SUPREME COURT OF NOVA SCOTIA
(Family Division)
Citation: Simmons v. Ferguson, 2018 NSSC 262

Date: 20181116
Docket: SFHPSA 108883
Registry: Halifax

Between:

Lenora Elaine Simmons

Applicant

and

Robert Choy Ferguson

Respondent

LIBRARY HEADING

Judge: The Honourable Associate Chief Justice Lawrence I. O'Neil

Heard: June 26, 2018 in Halifax, Nova Scotia

Issues: 1. What procedural options are available for a parent who lives with a child in Nova Scotia when that parent seeks child support from a prospective payor resident in the Province of Quebec?

Summary: In a Pre-Hearing ruling, the Court reviewed the basis of the Court's jurisdiction to order a payor living in Quebec to pay child support for children living in Nova Scotia. The Court found the *Interjurisdictional Support Orders Act, 'ISO' Act* did not apply. However, the Court found it had jurisdiction to make such an order pursuant to the authority of the *Court Jurisdiction and Proceedings Transfer Act, 'CJPTA'* and the *Reciprocal Enforcement of Judgments Act*, as interpreted by caselaw.

The parties resolved the issue on a consent basis as a result of an interjurisdictional conference. The Court was therefore not required to release this ruling earlier.

Keywords: Jurisdiction; ISO; Quebec; child support; interjurisdictional; *forum conveniens*; territorial competence

Legislation: *Parenting and Support Act, R.S., c.160*
Interjurisdictional Support Orders Act, S.N.S., 2002, c.9
Divorce Act, R.S.C. 1985, c.3 (2nd Supp)
Reciprocal Enforcement of Judgments Act, R.S.N.S. 1989, c.388
An Act Respecting the Reciprocal Issue and Enforcement of Support Orders, CQLR, c.0-1.2

An Act Respecting Reciprocal Enforcement of Maintenance Orders, R.S.Q. c.E-19
Court Jurisdiction and Proceedings Transfer Act, 2003 (2nd Session) S.N.S., c.2
Interjurisdictional Support Orders Regulations, NS Reg. 73/2003, Schedule A

Cases Considered: *Fraser v. Tighe, 2011 NSSC 511*
Pitts v. Noble, 2009 NSSC 325
Newell v. Upshaw-Oickle, 2017 NSSC 226
Austin (Burke) v. Casey, 2018 NSSC 49
Krushelinski v. Wehner, 2015 SKQB 195
Hryniak v. Mauldin, 2014 SCC 7

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Counsel: Samira Zayid, Counsel for Lenora Simmons
Robert Ferguson, Self-Represented

By the Court:

Introduction

[1] The Applicant is the mother of two children, one born August 12, 2003 and a second child born January 23, 2009. Both were born in the Province of Quebec. She is now a resident of Nova Scotia. The Respondent is the father of both children and resides in the Province of Quebec. She says she and the Respondent lived together 'on and off' beginning in 2002; married August 31, 2013 and separated May 1, 2016. She says no divorce action is in place.

[2] She filed a Court application in this Province on February 6, 2018 to address custody and access issues pertaining to the two children pursuant to the *Parenting and Support Act,* R.S.N.S. 1989, c.160. She sought custody of the two children and a defined parenting structure for the parties' two children.

[3] At the same time and as provided by the same statute, the Applicant filed a separate child support application seeking child support from the Respondent for the care of the two children. She asks that child support be based on the Nova Scotia Child Support Guideline tables and she seeks an order requiring the Respondent to obtain medical or dental insurance coverage for the children. The child support application is on the forms and follows the process mandated when support is sought from an out of Province resident pursuant to Provincial child support legislation. The process and forms are those mandated by the *Interjurisdictional Support Orders Act*, S.N.S. 2002, c. 9, the 'ISO' for Canadian Jurisdictions other than Quebec.

[4] In contrast, interjurisdictional support applications pursuant to the *Divorce Act*, RSC 1985, c 3 (2nd Supp) have a separate process as described in s.18 and s.19 of that statute. The later process requires that a provisional order be made in the originating jurisdiction and that it be confirmed in the 'responding' jurisdiction before taking effect.

