IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Torres* v. *Marin*, 2007 YKSC 29

Date: 20070604
S.C. No. 02-D3490
Registry: Whitehorse

Between:

MARIO RAUL RAYO TORRES

Petitioner

And

BLANCA DE LAS MERCEDES MARIN MARIN

Respondent

Before: Mr. Justice L.F. Gower

Appearances:

Kathleen M. Kinchen — Counsel for the petitioner
Malcolm Campbell — Counsel for the respondent

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the petitioner to be relieved of the requirement to pay spousal support. In the alternative, the petitioner asks that his current obligation to pay spousal support in the amount of $200 per month terminate when the petitioner turns 65 years old.

[2] The application was originally brought under s. 17(1) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) (the "*Act*"), for variation of an earlier interim interim spousal support order. That order imputed income to the petitioner in the amount of $32,000 per

annum and directed him to pay interim interim spousal support to the respondent in the amount of $200 per month. However, at the summary trial before me, it became apparent that s. 17 was not applicable, as that section only applies to an application to vary a spousal support order “by either or both former spouses”. At the time the application was brought, the parties were not yet divorced and were therefore not “former” spouses. Without any objection from the respondent’s counsel, the petitioner’s counsel reframed the application under s. 15.2(1) of the *Act*, as one seeking a final or permanent order for spousal support.

ISSUE

[3] The issue of entitlement was not seriously challenged by the petitioner. Indeed, the petitioner’s counsel conceded it is arguable that the respondent is entitled to spousal support. Therefore, I have proceeded to decide this matter on the basis that the real issue is one relating to the amount, if any, of the spousal support and its potential duration. That in turn requires a careful examination of the petitioner’s ability to pay, based upon an assessment of his past, current and likely future income.

FACTS

[4] The couple were married for a total of 31 years, until their separation in September 1999. The petitioner is currently 61 years old and the respondent is 63. In 1987, the petitioner came to Canada from Chile, the couple’s country of origin. He claimed to be a political refugee and eventually settled in Whitehorse. The respondent remained in Chile with the couple’s four children, living with the petitioner’s family. Over

the next five years, the petitioner took various types of labouring employment and provided financial support to the respondent.

[5] In 1992, the petitioner sponsored the respondent and their children to move to Canada. In that same year, he started his own business as a painter in Whitehorse, which continues to be his form of employment to the present.

[6] Upon moving to Canada, the respondent did not speak English. About a year after the move, she worked briefly for five or six months, but primarily was responsible for raising the couple's four children, while the petitioner earned the bulk of the family income. Eventually, in about 1999, the respondent began to experience health problems, specifically a bad back and arthritis, which permanently prevented her from working outside of the home. She provided medical confirmation of her inability to work by way of a note and a letter from her doctor. The latter was dated February 2, 2007, expressing the opinion that she is "unemployable".

[7] The respondent brought a separate application for child support and spousal support in October 1999. Eventually that led to an order from Justice R.E. Hudson in March 2000 (the "Hudson order"), which imputed an annual income to the petitioner in the amount of $32,000 and required him to pay child support for the one remaining child of the marriage, N., in the amount of $281 monthly, plus spousal support to the petitioner in the amount of $200 per month.

[8] In 2002, the petitioner began the within divorce proceedings. On January 14, 2003, Justice R. Foisy made an order in these proceedings, again imputing an annual income to the petitioner in the amount of $32,000, and requiring him to pay interim

interim child support of $281 per month and interim interim spousal support of $200 per month (the “Foisy order”). It is significant that the clerk’s notes of the hearing leading to the Foisy Order indicate that it was made “on consent”. That was also how the petitioner’s counsel described the order in her submissions at this summary trial.

[9] Pursuant to the two orders, the petitioner paid child support for N. until she turned 19 years old in September 2005. He continues to pay spousal support to the respondent. To date he has never missed either a child support payment or a spousal support payment.

