

CONSOLIDATION OF INTERJURISDICTIONAL SUPPORT ORDERS ACT

S.Nu. 2002,c.26

In force June 12, 2003: SI-004-2003

(Current to: May 3, 2012)

The following provisions have been deleted for the purposes of this consolidation:
s.46 and 47 (Consequential Amendments)

AS AMENDED BY:

S.Nu. 2008,c.17,s.46

s.46 in force September 18, 2008

S.Nu. 2008,c.19,s.2

s.2 in force September 18, 2008

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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INTERJURISDICTIONAL SUPPORT ORDERS ACT

Definitions

1. In this Act,

"appropriate authority", when used with reference to a reciprocating jurisdiction, means a person in that jurisdiction who corresponds to a designated authority; (*autorité compétente*)

"certified", when used in reference to a copy of any court document, means certified by the court from which the document originates; (*certifié conforme*)

"claimant" means a person who applies under this Act for support; (*requérant*)

"Clerk" means the Clerk of the Nunavut Court of Justice appointed under section 61 of the *Judicature Act*; (*greffier*)

"Court of Appeal" means the Court of Appeal of Nunavut established by subsection 31(1) of the *Nunavut Act* (Canada); (*Cour d'appel*)

"designated authority" means the person appointed under subsection 35(1), and includes a person to whom a power or duty is delegated under subsection 35(2); (*autorité désignée*)

"former Act" means the *Maintenance Orders (Facilities for Enforcement) Act*, R.S.N.W.T. 1988,c.M-3, as duplicated and amended for Nunavut; (*ancienne loi*)

"prescribed" means prescribed by regulation; (*version anglaise seulement*)

"provisional order" means

- (a) a support order made by the Nunavut Court of Justice that has no force or effect until confirmed by a court in a reciprocating jurisdiction; or
- (b) an order made in a reciprocating jurisdiction that is received for confirmation in Nunavut; (*ordonnance conditionnelle*)

"provisional order of variation" means

- (a) an order made by the Nunavut Court of Justice for variation of a support order that has no force and effect until confirmed by a court in a reciprocating jurisdiction; or
- (b) an order made in a reciprocating jurisdiction for variation of a support order that is received for confirmation in Nunavut; (*ordonnance modificative conditionnelle*)

"reciprocating jurisdiction" means a jurisdiction designated by regulation as a reciprocating jurisdiction; (*autorité pratiquant la réciprocité*)

"respondent" means a person from whom support is sought; (*intimé*)

"support" includes support, maintenance and alimony; (*aliments*)

"support order" means

- (a) a court order or an order made by an administrative body requiring the payment of support; or
- (b) a provision in a written agreement requiring the payment of support, if the provision is enforceable in the jurisdiction in which the agreement was made as if it were contained in an order of a court of that jurisdiction. (*ordonnance alimentaire*)

Designated court

2. For the purposes of proceedings under this Act, the Nunavut Court of Justice is the designated court.

PART I

CLAIMS WHERE NO ORDER EXISTS

Application

3. This part applies only if there is no support order in effect that requires a proposed respondent to pay support for either or both of the following:

- (a) a proposed claimant; or
- (b) any child for whom support is proposed to be claimed.

Division A

Claimant Ordinarily Resident in Nunavut

Support application

4. (1) If a proposed claimant ordinarily resides in Nunavut and believes that the proposed respondent ordinarily resides in a reciprocating jurisdiction, the proposed claimant may commence a proceeding in Nunavut that may result in a support order being made in the reciprocating jurisdiction.

Procedure

(2) To commence a proceeding referred to in subsection (1), a claimant shall complete a support application in the prescribed form that includes the following:

- (a) the claimant's name and address for service;
- (b) a copy of the statutory or other legal authority upon which the application is based, unless the claimant is relying upon the law of the jurisdiction where the respondent ordinarily resides;
- (c) the amount and nature of the support claimed;

- (d) an affidavit setting out the following:
 - (i) the respondent's name and any other information known to the claimant that may be used to locate or identify the respondent,
 - (ii) the respondent's financial circumstances, to the extent they are known to the claimant,
 - (iii) the name of each person for whom support is claimed,
 - (iv) the date of birth of any child for whom support is claimed,
 - (v) the evidence relevant to establishing the entitlement to and the amount of support, including,
 - (A) if support is claimed for a child, details of the child's parentage and information regarding the child's financial and other circumstances, and
 - (B) if support is claimed for the claimant, information regarding the claimant's financial and other circumstances and information regarding his or her relationship with the respondent; and
- (e) any other information or documents prescribed by regulation.

