

Variation of Support Orders under the *Interjurisdictional Support Orders Act* and the *Divorce Act*

Interjurisdictional Support Orders Act

Introduction

On January 31, 2003, the *Interjurisdictional Support Orders Act* ("ISO") was proclaimed in effect, along with the *ISO Regulations*. On the same day the Reciprocal Enforcement of Maintenance Orders section of the *Family Relations Act* ("REMO") were repealed.

Until March 31, 2002, the Ministry of the Attorney General provided contract counsel to present REMO applications to the court on behalf of the applicant. Since then, contract counsel has been provided in some locations to appear as a friend of the court and assist with ISO applications. At this point, contract counsel is only provided in some courthouses in the Lower Mainland.

Procedure under *ISO*

Under the old provisions of REMO, where the parties resided in reciprocating jurisdictions and an application for an initial order or the variation of an order was desired, the applicant had to first make a court application to obtain a provisional order. A provisional order is an order made without notice to the other side that has no force or effect until it is confirmed.

Once the provisional order was made, it was forwarded with all the supporting material and transcripts to the appropriate government office in the reciprocating jurisdiction. The reciprocating jurisdiction would have the matter set before their court and the other party was summonsed to court. After hearing the other party and reading the material and transcript from the provisional hearing, the court would confirm the provisional order or confirm a variation of the provisional order.

ISO changed the procedure so that only when the reciprocating jurisdiction requires it will a provisional order be made by a BC court. The usual procedure is that the BC applicant fills out the prescribed ISO forms and forwards them to the "designated authority" in BC. The designated authority forwards the documents to the appropriate authority in the reciprocating jurisdiction, which then files the material in the appropriate court. The court in the reciprocating jurisdiction makes an order based on the documents of both parties and, in Provincial Court, the *viva voce* evidence of the respondent.

Reciprocating Jurisdictions

Other than Quebec, all of the provinces and territories of Canada are reciprocating jurisdictions. In addition to the Canadian provinces and territories, there are other foreign jurisdictions with which British Columbia has signed an agreement under the REMO-ISO provisions. The reciprocating jurisdictions are all of the United States (including American Samoa, Guam, Puerto Rico and the US Virgin Islands), Australia, Fiji, New Zealand, Cook Islands, Papua New Guinea, Austria, the Czech Republic, Germany, Norway, the Slovak Republic, the UK, Gibraltar, Guernsey, Isle of Man, State of Jersey, Barbados, South Africa, Zimbabwe, Hong Kong and the Republic of Singapore.

Types of Orders that can be Obtained or Varied through ISO

ISO deals with child and spousal support only and there are no similar provisions dealing with custody, guardianship or access. In addition to court orders, ISO also applies to written agreements filed under s. 121 of the FRA or similar provisions in reciprocating jurisdictions.

a) Canadian Orders

ISO applies to FRA support orders made in both Supreme Court and Provincial Court, but not to orders made under the *Divorce Act*. Sections 18, 19 and 20 of the *Divorce Act* set out the procedure where there is an application to vary a support order made under the *Divorce Act* and one party resides in another province. Section 18, 19 and 20 of the *Divorce Act* are similar to the old REMO provisions. The procedure for varying such orders is set out below.

Under s. 22 of ISO, the Provincial court cannot vary a support order made in Canada by a federally appointed judge. However, under s. 27(8), the Provincial court may, if it is required, make a provisional variation order that varies a support order made in Canada by a federally appointed judge. Under s. 22 the Provincial court cannot vary a support order originally made under the *Divorce Act*.

ISO applies to both applications to obtain and applications to vary support orders in both the Supreme and Provincial Courts.

