

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

ANNA SASSIE

Applicant

- and -

ROY KLONDIKE

Respondent

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Transcript of the Chambers Application held before The Honourable Justice A. M. Mahar, sitting in Yellowknife, in the Northwest Territories, on the 24th day of September, 2015.

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APPEARANCES:

Mr. C. Buchanan: Counsel for the Administrator of Maintenance Enforcement

Mr. D. Large, Q.C.: Counsel for the Respondent, Roy Klondike

Official Court Reporters

1 THE COURT: Number one Sassie and  
2 Klondike.

3 MR. LARGE: Your Honour, my name is Donald  
4 Large. I'm with Legal Aid out of Yellowknife. I  
5 represent the applicant, Mr. Klondike, and  
6 Mr. Klondike has some issues about getting his  
7 child support order varied.

8 Mr. Buchanan, my friend, is with the legal  
9 services division. He represents the Director of  
10 Maintenance Enforcement.

11 MR. BUCHANAN: The Administrator.

12 MR. LARGE: The Administrator of  
13 Maintenance Enforcement.

14 Your Honour, this matter has been ongoing  
15 for a little while. And we did obtain an order  
16 from Justice Smallwood last date we were in  
17 court, which was the 22nd of August, and at that  
18 time, I believe -- I'll have to speak to my  
19 friend, but I believe we both understood that  
20 there was a maintenance order being enforced  
21 against Mr. Klondike. And the day after we were  
22 in court, I received correspondence from my  
23 friend, which I have put in the form of an  
24 affidavit of information sworn by my  
25 administrative assistant, Barbara Ruiz, we filed  
26 on the 15th of September, and in that letter, my  
27 friend advises me that he's reviewed his file and



1           that currently Anna Sassie does not have a  
2           support order registered for enforcement in the  
3           NWT Maintenance Enforcement Program and that in  
4           late April of 2015, his client learned that  
5           Ms. Sassie had left the jurisdiction and moved to  
6           Alberta, and we subsequently advised Ms. Sassie  
7           that she would need to register with Alberta  
8           Maintenance Enforcement to continue enforcement  
9           and that her file with us would be closed  
10          shortly, and her file was indeed closed on the  
11          19th of August.

12                 Now, my client is relatively  
13          unsophisticated, Your Honour. He resides in Fort  
14          Liard. He does not read or write, and any  
15          affidavit that we get from him, I deal with the  
16          court worker in Fort Simpson, Patricia Waugh.  
17          She goes to see him in Fort Liard. It's like a  
18          three-and-a-half-hour drive. And she reads the  
19          affidavit to him, as she did in this case, and  
20          then it gets sworn.

21                 So my friend, just moments before the Court  
22          came to order this morning, gave me a copy of a  
23          case I hadn't previously seen. It was Apples  
24          and, I guess, Maurice Cloughley -- is that how  
25          you say that? Maurice Cloughley and the  
26          Commissioner of the NWT. It's a reported  
27          decision, it was an ex parte matter, and I'll



1 speak to that after my friend has a moment to  
2 present his arguments on the matter. As I say, I  
3 previously was unaware of the matter.

4 I am familiar with Rule 38, on which,  
5 apparently, this Apples case was decided, and the  
6 rule is fairly clear, requires an application for  
7 an order for substitutional service to be  
8 supported by an affidavit of the deponent stating  
9 why it is impractical to effect service on the  
10 respondent (in this case, it would be on  
11 Ms. Sassie) and that -- proposing an alternative  
12 form of service.

13 And in his affidavit, he states that -- I'm  
14 sorry. He states in his affidavit -- it was the  
15 one that was filed -- the only one he's filed on  
16 the 31st of July of this year at -- just one  
17 moment. He said that in paragraph 3 that he --  
18 the applicant took him to court for child support  
19 in 1997. He did not appear on that date. He  
20 didn't -- he cannot read or write, had no idea  
21 that he was required to be in court. In any  
22 event, he indicates in his affidavit that it was  
23 a nine-year relation (paragraph 2), they had two  
24 children, and that the relationship ended quite  
25 some time ago and that the children have all  
26 reached the age of majority. And he states that  
27 in his belief, at paragraph 9, that the





1 applicant, Ms. Sassie, resides in Calgary. He  
2 doesn't have any idea what her current address  
3 is. He had an old phone number which he says has  
4 been now assigned to some other person unrelated  
5 to the applicant. He states his relationship  
6 ended years ago and "I have had no recent contact  
7 with her", and then he explains in paragraph 10  
8 that his lawyer, myself, advised him that an  
9 internet search was conducted but was  
10 unsuccessful and that Maintenance Enforcement was  
11 contacted, requested that they provide her  
12 address and that request was refused, and there's  
13 correspondence between myself and the Maintenance  
14 Enforcement office as an exhibit. So that's  
15 basically where we're at.