Notice

(3) A claimant is not required to notify a respondent that a proceeding has been commenced under this section. S.Nu. 2008,c.19,s.2.

Submission of application to designated authority

5. (1) A claimant shall submit a support application in the prescribed manner to the designated authority in Nunavut, along with a certified translation of the application if one is required by the appropriate authority in the reciprocating jurisdiction in which the claimant believes the respondent ordinarily resides.

Duty of designated authority

- (2) Upon receiving a support application, the designated authority shall
 - (a) review the application to ensure that it is complete; and
 - (b) forward a copy of the completed application to an appropriate authority in the reciprocating jurisdiction in which the claimant believes the respondent ordinarily resides.

Further information

(3) Upon receiving a request for further information or documents from an appropriate authority in a reciprocating jurisdiction under an enactment that corresponds to paragraph 9(2)(a), a claimant shall provide the information or documents within the time referred to in the request and in the prescribed manner to the Clerk who shall forward the information or documents to the appropriate authority in the reciprocating jurisdiction.

Order from reciprocating jurisdiction

(4) Upon receiving a certified copy of an order and reasons, if any, from an appropriate authority in a reciprocating jurisdiction under an enactment that corresponds to section 14, the designated authority shall, in the prescribed manner, provide the Nunavut Court of Justice with two copies of the order and reasons, if any.

Copy to claimant

(5) When the Nunavut Court of Justice receives copies of an order and reasons, if any, under subsection (4), the Clerk shall forward one copy to the claimant in the prescribed manner.

Provisional order

6. (1) If a claimant believes that a respondent ordinarily resides in a reciprocating jurisdiction that requires a provisional order, the Nunavut Court of Justice may, on the claimant's application and without notice to the respondent, make a provisional order that takes into account the legal authority upon which the support application is based.

Evidence in proceeding

(2) Evidence in a proceeding under subsection (1) may be given orally, in writing or as the Nunavut Court of Justice may allow.

Duty of designated authority

(3) If the Nunavut Court of Justice makes a provisional order, the designated authority shall forward to an appropriate authority in the reciprocating jurisdiction

- (a) the support application submitted under subsection 5(1);
- (b) a certified transcript of any oral evidence; and
- (c) three certified copies of the provisional order.

Request for further evidence

(4) If, during a proceeding to confirm a provisional order, a court in a reciprocating jurisdiction remits the matter to the Nunavut Court of Justice for further evidence, the Nunavut Court of Justice shall, after giving notice to the claimant, receive further evidence.

Evidence received and forwarded

(5) If evidence is received under subsection (4), the Clerk shall forward to the court in the reciprocating jurisdiction

- (a) a certified transcript of any oral evidence;
- (b) a certified copy of any documentary evidence; and
- (c) if the Nunavut Court of Justice modifies its provisional order, three certified copies of the modified provisional order.

Refusal to confirm provisional order

(6) If a court in a reciprocating jurisdiction refuses to confirm a provisional order from the Nunavut Court of Justice in respect of one or more persons for whom support is sought, the Nunavut Court of Justice may, on application by the claimant within six months after the refusal,

- (a) reopen the matter;
- (b) receive further evidence; and
- (c) make a new provisional order for a person in respect of whom confirmation of the original order was refused.

Division B

Claimant Ordinarily Resident Outside Nunavut

Definition of "support application"

7. In this Division, "support application" means

- (a) a provisional order referred to in paragraph (b) of the definition "provisional order" in section 1; or
- (b) a document from a reciprocating jurisdiction that corresponds to a support application described in subsection 4(2).

Notice of hearing

8. (1) If the designated authority receives a support application from an appropriate authority in a reciprocating jurisdiction, containing information that the named respondent ordinarily resides in Nunavut, the designated authority shall serve on the respondent, in the prescribed manner,

- (a) a copy of the support application; and
- (b) a notice requiring the respondent
 - (i) to appear at a place and time set out in the notice, and
 - (ii) to provide any prescribed information or documents.

Respondent ordinarily resident in another jurisdiction

(2) If the designated authority is unable to serve a respondent under subsection (1) and knows or believes that the respondent ordinarily resides in another reciprocating jurisdiction in Canada, the designated authority shall

- (a) forward the support application to the appropriate authority in that reciprocating jurisdiction; and
- (b) notify the appropriate authority in the originating reciprocating jurisdiction that he or she has forwarded the support application.