Before *REMO* was repealed, it was common practice for lawyers to obtain an initial maintenance order in BC Supreme Court under the *FRA* and Rule 13 of the Supreme Court Rules – “Service outside British Columbia.” Sometimes, variations of BC orders were made this way as well. This practice continued even after *ISO* was enacted. However, the BCCA decision in *Virani* (see below) has changed that practice. The Court decided that, by enacting *ISO*, the legislature intended to make a code and therefore the custodial parent in that case could not apply in the BC Supreme Court for a child support order against the non-custodial parent who resided in California. *ISO* provided, in full, the means by which such a claimant could obtain an order for support in this jurisdiction. See the full case review below.

b) Orders from Quebec

Quebec has not signed onto the *ISO* legislation with the other provinces. Accordingly, Quebec applies the law under its Civil Code, which provides that, where one party lives outside of the Province of Quebec, only the child support recipient may apply to change the child support order. If a payor who resides outside of Quebec wishes to vary a support order made in Quebec, he or she must retain a lawyer in Quebec or be prepared to travel to Quebec to make the application in person. If the payor attempts to proceed by way of *ISO*, the *ISO* package will be returned to the applicant with a letter advising them of the above.

c) Orders from a reciprocating jurisdiction outside of Canada

There is nothing in *ISO* that limits types of support orders which may be varied in foreign reciprocating jurisdictions, even if the order appears to be a divorce order. The designated Authority would likely send the *ISO* application to the foreign jurisdiction and it would be up to the foreign jurisdiction to refuse the application.

Designated Authority

Although the designated authority is the Director of Family Maintenance Enforcement, the Director’s office is not located at the Family Maintenance Enforcement Program’s office and FMEP only deals with the *ISO* orders registered with it for enforcement.

The designated authority:

- Processes incoming and outgoing applications and orders as mandated by specific sections of the ISO and the *Divorce Act*;
- Checks that application packages are complete before forwarding them to the appropriate reciprocating jurisdictions;
- Sends an application package to a BC court registry for filing and processing only if the reciprocating jurisdiction requires a provisional order to be made;
- Provides forms to applicants, either by mail or by accessing the ISO page on the Family Justice Website. (Note: Court registries do not supply ISO application forms);
- Designates the court which registers an incoming order for variation and enforcement;
- Provides central services in obtaining translations of outgoing orders to non-English speaking reciprocating jurisdictions and in obtaining currency conversion of maintenance amounts expressed in non-Canadian currencies.

Registration of an Order in British Columbia

Under ss. 17, 18 and 19 of ISO, a distinction is made between “foreign order” and “extra-provincial order.” Extra-provincial orders are made in Canada and foreign orders are made outside Canada.

Upon registration, the extra-provincial order has the same effect as if it was a support order made by a BC court. The payor cannot apply to set aside registration.

In contrast, the payor under a foreign order must be sent notice of the registration and may apply to set aside registration within thirty days of receiving notice of the registration. In order to have registration of the order set aside, the payor must show that:

- (a) he or she did not have proper notice or reasonable opportunity to be heard in the proceeding,
- (b) the order is contrary to the public policy of BC, or
- (c) the court or administrative body that made the order did not have jurisdiction to make the order.

Locating the Respondent

For variation of orders made in Provincial Court, a Search Request Form (see Appendix A) should be submitted through the Provincial Court Registry. The Search Request Form is submitted by the court registry to the Family Justice Programs Office. The Family Justice Programs Office is in the same office as the Director of Maintenance Enforcement. They will conduct the search and send the results to the Provincial Court registry with a reference number. The registry will then let the applicant know the reference number. The reference number should be submitted with the applicant’s ISO application. If the order has been filed with FMEP, the FMEP case number should be provided on the Search Request Form.

For variations of orders under the *Divorce Act*, the applicant should complete a form called “Statement of the Applicant” (Appendix B) and provide it to the Supreme Court registry. Again, if available, the FMEP case number should be provided.

Applicable Law

a) Child Support

In order to determine entitlement for child support orders on both initial and variation applications, the court is to first apply the law of the jurisdiction in which the child ordinarily resides. The law of

BC will be applied if the law of the child's ordinary residence does not provide entitlement to support for the child (ss.12 and 31). If there is still no entitlement and it is an initial application, the court lastly applies the law of the jurisdiction where the parties last maintained a common habitual residence.

