

**COURT OF APPEAL FOR ONTARIO**

**RE:** M. (Applicant/Respondent in appeal) v. H. (Respondent/Appellant)

**BEFORE:** MOLDAVER J.A. (In Chambers)

**COUNSEL:** Mary Eberts and Sharon D. Greene for the applicant  
Martha McCarthy for the respondent

**HEARD:** February 19, 1996

**ENDORSEMENT**

On the material before me, I have not been persuaded that the several declarations pertaining to the constitutionality of s. 29 of the *Family Law Act* should be stayed. I am however of the view that the interlocutory orders allowing the motion for interim support to proceed and requiring the applicant H. to deliver a financial statement (Form 69M) should be stayed pending the determination of the constitutional issue under appeal.

The parties agree that the appeal raises the following serious questions of law:

- (a) Did the learned motions judge err in declaring s. 29 of the *Family Law Act* unconstitutional? and

- (b) If not, did she nonetheless err in fashioning an inappropriate remedy to cure the defect?

As for irreparable harm, I note that the interlocutory orders which I propose to stay are inextricably bound up with the constitutional issue. If the applicant succeeds on her appeal, there will be no basis in law for proceeding with the interim support hearing or the requirement that the applicant deliver a financial statement. Accordingly, it seems to me that it would be wasteful and counterproductive for the parties to engage in a potentially difficult, complex and time consuming interim support hearing only to learn at a later date that the entire process was unwarranted. Furthermore, based upon the record before me, it is unclear whether the applicant would be able to recover the costs of such a hearing should she succeed on the appeal.

Of equal if not greater importance is the fact that absent a stay, the applicant will be required to disclose financial information which would otherwise be private and confidential. To my mind, this would amount to an intrusion into the privacy interests of the applicant which could not be rectified in the event of a successful appeal. Given that the word 'irreparable' refers to the nature of the harm rather than its magnitude, I am persuaded that the applicant might well suffer such harm if the relief sought is not granted.

Finally, in my view, the balance of convenience favours the applicant. On the material before me, I have concluded that the potential prejudice to the applicant outweighs any possible benefit which the respondent might derive if the interim support hearing is allowed to proceed. The parties have been separated since 1992. Since then, each has remained self-sufficient. The applicant however has assumed the burden of servicing the jointly incurred debt obligations. Given my intention to expedite the appeal, these features, when combined with the potential for irreparable harm to the applicant, lead me to conclude that the status quo should be preserved in the interim.

For these reasons the application is allowed in part. An order will go staying the motions for interim support and the requirement that the applicant deliver a financial statement, pending the determination of the appeal. It is further ordered that the appeal be expedited.

The costs of this application are reserved to the panel hearing the appeal.

February 20, 1996