16 The order of Justice Smallwood provided at  
17 paragraph 2 that we be permitted to serve  
18 substitutionally the respondent by serving the  
19 Family Responsibility Officer of the Maintenance  
20 Enforcement Program identified in paragraph one,  
21 because when we were before Justice Smallwood, we  
22 fully expected that somebody had an order they  
23 were trying to enforce against Mr. Klondike and  
24 that subsequently proved to be not the case.

25 So we have no way of finding out where  
26 Ms. Sassie is. The Director, however -- the  
27 Administrator does. At least in April of this



1           year there was correspondence coming from the  
2           Administrator's office to Ms. Sassie advising her  
3           that she needs to deal with Alberta Maintenance  
4           Enforcement, that her file held locally here  
5           would be closed. So I think that that's the most  
6           practical way to bring this to Ms. Sassie's  
7           attention, have the Director -- the Administrator  
8           of Maintenance Enforcement serve her these  
9           documents and then bring the matter back to court  
10          at a later date.

11        THE COURT:                    So, basically, what you're  
12          asking me to do is follow up on Justice  
13          Smallwood's order by clarifying that even though  
14          the Director is no longer responsible for the  
15          maintenance of the file, that they are to still  
16          be considered the parties for substitutional  
17          service?

18        MR. LARGE:                    Yes, that's what I would be  
19          (indiscernible) --

20        THE COURT:                    Thank you, Mr. Large.  
21          Mr. Buchanan.

22        MR. BUCHANAN:                Your Honour, again, as my  
23          friend said, I'm counsel for the Administrator of  
24          Maintenance Enforcement and we were severed with  
25          a Notice of Motion and affidavit of Roy Klondike.

26                    The Administer opposes the application of  
27          the respondent for an order for substituted



1 service on the applicant by serving the  
2 Administrator. We take no position on the other  
3 relief sought by the respondent.

4 As my friend explained, at the time that  
5 Justice Smallwood's order was granted, we had  
6 consented to the order in its form with an  
7 understanding from my client that the applicant  
8 had been advised to contact her jurisdiction's  
9 Maintenance Enforcement office, which at the time  
10 we understood to move to Alberta. Our file had  
11 been closed and so we consented to that order.  
12 We subsequently learned that, in fact,  
13 Ms. Klondike -- or Ms. Sassie had not registered  
14 with Alberta MEP, so at this time there's no  
15 office responsible for her file, and so  
16 essentially the order is ineffective.

17 And so moving into my friend's submissions  
18 today that he would like the Administrator  
19 served, we, in our respectful submission, oppose  
20 this application and ask that it be dismissed for  
21 two reasons. The first being that the respondent  
22 has not met the test required to obtain order for  
23 substituted service, and the second is that it  
24 would be inappropriate to require the  
25 Administrator to effect service on the applicant  
26 on behalf of the respondent.

27 So respecting the test, the first point is



1           that under Rule 38(1) and (2) of the Rules of  
2           Court, it sets out what must be shown through  
3           evidence by an applicant seeking a sub-service  
4           order. My friend went through the Rules, so I'll  
5           leave it to Your Honour to review.

6           Essentially, it is our submission that the  
7           respondent's affidavit fails to show why prompt  
8           personal service is impractical and why serving  
9           the Administrator with the Notice of Motion will  
10          or is likely to be effective in providing notice  
11          to the applicant.