Issues

[5] The issues are as follows:

1. The first question is whether this Court has jurisdiction to conclude the child support issue?
2. If so, what is the basis of the Court's jurisdiction?
3. The related question is whether the Court should exercise that jurisdiction if the Court is found to have it?

[6] This is a preliminary ruling on the process that must be followed to effect an adjudication of the child support issue given the parents live in different Provinces. [Given the subsequent outcome, it is now moot for this proceeding].

The Interjurisdictional Process

[7] The *Parenting and Support Act*, R.S.N.S. 1989, c 160 does not have rules governing the determination of the forum for support issues and does not provide for a process to resolve support issues when one of the parties is a resident of another jurisdiction.

[8] The child support application is on the forms and follows the process mandated when support is sought from an out of Province resident pursuant to Provincial child support legislation. The process and forms are those mandated by the *Interjurisdictional Support Orders Act*, S.N.S. 2002, c. 9, the 'ISO' forms prescribed for Canadian Jurisdictions other than Quebec.

[9] Although Quebec is designated as a reciprocating jurisdiction under the Nova Scotia 'ISO' regulations, the corresponding Quebec legislation has not been proclaimed in force. (*Act Respecting the Reciprocal Issue and Enforcement of Support Orders*, CQLR c.0-1.2). Nevertheless, by virtue of s.54(1) of the Nova Scotia 'ISO' legislation, reciprocal enforcement of child support orders between Nova Scotia and Quebec is provided for.

[10] Section 54 provides:

> 54(1) Where the Governor in Council is satisfied that laws are or will be in effect in a jurisdiction for the reciprocal enforcement of support orders made in the Province on a basis substantially similar to this Act, the Governor in Council may make regulations declaring that jurisdiction to be a reciprocating jurisdiction.
>
> (2) In declaring a jurisdiction to be a reciprocating jurisdiction under subsection (1), the Governor in Council may impose any conditions with respect to the enforcement and recognition of support orders made or registered in that jurisdiction.
>
> (3) The Governor in Council may, by regulation, revoke a declaration made under subsection (1), and the jurisdiction to which the revocation relates ceases to be a reciprocating jurisdiction for the purpose of this Act.

[11] In contrast, interjurisdictional support applications pursuant to the *Divorce Act*, RSC 1985, c 3 (2nd Supp) have a separate process as described in s.18 and s.19 of that statute. The later process requires that a provisional order be made in the originating jurisdiction and that it be confirmed in the 'responding' jurisdiction before taking effect.

[12] Both the 'ISO' and the 'Provisional Order' processes can take one-two years to complete and often longer.

[13] The 'ISO' regime is more thoroughly discussed in the Court's earlier decisions in *Fraser v. Tighe*, 2011 NSSC 511; *Pitts v. Noble*, 2009 NSSC 325; more recently in *Newell v. Upshaw-Oickle*, 2017 NSSC 226 and *Austin (Burke) v.*

Casey, 2018 NSSC 49. In earlier decisions, I have ruled the 'ISO' process does not bar the Court exercising jurisdiction based on the application of the common law principles defining whether a matter has a real and substantial connection to the matter being litigated. Herein, I propose to expand upon the earlier rationale for the rulings.

[14] In *Pitts v. Noble, supra*, I discussed whether this Court has jurisdiction at common law to rule on the support issue independently of the 'ISO' process when the prospective payor is resident in another common law Canadian Province. I relied on the reasoning of the Court in *Jasen v. Karassik*, 2009 ONCA 245.

[15] In *Fraser v. Tighe, supra*, I found the Respondent was actively avoiding service and thereby making the 'ISO' process unworkable because an inability to effect service on the Respondent in the other jurisdiction (Alberta) became an obstacle to the process moving to a conclusion.

[16] As discussed earlier, Quebec is not a signatory to the 'ISO' process. The 'ISO' process is not available to the parties herein. However, Quebec retains predecessor legislation for the reciprocal enforcement of maintenance orders.

[17] Enforcement of a child support obligation involving a resident of Quebec is available through the *Reciprocal Enforcement of Judgments Act*, R.S.N.S. 1989, c.388. That statute does not apply to support orders defined by the *'ISO' Act*, (s.2(b)) definition of judgment). The corresponding Quebec legislation as far as child support is concerned is *An Act Respecting Reciprocal Enforcement of Maintenance Orders*, CQLR c.E-19. The legislation requires that a 'Provisional Process' be followed; a process similar to that mandated by the *Divorce Act*.