The court must apply the law of BC to determine the quantum of child support on an initial application (s. 12). On a variation application the court must apply the law of the jurisdiction where the payor ordinarily resides (s. 31).

b) Spousal Support

Sections 12 and 35 of ISO indicate that the law of BC must be applied first where the matter is before the BC court. If there is no entitlement to support under the laws of BC and the application is an initial application for spousal support, the law of the jurisdiction in which the claimant and respondent last maintain a common habitual residence will be applied.

If it is a variation application, under s. 31, the courts are to look at the law of the jurisdiction in which the recipient ordinarily resides or, if the recipient is not entitled to support in that jurisdiction, the law of the jurisdiction in which the parties last maintained a common habitual residence.

Appeals

Under s. 36 of ISO, a decision of a BC court may be appealed. The appeal must be brought within 90 days after the date the ruling, decision or order of the BC court is entered as a judgment of the court. An interim order of the Provincial Court cannot be appealed. Provincial Court orders are appealed to Supreme Court and Supreme Court orders are appealed to the Court of Appeal.

In order to appeal orders made in other jurisdictions, the appropriate legislation in the reciprocating jurisdiction would have to be consulted.

Rights of Assignment

Under s. 40 of ISO, an assignment gives the government the same rights as the recipient to obtain a support order, obtain a variation of a support order, respond to an application to vary support or arrears of support, respond to an application to suspend enforcement, make or respond to an application to set aside registration of a foreign order, or appeal a decision.

Communication with the Designated Authority

An acknowledgement form is sent to the applicant upon receipt of the application by the Designated Authority. There is often a substantial waiting period (usually several months at least) before the final order will be received from the foreign jurisdiction.

If the wait becomes abnormally long, then the applicant can write to the address provided with the ISO package. Alternatively, the court in the reciprocating jurisdiction may be able to assist.

The telephone numbers and address of the Canadian Designated Authorities are available on the website of the National Child Support Enforcement Association (NCSEA) at:

<http://www.ncsea.org/content.asp?contentid=453>

Accepting the Jurisdiction of the Court

Under s. 35 of ISO, a BC court may vary a support order registered in BC if both parties accept the BC court's jurisdiction, both parties reside in BC or the respondent ordinarily resides in BC

and the applicant has registered the support order with the BC court under Part 3 of ISO. This applies to both the Provincial and Supreme Courts.

Administrative Tribunals in Reciprocating Jurisdictions

In some jurisdictions (particularly certain American States), applications to cancel arrears are sent to an administrative tribunal rather than to a designated court. The internet is a good source of information about the procedure in various foreign jurisdictions.

In the US, there is an Office of Child Support Enforcement (OCSE) as well as NCSEA. The OCSE's website has an interactive map which provides links to the various state enforcement agencies in the US. It is located at:

<http://ocse.acf.hhs.gov/ext/irg/sps/selectastate.cfm>

Washington State is one of the more frequent reciprocating jurisdictions with BC and applications to cancel arrears are sent to an administrative tribunal rather than to court.

Completing the Forms

The ISO forms are available on the Ministry of Attorney General's website at www.isoforms.bc.ca. The website has changed substantially since ISO was enacted and is now interactive. The user should click on "Form Select" to determine which forms he or she needs to complete. The website asks the user approximately four questions about their situation and then provides a list of forms that are required for their application. The forms can either be downloaded or mailed out to the user.

It is very important that the ISO forms are filled out completely. Under REMO, a provisional order was required to be made first and the applicant was able to tell the judge about his circumstances. If the applicant left something out in the written application, it could be remedied. Now, the ISO forms are the only information the presiding judge has about the applicant when making a decision (except for information provided about the applicant by the respondent). The respondent has the advantage of actually being before the presiding judge, sometimes with counsel. If the judge rules against the applicant, it is unlikely an appeal would be successful on the basis that the applicant did not provide sufficient information when it was readily available. Therefore, it is very important that the applicant provides all the relevant facts, as well as a full explanation as to why he or she needs to have the order varied or the arrears cancelled in the forms. It is also necessary for the applicant to attach any and all documents relating to the case.