[10] The petitioner provided information on his income from his painting business over the years from 1999 to 2006, inclusive. He has attached his income tax returns for each of those years, which his counsel advises have never been challenged by Revenue Canada. For the returns from 1999 through 2001, he attached financial statements from his painting business setting out the revenue and expenses for each year of operation. For those years, the tax returns indicate the gross business income and the net business income, after deducting expenses. The petitioner has also indicated that, by specifically deducting “materials and supplies” and “rentals” as expenses from the gross business income, he was able to arrive at a value for the “gross profit” of the business in each year, although that value is not specifically reflected in those returns. By 2002, the tax return form was redesigned by Revenue Canada to allow for a calculation for the “gross profit”. That value is determined by deducting from the gross business income the costs of “purchases during the year” (which I take to be roughly equivalent to the costs of “materials and supplies” and “rentals”, as referred to in the previous three years’ financial statements), as well as the costs of any sub-contracts.

[11] With that brief explanation, the petitioner's income history from 1999 to 2006 is as follows:

Years	Gross Business Income	Gross Profit	Net Income
1999	$47,489	$21,744	$1,504.58
2000	$39,419	$23,158.39	$2,195.04
2001	$92,836	$42,650.57	$19,200.93
2002	$47,430	$22,115.99	$1,595.98
2003	$45,365.43	$12,095.63	$(5,006.28)
2004	$50,906.58	$21,434.70	$7,271.28
2005	$36,695	$19,628.13	$(1,815.93)
2006	$51,910	$21,681.57	$1067.00

[12] The petitioner's counsel concedes, and I agree, that certain deductions such as "capital cost allowance" and "meals and entertainment" in each of the reported years should be added back in to result in a higher net income figure. The respondent's counsel suggests that the same should be done with other expenses such as the cost of driving back and forth to work, accounting costs and telephone bills, which ordinary salaried employees would not be able to deduct. I generally accept that about one-half of such costs should be added back in, but it will soon become apparent that the point is somewhat academic.

[13] It is important to note that the petitioner filed sworn financial statements in 2002 and 2006. In the 2002 financial statement, the petitioner deposed that his gross monthly income was $1,600 and that he had a gross annual income of $19,200, based upon his

2001 income. At that time, he was paying both child support and spousal support, totalling $481 monthly. Although he also deposed to having a deficit balance of $188 monthly, he indicated that he was debt free.

[14] In his 2006 financial statement, the petitioner swore that he had a total gross monthly income of $1,635, but that his gross annual income was only $11, 444. He explained that the monthly income was arrived at by taking his gross profits for 2005 and pro-rating it over one year. He claimed to have a monthly deficit of $195, notwithstanding that, by that time, he was no longer paying child support of $281 per month. On the other hand, his telephone costs had increased significantly as well as his costs for the operation and maintenance of his motor vehicle. Finally, he deposed that his total debt was $200.

[15] Both parties acknowledge that they have each taken a number of international holidays to Chile and other countries since their separation. I understand the respondent has twice travelled to Chile and once to Spain to visit family. The petitioner, on the other hand, admits to having travelled internationally almost every year during his "slow season", also for the purpose of visiting family. He says that he uses travel points to do so and often stays with family, keeping his costs to a minimum.

ANALYSIS

[16] Under s. 15.2(4) of the *Divorce Act*, in making a spousal support order:

> "… court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
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> (a) the length of time the spouses cohabited;

> (b) the functions performed by each spouse during cohabitation; and
>
> (c) any order, agreement or arrangement relating to support of either spouse."

[17] Further, under s. 15.2(6), a spousal support order should:

> "(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
>
> (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
>
> (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
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> (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time."

[18] In January 2005, Professors Carol Rogerson and Rollie Thompson, in conjunction with the Federal Department of Justice, published a document entitled *Spousal Support Advisory Guidelines: A Draft Proposal.* These advisory Guidelines do not deal with entitlement to support; rather, they are only relevant to issues of quantum and duration, once entitlement has been determined. In *Yemchuk* v. *Yemchuk*, 2005 BCCA 406, at para. 64, the British Columbia Court of Appeal accepted the guidelines as a "useful tool to assist judges in accessing the quantum and duration of spousal support". The Court of Appeal also noted that the guidelines are intended to reflect the current law and not to change it.

