

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Zenner v. Zenner*, 2015 NSSC 16

**Date:** 2015-01-26

**Docket:** No. SY DVRO 089304

**Registry:** Yarmouth

**Between:**

Rainer Ernst Zenner

Applicant

v.

Denyse L. Zenner

Respondent

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**Judge:**

The Honourable Justice Pierre L. Muisse, J

**Heard:**

April 3, 2014 and December 19, 2014 in Yarmouth, Nova Scotia

**Summary:**

The Applicant sought confirmation of a provisional order granted in Ontario in 2013 terminating all child and spousal support and eliminating all arrears. The provisional order was granted on the basis that there had been a material change in circumstances since the corollary relief order granted in 1990 in Prince Edward Island. However, a prior provisional order, dealing with the same issues had been granted by the Supreme Court of Prince Edward Island in 2008, and subsequently confirmed by the Supreme Court of British Columbia. That confirmed provisional order terminated child and spousal support effective 2005 and 2006, leaving the arrears

accumulated before that. The Applicant misrepresented to the Ontario judge who granted the 2013 provisional variation that the 2008 provisional order had not been confirmed.

**Issue:** Did the Applicant establish a material change in circumstances warranting a consideration of the merits of his application?

**Result:** The Applicant had to establish a material change since the 2008 provisional order and failed to do so. There was no material change during the period of retroactivity. New financial information from the Respondent was from 2008 to 2012. The Applicant's retirement was foreseen in 2008 and post-dated termination of support. It was material to enforcement, but not retroactive reduction of support obligations. Child-support had never been determined in accordance with the *Federal Child Support Guidelines*. However, in a prior application to vary child support, brought by the Applicant in 2000, i.e. after the *Guidelines* came into effect, the Prince Edward Island Supreme Court had already exercised its discretion to leave the child support obligation unchanged. Therefore, the coming into force of the *Guidelines* was not a material change. There was no change as required by Section 14(b) of the *Guidelines* during the period of retroactivity. Current garnishment of arrears that had accumulated between 1990 and 2006, was also not a change material to retroactive reduction of support. The Applicant was attempting to re-litigate the same case a second time, hoping for a different result. Therefore, the court refused to confirm the 2013 provisional order from Ontario.

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