

NOVA SCOTIA COURT OF APPEAL

Citation: *Waterman v. Waterman*, 2014 NSCA 110

Date: 20141211

Docket: CA 422372

Registry: Halifax

Between:

WAYNE WATERMAN

Appellant

v.

PAULETTE WATERMAN

Respondent

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- Judges:** The Honourable Justice Duncan Beveridge, and the Honourable Justice Peter M.S. Bryson, concurring; The Honourable Justice Jill M. Hamilton, dissenting.
- Appeal Heard:** April 15, 2014, in Halifax, Nova Scotia
- Subject:** Family law: applications to vary spousal support under the *Interjurisdictional Support Orders Act*
- Summary:** The appellant claimed that a change in circumstances justified a variation of spousal support and forgiveness of arrears. He filed an application to vary under the Ontario ISO legislation, which was forwarded to Nova Scotia. The respondent was served with notice of a hearing, and filed her answer, an affidavit and brief from counsel. The respondent and her counsel attended the hearing. The appellant did not. He had no notice of it. The respondent made submissions as to why the application should be dismissed. The application judge agreed.
- Issues:**
- (1) Did the judge err in dismissing the application to vary?
 - (2) Was the judge obliged to seek further information before adjudicating the merits of the application?
 - (3) Was the appellant denied natural justice by having had

no opportunity to attend the hearing or respond?

Result:

The majority allowed the appeal. The record did not reveal any error in law, misapprehension of the evidence, or palpable and overriding error in the judge's findings of mixed law and fact. Further, the application judge was not mandated by the legislation to seek additional information or details absent from the record in order to adjudicate the application. However, the majority concluded that the statute did not expressly or by necessary implication exclude the normal requirements of natural justice. Hence the outcome was tainted by the lack of notice of the hearing at which his application was adjudicated. A new hearing was ordered. The dissent was satisfied that the *ISO Act* did provide clear and unambiguous statutory authority that the appellant was not required to be given notice, and would dismiss the appeal.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 32 pages.