Respondent's residence undetermined

(3) If the designated authority is unable to serve a respondent under subsection (1) and

- (a) is unable to determine where the respondent resides, or
- (b) knows or believes that the respondent ordinarily resides outside of Canada,

the designated authority shall return the support application to the appropriate authority in the originating reciprocating jurisdiction, along with any information that he or she has concerning the respondent's location and circumstances.

Information to be considered

9. (1) When considering a support application, the Nunavut Court of Justice shall take into consideration

- (a) the evidence given or submitted to it; and
- (b) the documents received from the reciprocating jurisdiction.

Further information

(2) If the Nunavut Court of Justice requires further information or documents from the claimant to make a support order, the court shall

- (a) direct the Clerk to request that an appropriate authority in the reciprocating jurisdiction request the information or documents from the claimant; and
- (b) adjourn the hearing.

Interim order

(3) When acting under subsection (2), the Nunavut Court of Justice may also make an interim support order.

Dismissal

(4) If the Nunavut Court of Justice does not receive information or documents requested under subsection (2) within 18 months after the request is made, the court may dismiss the support application and terminate any interim support order made under subsection (3).

New proceeding

(5) The dismissal of a support application under subsection (4) does not preclude a claimant from commencing a new proceeding under this Act.

Parentage

10. (1) The Nunavut Court of Justice may determine the parentage of a child if

- (a) it is in issue in a hearing under this Part; and
- (b) a court of competent jurisdiction in Canada has not made a previous determination of the issue.

Effect of determination

(2) Subject to subsection (3), a determination of parentage under this section only has effect for the purpose of proceedings under this Act.

Declaratory order

(3) The Nunavut Court of Justice may make a determination of parentage that has the same effect as a declaratory order made under sections 4 or 5 of the *Children's Law Act* if the court is satisfied that it is appropriate to do so, having regard to all the circumstances of the case including the nature and quality of the evidence presented.

Application of *Children's Law Act*

(4) Sections 4 to 7 of the *Children's Law Act* apply to a determination under subsection (3).

Choice of law

11. (1) When determining a claimant's entitlement to support for a child, the Nunavut Court of Justice shall apply the law of the jurisdiction in which the child ordinarily resides, but if under that law the claimant is not entitled to support, the court shall apply the law of Nunavut.

Amount of support

(2) When determining the amount of support to be provided for a child, the Nunavut Court of Justice shall apply the law of Nunavut.

Entitlement to support

(3) When determining a claimant's entitlement to support for him or herself and the amount of that support, the Nunavut Court of Justice shall apply the law of Nunavut, but if under that law the claimant is not entitled to support, the court shall apply the law of the jurisdiction in which the claimant and the respondent last maintained a common habitual residence.

Powers of court

12. (1) At the conclusion of a hearing under this Division, the Nunavut Court of Justice may, with respect to a claimant, a child or both

- (a) make a support order;
- (b) make an interim support order and adjourn the hearing to a specified date;
- (c) adjourn the hearing to a specified date without making an interim support order; or
- (d) refuse to make a support order.

Retroactive order

(2) The Nunavut Court of Justice may make a retroactive support order.

Payments

(3) The Nunavut Court of Justice may make a support order requiring support to be paid periodically, as a lump sum or both.

Reasons

(4) If the Nunavut Court of Justice refuses to make a support order, the court shall give reasons for its decision.

Order if notice not complied with

- 13.** (1) If a respondent does not
- (a) appear as required in a notice under paragraph 8(1)(b), or
 - (b) provide information or documents as required in a notice under paragraph 8(1)(b),

the Nunavut Court of Justice may make an order in the absence of the respondent, information or documents and, in making the order, may draw any inference it considers appropriate.

Duty of the Clerk

(2) If the Nunavut Court of Justice makes an order under subsection (1), the Clerk shall forward a copy of the order to the respondent and to the designated authority in the prescribed manner.

Duty of the designated authority

14. As soon as practicable after receiving an order made under this Division, the designated authority shall forward a certified copy of the order and any reasons to the appropriate authority in the reciprocating jurisdiction that forwarded the claimant's support application.

PART II

REGISTRATION AND ENFORCEMENT OF ORDERS
MADE OUTSIDE NUNAVUT

Definitions

15. In this Part,

"extra-provincial order" means

- (a) a support order,
- (b) an interim support order, or
- (c) an order that varies a support order,

made in a reciprocating jurisdiction in Canada, but does not include a provisional order or a provisional order of variation; (*ordonnance extraprovinciale*)

"foreign order" means

- (a) a support order,
- (b) an interim support order, or
- (c) an order that varies a support order,

made in a reciprocating jurisdiction outside Canada, but does not include a provisional order of variation. (*ordonnance étrangère*)

S.Nu. 2008,c.19,s.2.