[18] The *Act Respecting Reciprocal Enforcement of Maintenance Orders*, CQLR, c E-19, provides, at ss 1 and 10:

> Execution of judgments.
>
> 1. A judgment rendered in state, province or territory designated under section 10 ordering payment of maintenance may be executed in Québec in accordance with the conditions and formalities prescribed by this act. …
>
> Reciprocal enforcement.
>
> 10. The Government may by order designate any state, province or territory which it

> considers to have legislation substantially similar to the provisions of this Act that authorizes the execution of judgments ordering payment of maintenance rendered in Québec.
>
> Coming into force.
>
> The order must further give the date of the coming into force of this Act for each state, province or territory it designates; the order shall be published in the Gazette officielle du Québec.

[19] The *Act* goes on to set out a "provisional order" procedure. Upon receipt of a judgment as described in s 1 from an authorized official", the Attorney General "shall transmit the same to the clerk of the Superior Court of the district where the defendant has his domicile or residence" (s 2). On deposit with the clerk, the judgment is effective as if it were issued by a Québec court (s 3), unless the defendant objects to execution of the order, whereupon it must be confirmed by the local court (ss 3-7).

[20] The Order respecting the application of the Act respecting reciprocal enforcement of maintenance orders states, at s 1, that the *Act*:

> applies to judgments ordering payment of maintenance rendered in Ontario, New Brunswick, Nova Scotia and Prince Edward Island, from and after, for each of those provinces, the adoption of an order applying an Act of the same nature, in force in the province concerned, to judgments rendered in Québec ordering payment of maintenance.

[21] The Manitoba Court of Appeal considered a similar provision in *Lei v Kwan*, 2010 MBCA 108, [2010] MJ No 347. Scott CJM said, for the court:

> 5 The purpose of the ISO Act is to simplify the recognition and enforcement of support orders between the provinces of Canada as well as with other reciprocating states. While all jurisdictions in Canada have passed legislation to implement the ISO Act, it is not yet in force in Québec. The ISO Act provides for this eventuality by requiring that in a reciprocating state where the ISO Act is not in force, a provisional order must first be obtained. Section 7(1) reads as follows:
>
> > Where the respondent is ordinarily resident in a reciprocating jurisdiction that requires a provisional order, the Manitoba court may, on application by a claimant and without notice to and in the absence of a respondent, make a provisional order taking into account the specific statutory or other legal authority on which the claimant's application for support is based.

> 6 The necessity for a provisional order under sec. 7(1) is consistent with the former practice (now repealed) under The Reciprocal Enforcement of Maintenance Orders Act, C.C.S.M., c. M20, rep. January 31, 2003 (REMO), which obliged a court, in the jurisdiction where an application was first made for support from a non-resident, to pronounce a provisional order with respect to the existence of a support obligation and the quantum of support. If granted, the order would then be sent to the reciprocating state where the respondent resided. The court in the receiving state, after hearing from the respondent, could confirm, reject or vary the first order. The provisional order was of no force and effect until confirmed by the reciprocating state where the respondent resided.
>
> 7 Under the ISO Act the procedure is much different. A more streamlined application process has been fashioned. In those jurisdictions where the ISO Act, or its equivalent, is in force, no provisional order is required. Once the application is made, the package is simply forwarded as an administrative act, to the reciprocating state. Only one judicial hearing takes place, namely, in the jurisdiction where the respondent resides.

[22] The Québec Court of Appeal considered the procedure under the *Québec Act* in *Droit de la famille - 08168*, 2008 QCCA 199, [2008] JQ no 607. In that case the Alberta Court of Queen's Bench had issued a provisional order under the Alberta ISOA and an issue arose in Québec respecting the effective date of the order in that province. The payor also objected on the basis of lack of notice of the Alberta proceeding. Hilton JA said, for the court:

> 33 I agree with the Attorney General that provisional orders such as the one issued by Perras, J. are not contrary to public order because they were issued without notice and ex parte. Indeed, the relevant provisions of sections 5 and 7 of the ISO are substantively no different from those of section 9 of the Act that would govern the procedural conduct of a Quebec creditor of a child support obligation in circumstances where the debtor of the obligation was neither domiciled nor resident in Quebec. The relevant extracts from the Alberta and Quebec provisions are as follows:
>
> > Alberta:
> >
> > 5(1) Where a claimant ordinarily resides in Alberta and believes that the respondent ordinarily resides in a reciprocating jurisdiction, the claimant may start a process in Alberta that could result in a support order being made in the reciprocating jurisdiction.
> >
> > (2)To start the process, the claimant must complete a support application that includes the following:
> > [...]