[19] The guidelines set out a "without child support" formula, which would be applicable to the case at bar, since the couple's daughter, N. is no longer a child of the

marriage. According to the formula, for marriages of 25 years or longer, the amount of child support would range from 37.5 to 50% of the gross income difference between the spouses' gross incomes. In the case at bar, because the respondent earned nothing and the petitioner was the sole income earner, the amount would be somewhere between 37.5 to 50% of the petitioner's income. As for duration, the guidelines suggest that if the marriage is 20 years or longer, the spousal support would be indefinite.

[20] However, at pp. 87 and 88, the guidelines also deal with the issue of whether and at what point there should be a "floor" for spousal support, that is, an income level for the payor spouse below which zero support is to be paid. Here the authors say:

> "Our initial view is that there should not be any amount of spousal support payable until the payor's gross income exceeds $20,000 per year. A minimum wage or poverty line income was considered too low, providing too little incentive for the payor to continue working, given prevailing tax rates. A review of the case law suggests that judges almost never order spousal support where payors make less than $20,000, or even slightly more
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> ...
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> For spouses with low incomes, we must be particularly concerned about work incentives, welfare rates and net disposable incomes. There may be compelling arguments for low-income payors to pay child support at very low income levels, but the same arguments cannot be made for support for adult spouses. If anything, we are worried that the $20,000 floor may be too low, creating real hardship for payor spouses and ultimately threatening the credibility of the formulas.
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> We do have one concern with an absolute floor at $20,000, namely a **cliff effect** for those payors just above the floor. A way to avoid such a cliff would be to have some smoothing of the formulas over a range of lower incomes, e.g. between $20,000 and $40,000, with the percentages rising towards the standard range (as was done in the construction of the

> *Federal Child Support Guidelines*). We would prefer to avoid such complexity at the lower end, at least in this early stage in the development of advisory guidelines. For now, the cliff effect can be best avoided by an **exception** for cases where the payor spouse's gross income is **more than $20,000 but less than $30,000**. For cases within this range, assuming entitlement, consideration should be given to the percentages sought under the applicable formula, the net disposable income left to the payor spouse, and the impact of a spousal support payment upon the work incentives and marginal gains of the payor." (my underlining)

[21] The respondent's counsel submitted that I should continue to impute to the petitioner an annual income of $32,000, as was done in both the Hudson and Foisy orders, and order him to pay spousal support in the range of $800 monthly (or 30% of the gross income difference between the parties). As I understood his submission, the rational for such an imputation is that there has been no significant change in the petitioner's circumstances since the Hudson order in 2000, and therefore the same imputation could and should be made today. However, the problem with that argument is that I have no reasons from Justice Hudson explaining why he made the original imputation of $32,000 annually. I have reviewed that file, as it involved an earlier and separate proceeding, and could find little of assistance in the way of evidence on the record or otherwise. Further, although the Foisy order confirmed the imputation of $32,000, that was done over four years ago and was on consent. I have nothing before me on this summary trial which would support making the same imputation today.

[22] The respondent's counsel also submitted on this point that I can infer that the petitioner has been under-employed over the period from 1999 to 2006. He characterized the petitioner as "choosing" not to work in the winter so that he can go on international holidays. The respondent's counsel argued that I can take judicial notice of

the high demand for professional painters within the current economic upswing in the Whitehorse area, as well as the fact that indoor painting can be done in the winter. While I generally accept both of those latter propositions as correct, I also accept as reasonable the petitioner's deposition that his work is "largely seasonal in nature, generally from May to October". While indoor painting jobs are no doubt available in the winter, a greater volume of the work would be likely during the spring, summer and fall. Further, the petitioner does not state that he ceases work altogether during the winter months, but rather that it is his "slow season". Therefore, it does not seem unreasonable for him to plan his international travel during that season.

[23] Further, there is no evidence of the petitioner having received other job offers and refusing them, or having declined other higher paying employment opportunities. Rather, there is some evidence that the petitioner has been experiencing health issues of late, such as high cholesterol, which apparently makes it difficult to hang on to his painting rollers at times. Accordingly, he deposed that he must occasionally sub-contract some of the painting work as he cannot do it all alone within a reasonable time frame. Unfortunately, unlike the respondent, the petitioner failed to provide any medical evidence to support that allegation. Nevertheless, I am not persuaded that the petitioner has been intentionally under-employed.

[24] Accordingly, I conclude it would be unfair to impute an annual income in the range of $32,000 at this time.