Receipt of order in Nunavut

16. (1) To register an extra-provincial order or a foreign order in Nunavut, an appropriate authority in a reciprocating jurisdiction shall forward a certified copy of the order to the designated authority in Nunavut.

Copy to Clerk

(2) Upon receiving an order under subsection (1), the designated authority shall forward a copy of the order, in the prescribed manner, to the Clerk.

Registration by party

(3) A party to an extra-provincial order or foreign order who ordinarily resides in Nunavut may register the order in Nunavut by providing a certified copy of the order to the Clerk.

Registration by Clerk

17. (1) Upon receiving an order under subsection 16(2) or (3), the Clerk shall register it as an order of the Nunavut Court of Justice.

Effect of registration

(2) An order registered under subsection (1) has the same effect as a support order made by the Nunavut Court of Justice.

Arrears

(3) An order registered under subsection (1) may be, with respect to arrears accrued before its registration and obligations accruing after its registration,

- (a) enforced in the same manner as a support order made by the Nunavut Court of Justice; and
- (b) varied in accordance with this Act.

Filing of order

(4) An order registered under subsection (1) shall be filed by the Clerk in accordance with subsections 5(3) and (4) of the *Maintenance Orders Enforcement Act*.

Application of *Maintenance Orders Enforcement Act*

(5) The provisions of the *Maintenance Orders Enforcement Act* that deal with the enforcement of a maintenance order made under that Act apply to a support order filed by the Clerk under this Part.

Foreign orders

18. (1) After the registration of a foreign order under section 17, the designated authority shall, in the manner prescribed, notify all parties to the order whom the designated authority reasonably believes ordinarily reside in Nunavut.

Application to set aside

(2) Within 30 days after receiving notification under subsection (1), a party to a foreign order may, after giving notice in the prescribed manner, apply to the Nunavut Court of Justice to set aside the registration of the order.

Powers of court

(3) In determining an application under subsection (2), the Nunavut Court of Justice may

- (a) confirm the registration; or
- (b) set aside the registration if it determines that
 - (i) in the proceeding in which the foreign order was made, a party to the order did not have proper notice of the proceeding or was not afforded a reasonable opportunity to be heard,
 - (ii) the foreign order is contrary to public policy in Nunavut, or
 - (iii) the court that made the foreign order did not have jurisdiction to make the order.

Reasons

(4) If the Nunavut Court of Justice sets aside a registration under paragraph (3)(b), it shall give reasons for its decision.

Jurisdiction

(5) For the purposes of subparagraph (3)(b)(iii), a court has jurisdiction if, at the time the order was made,

- (a) all the parties to the order were ordinarily resident in the reciprocating jurisdiction outside Canada; or
- (b) a party who was not ordinarily resident in the reciprocating jurisdiction outside Canada was subject to the jurisdiction of the court.

Distribution of decision

(6) Any decision or order of the Nunavut Court of Justice under this section shall be provided to the parties and to the designated authority in the prescribed manner.

Proof of notice

(7) In a proceeding to enforce a registered order made in a reciprocating jurisdiction outside Canada, it is not necessary to prove that the respondent received notice under subsection (1).

Effect of setting aside

19. (1) If the registration of a foreign order is set aside, the order shall, at the request of the party seeking to register the order, be dealt with under this Act as if it were a support application received under subsection 8(1) or a support variation application received under subsection 27(1) as the case may be.

More information or documents required

(2) If a foreign order does not include the information or documents required for a support application or a support variation application, the designated authority shall request them from an appropriate authority in the reciprocating jurisdiction that made the order, and no proceedings shall be continued under this Act until the designated authority receives the requested material.

PART III

VARIATION OF SUPPORT ORDERS

Definitions

20. In this Part,

"applicant" means a party who applies to vary a support order; (*requérant*)

"respondent" means a party who is a respondent in an application to vary a support order; (*intimé*)

"support order" means a support order that is made in

- (a) Nunavut, or
- (b) a reciprocating jurisdiction and has been registered under subsection 17(1) of this Act, or under the former Act,

but does not include a provisional order or a provisional order of variation. (*ordonnance alimentaire*)

Restriction

21. Nothing in this Part permits the variation of a support order originally made under the *Divorce Act* (Canada) unless it is authorized by a federal enactment.

Division A

Applicant Ordinarily Resident in Nunavut

Application to vary

22. (1) If a proposed applicant ordinarily resides in Nunavut and believes that the proposed respondent ordinarily resides in a reciprocating jurisdiction, the proposed applicant may commence a proceeding in Nunavut that may result in a support order being varied in the reciprocating jurisdiction.