> (4)The claimant is not required to notify the respondent that a process has been started under this section.
>
> 7(1) Where the claimant believes that the respondent ordinarily resides in a reciprocating jurisdiction that requires a provisional order, the Alberta court may, on application by the claimant and without notice to and in the absence of the respondent, make a provisional order taking into account the specific statutory or other legal authority on which the claimant's support application is based.
>
> Quebec:
>
> 9.In the case of an action for maintenance before a court of Québec, against a person neither resident nor domiciled therein, the court may, for the purposes of section 8, notwithstanding the rules of the Code of Civil Procedure and even if the defendant has not been summoned or heard, render a judgment of a provisional nature, subject to the final judgment of the competent court of the place where the defendant resides or is domiciled.
>
> The depositions and stenographic transcripts of the evidence and particulars of the description, identity and residence or domicile of the defendant shall then be transmitted, with the copy of the judgment, by the clerk to the Attorney General, and by the latter to the competent person in the state, province or territory where such judgment is to be executed.

34 Quebec and Alberta are not alone in having statutory provisions such as those referred to in paragraph [33] that do not require service of the initiating procedure on the debtor in the province of the debtor's residence as a condition precedent to judgment being rendered in the province of the creditor. It is manifest that the Canadian provinces have together established a national system of reciprocal enforcement of maintenance orders.

[23] The interplay of the ISOA and the Québec legislation confirms the two different statutory schemes can work together by way of the provisional order process. This does not completely end the jurisdictional inquiry. It is clear that a Nova Scotia court can exercise jurisdiction outside the ISOA procedures, through a conventional jurisdiction and forum analysis.

[24] One may also look to the *Court Jurisdiction and Proceedings Transfer Act*, 2003 (2nd Session) S.N.S., c.2, the '*CJPTA*' and relevant caselaw to determine whether Nova Scotia has competence to determine whether child support is payable by a Quebec resident pursuant to this statute.

[25] Sections 2 and 3 of the '*CJPTA*' directs how the territorial competence of a Court is to be determined and further at Section 10 provides the criteria that determine whether a Court should exercise jurisdiction once it is found to exist. The '*CJPTA*' provides a Court's territorial competence may be founded when there is a real and substantial connection between the Province and the facts upon which the proceeding against that person is based:

> 2 In this Act,
>
> . . . . .
>
> (f) "subject-matter competence" means the aspects of a court's jurisdiction that depend on factors other than those pertaining to the court's territorial competence;
>
> (g) "Supreme Court" means the Supreme Court of Nova Scotia;
>
> (h) "territorial competence" means the aspects of a court's jurisdiction that depend on a connection between
>
> (i) the territory or legal system of the state in which the court is established, and
>
> (ii) a party to a proceeding in the court or the facts on which the proceeding is based. 2003 (2nd Sess.), c. 2, s. 2.
>
> 3 (1) In this Part, "court" means a court of the Province unless the context otherwise requires.
>
> (2) The territorial competence of a court is to be determined solely by reference to this Part. 2003 (2nd Sess.), c. 2, s. 3.
>
> Proceedings against persons
>
> 4 A court has territorial competence in a proceeding that is brought against a person only if
>
> > (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counter-claim;
> >
> > (b) during the course of the proceeding that person submits to the court's jurisdiction;
> >
> > (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding;

> (d) that person is ordinarily resident in the Province at the time of the commencement of the proceeding; or
>
> **(e) there is a real and substantial connection between the Province and the facts on which the proceeding against that person is based. 2003 (2nd Sess.), c. 2, s. 4. [emphasis added]**
>
> . . . . .
>
> 13 Where there is a conflict or inconsistency between this Part and another Act of the Province or of Canada that expressly
>
> (a) confers jurisdiction or territorial competence on a court; or
>
> (b) denies jurisdiction or territorial competence to a court,
> that other Act prevails. 2003 (2nd Sess.), c. 2, s. 13.