[25] On the other hand, I seriously question the reliability of the petitioner's tax returns. According to his return for 2006, the petitioner's gross profit was $21,681.57.

From that, the petitioner deducted a total of $16,365.21 in business expenses, as well as a capital cost allowance of $4,249.36. That left him with a net income for 2006 of $1,067. Even if I add back in, as his counsel concedes, the capital cost allowance ($4,249.36) and the meals and entertainment ($728.08) that would only increase the petitioner's net income to $6,044.44. That amount divided by 12 would result in a monthly income just over $500. It is obvious to me that such an amount fails to accurately reflect the petitioner's real income. According to his financial statement for that year, the petitioner's rent alone was $500 per month, and his total monthly expenses were listed as $1,830, yet he claimed to have a deficit of only $195 per month. Therefore, his income must have been greater than $500 per month.

[26] I assume the petitioner's business financial statements and tax returns were prepared by his bookkeeper or accountant, who no doubt did their best to minimize the amount of the petitioner's net taxable income. However, the net incomes deposed to by the petitioner from 1999 through 2006, with the exception of 2001, simply do not seem sufficient to meet his monthly expenses, as evidenced from his two personal financial statements. Rather, I find that the monthly incomes stated by the petitioner in each of those financial statements are more likely to be closer to his real income over the years. In 2002, his gross monthly income was $1,600 or $19,200 annually; and in 2006, his gross monthly income was $1,635, or approximately $19,625 annually.

[27] It is also very telling to me that in both 2002 and 2006, the petitioner swore that he was virtually debt free. I appreciate that he has also stated that, since the fall of 1999, he has been in a new common law relationship and has resided in a home owned by his common law partner. He claims to make a contribution for food and rent as he is

“able”, and relies on his partner to pay expenses when he is short. However, I cannot imagine that the petitioner would have continued to incur a monthly deficit of between $188 and $195, or $2,256 to $2,340 annually, from 2002 to 2006, without incurring some amount of debt. This also causes me to doubt that the petitioner’s figures are accurate.

[28] The petitioner deposed at this summary trial “It is a financial strain for me to pay the respondent $200 per month.” However, this appears to be the first time he has raised an issue over his ability to pay. The petitioner was able to pay a total of $481 a month in combined child and spousal support from March 2000 until N. ceased to be a child of the marriage in 2005. Further, it appears that the petitioner *consented* to the Foisy order in 2002, which confirmed his imputed annual income of $32,000 and the child and spousal support totalling $481, Thus, if it is currently “a financial strain” for the petitioner to pay the respondent $200 per month, I question why he did not raise that concern in 2002, when he was earning about the same amount of money, according to his personal financial statement that year. On the contrary, not only did the petitioner fail to raise the issue of his ability to pay in 2002, he seemed to have *willingly agreed* to a continuation of the payments that he had been making for the previous 34 months.

[29] The petitioner’s counsel submitted at the summary trial that there was no evidence that the petitioner did not suffer financial hardship when he was paying the combined child and spousal support of $481 from March 2000 until September 2005. However, I would think that it is the petitioner himself who bears the onus on this application to show on a balance of probabilities that, not only is it currently a financial

hardship for him to pay spousal support of $200 monthly, but that it was also a hardship for him in previous years, when he had roughly the same amount of income.

[30] For all these reasons, I do not accept the petitioner's tax returns as an accurate reflection of his real income from 1999 to 2006. (I note parenthetically here that, under s. 19(2) of the *Federal Child Support Guidelines*, the reasonableness of an expense deduction is not governed solely by whether it is permitted under the *Income Tax Act*. I see no reason why that principle should not apply equally to the calculation of income for the purpose of paying spousal support.) Further, I am not persuaded that the petitioner is unable to pay $200 per month in spousal support on an on-going basis.

[31] I recognize that I have found the petitioner to earn approximately $19,625 annually as of 2006 and that this is below the $20,000 "floor" referred to in the spousal support guidelines. However, that amount is very close to $20,000, and in fact could be above $20,000, which would put this case in the range of exceptional cases of $20,000 to $30,000. For such cases, it is recommended that consideration be given to the percentage sought under the "without child support" formula, while keeping in mind the net disposable income left to the payor spouse. A payment of $200 per month from an annual income of $19,625 means that the multiplier under the "without child support" formula in the guidelines would be approximately 12%, as opposed to the suggested usual range of 37.5% to 50% of the gross income difference between the parties.