The small amount space provided on the Form M for the applicant's change in circumstances can be misleading even though it says that the applicant should attach an extra page if necessary. It infers that it isn't necessary except in unusual cases.

The applicant should attach as much relevant information as possible, especially if he or she is applying to cancel arrears. The applicant should include any explanations as to his or her inability to find work, medical reports, records of employment, or any other evidence there is to support the applicants claim. The applicant must make full financial disclosure of the judge may make an adverse inference.

The claimant is to make a photocopy of his or her original documents and swear to the photocopy (not the original). The originally sworn photocopy is to be sent to the designated authority along with two photocopies of the originally sworn photocopy.

Certified copies of the pertinent orders must be enclosed.

Hague Convention on the International Recovery of Child Support

Delegates from 68 States and the European Community have finalized this convention. However, the US is the first and only signatory to the convention at this point. The signatories agree to assist citizens from other signatory states to recover child support.

Case Law regarding ISO

BCCA

Mathers v. Bruce, 2005 BCCA 410

In this case, the appellant father lived in England and the respondent mother lived in BC. The child was born after the father had moved to England. The mother brought an action in BC and obtained an order for interim custody, guardianship and maintenance of the child in accordance with the Federal Child Support Guidelines. The father commenced divorce proceedings in England. The father then applied for and received a reduction in child support in BC, with leave to vary his order upon pronouncement of a child support order in the English divorce proceeding.

An order was made for child support in the divorce proceeding in accordance with English law. The father then obtained copies of the ISO forms on the Ministry of the Attorney General's website, completed them with appropriate changes, and forwarded those forms by mail to the Supreme Court registry where the last order had been made.

The father did not appear at the hearing, but the mother filed her documents under ISO and appeared at the hearing. The chambers judge treated the application as a support variation application brought under ISO. He thought the father wanted to vary the quantum under English law on the basis of the formula applied in England and dismissed the case.

On appeal, the father argued that the chambers judge erred as he failed to apply the law of England as required by s. 31(2) of ISO. The Court of Appeal found that the father could have applied to vary the BC Order as he was given leave to do so. He also could have applied under ISO for a variation. However, since he had not followed the procedure under ISO (by sending the documents to the appropriate authority in England), his application was not made under ISO. The father could not rely on s. 31(2) of ISO. His appeal was dismissed.

E.K. v. D.K., 2005 BCCA 425; [2005] BCJ No. 1848

In this case, an agreement was made between the parties which included an agreement for child support. The agreement was incorporated into a divorce order in the Superior Court of New Jersey, Chancery Division. One of the terms of the agreement was that, upon execution of the agreement, a Domestic Violence Complaint would be dismissed. The order was registered in the Supreme Court of BC under REMO and FMEP applied to enforce arrears. The chambers judge found that the inclusion of that term made the agreement (and therefore the order) void as contrary to public policy in BC. He refused to enforce the arrears. The mother and FMEP appealed.

The Court of Appeal found that "the law seems to be that caution is required before finding an agreement to be contrary to public policy, particularly when, as here, the provision under consideration is valid in the jurisdiction in which it came into being" [paragraph 18]. The Court weighed the importance of financial support of children against the minor offence to public policy in this case and found that payment of child support was more important. At paragraph 26 the Court states "Just as the law is firm that a parent must not be allowed to barter away his or her

child's right to financial support, so must the law be slow to invalidate on the basis of public policy a child support provision in a matrimonial agreement." The appeal was allowed.

Virani v. Virani, 2006 BCCA 63 and 2006 BCCA 341

On February 14, 2006, the BC Court of Appeal issued the Reasons for Judgment in *Virani v. Virani* (2006 BCCA 63) and on July 17, 2006 issued Supplementary reasons in the same case (2006 BCCA 341).