[26] If this Court has territorial competence to conclude the child support issue pursuant to the '*CJPTA*', should it assume jurisdiction over the child support issue?

[27] Nova Scotia has a real and substantial connection to the children. They live here and the issues of custody and access must be concluded here. Mr. Ferguson is participating in the conciliation process offered by this Court to conclude those issues here. Child support has a strong legal nexus with parenting determinations. As I stated in *Pitts v. Noble*, 2009 NSSC 325 at paragraph 44:

> [44] Finally, one must consider the strong legal nexus between custody and the obligation of the noncustodial parent to contribute child support to the custodial parent. The court is mandated when dealing with a custody issue to also consider the child-support implications of the order. The legal reality of the child support obligation was described by the court in D.B.S. as follows:
>
> For the Majority
>
> 36. It is trite to declare that the mere fact of parentage places great responsibility upon parents. Upon the birth of a child, parents are immediately placed in the roles of guardians and providers...
>
> 37. The parent-child relationship engages not only moral obligations, but legal ones as well. Canadians will be familiar with these legal obligations as they have come to be refined, quantified and amplified through contemporary legislative enactments. But the notion of child support, as a basic obligation of

> parents, is in no way a recent concept.....The obligation of support was thus seen to arise automatically, upon birth; in one 1879 case, this meant that a child support award that included a period pre-dating the institution of the mother's action was confirmed on appeal...
>
> For the Minority
>
> 161. The law is clear that separated parents are obliged to pay child support in accordance with their ability to do so. Only the payor parent knows when there has been a change in income that would warrant an adjustment to child support. That, therefore, is the parent with the major responsibility for ensuring that a child benefits from the change as soon as reasonably possible. A system of support that depends on when and how often the recipient parent takes the payor parent's financial temperature is impractical and unrealistic.
>
> . . . . .
>
> 163. So long as the change would warrant different child support from what is being paid, the presumptive starting point for the child's entitlement to a change in support is when the change occurred, not when the change was disclosed or discovered.

[28] In *Jasen v Karassik* (2009), 95 OR (3d) 430, 2009 ONCA 245, leave to appeal denied, [2009] SCCA No 205, the parties had never married. The mother and the parties' son lived in Ontario. The father lived in New York. There was an existing agreement for child support, with which the father had complied. On the mother's application, a judge of the Ontario Court of Justice varied the agreement under the provincial Family Law Act. The father did not dispute jurisdiction at first instance, but on appeal to the Ontario Superior Court he argued that the court lacked jurisdiction to make a child support order other than by way of the ISOA, which the mother had not relied on. The Superior Court judge held that the ISOA was a "complete code for interjurisdictional support proceedings." On further appeal, the Ontario Court of Appeal held that the Court of Justice had jurisdiction, finding that the ISOA was not a complete code. O'Connor ACJO said, for the court:

> [16] Jurisdiction may be asserted against an out-of-province father in three circumstances: the father is physically present in Ontario; the father consents, agrees or attorns to the jurisdiction; or Ontario has a real and substantial connection to the matter being litigated and service ex juris has been properly effected: Muscutt v. Courcelles (2002), 60 O.R. (3d) 20, [2002] O.J. No. 2128 (C.A.), at paras. 19-20.

[29] The court held that the father had attorned to Ontario's jurisdiction. There was, additionally, a real and substantial connection between Ontario and the matter being litigated. Addressing the Muscutt factors, the Associate Chief Justice said:

