 = $885 per month.

June 2008	$ 885.00
July	885.00
August	885.00
September	885.00
October	885.00
	$4,425.00

LESS: Total paid by father to date <$ 4,700.25> (including November 12th garnishment, in trust)

OVERPAYMENT by father for S. $ 275.25

3. Child support for S. effective November 1, 2008 per (50/50) shared residency/custody under s. 9 of the *Guidelines*:

Payable by father	$ 885.00 per month
Payable by mother	$ 460.00 per month
Net payable by father	$ 425.00

4. Set-off of child support payable by mother for B. ($460 per month) against net child support payable by father for S. ($425 per month) = $35 per month net payable by mother to father for B., effective November 1, 2008.

5. Arrears of child support payable by mother for B., PLUS overpayment by father for S. of $275.25, PLUS overpayment on June and July 2008 child support cheques of $0.04 = $2,345.29 owing from mother to father.

[36] Although I have imputed income to the mother in an amount significantly more than she is presently earning, I do so in the expectation that she will eventually return to her former self-employment as a consultant, or will obtain other equally lucrative employment. Assuming that she does so, it would be reasonable to expect a period of transition during which she either leaves her current employment, or finishes the term of that employment on January 12, 2009, and returns to her former employment, or takes another job. If she in fact goes back to her consulting business, then a further period of time will likely be required before she begins generating revenue.

[37] In addition, while the mother has expressed an intention to sell the former matrimonial home, it is again reasonable to expect that some amount of time will be required to allow that to happen and for the mother obtain a fair market price.

[38] In general terms, under s. 9(c) I have broad discretion to consider the mother's conditions, means, needs and other circumstances. Having done so, I am persuaded that it would be fair to allow the mother a period of six months from December 1, 2008 in order

to find more lucrative employment and to arrange for the sale of the former matrimonial home. In the meantime, I expect the mother will continue to incur a monthly deficit of about $1,500. With that expectation in mind, I will allow the mother a grace period of six months from December 1, 2008 to May 31, 2009 within which she will not be required to repay the father the arrears of $2,345.29 owing with respect to B. However, effective June 1, 2009, the mother will begin repaying the father these arrears at the rate of $300 per month.

[39] Obviously, there will have to be amendments to paras. 2 and 7 of the CCRO as a result of these determinations. However, it is my intention that the provisions of the CCRO which require an annual exchange of financial disclosure by June 1st each year and a consequential variation of the amount of child support payable according to the parties' respective incomes and the table amounts under the *Guidelines*, as set out in para. 10, will continue.

4. If the father is successful in whole or in part on the application, should special costs be payable by the mother?

[40] The last issue is the question of costs. I repeat that the father's counsel apparently made his first request in writing to the mother's counsel on or about July 15, 2008 to vary the child support payable for B. in order to reflect B.'s change in living arrangements. The mother's counsel was reminded of this issue in the letter from the child advocate dated September 23, 2008. Indeed, the letter from the father's counsel dated October 2, 2008 suggested that mother's counsel then had instructions to contact MEP to advise that office to take no further enforcement proceedings and to hold the funds in their account in trust until the matter could be sorted out. As of October 22, 2008, neither the mother nor her counsel had been in contact with MEP to resolve this problem. Nor is there any further

evidence on this point in the mother's affidavit or financial statement. As a result of the mother's inaction on this issue, monies have been paid out by MEP to the mother which ought to have been held in trust and returned to the father. In addition, the father has had his wages garnished on four occasions from September 29 to November 12, 2008. The mother has provided no explanation for her inaction in responding to the father's requests to stay enforcement and to have MEP hold the monies in trust. For all those reasons, it is appropriate, in my view, to award the father special costs for this application, payable within 12 months of the date of this order.

CONCLUSIONS

1. The child support payable for B. is determined by s. 3 of the *Child Support Guidelines*. The child support payable for S. is determined by applying s. 9 of the *Guidelines.*
2. The most recent evidence of the father's income is to be used, which indicates his 2008 income will be $97,361.65.
3. I impute an income of $50,000 for the mother for 2008, based upon s. 19(1)(a) of the *Guidelines.*
4. The child support payable by the mother for B., effective June 15, 2008, is $460.00 monthly. The child support payable by the father for S., effective November 1, 2008, is $425.00 monthly. After the set-off, the mother shall pay net child support to the father of $35.00 monthly, effective November 1, 2008.
5. The mother owes the father arrears of child support of $2,345.29, which she will begin repaying on June 1, 2009 at the rate of $300.00 per month.

6. The mother shall pay special costs for this application, to be assessed, within 12 months of the date of this order.
7. With respect to the remaining issues on which there was no substantial disagreement, I make the following orders:

    a) The child B., born September 6, 1995, shall reside primarily with the father, with reasonable access to the mother taking into account B.'s wishes. The father shall advise the mother of any significant matters concerning B., including such areas as her physical and mental health, her education and her activities.

    b) The child S., born May 18, 2001, shall reside equally between the parties, for a period of two weeks with each parent, on an alternating basis.

    c) During the two weeks S. resides with the mother, the father will have access with S. for up to three hours after school one afternoon each week, mid-week, as agreed between the parties in writing.

    d) The father shall accommodate S.'s dancing with Ta'an Kwach'an dancers, while she is residing with him, or spending access time with him.

[41] I have noted the mother's submission that, if the father is working out of Whitehorse during a two week period when S. is to live with him, then S. should remain with the

mother. I am not going to impose such a condition because the main reason S. wants increased time with her father is so that she can see more of her sister, B., whom she misses. I feel it is in S.'s best interests to have maximum contact with both her sister and each of her parents.

[42] I have also noted the father's submission that the mother's use of alcohol be restricted while S. resides with her, and while she exercises access with B. I have not imposed such a restriction because the evidence on this point was contradictory and inconclusive.

[43] I will leave it to counsel to determine the most appropriate wording for the consequential amendments required to the CCRO.

Gower J.