Contents of application

(2) To commence a proceeding referred to in subsection (1), an applicant shall complete a support variation application in the prescribed form that includes the following:

- (a) the applicant's name and address for service;
- (b) a certified copy of the support order;

- (c) a copy of the statutory or other legal authority upon which the application is based, unless the applicant is relying upon the law of the jurisdiction where the respondent ordinarily resides;
- (d) the particulars of the variation applied for, which may include termination of the support order;
- (e) an affidavit setting out the following:
 - (i) the respondent's name and any other information known to the applicant that may be used to locate or identify the respondent,
 - (ii) the respondent's financial circumstances, to the extent they are known to the applicant, including whether he or she is receiving social assistance,
 - (iii) the name of each person, to the extent they are known to the applicant,
 - (A) for whom support is payable, or
 - (B) who will be affected if the variation is granted,
 - (iv) the evidence in support of the application, including,
 - (A) if support paid for a child may be affected, information regarding the child's financial and other circumstances, and
 - (B) if support paid for the applicant or respondent may be affected, information regarding the applicant's relationship with the respondent, and
 - (v) the prescribed information regarding the applicant's financial circumstances; and
- (f) any other prescribed information or documents.

Notice

(3) An applicant is not required to notify a respondent that a proceeding has been commenced under this section. S.Nu. 2008,c.19,s.2.

Submission of application

23. (1) An applicant shall submit a support variation application in the prescribed manner to the designated authority in Nunavut, along with a certified translation of the application if one is required by the appropriate authority in the reciprocating jurisdiction in which the applicant believes the respondent ordinarily resides.

Review of application

- (2) Upon receiving a support variation application, the designated authority shall
- (a) review the application to ensure that it is complete; and
 - (b) forward a copy of the completed application to an appropriate authority in the reciprocating jurisdiction in which the applicant believes the respondent ordinarily resides.

Further information

(3) Upon receiving a request for further information or documents from an appropriate authority in a reciprocating jurisdiction under an enactment that corresponds to paragraph 28(2)(a), an applicant shall provide the information or documents within the time referred to in the request and in the prescribed manner to the designated authority who shall forward the information or documents to the appropriate authority in the reciprocating jurisdiction.

Receipt of order and reasons

(4) Upon receiving a certified copy of an order and reasons, if any, from an appropriate authority in a reciprocating jurisdiction under an enactment that corresponds to section 32, the designated authority shall, in the prescribed manner, provide the Nunavut Court of Justice and the applicant with a copy of the order and reasons, if any.

Where respondent no longer resident in reciprocating jurisdiction

24. If the applicant ordinarily resides in Nunavut and the respondent no longer resides in a reciprocating jurisdiction, the applicant may apply directly to the Nunavut Court of Justice to vary the support order, and the court may make a variation order if the respondent has been given notice of the proceeding.

Provisional order of variation

25. (1) If an applicant believes that a respondent ordinarily resides in a reciprocating jurisdiction that requires a provisional order of variation, the Nunavut Court of Justice may, on application by the applicant and without notice to the respondent, make a provisional order of variation that takes into account the legal authority upon which the support variation application is based.

Evidence

(2) Evidence in a proceeding under subsection (1) may be given orally, in writing or as the Nunavut Court of Justice may allow.

Duty of designated authority

(3) If the Nunavut Court of Justice makes a provisional order of variation, the designated authority shall forward to an appropriate authority in the reciprocating jurisdiction

- (a) the support variation application submitted under subsection 23(1);
- (b) a certified transcript of any oral evidence; and
- (c) three certified copies of the provisional order of variation.

Request for further evidence

(4) If during a proceeding to confirm a provisional order of variation, a court in a reciprocating jurisdiction remits the matter to the Nunavut Court of Justice for further evidence, the Nunavut Court of Justice shall, after giving notice to the applicant, receive further evidence.

Duty of Clerk

(5) If evidence is received under subsection (4), the Clerk shall forward to the court in the reciprocating jurisdiction

- (a) a certified copy of any oral evidence;
- (b) a certified copy of any documentary evidence; and
- (c) if the Nunavut Court of Justice modifies its provisional order of variation, three copies of the modified provisional order of variation.

Refusal to confirm provisional order of variation

(6) If a court in a reciprocating jurisdiction refuses to confirm a provisional order of variation made by the Nunavut Court of Justice in respect of one or more persons for whom the variation is sought, the Nunavut Court of Justice may, on application by the applicant within six months after the refusal,

- (a) reopen the matter;
- (b) receive further evidence; and
- (c) make a new provisional order of variation for a person in respect of whom confirmation of the original order was refused.

