

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

SA

Respondent

-and-

JR

Applicant

---

Application to vary child support pursuant to the *Children's Law Act*, SNWT 1997,  
c 14

Heard at Yellowknife: June 5, 2023

Written Reasons filed: July 14, 2023

---

**REASONS FOR JUDGMENT OF THE  
HONOURABLE JUSTICE K.M. SHANER**

Counsel for the Applicant:

Idowu Ohioze

Counsel for the Respondent:

Anastasia Kiva

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

SA

Respondent

-and-

JR

Applicant

**REASONS FOR JUDGMENT**

**INTRODUCTION**

[1] JR asks for an order varying, retroactively and prospectively, a support order granted in 2008 and confirmed in 2015, pursuant to s 61(2) of the *Children's Law Act*, SNWT 1997, c 14 and the *Child Support Guidelines*, R-138-98, enacted pursuant to s 85 of the *Children's Law Act* (the "*Guidelines*"). The application engages both procedural and substantive aspects of the law of child support in the Northwest Territories, including the obligations on respondents to make full, timely and continuous financial disclosure and the consequences which flow from the failure to do so.

[2] The Respondent, SA, opposes the application.

[3] For reasons following, the application is dismissed.

**HISTORY**

[4] JR and SA are the parents of a child born in 2007. They separated shortly after her birth. She has always lived with SA. The child has complex medical issues.

[5] On December 14, 2007, SA filed an Originating Notice seeking custody, child support and financial disclosure. The application was supported by an affidavit from SA in which she deposed JR worked full-time at a diamond mine in the Northwest

Territories and that he also sold artwork. She stated JR had 20 paintings for sale at a Yellowknife art gallery ranging in price from \$180.00 to \$3,000.00 each. Additionally, there was an affidavit from a paralegal attaching information from Statistics Canada showing the median annual income for a male over 15 in the Northwest Territories was \$66,645.00.

[6] The matter came before Schuler, J on January 31, 2008. According to the Clerk's notes, SA's lawyer submitted a copy of the first page of an affidavit of service showing JR was served January 17, 2008. That document is on the Court's file; however, the original affidavit of service is not. JR was paged to the courtroom but did not respond. Justice Schuler ordered the matter be put over to March 27, 2008. Her order also directed JR to make financial disclosure by March 7, 2008.

[7] SA's lawyer withdrew the application from the March 27, 2008 list and re-listed it to May 1, 2008 because she was unable to effect service. Justice Schuler's January 31, 2008 order and the Notice of Withdrawal setting the matter over to May 1, 2008 were then served personally on JR on April 5, 2008.

[8] The application proceeded on May 1, 2008. JR did not appear, nor did he file the financial disclosure as directed by Schuler, J. Justice Schuler issued an interim order imputing annual income of \$66,645.00 and ordering JR to pay child support of \$618.00 a month commencing May 1, 2008. JR was personally served with a copy of that order on May 13, 2008.

[9] JR made few voluntary payments and by 2012 he had accumulated approximately \$27,000.00 in arrears. The Maintenance Enforcement Administrator took enforcement action under the *Maintenance Orders Enforcement Act*, RSNWT 1988, c M-2 and on May 7, 2012 obtained an order from the Territorial Court of the Northwest Territories requiring him to pay \$200.00 a month towards arrears. The order indicates JR was present at the hearing and made submissions on his own behalf.

[10] In April of 2015, SA filed a Notice of Motion seeking a final order to confirm the amount of ongoing child support ordered by Schuler, J in 2008 and to require JR to contribute to the child's extraordinary expenses. The Notice of Motion included a notice to JR to disclose his income. The application was supported by an affidavit from SA in which she deposed JR was an artist. She included as exhibits internet search results demonstrating JR had artwork in a number of galleries, that he taught art classes and that offered himself as an "artist in residence" to schools and other organizations. SA also provided evidence regarding the child's complex medical needs, which necessitated additional expenses.

[11] The application was heard June 25, 2015. JR was served properly with notice and appeared at the hearing. He did not file his own affidavit, nor did he provide the financial disclosure requested in the Notice of Motion. He consented to an order which confirmed ongoing child support of \$618.00 a month, based on the income imputed in 2008. The order also directed him to pay extraordinary expenses of \$250.00 a month. A copy of the order was served on JR the next day.

