

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MILDRED DELIGHT LARGE

Applicant

- and -

DARRYL LAKEN HARRY LEWIS

Respondent

MEMORANDUM OF JUDGMENT

[1] The applicant seeks a retroactive variation of a child support order issued by the Supreme Court of Prince Edward Island on July 22, 1998. Since this is a request to vary an order issued pursuant to corollary relief proceedings under the *Divorce Act (Canada)*, and since the respondent is not a resident of this jurisdiction and has not attorned to the jurisdiction of this court, the order for variation that I make herein is provisional only subject to confirmation in Prince Edward Island.

[2] The parties were divorced in 1993. They have three children of the marriage: (i) Laura, born June 20, 1985; (ii) Lydia, born September 22, 1988; (iii) Spencer, born March 8, 1990. The applicant was awarded custody of the children and the respondent was ordered to pay \$300.00 per month as child support. In 1998, the support amount was varied to \$490.00 per month, calculated on an estimated annual income of \$25,000.00 for the respondent. The applicant now seeks to vary the child support based on an increase in the respondent's income.

[3] The applicant has made repeated attempts to obtain information from the respondent as to his actual income. He has not provided that information. Information from the Maintenance Enforcement Program of Prince Edward Island reveals that his support payments have been irregular and, as of May 1, 2007, there were accumulated arrears of \$7,691.52.

[4] The applicant has provided evidence that, for the past 8 years, the respondent has been employed by the Government of Canada, Department of Agriculture, as a gasoline and diesel mechanic. She has obtained publicly-accessible information that, with the respondent's level of experience, he should be earning at least \$29.70 per hour (as of 2003). This would provide an annual income of \$57,915.00. That amount would doubtlessly be higher today.

[5] The applicant also believes that the respondent works as a freelance mechanic out of his home. She thinks he earns at least \$80,000.00 from all sources.

[6] I am prepared to accept the evidence provided by the applicant as to the respondent's employment income. The belief as to private work, however, is too speculative based on the evidence presented. In the absence of any other evidence, and because of the failure of the respondent to provide income information, I impute an annual income of \$60,000.00 to the respondent.

[7] Of the three children of the marriage, two (Lydia and Spencer) are still dependant and attending school. The eldest (Laura) ceased to be a dependant child in June, 2004, when she graduated from a post-secondary school.

[8] The *Divorce Act* requires that there be a change of circumstances since the making of the last support order. I find such a change due to the change in the respondent's income and the fact that there are now only two children subject to the order as opposed to three.

[9] The applicant asks that the order be retroactive to August of 2003. She had communicated with the respondent's lawyer in 2003 informing him of her desire to vary the amount of child support. She also commenced proceedings in Saskatchewan in 2004 but apparently had used the wrong procedure so it did not proceed. But the respondent was made aware of the Saskatchewan action.

[10] In my opinion, the fact that the respondent has consistently refused or neglected to provide relevant financial information is justification for a retroactive order. As noted by the Supreme Court of Canada, in *D.B.S. v. S.R.G.*, [2006] S.C.J. No. 37: parents have an obligation to support their children in a manner commensurate with their income; the amount of child support will generally fluctuate based on the payor's income; and, payor parents who do not increase their child support payments to correspond with their incomes will not have fulfilled their obligations to their children.

[11] Therefore, the 1998 order will be varied so as to provide for child support payments, based on an annual income of \$60,000.00, effective August 1, 2003, for (a) three children for the period from the effective date to and including June 1, 2004, and

(b) two children from July 1, 2004, until further order or the children or any one of them cease to be “children of the marriage”, as that term is defined in the *Divorce Act*. The Child Support Guidelines were amended as of May 1, 2006, so there will be different amounts before and after that date.

[12] I therefore issue a provisional variation order whereby the child support obligations of the respondent will be as follows:

1. For the period of August 1, 2003, to June 1, 2004 (inclusive), he is required to pay the sum of \$1,048.00 per month (based on 3 children at the pre-2006 tables).
2. For the period of July 1, 2004, to April 1, 2006 (inclusive), he is required to pay the sum of \$801.00 per month (based on 2 children at the pre-2006 tables).
3. For the period fo May 1, 2006, and continuing, he is required to pay the sum of \$849.00 per month (based on 2 children at the 2006 tables).

[13] Since the variation will result in an increase to the arrears,I further order that the respondent, commencing on September 1, 2007, is to pay the minimum additional sum of \$100.00 to be credited toward the arrears.

[14] I direct that the applicant prepare a formal order in this matter for my approval. The necessary documentation can then be transmitted to the appropriate authorities in Prince Edward Island.

J.Z. Vertes  
J.S.C.

Dated this 7<sup>th</sup> day of August 2007.

TO: Mildred Delight Large  
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