Division B

Applicant Ordinarily Resident Outside Nunavut

Definition of "support variation application"

26. In this Division, "support variation application" means

- (a) a provisional order of variation referred to in paragraph (b) of the definition "provisional order of variation" in section 1; or
- (b) a document from a reciprocating jurisdiction that corresponds to a support variation application described in subsection 22(2).

Notice of hearing

27. (1) If the designated authority receives a support variation application from an appropriate authority in a reciprocating jurisdiction that contains information that the named respondent ordinarily resides in Nunavut, the designated authority shall serve on the respondent, in the prescribed manner,

- (a) a copy of the support variation application; and
- (b) a notice requiring the respondent
 - (i) to appear at a place and time set out in the notice, and
 - (ii) to provide any prescribed information or documents.

Designated authority unable to serve respondent

(2) If the designated authority is unable to serve a respondent under subsection (1) and knows or believes that the respondent ordinarily resides in another reciprocating jurisdiction in Canada, the designated authority shall

- (a) forward the support variation application to the appropriate authority in that reciprocating jurisdiction; and

- (b) notify the appropriate authority in the originating reciprocating jurisdiction that he or she has forwarded the support variation application.

Designated authority unable to determine where respondent resides

(3) If the designated authority is unable to serve a respondent under subsection (1) and

- (a) is unable to determine where the respondent resides, or
- (b) knows or believes that the respondent ordinarily resides outside Canada,

the designated authority shall return the support variation application to an appropriate authority in the originating reciprocating jurisdiction, along with any information that he or she has concerning the respondent's location and circumstances. S.Nu. 2008,c.19,s.2.

Information to be considered

28. (1) When considering a support variation application, the Nunavut Court of Justice shall take into consideration

- (a) the evidence given or submitted to it; and
- (b) the documents received from the reciprocating jurisdiction.

Further information

(2) If the Nunavut Court of Justice requires further information or documents from an applicant to make a support variation order, the Court shall

- (a) direct the designated authority to request that an appropriate authority in the reciprocating jurisdiction request the information or documents from the applicant; and
- (b) adjourn the hearing.

Interim support variation order

(3) When acting under subsection (2), the Nunavut Court of Justice may also make an interim support variation order.

Dismissal

(4) If the Nunavut Court of Justice does not receive information or documents requested under subsection (2) within 18 months after the request is made, the Court may dismiss the support variation application and terminate any interim support variation order made under subsection (3).

New proceeding

(5) The dismissal of a support variation application under subsection (4) does not preclude an applicant from commencing a new proceeding under this Division.

Choice of law

29. (1) When determining an applicant's entitlement to receive or continue receiving support for a child, the Nunavut Court of Justice shall apply the law of the jurisdiction in which the child ordinarily resides, but if under that law the party is not entitled to support, the Court shall apply the law of Nunavut.

Support for child

(2) When determining the amount of support to be provided for a child, the Nunavut Court of Justice shall apply the law of the jurisdiction where the party liable to pay the support ordinarily resides.

Support for applicant

(3) When determining an applicant's entitlement to receive or continue receiving support for him or herself and the amount of that support, the Nunavut Court of Justice shall apply the law of Nunavut, but if under Nunavut law the applicant is not entitled to support, the court shall apply

- (a) the law of the jurisdiction in which the applicant ordinarily resides;
or
- (b) if the applicant is not entitled to support under the law of the jurisdiction referred to in paragraph (a), the law of the jurisdiction in which the applicant and the respondent last maintained a common habitual residence.

Powers of court

30. (1) At the conclusion of a hearing under this Division, the Nunavut Court of Justice may, with respect to an applicant, a child or both,

- (a) make a support variation order;
- (b) make an interim support variation order and adjourn the hearing to a specified date;
- (c) adjourn the hearing to a specified date without making an interim support variation order; or
- (d) refuse to make a support variation order.

Retroactive support variation order

(2) The Nunavut Court of Justice may make a retroactive support variation order.

Periodic or lump sum payment

(3) The Nunavut Court of Justice may make a support variation order requiring support to be paid periodically, as a lump sum or both.

Reasons

(4) If the Nunavut Court of Justice refuses to make a support variation order, the Court shall give reasons for its decision.