[32] Further, at p. 89, the guidelines suggest the floor is not absolute and that there may be exceptional cases even where the payor's income is below $20,000:

> " … In general, the formulas for amount and duration will not operate where the payor spouse's gross income is less than $20,000 per year, as it will be rare that there will be sufficient ability to pay. There may, however, be exceptional cases where spousal support might be paid, e.g. where the payor spouse is living with parents or otherwise has significantly reduced expenses. Formulas will be less helpful in determining amounts in such cases. There is another good reason for allowing exceptions below the income floor: these advisory guidelines address amount and duration, not entitlement. An absolute income floor for amount would effectively create an entitlement rule, something that these guidelines should not do, in light of their informal and advisory nature. The issue of entitlement must always remain open, as a threshold issue, to be defined by the legislation and judicial interpretation of that legislation. "
> (my emphasis)

[33] In this case, I have found that the petitioner *does* have sufficient ability to pay.

[34] As for the duration of the child support, the guidelines suggest that it be paid on an indefinite basis for marriages in excess of 20 years. Here, the petitioner has deposed that he plans to retire in about 4 years, when he will turn 65 and become eligible to receive Old Age Security and his Canada Pension. He has stated that he does not have any other retirement income. At that time, the respondent, will also be of retirement age and will probably have an income similar to that of the petitioner. As there will not then likely be any significant gross income difference between the parties, it would be appropriate to terminate the petitioner's obligation to pay spousal support upon his retirement. Therefore, the petitioner's counsel asks that, if I do award the respondent $200 per month in spousal support, that it be payable only until the petitioner stops working. That will avoid putting the petitioner to the additional expense of having to return to court in the future to make an application to vary under s. 17 of the *Divorce Act*.

[35] The respondent's counsel submits that even though the petitioner purports to be in retirement, he could continue to work as a painter, thereby earning additional income over and above his pension income. Therefore, counsel says that it would be preferable for the petitioner to have to bring an application to vary once the fact of the petitioner's retirement is established.

[36] Under s. 15.2(3) of the *Divorce Act*, the court may make an order for spousal support "for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it think fit and just." In my view, this gives me significant discretion and latitude to make an order which will be fair to the parties in the near term, while avoiding unnecessary continuation of these proceedings in the future. Accordingly, I order that the petitioner's obligation to pay spousal support will continue so long as the petitioner continues to earn employment income, as defined by Revenue Canada, or until further order of this court. The petitioner has never missed a support payment to date. I do not expect him to be evasive with respect to this obligation in the future. If the respondent has reason to feel he is, then she can bring the appropriate application and provide her evidence in support.

[37] I will say one final word about the change in the petitioner's position, bringing this application is under s. 15.2 of the *Divorce Act,* rather then under s. 17. Initially, the petitioner assumed he was making an application to vary the interim interim spousal support in the Foisy order. He further assumed that such an application was properly brought under s. 17 of the *Divorce Act*. Section 17(4.1) speaks about the test for varying "a spousal support order", as requiring "a change in the condition, means, needs or

other circumstances of either former spouse". That test has been widely judicially interpreted as requiring a *material* change in circumstances. Accordingly, both parties initially assumed that this was the test for the within application.

[38] However, at the summary trial, it was noted that the definition of "spousal support order" means an order under s. 15.2(1) of the *Act*, which appears to refer to a permanent or final order made at trial, as opposed to an "interim order", which is made under s. 15.1(2). That led to a further examination of the case law, which revealed that an "interim order" cannot be varied under s. 17 of the *Divorce Act*, because that section contemplates the variation of a support order which is made after the divorce is final, at which point the spouses become "former spouses" as referred to ss. 17(1)(a) and (4.1.).

[39] The question then arose whether this court has jurisdiction under the *Divorce Act* to vary an interim spousal support order made under s. 15.2(2), as there is no specific provision within the *Act* which expressly authorizes the variation of an "interim" spousal support order. This has been referred to by Justice Robert Carr, of the Court of Queen's Bench of Manitoba, as a "legislative gap".[1] However, Justice Carr also notes that courts have found various ways around this gap.