12          So turning to the affidavit of Roy Klondike.  
13          The respondent outlines his effort to make  
14          contact with the applicant in paragraphs 9 and  
15          10. My friend had reviewed those efforts. At  
16          paragraph 9, Mr. Klondike -- Mr. Klondike states  
17          that he's out of contact with the applicant, he  
18          believes she lives in Calgary, but he doesn't  
19          know what her address is. He tried calling her,  
20          but the telephone number he has is no longer the  
21          applicant's. In paragraph 10, Mr. Klondike  
22          further states that his lawyer conducted an  
23          unsuccessful internet search for the applicant's  
24          address and telephone number, his lawyer also  
25          contacted the Administrator to request the  
26          applicant's contact information, but the  
27          Administrator refused that request. In our





1 respectful submission, these efforts are not  
2 sufficient to show that it is impractical to  
3 personally serve the applicant.

4 The meaning of "impractical" under Rule 38  
5 was considered by this honourable court in the  
6 case of Apples v. Northwest Territories  
7 Commissioner, 2009 NWTSC 3, and I have a copy for  
8 Your Honour --

9 THE COURT: Thank you.

10 MR. BUCHANAN: -- to hand up. It's a  
11 relatively short case and it's well known in this  
12 jurisdiction.

13 THE COURT: Thank you.

14 MR. BUCHANAN: In that case, the Plaintiffs  
15 sought an order for substitutional service on the  
16 Defendants with the Statement of Claim by posting  
17 an ad in a local newspaper in New Zealand where  
18 the Defendant was known to live. Similar to  
19 Mr. Klondike's application, the Plaintiffs in  
20 Apples filed an affidavit stating they were not  
21 able to locate the address of the Defendant  
22 through an internet search. In dismissing the  
23 Plaintiff's application, Justice Cooper compared  
24 Rule 38 to Alberta's rule which is identical in  
25 wording. At paragraph 7 of that case, Justice  
26 Cooper sites Stevenson and Côté, which states the  
27 following:



1                   The Rules uses the word  
2                   "impractical" with respect to  
3                   effecting prompt personal service,  
4                   but decided cases suggest that  
5                   courts apply a stricter standard,  
6                   i.e., practical impossibility of  
7                   serving the defendant personally.  
8                   The affidavit supporting an  
9                   application for substitutional  
10                  service must state why prompt  
11                  personal service is impractical, and  
                  show that reasonable efforts were  
                  made to locate and to personally  
                  serve the defendant. What is  
                  reasonable will depend upon the  
                  circumstances of the case, including  
                  the type that relief claimed, the  
                  amounts involved, the efforts made  
                  to locate the defendant, and the  
                  steps taken to effect personal  
                  service ...

12                  Justice Cooper found that the stricter  
13                  standard applied in the Northwest Territories.

14                  Your Honour, in our respectful submission,  
15                  Mr. Klondike has not taken enough steps to locate  
16                  the Defendant to say that prompt personal service  
17                  is impractical. For example, it is open to the  
18                  respondent to retain the services of a skip  
19                  tracer or process server in Calgary to locate and  
20                  serve the applicant. He could also ask his  
21                  children if they know where the mother is, and he  
22                  can contact the lawyer for the applicant in the  
23                  original hearing to see if they have current  
24                  contact information for the applicant. Based on  
25                  Mr. Klondike's affidavit, none of these  
26                  reasonable steps have been taken. As well,  
27                  Mr. Klondike's affidavit fails to state that he



1 believes that serving the Administrator of  
2 Maintenance Enforcement with the Notice of Motion  
3 will or is likely to be effective in effecting  
4 personal service on the Application.

5 THE COURT: Perhaps you can focus in on  
6 that because that is my primary concern. Are you  
7 aware whether or not the Director has current  
8 information? Either Director, here or in  
9 Alberta.

10 MR. BUCHANAN: Your Honour, we do have  
11 contact information for the applicant. We do not  
12 know whether it's current. As my friend stated,  
13 we did receive correspondence, or sent  
14 correspondence - I'm not clear which - and so I  
15 do not know whether that correspondence was  
16 received if it had been sent, but I do know that  
17 my client does have an address.

18 THE COURT: All right.

19 MR. BUCHANAN: So our second submission is  
20 that, respectfully, it would inappropriate for  
21 this honourable court to require the  
22 Administrator to accept service on behalf of the  
23 applicant.