Order if notice not complied with

- 31.** (1) If a respondent does not
- (a) appear as required in a notice under paragraph 27(1)(b), or
 - (b) provide information or documents as required in a notice under paragraph 27(1)(b),

the Nunavut Court of Justice may make an order in the absence of the respondent, information or documents and, in making the order, may draw any inference it considers appropriate.

Duty of the Clerk

(2) If the Nunavut Court of Justice makes an order under subsection (1), the Clerk shall forward a copy of the order to the respondent and the designated authority in the prescribed manner.

Duty of designated authority

- 32.** As soon as practicable after receiving an order made under this division, the designated authority shall forward a certified copy of the order and reasons to
- (a) an appropriate authority in the reciprocating jurisdiction in which the applicant ordinarily resides; and
 - (b) if the original support order was made in another reciprocating jurisdiction, to an appropriate authority in that jurisdiction.

Division C**Variation of Registered Orders****Jurisdiction**

- 33.** (1) The Nunavut Court of Justice, after taking into consideration any right of a government or a government agency under section 39, may vary a support order that is registered in Nunavut under Part II or the former Act if
- (a) both the applicant and the respondent accept the court's jurisdiction;
 - (b) both the applicant and the respondent ordinarily reside in Nunavut; or
 - (c) the respondent ordinarily resides in Nunavut and the order was registered by the applicant.

Application of *Family Law Act*

(2) The *Family Law Act* applies for the purposes of varying a support order under subsection (1) as if the order were an order for support under that Act.

PART IV

APPEALS

Appeals

34. (1) Subject to subsections (2) and (4), a party to a proceeding under this Act or the designated authority may appeal any decision, order or ruling of the Nunavut Court of Justice under this Act to the Court of Appeal.

Time to appeal

(2) An appeal shall be commenced within 90 days after the date on which the Nunavut Court of Justice's decision, order or ruling is entered as a judgment of the court.

Extension of time

(3) Notwithstanding subsection (2), the Court of Appeal may extend the appeal period, either before or after it has expired.

Respondent may appeal

(4) A party responding to an appeal under subsection (1) may appeal a decision, order or ruling in the same proceeding within 30 days after receiving the notice of appeal.

Order under appeal

(5) An order under appeal remains in force pending the determination of the appeal, unless the Nunavut Court of Justice or the Court of Appeal orders otherwise.

Duty of designated authority

- (6) The designated authority shall forward a copy of an appeal decision to
- (a) an appropriate authority in the reciprocating jurisdiction in which a party to the proceeding ordinarily resides; and
 - (b) if a support order affected by the appeal was originally made in another reciprocating jurisdiction, an appropriate authority in that jurisdiction.

PART V

GENERAL

Appointment of designated authority

35. (1) The Minister may appoint one or more persons to act as the designated authority in Nunavut for the purposes of this Act or any provision of this Act.

Delegation

(2) A person appointed under subsection (1) may, in writing, delegate any power or duty under this Act to any other person.

Liability

(3) No proceeding for damages shall be commenced against the designated authority or any employee in the designated authority's office for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Forwarding of documents

36. Upon receiving an order or other document that is to be forwarded to a reciprocating jurisdiction, the designated authority shall forward the order or document to an appropriate authority in the reciprocating jurisdiction.

Translation

37. (1) If the designated authority forwards an order or other document to a reciprocating jurisdiction that requires it be translated into a language other than French or English, the order or document shall be accompanied by

- (a) a translation of the order or document into the other language; and
- (b) a certificate of the translator authenticating the accuracy of the translation.

Applicant to provide translation

(2) A person for whom an order or document is being forwarded under subsection (1) shall provide the translation and the translator's certificate to the designated authority.

Reciprocating jurisdiction to provide translation

(3) An order or other document from a reciprocating jurisdiction that is written in a language other than the Inuit Language, English or French shall be accompanied by

- (a) a translation of the order or document into one of the Inuit Language, English or French; and
- (b) a certificate of the translator authenticating the accuracy of the translation.

S.Nu. 2008,c.17,s.46.

Foreign currency

38. If in a support order or an application received by the Nunavut Court of Justice, the amount of support is not expressed in Canadian currency, the Clerk shall convert the amount into Canadian currency in the prescribed manner.

Right of subrogation

39. A government or government agency that is providing, or has provided, social assistance to a person has the same rights as that person to commence or participate in any proceeding under this Act, including the right

- (a) to obtain or vary support;
- (b) to respond to an application

- (i) for variation of support payments or arrears under a support order, or
 - (ii) to suspend enforcement of support payments or arrears under a support order;
 - (c) to make or respond to an application under section 18 to set aside the registration of a foreign order;
 - (d) to appeal or respond to an appeal under this Act; or
 - (e) to seek an order for the reimbursement of social assistance provided by it to the person.
- S.Nu. 2008,c.19,s.2.

