

CV 06884

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MICHELLE YVONNE BAILEY

Applicant

- and -

THOMAS EDWARD SALMON

Respondent

MEMORANDUM OF JUDGMENT

The Applicant has applied by way of Originating Notice for variation of a child support order made August 31, 1994 in the Court of Queen's Bench of Alberta (the "Alberta order").

The Respondent argues as a preliminary point that this Court has no jurisdiction to vary the Alberta order.

The Applicant's affidavit indicates that the child was born of a common-law relationship with the Respondent. The Applicant and the child moved to Yellowknife from Alberta shortly after the Alberta order was made. The Respondent continues to reside in Alberta.

Counsel for the Respondent points out that the Alberta order has not been registered in the Northwest Territories pursuant to the *Maintenance Orders (Facilities for Enforcement) Act, R.S.N.W.T. 1988, c. M-3*. I note that Alberta is a reciprocating jurisdiction for purposes of registration under that *Act* pursuant to the *Reciprocating States Designation Regulations, R.R.N.W.T. 1990, c. M-3*.

There is no evidence that the Alberta order cannot be registered in this jurisdiction. Counsel for the Applicant argued only that it would not make sense to do so given that the Respondent resides in Alberta. That observation may have merit, but it also raises the question why one would apply in the Northwest Territories to vary an Alberta order when the person against whom the order was made resides in Alberta.

The *Maintenance Orders (Facilities for Enforcement) Act* is a mechanism by which a maintenance order made in a reciprocating jurisdiction may be registered in the Northwest Territories. Proceedings may be taken on the registered order and it may be enforced as if it were an order made by a court in the Northwest Territories. Once registered, it may also be enforceable under the *Maintenance Orders Enforcement Act, R.S.N.W.T. 1988, c. M-2*.

Here the Applicant chose not to proceed under the mechanism provided in the legislation. Instead, she asks that I simply vary the Alberta order. I have been referred to no authority which would permit me to do that. Counsel for the Applicant submitted that I ought to exercise the Court's *parens patriae* jurisdiction.

In *Rebus v. McLellan*, [1994] N.W.T.R. 1 (C.A.), Lieberman J.A. speaking for the Court noted that the Court's *parens patriae* jurisdiction to guard and protect the interests of children extends to financial interests. He observed further that a *parens patriae* award is frequently made when there is a gap in the applicable legislation that would result in injustice to a child and that the *parens patriae* jurisdiction is a discretion to be exercised with caution.

In this case, it is not alleged that there is a gap in the applicable legislation or that the Applicant has no recourse other than to proceed in the manner chosen. Counsel for the Applicant submitted that it was felt that an application to vary the Alberta order was the easiest route to follow.

I find that this is not a case where the Court's *parens patriae* jurisdiction should be exercised. If the maintenance enforcement mechanism referred to is not appropriate in the circumstances, the Applicant may be able to pursue an original application under the applicable Northwest Territories legislation dealing with child

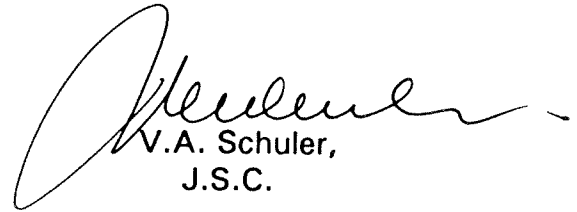
maintenance. She also has the option of applying in Alberta for variation of the Alberta order which, given the Respondent's residence there, would seem to be the most logical alternative.

A further argument made on behalf of the Applicant is that because s. 24(5)(c) of the *Maintenance Orders Enforcement Act* provides only that the Territorial Court may not vary a maintenance order made by a superior court of a province, it is left open to this Court to vary such order. But s. 24(5)(c) must be read in context. It is a provision which applies in default proceedings taken with respect to a maintenance order registered with the Maintenance Enforcement Administrator. The Alberta order has not been registered, so s. 24(5)(c) is not applicable. In any event, it cannot be inferred from that section that this Court has the power to vary an order made by a superior court in another jurisdiction in proceedings brought outside the mechanism provided by the statute.

In conclusion, I find that this is not a case where the Court's *parens patriae* jurisdiction should be exercised to vary the Alberta order and further that I do not otherwise have jurisdiction to do so. The application is therefore dismissed.

Costs normally follow the event but if counsel wish to make submissions in that regard they may make arrangements to do so within 30 days of issuance of

this Memorandum.



V.A. Schuler,
J.S.C.

Dated at Yellowknife, NT
this 5th day of May 1997

Counsel for the Applicant:
Counsel for the Respondent:

O. Rebeiro
B. Enge

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