[12] JR filed this application through his previous counsel on July 12, 2021. It was adjourned without a date for lack of service and to await the outcome of further enforcement proceedings before the Territorial Court. His current counsel brought it forward just over a year later, on July 21, 2022, and obtained an order staying enforcement of arrears but directing ongoing child support to continue. It was subsequently directed to a special chambers hearing and proceeded.

### **EVIDENCE IN THIS APPLICATION**

[13] The evidence JR relies on in this application is contained in an affidavit dated July 9, 2021, tendered in support of his application. It is the only evidence he has ever submitted in these proceedings. It has not been updated since it was filed.

[14] As of July 9, 2021, JR was \$88,650.47 in arrears for the child support payable to SA. The current amount of arrears is unknown. He is subject to another support order for children from a previous relationship under which arrears of approximately \$59,000.00 had been accumulated as of July 9, 2021. The circumstances leading to those arrears were not described in the affidavit and JR did not include a claim for undue hardship with this application.

[15] JR deposes he works as a self-employed artist. When he swore his affidavit in 2021, he anticipated receiving approximately \$50,000.00 for painting a large mural for the Royal Canadian Legion.

[16] JR's affidavit includes copies of income tax returns for the years 2012 and from 2015 to 2019. These disclose the following income for those years:

<b>Year</b>	<b>Income</b>
2012	\$10,750
2015	\$21,950.00
2016	\$20,700.00

2017	\$15,142.00
2018	\$18,290.00
2019	\$27,420.00

[17] No explanation is offered as to why JR did not provide evidence of his income for the years 2008 through 2011, 2013 and 2014, and for the years 2020 to the present. Other than a representation by his counsel that JR was not served with notice of the initial application in 2008 (which is addressed later in these reasons) there is no explanation as to why he did not provide financial disclosure to the Court in 2008 and 2015, when the interim and final orders were made.

[18] JR did not include any information about what happened to the job he had at the mine in 2008, which SA referred to in the affidavit she filed in support of the 2008 child support order. There is no evidence JR has sought any other employment opportunities.

[19] JR's affidavit includes copies of garnishee summons issued to Taylor Architectural Group in relation to the child support owed to SA and another issued to the Royal Canadian Legion in relation to JR's child support debt from his other relationship. Both were issued October 5, 2020. There is no explanation as to how he was connected to either organization at the time the garnishee summonses were issued, whether as a contractor or otherwise.

[20] SA swore an affidavit in response to this application on October 3, 2022. She states JR has a college diploma in graphic design. Included as exhibits are copies of advertisements seeking candidates for graphic design jobs, the results of a Google search SA conducted showing various paintings and reproductions of JR's artwork, their prices, and a copy of a Canadian Broadcasting Corporation ("CBC") online article featuring JR and his artwork from March 13, 2022,

[21] The CBC article states JR has produced over 4,300 paintings in the past 27 years and quotes him as saying he is ". . . building up [his] inventory, working with three or four different galleries across Canada and selling on social media, just getting new paintings out there".

[22] The results of SA's Google search reveal 23 of JR's paintings, including six for sale through an art gallery ranging in price from \$1,375.00 to \$5,700.00. As well, it appears his artwork has been reproduced on umbrellas, scarves, handbags,

glassware and notebooks ranging in price from \$23.95 to \$98.99. JR is also credited as the illustrator of two children's books.

[23] SA also conducted a search of the Statistics Canada website and included a printout showing average personal income in the Northwest Territories between 2011 and 2020. For Yellowknife, the average income was \$67,629.00 in 2011 and \$80,075.00 in 2020.

[24] There is no evidence JR gave SA effective notice of his intention to proceed with this application until filing formal notice in 2021.

## **GROUND FOR RETROACTIVE AND ONGOING VARIATION**

[25] JR advances procedural and substantive grounds for variation, which I have summarized.

[26] First, in oral submissions at the special chambers hearing, JR's counsel submitted notice of the original return date, January 31, 2008, was not served on JR. JR does not address this anywhere in his affidavit; however, his counsel points out there is no proof of service on the Court's file.

[27] Second, there were fewer than 30 days between the time JR was served with notice of the May 1, 2008 return date and the hearing, cutting short the time he had to file the financial information under s 21(6) of the *Guidelines*.