In the February 14, 2006 reasons, the Court of Appeal answered the following questions:

1. "Does the *Divorce Act*, by its terms, empower a superior court in Canada to make a support order in favour of a child habitually resident in this jurisdiction whose parents were divorced by the order of a foreign court?"
2. Does the *Family Relations Act* empower a court in British Columbia to make an original order for support against a non-resident parent who has never been a resident of this or any Canadian jurisdiction?"

The remaining issues are:

1. Whether the non-resident participated in the proceedings to such an extent that he cannot object to the jurisdiction of the court, and
2. If so, what law is to be applied and how.

The facts in *Virani* are somewhat complicated. The parties were married in Illinois, USA, and had one daughter. The parties separated while resident in Manchester, England. The mother and the child relocated to Seattle, WA. The father returned to the USA and was living in California. The mother and child then moved to Vancouver and became landed immigrants. The parties were divorced by order of the Superior Court of Washington, County of King. The same court made a final order regarding a Parenting Plan which provided that the mother have custody of the child and set out access. The same court also made a separate order which provided for child support. The child support order only contained provisions relating to child support.

The British Columbia proceedings were commenced when the mother sought to have the order for custody recognized under ss. 44 and 48 of the *FRA* and to have the access order varied under s. 49 of the *FRA*. The Supreme Court of BC made an *ex parte* order that not only recognized the custody order, but recognized the child support order as well. The court had no foundation in law to recognize the child support order. The father was served with the materials and entered an appearance shortly thereafter.

About two years later the mother applied by way of Notice of Motion to the Supreme Court of BC for an order that the father pay child support, or alternatively, an order that varied the Washington child support order, among other things. She relied on s. 15 of the *Divorce Act*, alternatively s. 17 of the *Divorce Act*, and the Federal Child Support Guidelines.

The court answered the questions set out above as follows:

1. No. The *Divorce Act*, by its terms, does not empower a superior court in Canada to make a support order in favour of a child habitually resident in this jurisdiction whose parents were divorced by the order of a foreign court.
2. No. The custodial parent could not apply in the Supreme Court of British Columbia for child support order because, by enacting *ISO*, the Legislature intended to make a code.

In this case the custodial parent was the claimant in BC and Division 1 of the statute provided in full the means by which such a claimant could obtain an order for support in this jurisdiction.

In the Supplementary Reasons of July 17, 2006, the court states that:

“The [ISO] Act has a precise mechanism by which a person resident in this jurisdiction may obtain a support order against a person not resident in this jurisdiction. The mechanism engages public officers in both jurisdictions.

“The courts of this Province should not entertain any proceedings which might fairly be considered to be wiggling out of the requirements of the scheme, at least in those cases in which one of the parties is a foreigner whose only tie to Canada, the habitual residence of his child, was imposed upon him by his former wife, the custodial parent.”

While the decision does not address the remaining two issues of attornment and choice of law, the court allowed both appeals.

Possible Exceptions to *Virani*

It is interesting to note that in the second question (“Does the *Family Relations Act* empower a court in British Columbia to make an original order for support against a non-resident parent who has never been a resident of this or any Canadian jurisdiction?”), the court seems to separate respondents who reside in other provinces from respondents who reside in other countries. The two paragraphs above from the Supplementary Reasons seem to reiterate the same theme. There may be an argument to be made that *Virani* does not apply to respondents who reside in another province or have previously resided in British Columbia.

Another argument that could perhaps be made is that the respondent has attorned to the jurisdiction of British Columbia by virtue of his or her actions. For instance, there may be attornment where the parties had both resided in BC at the time the initial order was made and one of the parties left the Province afterwards.

The Law Reform Commission of B.C. Study Paper dated May 1989 and authored by Mr. John Horn (as he then was) states:

“Despite the fundamental principle of English law that jurisdiction is founded upon service on the defendant in the territory, it has long been recognized that an absent defendant may confer jurisdiction on the court by submitting to it. A foreign defendant can submit to the jurisdiction in one of three ways:

- 1) By entry of an unconditional appearance, or, in territories where the appearance has been abolished, by filing an unconditional defence, or by contesting the merits, or by seeking interlocutory relief consistent only with an intention to contest the merits.
- (2) By commencing a proceeding in the forum in which case there is a submission in respect to any claim over, however framed.
- (3) By agreement, express or implied, to submit to the jurisdiction which agreement may be made before or after litigation was commenced.”