24 First, it would not always be the case the  
25 Administrator will have the contact information  
26 for the creditor. The respondent assumes that we  
27 have the updated address of the applicant, but



1           there's no evidence establishing this, although,  
2           as I had said, we do have an address. I do not  
3           know the current status of the address. Second,  
4           even if the Administer had contact to reach the  
5           applicant, the Administrator is not permitted to  
6           release such information in these circumstances  
7           pursuant to the Access to Information and  
8           Protection of Privacy Act. And I have a copy of  
9           that Act, Your Honour, and I'll refer to a few  
10          sections that are relevant. (Indiscernible).

11        THE COURT:                    Thank you. You wouldn't be  
12          required to release the address, you would simply  
13          be required to act on the address. Correct?

14        MR. BUCHANAN:                Well, what my friend is asking  
15          is that we accept service on behalf of the  
16          applicant, which requires us to send the Notice  
17          of Motion to the applicant and ensure that it's  
18          been served. So, essentially, he's passing the  
19          responsibility on to our office to incur the  
20          costs and ensure that service is effective.

21                So under Section 2 of the ATIPP Act, which I  
22          have handed to Your Honour, the Applicant's  
23          address and telephone number is considered  
24          personal information under the definition. Under  
25          Section 47, which I have flagged, it states that  
26          "A public body may disclose personal information  
27          only ... (b) in accordance with this Division."





1           And I should note that the Administrator is a  
2           public body.

3           Section 48, next one down, sets out the  
4           various circumstances under which personal  
5           information may be disclosed, and I have  
6           identified two relevant paragraphs. First is (a)  
7           which states that a public body may use personal  
8           information only "(a) for the purpose for which  
9           the information was collected or compiled or for  
10          a use consistent with that purpose". The second  
11          relevant paragraph is (n). Disclosure is  
12          permitted "for the purpose of complying with a  
13          subpoena or warrant issued for an order made --  
14          or an order made by a court, person or body that  
15          has the authority to compel the production of  
16          information or with the rule of court that  
17          relates to the production of information."

18          So regarding the first one, sub (a), the  
19          Administrator collects a creditor's personal  
20          information only for the purposes of enforcement  
21          of a support order. This purpose is set out in  
22          the Maintenance Orders Enforcement Act. The  
23          respondent is seeking a sub-service order to  
24          commence an application to vary a support order,  
25          not enforce a support order. In fact, the  
26          respondent is actually requesting that the order  
27          cease being enforced.



1           In our submission, the variation of a  
2           support order is not the same thing as  
3           enforcement, and so the disclosure of the  
4           Applicant's personal information for the  
5           respondent's application is not consistent with  
6           the purpose for which it was collected, thus  
7           ATIPP does not permit its disclosure under sub  
8           (a).

9           Regarding sub (n), this honourable court may  
10          order the disclosure of the Applicant's personal  
11          information where there is authority to do so  
12          under either legislation or rule of court. In  
13          our submission, there's no such authority and we  
14          would defer to the respondent to show under which  
15          authority such information could be produced.  
16          Barring such authority, the applicant's personal  
17          information cannot be disclosed under sub (n) of  
18          the ATIPP Act.

19        THE COURT:                    It's a question of whether I  
20          would determine it to be a disclosure or simply  
21          responsibility of your office. Correct?

22        MR. BUCHANAN:                Yes, under ATIPP, it would be  
23          a determination of whether it was disclosure.  
24          Whether it was the responsibility of our office,  
25          that would fall under --

26        THE COURT:                    That's your issue. Right?  
27          The initial issue of whether ATIP even applies at



1 all or not is whether or not it's a disclosure.  
2 If it's simply a question of shifting the  
3 responsibility to your office to locate and serve  
4 the respondent, then there's no disclosure  
5 providing that information remains within your  
6 office. Correct? So the question is whether  
7 it's properly the responsibility of the office to  
8 undertake this. Correct?

9 MR. BUCHANAN: Well, under, under Section 48,  
10 it's -- our submission, it's a use of personal  
11 information, not a disclosure. So under sub (a)  
12 it says that "for the purpose for which the  
13 information was collected or compiled or for a  
14 use consistent with that purpose". In this case,  
15 ATIPP Act does prevent a public body from using  
16 information or disclosing information.