[28] Third, and relatedly, JR says because he was not afforded sufficient time to submit his financial information before the May 1, 2008 hearing, income higher than what he actually earned was imputed to him in the interim order and the final order which followed in 2015. He argues this was an error because his income information was not available to the Court either time. Now that it is available, it should be treated as a change in circumstances and support should be adjusted retroactively and prospectively to reflect actual income.

## **ANALYSIS**

### ***Failure to Prove Service of the Original Application***

[29] The importance of proof of service on litigation cannot be overstated. Subject to orders or directions from a judge, or admissions between parties, the original affidavit of service respecting any court document which must be served should be filed in advance of the application to which it relates. This is particularly important when only one party appears, as the affidavit of service provides the judge with

evidence of when and how the other party was served. That evidence, in turn, allows the judge to assess whether the other party has had sufficient notice and a fair opportunity to put their evidence and positions forward.

[30] In these circumstances, however, JR cannot rely on the absence of proof of service of the January 31, 2008 return date to vary or set aside any of the orders made. Although there is no affidavit of service on the file regarding the January 31, 2008 date, nothing substantive happened that day. Justice Schuler issued an order requiring JR to file financial disclosure by March 7, 2008 and she adjourned everything else to a later date. Importantly, there was no order imputing income or directing JR to pay child support that day.

[31] Further, and as is discussed in detail below, it is clear JR had proper notice of the proceedings on May 1, 2008, which resulted in Schuler, J's interim order. The affidavit of service respecting that application shows he was served April 5, 2008, well within the time for service of an Originating Notice set out in the *Rules of the Supreme Court of the Northwest Territories*.

### ***Failure to Allow 30 Days to Provide Financial Disclosure***

[32] This argument engages principles of civil procedure, in particular, the nature of the 30-day period for making disclosure in s 21(6), the effect of the failure to allow JR the full 30 days to disclose his financial information and JR's obligations as a litigant after the order was made.

[33] A respondent to a child support application must disclose all sources of income within 30 days of being served with an application for child support (*Guidelines*, ss 21(2) and (6)). As noted, JR was served with notice of the May 1, 2008 hearing date on April 5. Thus, he had only 25 days, rather than 30, to provide financial disclosure. He did not provide disclosure. Income was imputed to him and child support was calculated on that basis. JR argues the order should not have been made because his financial information was not available to the Court. He ought to have had the full 30 days to disclose before the order was made. This, in turn, gives rise to grounds for retroactive variation.

[34] There is an important distinction between substantive and procedural law. This was articulated by the Ontario Court of Appeal in *Sutt v Sutt*, 1968 CanLII 221 (ONCA) at 8, [1969] 1 OR 169 as follows:

[. . .] Substantive law creates rights and obligations and is concerned with the ends which the administration of justice seeks to attain, whereas procedural law is the vehicle providing the means and instruments by which those ends are attained. It

regulates the conduct of Courts and litigants in respect of the litigation itself whereas substantive law determines their conduct and relations in respect of the matters litigated. In *Poyser v. Minors* (1881), 7 Q.B.D. 329 at p. 333, Lush, L.J., drew the distinction in these words:

"Practice" in its larger sense -- the sense in which it was obviously used in that Act, like "procedure" which is used in the Judicature Acts, denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which by means of the proceeding the Court is to administer the machinery as distinguished from its product. Where there is a right there is a remedy.

[35] In a child support application, the legal obligation to provide financial disclosure – and the other party’s right to receive it - is substantive. As discussed in detail below, financial disclosure is a central component of the child support regime under the *Children’s Law Act* and the *Guidelines*. It is what gives the recipient and, where the matter is litigated, the Court, the evidence required to determine the amount of child support. The child support order which results from this is a substantive remedy.

[36] By contrast, the 30-day time period within which a respondent must make financial disclosure is procedural. It informs respondents of the time frame within which they must comply with the substantive obligation to make financial disclosure.