Conclusion

Barring the two possible exceptions set out above, where the non-custodial parent resides outside of British Columbia, the custodial parent must apply to vary or to obtain a maintenance

order using the procedures under *ISO*. The provisions for service *ex juris* under Rule 13 do not apply where *ISO* applies. There does not appear to be any difference if an initial child support application is made to the Supreme Court and joined with a applications for custody, access and guardianship.

Given the length of time *ISO* applications take, we should ensure that we ask for child support retroactive to an appropriate date. Unfortunately, if the reciprocating jurisdiction chooses not to grant retroactive child support, an appeal is difficult.

While the head-note to the *Virani* case seems to indicate that you cannot apply for child support under the *Divorce Act* if the other party resides outside of the province, the case does not stand for that proposition. The *Divorce Act* provides for its own procedure for obtaining and varying child support orders where one of the parties resides in a different province and of course provincial legislation does not affect the procedure under the *Divorce Act*.

BCPC

M.I. v. A.T., 2004 BCPC 391; [2004] BCJ No. 2180

In this case, the mother had been working and living in the US when she gave birth to the child. She commenced an application under *ISO*. Before the application was heard in BC, the mother and child moved to Japan with no plans to return to the US or Canada. Japan is not a reciprocating jurisdiction with Canada and so the application was dismissed.

J.C.H. v. M.B.H., 2006 BCPC 76; [2006] BCJ No. 580

An order was sent to the Provincial Court for registration under *ISO*. The order was a Divorce order made in the Superior Court of Fulton County, State of Georgia which provided that support be paid. Registration was opposed on the basis that registration ought to have been in the Supreme Court and not the Provincial Court. It was argued that the Provincial Court may not have the jurisdiction to deal with the order if it meant having the Provincial Court vary a Divorce Order made in Georgia.

The Court found that "There is no restriction in the *ISO Act* that precludes the Provincial Court from varying foreign orders made by a court in another country. The provisions of the Constitution Act of Canada, 1867, which give rise to the appointment of section 96 judges and which prevent provincially appointed judges from varying an order made by a federally appointed judge or an order made under the *Divorce Act* (Canada) as set out in section 22 of the *ISO Act*, are applicable to Canada only and do not bind Canadian courts as they relate to the courts of other countries. There has been no authority provided to me that supports the position that a provincially appointed judge is bound by the constitutional provisions of another country" [paragraph 37].

British Columbia (Director of Maintenance Enforcement) v. P.T., 2006 BCPC 514; [2006] BCJ No. 3076

FMEP sought to enforce interest owing on a maintenance order made in Germany against the respondent in 1990. On February 4, 2005, the German court had made an order which set out the arrears owing by the respondent and dismissed further actions. The 2005 German order did not provide for interest. On May 13, 2005, the respondent paid the full amount ordered in the 2005 German order. FMEP sought to collect the interest on the arrears owing since 1990 under the s. 11.1 of the *FMEA*. The respondent argued that he did not owe the interest as he had paid the German order of 2005 in full. The court found that he did not owe the interest between 1990 and 2005 as the 2005 German order did not provide for interest, but he did owe interest from the date of the 2005 German order to the date of payment, as well as an outstanding balance on the arrears.

CHANGING A *DIVORCE ORDER* FOR SPOUSAL OR CHILD SUPPORT THAT HAS BEEN MADE IN ANOTHER PROVINCE

This paper sets out the procedure of applying to the Supreme Court of BC to change a child or spousal support order made in a divorce proceeding in another province. It does not deal with orders made outside Canada nor does it deal with applications to vary custody or access orders.