17 THE COURT: But 48 simply says "a public  
18 body may disclose personal information".  
19 Correct? So all of the sub-headings beyond that  
20 are related to a disclosure, not a use.

21 MR. BUCHANAN: Yes. I see Your Honour's  
22 point. My understanding of the Act, and I would  
23 have to find the specific section, is that a use  
24 of the information is covered in a different  
25 section from disclosure. And so in our  
26 submission, this is a use that's inconsistent  
27 with the collection. Essentially, we're



1 protecting personal information. The creditor  
2 provided personal service to the Administrator  
3 with the understanding that it be kept private,  
4 and what we're trying to do is protect the  
5 information.

6 But Your Honour's point regarding that we be  
7 asked to accept service and handle information,  
8 not necessarily disclosure information to the  
9 respondent, we would say that it's inappropriate  
10 to require the Administrator to accept service on  
11 behalf of the applicant because, in our  
12 submission, this is a private matter between the  
13 parties that does not involve Maintenance  
14 Enforcement. The task of locating the applicant  
15 and expending funds to effect service on the same  
16 should not be borne by the Administrator. This  
17 is the respondent's responsibility. To grant the  
18 Respondent's application for substituted service  
19 on the Administrator would set an unwanted  
20 precedent that could open the floodgates to  
21 further orders and additional costs for the  
22 Administrator. The Administrator therefore asks  
23 that the respondent's application be dismissed  
24 with respect to the application for sub-service.

25 Subject to any questions, those are my  
26 submissions.

27 THE COURT: If I could ask you one





1 question. When you appeared in front of Justice  
2 Smallwood, you agreed to the order. Correct?

3 MR. BUCHANAN: That's right.

4 THE COURT: At that point, you thought  
5 there was an existing order in Alberta.

6 MR. BUCHANAN: At that point, we thought that  
7 -- I believe this is a Northwest Territories  
8 order.

9 THE COURT: You thought that the order had  
10 been transferred to Alberta.

11 MR. BUCHANAN: Right. So, at that point, my  
12 information from the client was that our file was  
13 closed and that the file -- that we had advised  
14 the applicant to register with her office, which  
15 is Alberta.

16 THE COURT: So the only difference between  
17 today and then is the fact that the file has been  
18 closed.

19 MR. BUCHANAN: The only difference is that we  
20 now know that -- well, one of the differences is  
21 the file is closed. The other difference is that  
22 we know that -- my client had contacted their  
23 colleagues in Alberta and found out that indeed  
24 she had not actually registered.

25 THE COURT: So it's not a question of how  
26 much information was available to the Director,  
27 it's a question of whether a file has been opened



1 or closed, really.

2 MR. BUCHANAN: With respect to the wording of  
3 the order, it was our understanding that she  
4 would have registered with Alberta. That's what  
5 she was told to do.

6 THE COURT: No, but what I'm getting at is  
7 your concerns, all of your concerns with respect  
8 to the Privacy Act and the rest of the concerns  
9 about the propriety of this have all arisen based  
10 on one simple discovery, which is that she's no  
11 longer an active client as opposed to an inactive  
12 client because she hasn't had the order  
13 transferred. Correct?

14 MR. BUCHANAN: Right.

15 THE COURT: So you had no concerns before  
16 about the use of this information for exactly  
17 this purpose.

18 MR. BUCHANAN: Well, the information we were  
19 to provide was the name of the jurisdiction in  
20 which she would have registered, which is  
21 Alberta, which the applicant -- or the Respondent  
22 had already known.

23 THE COURT: But, again, you were acting on  
24 behalf of this Director and you were quite happy  
25 to pass this order on -- or pass the  
26 substitutional service on to another similar  
27 organization. Correct? You didn't see any



1           impropriety with it.

2           MR. BUCHANAN:                No, we had consented to  
3           providing the information and that was the limit  
4           of our consent. I mean, we -- whether the other  
5           jurisdiction would accept sub-service is an  
6           entirely different matter. We're not aware  
7           whether they would have or not.

8           THE COURT:                 Okay. Thank you.

9           MR. LARGE:                 Just in response, Your Honour.  
10          I appreciate that my friend has spent a lot of  
11          time preparing for his response this morning  
12          based on the provisions of the Access to  
13          Information and Protection of Privacy Act, but  
14          you won't find anywhere in our Notice of Motion a  
15          request for the Director of Maintenance  
16          Enforcement to provide us with Ms. Sassie's  
17          address.