[37] The 30-day time period cannot be ignored; however, because it is procedural in nature, failure to provide a respondent with the full 30 days to provide financial disclosure does not invalidate the order which would flow from the proceedings. Rather, it is a procedural irregularity. The Court can cure procedural irregularities. *Vaters v Calgary Cab Co*, 2001 ABCA 4. Where an order is issued in the face of a procedural irregularity, it is open to the affected party to move to set it aside or vary it. This is not an unlimited right, however. A key principle is the affected party must act quickly once they have knowledge of it: they must not engage in wilful delay. *Costa v Sanavik Cooperative Association*, 1979 CarswellNWT 2 (NWTSC) at para 15, citing *Klein v Schile*, 1921 CanLII 107 (SKCA), 1921 CarswellSask 57. JR did not meet this obligation.

[38] JR was served promptly with a copy of the May 1, 2008 order on May 13, 2008. There is no evidence he took any steps to bring the matter back before the Court to address the amount of imputed income. In 2012 he was present and made submissions in an enforcement hearing in the Territorial Court respecting the same order. Again, there is no evidence he tried to have the order varied in this Court after enforcement proceedings were commenced. In 2015, JR consented to the order being



finalized based on the income imputed in 2008. It was not until 2021, some 13 years later, that JR brought this application to vary. The delay has not been explained. In short, JR has waited too long to come forward and argue the income imputed to him in 2008. He is not entitled to relief on this basis.

[39] While the foregoing is sufficient to dispose of this argument, there is another reason the Court cannot vary the order on the basis that income was imputed erroneously. Except for 2012, JR has not disclosed his income for the years between 2008 and 2015, when the final order was issued, and he has not explained this evidentiary omission. As a practical matter, this leaves the Court unable to calculate what child support would have been if JR's income was disclosed and leads back to need to impute income.

[40] This argument is dismissed.

### ***Change in Circumstances and Availability of New Evidence***

[41] Given my conclusions respecting variation of the May 1, 2008 order, I will consider these grounds for variation in relation to the 2015 final order.

[42] The applicable legal framework is set out in the *Children's Law Act* and the *Guidelines*, which are substantially similar and, in some cases, mirror, that established by the *Divorce Act*, RSC 1985 c 3 (2<sup>nd</sup> Supp) and the *Federal Child Support Guidelines*, SOR 97-175 made thereunder. Thus, cases considering and interpreting the child support variation provisions under the *Divorce Act* provide useful and persuasive interpretive guidance. Of particular relevance is *Colucci v Colucci*, 2021 SCC 24, which sets out a comprehensive framework within which to evaluate applications for retroactive variation and to rescind arrears. *Colucci* was recently applied in a retroactive variation application under the *Children's Law Act* in *Lacoursière v Penk* 2023 NWTSC 4 at paras 39-42.

[43] The starting point is s 58 of the *Children's Law Act*, which requires parents to provide support for their children "where the parent is capable of doing so". Section 59(1) authorizes the Court to order child support and determine the duration and amount. Section 59(3) allows it to do so on both an interim and final basis. Section 59(4) requires the Court to apply the *Guidelines* in making interim and final orders.

[44] Under the *Guidelines*, the amount of child support is determined in relation to the payor parent's income. Therefore, full financial disclosure by the respondent to a child support application plays a central role in determining the amount. In

*Colucci*, Martin, J set out the rationale for, and the importance of, full and ongoing financial disclosure by payor parents:

[48] After applying the *Guidelines* and *D.B.S.* for many years, it has become clear just how much the child support system, including s. 17 variations, depends upon adequate, accurate and timely financial disclosure. [. . .] Simply stated, disclosure is the linchpin on which fair child support depends and the relevant legal tests must encourage the timely provision of necessary information.

[49] The pivotal role of disclosure comes as no surprise since the premise underlying the *Guidelines* “is that the support obligation itself should fluctuate with the payor parent’s income” (*D.B.S.*, at para. 45). The structure of the *Guidelines* thus creates an informational asymmetry between the parties. In a system that ties support to payor income, it is the payor who knows and controls the information needed to calculate the appropriate amount of support. The recipient does not have access to this information, except to the extent that the payor chooses or is made to share it. It would thus be illogical, unfair and contrary to the child’s best interests to make the recipient solely responsible for policing the payor’s ongoing compliance with their support obligation.