> [18] I am also satisfied that there was a real and substantial connection among the parties, the subject matter of the application and the Ontario court such that the application judge properly assumed jurisdiction. In Muscutt, Sharpe J.A. outlined the following list of factors relevant to the real and substantial connection inquiry at paras. 77-110:
>
> -- The connection between the forum and the plaintiff's claim;
> -- the connection between the forum and the defendant;
> -- unfairness to the defendant in assuming jurisdiction;
> -- unfairness to the plaintiff in not assuming jurisdiction;
> -- the involvement of other parties to the suit;
> -- the court's willingness to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis;
> -- whether the case is interprovincial or international in nature; [and]
> -- comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere.
>
> [19] Most of the Muscutt factors support the conclusion that there was a real and substantial connection in this case. There was a strong connection between the forum and the subject matter of the claim, which was an application to vary support for a child who had lived in Ontario with his mother since birth. As discussed above, the father attorned and submitted personally to the jurisdiction of the court. There was no apparent unfairness to him in the Ontario court assuming jurisdiction. While the mother would not necessarily be forced to litigate in another jurisdiction if the Ontario court declined jurisdiction, she would have been compelled to start another proceeding under the ISOA. Further, had analogous proceedings been initiated in a foreign jurisdiction, I am satisfied that Ontario courts would recognize and enforce an order rendered on the same basis as the application judge rendered her decision. Finally, while the case involves a resident of New York State, the application for variation of support for a child who has lived in Ontario since birth can hardly be described as having significant "international" elements. In sum, I am satisfied that there was a real and substantial connection to Ontario in this case.

[30] In rejecting the father's submission that the ISOA was a "complete code" governing interjurisdictional support matters, the Associate Chief Justice held that there was "nothing in the ISOA to suggest that it was intended to remove the right of applicants to proceed under the FLA by effecting service ex juris and demonstrating that the Ontario court has jurisdiction to hear the application."

Further, he said, s 51 of the ISOA "expressly preserves the continued availability of remedies under other legislation." (Equivalent language appears in s 51 of the Nova Scotia ISOA.) Finally, "the broader interjurisdictional support regime contemplates that applicants will not be precluded from seeking remedies in their own domestic courts. The statutes in reciprocating jurisdictions have provisions similar to s. 51 of the ISOA." Distinguishing the authorities relied on by the father, O'Connor ACJO concluded:

> [68] There is no reason why an applicant may not pursue an out-of-province father for support or for variation of a support provision in a domestic contract where service ex juris has been properly effected and the real and substantial connection test has been met. The real and substantial connection test was developed with the interests of comity in mind. In Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, [2004] S.C.J. No. 44, Binnie J. relied on the following comments by La Forest J. in Tolofson v. Jensen, [1994] 3 S.C.R. 1022, [1994] S.C.J. No. 110, at pp. 1047-49 S.C.R. At para. 60, he stated:
>
> > From the outset, the real and substantial connection test has been viewed as an appropriate way to "prevent overreaching . . . and [to restrict] the exercise of jurisdiction over extraterritorial and transnational transactions" . . . . The test reflects the underlying reality of "the territorial limits of law [page448] under the international legal order" and respect for the legitimate actions of other states inherent in the principle of international comity. (Citations omitted)
>
> [69] Finally, as a practical matter, I note that if the father's argument that the only means for obtaining an original support order or varying a support agreement is under the ISOA, then issues of child access and custody would in some cases have to be dealt with in a different proceeding than child support where there is a non-resident payor. That would be an unfortunate result and one that would run contrary to the principle that a multiplicity of legal proceedings should be avoided: see Courts of Justice Act, R.S.O. 1990, c. C.43, s. 138.

[31] The *Jasen v Karassik* reasoning was reaffirmed in *Navarro v Parrish*, 2014 ONCA 856, [2014] OJ No 5733, where the court said, briskly:

> 4 The appellant's first argument is conclusively answered by Jasen v. Karassik, 2009 ONCA 245 holding that the Interjurisdictional Support Orders Act provides an alternative procedure and does not bar an applicant from seeking support from an out-of-province respondent under the Family Law Act provided that the court has jurisdiction to hear the claim.
>
> 5 An Ontario court has jurisdiction under the Family Law Act provided that there is a real and substantial connection between the claim and Ontario. Here, the child was born

> in Ontario and the child and his mother have resided in Ontario for all of the child's life. Here, the ordinary residence of the child in Ontario is a sufficient basis to conclude that there was a real and substantial connection between Ontario and the subject-matter of the litigation, custody and support of the child.

