Sassie v. Klondike, 2015 NWTSC 60 S-1-CV-1997007021

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 ANNA SASSIE

 Applicant

 - and -

 ROY KLONDIKE

 Respondent

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 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.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 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

 Official Court Reporters

 1

 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

 Official Court Reporters

 2

 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

 Official Court Reporters

 3

 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

 Official Court Reporters

 4

 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

 Official Court Reporters

 5

 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

 Official Court Reporters

 6

 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

 Official Court Reporters

 7

 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:

 Official Court Reporters

 8

 1 The Rules uses the word

 "impractical" with respect to

 2 effecting prompt personal service,

 but decided cases suggest that

 3 courts apply a stricter standard,

 i.e., practical impossibility of

 4 serving the defendant personally.

 The affidavit supporting an

 5 application for substitutional

 service must state why prompt

 6 personal service is impractical, and

 show that reasonable efforts were

 7 made to locate and to personally

 serve the defendant. What is

 8 reasonable will depend upon the

 circumstances of the case, including

 9 the type that relief claimed, the

 amounts involved, the efforts made

 10 to locate the defendant, and the

 steps taken to effect personal

 11 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

 Official Court Reporters

 9

 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

 Official Court Reporters

 10

 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."

 Official Court Reporters

 11

 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.

 Official Court Reporters

 12

 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

 Official Court Reporters

 13

 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

 Official Court Reporters

 14

 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

 Official Court Reporters

 15

 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

 Official Court Reporters

 16

 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

 Official Court Reporters

 17

 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.

 Official Court Reporters

 18

 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

 Official Court Reporters

 19

 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

 Official Court Reporters

 20

 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.

 Official Court Reporters

 21

 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.

 Official Court Reporters

 22

 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

 Official Court Reporters

 23

 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

 Official Court Reporters

 24

 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

 of the Rules of Court

 20

 21

 22

 Jane Romanowich, CSR(A)

 23 Court Reporter

 24

 25

 26

 27

 Official Court Reporters

 25