[40] In *Validen* v. *Validen*, [1990] M.J. No. 619 (Q.B.), at p. 2 (QL), Mercier J., of the Manitoba Court of Queen's Bench, relied on the inherent jurisdiction of the court to allow further applications under s. 15 of the *Divorce Act*, to make "new" orders to deal with "inequitable and changed circumstances" in accordance with the intent and purposes of the *Divorce Act.*

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[1] *The Conduct of Family Proceedings*, Seminar for Newly Federally Appointed Trial Judges, September 28 – 29, 2004.

[41] In *Monkhouse* v. *Monkhouse*, [1987] S.J. No. 686 (Q.B.), at pp. 3 - 4 (QL), Scheibel J. of the Saskatchewan Court of Queen's Bench, agreed that s. 17 of the *Divorce Act* does not prevent alteration of an interim order under what is now s. 15.2, and that it may be necessary to return to s. 15.2 to make other orders varying an interim order. Section 15.2(3) states as follows:

> "(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just."

[42] In *MacDonald* v. *MacDonald,* [1990] N.S.J. No. 100 (S.C.), Glube C.J.T.D. of the Nova Scotia Supreme Court, at pp. 4 and 5 (QL), was dealing with an application for child support under s. 15 of the *Divorce Act* (now s. 15.1) at a divorce trial and said:

> "… In my opinion, the matter of maintenance before me on a divorce is not to be dealt with as a variation under s. 17, rather it is to be dealt with as an order for maintenance under s. 15, [now s. 15.2] … Although an interim order may be varied before the divorce hearing, it remains interim …"

[43] In *Dumont* v. *Dumont*, [1987] N.B.J. No. 1054 (Q.B.), Deschenes J. of the New Brunswick Court of Queen's Bench, acknowledged that s. 17(1)(a) cannot be relied upon as allowing an application to vary an interim support order. However, that court, like *Monkhouse*, also held that s. 17 does not necessarily mean that the court is precluded from entertaining such applications. At page 3 (QL), Deschenes J. said as follows:

> When one considers the injustices which could arise if a court is unable to vary "interim" support orders or "interim" custody orders, it is clear that Parliament did not intend to

> preclude such applications. In fact, interim orders can sometimes remain in force for lengthy periods of time before a permanent order with respect to support or custody can be obtained, and one can think of numerous examples when a variation simply becomes a necessity in order to do justice between the parties.
>
> In my view, Parliament having given specific statutory authority in [s. 15.2(3)] of the Act to the Court of Queen's Bench to make interim orders for support or custody, the court is allowed to use its inherent jurisdiction in order to do justice between the parties.
>
> …
>
> In my view, the exercise of a court's inherent jurisdiction to vary an interim support order made under the Divorce Act, 1985, does not contravene any provisions of the Act.
>
> As pointed out in the Lipson case (supra), however, orders to vary interim support orders should not be granted lightly and certainly not where the applicant is unable to show a substantial change in circumstances or where an appropriate adjustment can be made at the trial. (my underlining)

[44] I accept the *Dumont* decision as an accurate statement of the law and conclude that this Court has jurisdiction to vary interim orders pursuant to what is now s. 15.2(3) of the *Divorce Act*. A “substantial change in circumstances” is required for such a variation, which I do not view as being significantly different from the “material change in circumstances” required to vary a final or permanent order.

CONCLUSION

[45] In summary, I conclude as follows:

1. The petitioner’s application to be relieved of the requirement to pay spousal support is dismissed;

2. The petitioner has the ability to pay, and is ordered to pay spousal support to the respondent in the amount of $200 per month, commencing June 1, 2007, and on the first day of each month thereafter until the petitioner ceases to earn employment income, as defined by the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.);

3. Although the issue was not raised, to avoid uncertainty and further proceedings, this order shall be enforced by the Director of Maintenance Enforcement, and the amounts to be paid under this order shall be paid to the respondent through the Director of Maintenance Enforcement; and

4. As the parties achieved mixed success on this summary trial, each will bear their own costs.

GOWER J.