[32] The *Jasen* reasoning was applied in Saskatchewan in *Krushelinski v Wehner*, 2015 SKQB 195, [2015] SJ No 356, where the mother, a resident of Saskatchewan, applied under the provincial Family Maintenance Act for child support from the father, a resident of Alberta. The father argued that the ISOA process was mandatory. Wilkinson J comprehensively reviewed the caselaw and said:

> 46 Clearly, in Ontario, a support claimant can elect which remedy to pursue, either, (1) by seeking relief under the ISOA (Ont), or (2) by bringing an application under provincial support legislation, establishing a real and substantial connection to the province of Ontario, and effecting service ex juris.
>
> 47 The Ontario position harmonizes with case law in Saskatchewan where the analysis is conducted having regard to the CJPTA. Ontario decides issues of territorial competence within a common-law, as opposed to a statutory, framework. The CJPTA is simply a codification of common law rules regarding establishment of territorial competence. Thus, while Ontario has not passed a version of the CJPTA, it applies similar principles in determining issues of territorial competence…

[33] The *Court Jurisdiction and Proceedings Transfer Act* would not apply where territorial competence was addressed in another act; this was indicated by s 11 of the Saskatchewan Act, which mirrors s 13 of the Nova Scotia *CJPTA*. As such, Wilkinson J said, "[i]f the FMA contains no provision pertaining to the determination of territorial competence and there is no conflict or inconsistency between the *CJPTA* and the *FMA*, then territorial competence is to be determined by the *CJPTA*." As with the *Nova Scotia Parenting and Support Act*, the *Saskatchewan Family Maintenance Act* was silent on the issue of territorial competence. Wilkinson J concluded:

> 56 In summary, the Ontario case law holds considerable sway in the analysis. I conclude that the ISOA does not constitute a complete code and that the mother was entitled to bring her child support application under the FMA. As Walling previously determined, the Saskatchewan Court has territorial competence in proceedings brought under the FMA for spousal support against a non-resident. On the circumstances of the present case, the child support claim has a real and substantial connection to Saskatchewan. It has been the habitual residence of the mother and the children for their entire lives. The parties cohabited in Saskatchewan throughout their relationship.

> Ordinary residence is a presumptive connecting factor: Knowles and Parrish.

[34] This left the question of whether the *forum conveniens* analysis required resort to the ISOA, or whether the provincial legislation would suffice. The court said:

> 60 Considerations of convenience and expense favour the mother. Her financial circumstances are compromised, given the recent loss of employment. The father travels to Saskatchewan for access purposes. He comes to Saskatoon in order to visit his mother and other family members. Travel between Spruce Grove, Alberta and Saskatoon for court purposes would not be particularly onerous for the father, and options are always available for appearance by telephone or video-conference. The father has retained counsel in Saskatoon, but apparently has no legal representation in Alberta. The father is an employee, and disclosing evidence of his income should be a relatively straightforward matter. The complexities associated with determining income from self-employment, or from controlled corporations, or from farming pursuits have no application here. There are orthodontic expenses and hockey expenses in issue, and the information required to qualify them as s. 7 expenses under the Guidelines rests in Saskatchewan. One child is now 18, and issues of entitlement have arisen. The evidence on that issue is similarly based in Saskatchewan. Retroactive support is claimed, and the bulk of the evidence on that issue is, for the most part, Saskatchewan based. No issue has been identified in terms of the appropriate law to be applied, and the mother is fully satisfied she will be able to enforce any judgment obtained in this proceeding.
>
> 61 Further, it is the kind of case where, under ISOA, there may well be considerable delay in obtaining the requisite information. It is more than likely that questions and answers will ping-pong back and forth between provinces and consequential delays will follow. Children's circumstances are certainly never static and by the time information is remitted it may need to be updated. It would be more practical to address the issues in a unified process, and a single forum, without the intermediation of the designated authorities. It is eminently fair and reasonable to address the issues in the jurisdiction where the children have always maintained their habitual residence.

[35] As such, Wilkinson J held that the mother was free to proceed under the *Saskatchewan Family Maintenance Act* and was not obliged to commence a proceeding under the ISOA.