[45] Section 19(1) permits the Court to impute income to the payor in certain circumstances, including where the payor is intentionally unemployed or under employed, or has failed to disclose income when under a legal obligation to do so. As stated in *Colucci*, where a court imputes income, there are important implications for an application for retroactive variation:

[63] Of course, a payor whose income was originally imputed because of an initial lack of disclosure cannot later claim that a change in circumstances occurs when he or she subsequently produces proper documentation showing the imputation was higher than the table amount for their actual income. The payor cannot rely on their own late disclosure as a change in circumstances to ground a variation order (*Gray*, at paras. 33-34). This would “defeat the purpose of imputing income in the first place” and act as “a disincentive for payors to participate in the initial court process” (*Trang v. Trang*, 2013 ONSC 1980, 29 R.F.L. (7th) 364, at para. 53).

[46] Subsection 61(2) of the *Children’s Law Act* permits the Court to vary a support order retroactively and prospectively, or to relieve a payor of arrears:

61. (2) Where the court is satisfied that evidence not available on the previous hearing has become available or that a change in circumstances as provided for in

the applicable guidelines has occurred since the making of an order of support or the disposition of another application for variation in respect of the same order, the court may

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
- (b) relieve the respondent from the payment of part of or all the arrears or any interest due on the arrears; and
- (c) make any other order under section 60 that the court considers appropriate.

[47] Subsection 61(2) is informed by s 14(a) of the *Guidelines*, which provides (in part):

14. For the purposes of subsection 61(2) of the Act, any one of the following constitutes a change in circumstances that gives rise to the making of a variation order in respect of a child support order:

- (a) where the amount of child support sought to be varied includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or provision of the child support order;

[48] Where a payor has met the threshold of demonstrating a change in circumstances, the Court must then decide on the length of retroactivity. In *Colucci, Martin, J* set out the legal framework to be applied in addressing the length of retroactivity when a payor applies for downward variation. There is a presumption the variation will date back to the date of effective notice, ie, when the payor makes the recipient aware of the intention to seek a retroactive downward variation, up to three years before formal notice, ie, when proceedings are commenced. Where, as here, there has been no effective notice before the variation proceedings are filed and served, the commencement date for the variation will generally be the date formal notice was provided. *Colucci*, paras 91-95.

[49] JR seeks retroactive variation to a point several years before he filed this application. Courts have discretion to depart from the presumptive commencement dates for variation. The discretion is guided by the four considerations set out in *DBS v SRG*, 2006 SCC 37 at paras 100-116, [2006] 2 SCR 231, adapted for applications for retroactive decrease. *Colucci*, at paras 96-108. These are:

- a. whether there is an understandable reason for the delay in bringing the application;
- b. the payor's conduct;
- c. the child's circumstances; and

- d. hardship to the payor if retroactivity is not extended beyond the presumptive date.

[50] With respect to the payor's conduct, *Colucci* holds efforts to disclose income information to, and communicate with, the recipient parent in a timely manner and efforts in making voluntary payments are key considerations:

[102] The payor's efforts to disclose and communicate will often be prominent considerations in assessing the payor's conduct in the context of an application for a retroactive decrease of support. For example, if the payor provides effective notice but fails to communicate and disclose information on an ongoing basis after the date of effective notice, the payor's silence may militate in favour of abbreviating the period of retroactivity. Conversely, if more than three years have passed between the date of effective notice and the date of formal notice, the court might consider declining to apply the three-year rule if the payor has made ongoing efforts to disclose, communicate and engage in dialogue with the recipient.

[103] The court may also consider whether the payor made voluntary payments against the arrears, continued to pay in accordance with their ability to pay, cooperated with enforcement agencies, and showed a willingness to support the child rather than evading child support obligations (see *DiFrancesco v. Couto* (2001), 56 O.R. (3d) 363 (C.A.), at para. 25). It should go without saying that a person who is subject to a child support order must "comply with the order until it is no longer in effect", and this principle is now expressly enshrined in the Divorce Act "[f]or greater certainty" (s. 7.5). Genuine efforts to continue paying as much as the payor can will show good faith and a willingness to support the child.

[51] With respect to hardship, the onus is on the payor to lead evidence demonstrating they will suffer hardship unless the period of retroactivity is longer than the presumptive date. Hardship must be evaluated taking into account not only the hardship the payor may suffer if the application is not granted, but also the hardship the recipient parent and the child may suffer if the retroactive variation is granted. Moreover, "[h]ardship carries much less weight where brought on by the payor's own unreasonable failure to make proper disclosure and give notice to the recipient". *Colucci*, at para 108.