Terminology

40. The Nunavut Court of Justice shall give a document from a reciprocating jurisdiction such broad and liberal interpretation as is necessary to give effect to it, where the document

- (a) contains terminology that is different from the terminology used in this Act;
- (b) contains terminology that is different from that customarily used in Nunavut; or
- (c) is in a form that is different from that customarily used in Nunavut.

Law of reciprocating jurisdiction

41. (1) In a proceeding under this Act,

- (a) the Nunavut Court of Justice shall take judicial notice of the law of a reciprocating jurisdiction and, where required, apply it; and
- (b) an enactment of a reciprocating jurisdiction may be pleaded and proven by producing a copy of the enactment received from the reciprocating jurisdiction.

Proof of document

(2) A document purporting to be signed in a reciprocating jurisdiction by a judge, an officer of a court or a public officer is, unless the contrary is proven, proof of the appointment, signature and authority of the person who signed it.

Evidence from reciprocating jurisdiction

(3) The following, taken in a reciprocating jurisdiction, may be received in evidence by the Nunavut Court of Justice:

- (a) a written statement sworn to by the maker;
- (b) a deposition; and
- (c) a transcript of evidence.

Proof of default or arrears

(4) Default in paying support or arrears of support may be proved by a sworn document made by a person who declares that he or she has knowledge of, or information and belief concerning the default or arrears.

Spouses as witnesses

(5) Spouses are competent and compellable witnesses against each other in proceedings under this Act.

Other remedies

- 42.** This Act does not impair any other remedy available to
- (a) a person;
 - (b) the Government of Nunavut or a political subdivision or official agency of it;
 - (c) a province or another territory of Canada or a political subdivision or official agency of it;
 - (d) a jurisdiction outside Canada or a political subdivision or official agency of it.

Declaration

43. (1) If the Commissioner, on the recommendation of the Minister, is satisfied that laws are or will be in effect in a jurisdiction for the reciprocal enforcement of support orders made in Nunavut on a basis substantially similar to this Act, the Commissioner, on the recommendation of the Minister, may make regulations declaring that jurisdiction to be a reciprocating jurisdiction.

Conditions

(2) In declaring a jurisdiction to be a reciprocating jurisdiction under subsection (1), the Commissioner, on the recommendation of the Minister, may impose any conditions with respect to the enforcement and recognition of support orders made or registered in that jurisdiction.

Revocation

(3) The Commissioner, on the recommendation of the Minister, 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 purposes of this Act.

Other regulations

- 44.** The Commissioner, on the recommendation of the Minister, may make regulations
- (a) respecting notices, information and documents required by this Act;
 - (b) respecting the serving or giving of notices, information and documents under this Act;
 - (c) respecting proceedings under this Act;
 - (d) respecting conversion into Canadian currency for the purposes of section 38;

- (e) prescribing forms for the purposes of this Act and the regulations;
- (f) prescribing anything that is referred to in this Act as being prescribed;
- (g) generally for the effective administration of this Act.

PART VI

TRANSITIONAL PROVISIONS

Order under former Act

45. (1) An order made or registered under the former Act continues to be valid and in full force and effect, and may be varied, enforced or otherwise dealt with under this Act.

Continuation of proceedings under former Act

(2) If a respondent receives notice of a hearing to consider a provisional order of variation or rescission or notice of registration of a final order before this Act comes into force, the matter shall be dealt with in accordance with the former Act.

Application under former Act

(3) If, before this Act comes into force, a person who ordinarily resides in Nunavut brings an application for a provisional order or a provisional order of variation or rescission under the former Act, the application may be continued in accordance with the former Act.

Registration of final orders

(4) If a final order received in Nunavut for registration under the former Act is not registered with the Nunavut Court of Justice before this Act comes into force, the final order shall be dealt with under this Act as if it were an extra-territorial order or a foreign order, as the case may be, received under Part II.

Provisional orders

(5) If a provisional order or a provisional order of variation or rescission is received in Nunavut under the former Act, and the respondent does not receive notice of the proceedings to consider the order before this Act comes into force, the order shall be dealt with under this Act as if the order were a provisional order or a provisional order of variation under this Act.

Note

**The following provisions have been deleted for the purposes of this consolidation:
s.46 and 47 (Consequential Amendments)**

COMMENCEMENT

Commencement

48. This Act comes into force on a day or days to be fixed by order of the Commissioner.