[36] Much of the evidentiary basis identified by the Court in *Krushelinski, supra* (at paragraph 60-61) to support a finding that the child support issue should be resolved in Saskatchewan is also present here:

> [60] Considerations of convenience and expense favour the mother. Her financial circumstances are compromised, given the recent loss of employment. The father travels to Saskatchewan for access purposes. He comes to Saskatoon in order to visit his mother and other family members. Travel between Spruce Grove, Alberta and Saskatoon for court purposes would not be particularly onerous for the father, and options are always available for appearance by telephone or video-conference. The father has retained counsel in Saskatoon, but apparently has no legal representation in Alberta. The father is an employee, and disclosing evidence of his income should be a relatively straightforward matter. The complexities associated with determining income from self-employment, or from controlled corporations, or from farming pursuits have no application here. There are orthodontic expenses and hockey expenses in issue, and the information required to qualify them as s. 7 expenses under the Guidelines rests in Saskatchewan. One child is now 18, and issues of entitlement have arisen. The evidence on that issue is similarly based in Saskatchewan. Retroactive support is claimed, and the bulk of the evidence on that issue is, for the most part, Saskatchewan based. No issue has been identified in terms of the appropriate law to be applied, and the mother is fully satisfied she will be able to enforce any judgment obtained in this proceeding.
>
> [61] Further, it is the kind of case where, under ISOA, there may well be considerable delay in obtaining the requisite information. It is more than likely that questions and answers will ping-pong back and forth between provinces and consequential delays will follow. Children's circumstances are certainly never static and by the time information is remitted it may need to be updated. It would be more practical to address the issues in a unified process, and a single forum, without the intermediation of the designated authorities. It is eminently fair and reasonable to address the issues in the jurisdiction where the children have always maintained their habitual residence.

[37] The case for a Court to assume jurisdiction and to deal with the child support issue when a prospective payor lives in another jurisdiction is strengthened when the Court is required to deal with the custody issue pertaining to the subject child(ren). The clear direction of the Supreme Court is that Courts must do more to facilitate access to Justice for Canadian families.

[38] In *Hryniak v. Mauldin*, 2014 SCC 7 the Supreme Court directed lower Courts as follows:

> [1] Karakatsanis J. — Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.

> [2] Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[39] Mr. Ferguson objects to this Court dealing with the child support issue. He wishes to make an undue hardship claim. I am satisfied he has *bona fides*.

[40] Through the conciliator, Mr. Ferguson advised of his intention to claim his child support obligation should be less than the table amount because he claims imposition of the table amount of child support both retroactively and on an ongoing basis will represent an undue hardship to him. He is subject to a support obligation in Quebec for other children.

[41] Section 10 of the Child Support Guidelines of Nova Scotia and an analogous provision of the Quebec Guidelines provide that a prospective payor may make an undue hardship application.

[42] Undue Hardship applications are often made but frequently abandoned because the threshold test that must be met to be successful is substantial. The level of preparation required of a party claiming undue hardship is significant.

[43] Notwithstanding this Court's concern about a significant delay in having the child support and special expense claim concluded should the provisional process be pursued, I am satisfied the best opportunity for Mr. Ferguson to put forth his claim for undue hardship must be afforded to him.

Conclusion

[44] I am satisfied the 'CJPTA' codifies the basis upon which this Court has jurisdiction. This statute incorporates the common-law principles discussed in the *Pitts* and *Krushelinski* decisions. I am also satisfied the *Reciprocal Enforcement of Judgments Act*, R.S.N.S. 1989, c.388 is available to assist enforcement of a Nova Scotia order in Quebec; should one issue.

[45] An order addressing parenting issues has been approved by the parties and is now in effect.

[46] I am satisfied, absent Mr. Ferguson's attorning to the jurisdiction of this Court, this matter would have proceeded as an interjurisdictional support claim by a resident of Nova Scotia against a resident of Quebec. The Provisional process would have been followed. That process is consistent with both the requirements of the *Reciprocal Enforcement of Judgment Act*, R.S.N.S. 1989, c. 388, s. 1. and the Quebec legislation, *An Act Respecting Reciprocal Enforcement of Maintenance Orders*, CQLR, Chapter E-19.

[47] As stated herein, the jurisdictional issue has now become moot. A Provisional hearing scheduled for June 26, 2018 to address the child support issue was re-scheduled because Ms. Simmons' counsel was not available that day. The hearing was rescheduled to August 30, 2018 at which time counsel for Mr. Ferguson participated by telephone and the parties' respective counsel participated in discussions aimed at resolving the support issue on a consent basis.

[48] On September 21, 2018 the Court convened a Conference with the parties. Both parties were represented by counsel. Mr. Ferguson's counsel participated by telephone from Montreal. Ms. Zayid appeared with Ms. Simmons. The parties agreed on the terms of a child support order. As a result, the provisional process is no longer necessary.

ACJ