18          THE COURT:                 I've got that, Mr. Large.  
19          Thank you.

20          MR. LARGE:                 So it's totally irrelevant,  
21          the concerns expressed by my friend on the  
22          Privacy Act.

23                 Then we -- the way Legal Aid works, we got  
24          a, we got a referral, and our instructions are,  
25          from our administrator, to review the file and  
26          prepare an opinion. So we want to see that the  
27          file has some merit before we spend time on it.



1           So while this evidence is not before the Court, I  
2           did a quick calculation based on the financial  
3           disclosure that I got from my client with the  
4           assistance of the court worker, and I believe  
5           that if this matter gets before a court, which is  
6           what we're trying to do, his arrears will be  
7           reduced to zero. He will have overpaid. But  
8           that's not evidence before the Court yet.

9           But it's important that this matter proceed  
10          on behalf of Mr. Klondike. I mean, it's fine for  
11          Maintenance Enforcement to say, you know, this is  
12          not what we do and, you know, we'll just take  
13          your paycheck and we'll cancel your passport and  
14          we'll grab your driver's licence and as soon as  
15          you get any money coming from any source we know  
16          of, we'll grab that, but, gosh, we just can't --  
17          we might open the floodgates of litigation.  
18          Well, you know what, I hope it does because I  
19          think this matter should be resolved through a  
20          legislation amendment, but that's not for me or  
21          you to decide at this point. If Maintenance  
22          Enforcement has these powers of financial ruin in  
23          some case -- to some respondent, the least they  
24          should be able to do is accept service on behalf  
25          of their client. Ms. Sassie was their client and  
26          they've given us the proof that we suspected was  
27          there, they know where she is, or at least they





1           knew in April. So that's our only recourse, Your  
2           Honour.

3                     We're dealing with an illiterate litigant  
4           who lives hundreds of miles from Yellowknife, and  
5           for him to go and try to contact the former  
6           lawyer when he wasn't even in court himself, he  
7           couldn't read or write the documents that were  
8           served on him, that's a ridiculous standard to  
9           put him through. So I'm seeking the order as  
10          requested (indiscernible) two of them.

11       MR. BUCHANAN:             Your Honour, I just have two  
12          points, if I may.

13       THE COURT:                 Sure.

14       MR. BUCHANAN:             First, going back to your  
15          question regarding the ATIPP Act and -- I mean, I  
16          guess this is a moot point, but I would just  
17          point out that under subsection 43, it says that  
18          we can only use the information for the purpose  
19          for which it was collected.

20                     And then regarding my friend's points  
21          regarding what Maintenance Enforcement can do,  
22          that's all laid out in the Maintenance  
23          Enforcement Act. And we do have significant  
24          powers with respect to the debtor such as  
25          collecting information, garnishing wages,  
26          reporting to CRA, et cetera. It's very limited  
27          with respect to the creditor. In fact, it's



1 almost silent on the creditor. And so we only  
2 have the powers granted to us by legislation.  
3 And so within the Act, there is no authority for  
4 us to accept service of these documents and to  
5 expend the costs.

6 THE COURT: But there's no specific  
7 prohibition against it either, is there?

8 MR. BUCHANAN: No, there's no --

9 THE COURT: It's simply not addressed.  
10 Correct?

11 MR. BUCHANAN: It's not addressed. But,  
12 again, this is -- if Your Honour were to grant  
13 the order, this is a cost that will come out of  
14 the Administrator's pockets, it's not something  
15 that we're funded for, and, in my submission, it  
16 would open the floodgates, because I know that  
17 Legal Aid office would actually use this order  
18 quite --

19 THE COURT: Let me ask you this. If the  
20 order was limited to attempting to contact the  
21 respondent at her known address, what's the cost?

22 MR. BUCHANAN: It would be quite minimal.  
23 But, again, my -- going to my first point, in my  
24 submission, the respondent has not made  
25 sufficient efforts to get the order in the first  
26 place.