Only a superior court has the power to make or to change an order made under the *Divorce Act*. In British Columbia, Nova Scotia, the Northwest Territories, the Yukon Territory, Newfoundland, and Prince Edward Island, the superior court is called the Supreme Court. In Alberta, Saskatchewan, Manitoba, and New Brunswick, the superior court is called the Court of Queen's Bench. In Ontario, it is called the Superior Court of Justice (and, sometimes, Unified Family Court). In Quebec, it is called the Superior Court. In Nunavut, the superior court is called the Court of Justice.

Determining if it is a *Divorce Act* order

Sometimes it is hard to determine if the order to be changed is an order made under the *Divorce Act* as often the order will not specifically say it is made under the *Divorce Act*. Unless the order says otherwise:

1. If the order was not made in one of superior courts noted above, then it cannot be a *Divorce Act* Order.
2. If the order contains a paragraph granting a divorce, then the order for support is made under the *Divorce Act*. Older orders for divorce (i.e., not made under the *Divorce Act*, 1985) may refer to a *decree nisi* or a *decree absolute*.
3. If the order for divorce is on a different order than the support order, compare the court file number on the orders. If it is the same number, then the support order is made under the *Divorce Act*.

If there is still doubt as to whether the order was made under the *Divorce Act*, contact the Court Registry where the order was made or contact the lawyer who assisted the client in obtaining the divorce.

If the support order was not made under the *Divorce Act*, then the client will have to apply under the *Inter-jurisdictional Support Orders Act* or go back to the court that made the order.

Commencing an Action where Order Made under the *Divorce Act*

Even if the Family Maintenance Enforcement Program has started enforcement proceedings on the order, the client must start his or her own action in Supreme Court. To do so, the client must complete a Petition to the Court (Form 3).

http://www.ag.gov.bc.ca/courts/civil/sup crt rules/forms/forms_sc.htm

How to complete the Petition to the Court

1. The person making the application will be the Petitioner and the former spouse will be the Respondent. There is no court file number until the file is opened. The Registry will provide a number when the Petition is filed.
2. The application is for an Order that "the Order of (*name of judge*) made on (*date of order*) in the (*name of court*) of (*Province*) be provisionally varied so that the (*child/spousal*)

support be (*increased or decreased*) to (*amount*) and/or the arrears of (*child/spousal*) support be reduced or cancelled.”

3. The application is made pursuant to ss. 17, 18 and 19 of the *Divorce Act*.
4. The Petition requires that a summary of the facts relevant to the application be set out on the form. The facts should be objective and give the person reading them a brief idea of the history of the case. The facts should state what orders have been made in the past and what changes have occurred that make it necessary to vary the support Order.
5. A copy of the support Order that is the subject of the application must be attached to the Petition. It is best if the copy of the Order is certified to be a true copy of the Order by the court that made the Order. However, the Registry may accept an uncertified copy.

Additional Documents

In addition to the Petition to the Court, a Financial Statement (Form 89) and an Affidavit to support the application must be filed. A Notice of Hearing with the date left blank should also be prepared.

Getting a Court date

Because the client is asking for a provisional Order under the *Divorce Act*, he or she does not have to serve the other party before having the matter heard in the Supreme Court of British Columbia. Therefore, the court may hear the matter on the same day as the client files the Petition to the Court with the supporting documents.

Process after the Order is Made

The client will likely have to draft the order that is made and submit it for entry.

The Registry will have the client complete a “Statement of Applicant” (attached as Appendix B) and complete a form that gives information about the other party so that the court in the other province is able to have he or she served. The Registry staff will order a transcript.

A Provisional Order has no legal effect until it is “confirmed” or made final in the province where the other party lives.

The Registry will send all of the court documents, the transcript and the “Statement of Applicant” to the designated authority (the same office as ISO applications are sent), which will have them sent to the appropriate authority in the other province. From there, the documents are sent to the court in the province where the order was made or the other party resides. The documents will be served on the other party, who will have an opportunity to present evidence to the judge in the province where he or she resides and that judge will make a final or confirming order.

Once the court in the other province makes a confirming order, the order and the court’s reasons are sent back to the designated authority in British Columbia and then sent to the court registry that made the provisional order.

This process can take a few months to complete. In some cases, it will take up to a year.