

**PUBLICATION OF IDENTIFYING INFORMATION IS
PROHIBITED BY SECTION 172(2) OF THE *CHILDREN'S ACT***

B. v. B., 2003 YKSC 3

Date: 20030107
Docket No.: S.C. 02-B0054
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

N. A. B.

PETITIONER

AND:

W. A. B.

RESPONDENT

Unrepresented

For the Applicant

Joie Quarton

For the Petitioner

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] HUDSON J. (Oral): This is an application to review and revise downwards, the payment of child support.

[2] The original child support order was on April 1, 1997, and almost concurrent or coincidental with the applicant respondent suffering a serious accident involving a blow to the head.

[3] He, therefore, has no memory of the events leading up to the corollary relief order of April 1st, requiring him to pay \$1,300 a month with respect to three children,

as described in the evidence.

[4] He doesn't know why the sum of \$1,300 was ordered, when he had earlier been paying \$1,000.

[5] It is stated that it is based on an income of \$50,000 but his evidence before me now is that he wasn't making anywhere near that. In fact, his income approximated \$19,300. He wasn't, as I say, aware because of his accident and because he wasn't inclined to pay less than someone said he should pay.

[6] He had no regard for his legal rights for a considerable period of time and his income fell further and further and he was unable to make the payments called for under the corollary relief order.

[7] On May 1st, 1997, the child support guidelines came into force, at which time he was not living in the Yukon and the calculations as to appropriate amounts relate to his province of residence.

[8] The annual amount ordered at \$1,300 is \$15,600 but the guidelines would have required him to pay \$3,456.

[9] He, in fact, did pay the \$15,600. And as he did pay the \$1,300 for nine months, resulting in a considerable overpayment if one looks at the guidelines.

[10] In the successive years, his income varied from \$8,244 in 2002 in which his income is now known to be \$17,255.

[11] The applicant's counsel has filed calculations to support her submissions, and in the result of those calculations, the matters financially between the petitioner and the respondent, would be that at if one looked at the guideline amounts, there would be a substantial overpayment.

[12] It matters not what the amount of the overpayment is, it is simply that the arrears in my view, based on the evidence before me, of principally the guidelines, secondly evidence that he is not a malingerer but is a person who has suffered difficulties and for extensive periods, has paid the majority of his income in the form of child support.

[13] I'm satisfied on the evidence, this being a provisional order, that the original order was made on a false premise that the income of the respondent was \$50,000.

[14] Therefore, it is clear to me that the arrears should be cancelled.

[15] The ongoing payments start with January 1st, and should be \$219, based on three children, an income of \$17,255 and residence in the Yukon Territory.

[16] That is my judgment in this matter for delivery to the jurisdiction in which the petitioner resides for confirmation.

HUDSON J.