27 THE COURT: Thank you.



1           With respect to Rule 38(1) and (2), I accept  
2 the guidance of Justice Cooper finding that the  
3 test is, in fact, quite strict, but that  
4 strictness has to be interpreted in light of the  
5 particular circumstances of the parties involved.

6           I am told by Mr. Large that the applicant is  
7 an illiterate person who lives some three hours'  
8 drive away from the nearest court worker and that  
9 his ability to undertake a search for his former  
10 spouse is limited. Given those concerns, I do  
11 find that the strict test has been met.

12           With respect to the application of the ATIPP  
13 provisions, as Mr. Large has commented and as I  
14 have commented earlier, there is no anticipated  
15 requirement for the Director to disclose any of  
16 its private information or the private  
17 information of the respondent and, as such, it is  
18 my finding that the ATIPP provisions do not  
19 apply. Even if they did apply, the sections that  
20 have been referred to deal with disclosure, not  
21 with use.

22           Mr. Buchanan has quite ably argued that this  
23 sort of thing was not contemplated -- or is not  
24 to be found in the legislation. But there are a  
25 lot of gaps in legislation. There are empty  
26 spaces into which the Court can interpret  
27 reasonable responses to requests.



1           It is also a troubling argument, in my  
2           respectful view, that the only issue that  
3           Maintenance Enforcement can consider is the  
4           actual enforcement of its order, not the  
5           variation of its order, not the reasonableness of  
6           the order upon review, simply the strict  
7           enforcement of it, and that does not persuade me.

8           It is no major undertaking for the Director  
9           to attempt to contact the respondent at the  
10          previous known address.

11          Substitutional service will not be effective  
12          if the order requires the Director to do  
13          something that they are not able to do, and I do  
14          not propose to push the costs of skip tracers and  
15          other more expensive search vehicles onto the  
16          director.

17          So I will make the order granting  
18          substitutional service with the limitation that  
19          the substitutional service is limited to  
20          attempting to contact the respondent at the  
21          previous known address. I do not see any reason  
22          why this could not be done between now and the  
23          next family chambers. Is it one month from now  
24          or what are we talking?

25          MR. LARGE:                    We meet every week, Your  
26          Honour.

27          THE COURT:                   That is a bit soon. Different





1 jurisdiction.

2 MR. LARGE: Perhaps, Your Honour -- I have  
3 some holidays coming. Perhaps you could put it  
4 over until November. (Indiscernible).

5 THE COURT: Suggest a date in November  
6 then.

7 MR. LARGE: November the 5th, Your Honour.

8 THE COURT: Very good. Thank you. I will  
9 put it over to November the 5th. At that time,  
10 Mr. Buchanan, all we are looking for is an  
11 indication of whether or not you were able to  
12 contact the respondent. If not, we will have to  
13 consider other options. Thank you.

14 MR. BUCHANAN: Yes, Your Honour. Just to  
15 clarify, you're asking us to send a letter to --  
16 or contact the applicant and then see whether  
17 she's responsive at that address?

18 THE COURT: Yes.

19 MR. BUCHANAN: That's the extent of it?

20 THE COURT: That is the extent of it.

21 MR. BUCHANAN: Okay. And I'll report back on  
22 the 5th.

23 THE COURT: Use whatever contact  
24 information you have.

25 MR. BUCHANAN: Okay.

26 THE COURT: That is what I am asking you  
27 to do. I do not want to be specifically limiting



1           it to that address. The order should reflect  
2           that it is using the information that you have at  
3           your disposal to contact the Respondent, but I am  
4           not requiring you to go beyond that.

5   MR. BUCHANAN:            Okay.

6   THE COURT:                Thank you.

7   MR. LARGE:                That's fine, Your Honour.

8           I'll draft an order. I'll have a copy, a draft  
9           copy, over to my friend so he can review it  
10          before it comes to the clerk.

11   THE COURT:                Thank you.

12   MR. LARGE:                Thank you, Your Honour. Those  
13          are all my matters today.

14   THE COURT:                Thank you, Mr. Large.

15   (ADJOURNED TO NOVEMBER 5, 2015, AT 10 A.M.)

16                            .....

17

18

19                            Certified Pursuant to Rule 723  
20                            of the Rules of Court

21

22

23                            Jane Romanowich, CSR(A)  
24                            Court Reporter

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