[52] Applying this framework to the facts in this case, it is clear JR's application for retroactive variation is fraught with insurmountable problems and cannot succeed.

[53] JR's argument that information about his income was not available when the final order was made is without sufficient evidentiary foundation and it has no merit.

He has not explained why it was unavailable, nor has he provided evidence about what efforts he made to obtain the information. He was present at the hearing in 2015 and he consented to the terms of the final order, including the imputed income. JR cannot now come before the Court and seek relief based on the bare assertion the evidence was not available when the matter was heard. To hold otherwise would be wholly unfair and prejudicial to SA, who relied on JR's consent in her application for a final order for child support. Moreover, it would conflate the unavailability of evidence with a failure to produce it.

[54] JR's argument there has been a change of circumstances within the meaning of s 14(a) of the *Guidelines* by reason of his income being different than what has been imputed to him is also without merit. It calls on the Court to interpret s 14(a) without regard to its legislative context and the case law which puts early, robust and continual financial disclosure at the heart the overall legal framework for determining child support. Clearly, JR had many years to make proper financial disclosure and to apply to vary both the 2008 and the 2015 orders to reflect his actual income. He did not and instead, knowingly allowed arrears to accumulate based on imputed income. That was his choice. He cannot to now vary his child support obligations retroactively based on evidence that was available but which he failed to put forward when he had the opportunity to do so. This would not only encourage respondents to ignore their legal obligations to make financial disclosure, it would also defeat the purpose of imputing income and create a climate of uncertainty in child support matters.

[55] JR has not demonstrated the evidence of his income was unavailable when the orders were made, nor has he shown there has been a change in circumstances which would justify retroactive variation.

[56] Even if the income JR has now disclosed could be considered a change of circumstances, the evidentiary record is insufficient to allow the Court to vary the order retroactively to the date of formal notice or to vary it prospectively. JR's income is provided only up to 2019. The application was filed in July of 2021. It then remained stagnant until it came forward in late 2022 when the parties secured a special hearing date. There is no explanation as to why, within this time period, JR did not submit current evidence about his income. The result is, there is insufficient evidence about JR's income which the Court could use to calculate the appropriate amount of child support for 2020 and beyond. Further, JR's evidence about his income suggests it fluctuates yearly, which would in turn invite the Court to look for an income pattern to determine the appropriate amount of support. This exercise is not feasible without having information about JR's income for the last four years. Again, the Court is led to the need to impute income to JR.

[57] There also would be no grounds for departing from the date of formal notice and extending retroactivity back to 2015 within the framework of the adapted *DBS* factors. JR has not explained the delay in seeking retractive variation. His conduct has fallen short of what is expected of a responsible parent: he has made very few voluntary payments and he made no attempts to disclose his income until 2021, 13 years after the first child support order. What he disclosed then is woefully inadequate, extending only to 2019. The child has complex medical needs, with consequent related expenses, for which SA has borne almost exclusive responsibility, on top of the basic day to day expenses of food, shelter, utilities, school fees and clothing. JR's voluntary payments have been sporadic and few, with most of what has been paid has been collected through the Maintenance Enforcement Administrator. Finally, JR has not provided evidence of any hardship he may suffer if he is denied the relief he seeks.

## **CONCLUSION**

[58] JR's application is dismissed. Paragraph 1 of the order dated July 21, 2022 staying enforcement of arrears is vacated and enforcement proceedings can therefore continue.

[59] As SA was wholly successful, she is entitled to costs. If the parties are unable to agree on the amount of costs, they may submit a Bill of Costs to the Clerk for taxation.

K. M. Shaner  
JSC

Dated in Yellowknife, NT this  
14<sup>th</sup> day of July, 2023

Counsel for the Applicant:

Idowu Ohioze

Counsel for the Respondent:

Anastasia Kiva

**IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES**

---

**BETWEEN**

SA

Respondent

-and-

JR

Applicant

---

REASONS FOR JUDGMENT OF  
THE HONOURABLE JUSTICE K.M. SHANER

---