SC CIV 93 032

6101-02081

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

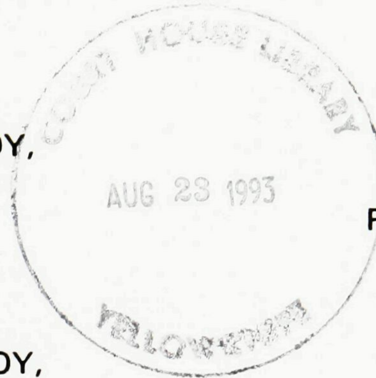
THERESA EVOY,

PETITIONER

- and -

JAMES M. EVOY,

RESPONDENT

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Application by the respondent to set aside noting in default and to vary a spousal support order.
Allowed with directions.

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES

Heard at Yellowknife, Northwest Territories
on June 21, 1993

Reasons filed: June 28, 1993

Counsel for the Petitioner: Elaine Keenan Bengts

Counsel for the Respondent: Thomas H. Boyd

No. 6101-02081

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**REASONS FOR JUDGMENT**

**INTRODUCTION**

1 The parties were divorced by a judgment rendered on June 2, 1993. For sake of convenience, and notwithstanding the divorce, I will refer to them in these reasons as the "wife" and the "husband" respectively.

2 I am asked to rule on two applications by the husband: (1) to set aside default with respect to the wife's matrimonial property claim; and, (2) to vary the amount of spousal support payable by him to the wife. Because these applications came before me in a somewhat convoluted fashion, I will set out the procedural history of this litigation in some detail.

**HISTORY OF THE LITIGATION**

3 The parties separated in 1990 after twenty-five years of marriage. The wife's Petition for Divorce was filed and served in July of 1991. In it she sought a divorce, spousal support in an unspecified amount, and a division of matrimonial property.

4 In February of 1992 the wife filed a motion for interim support of $650 per month. This motion was eventually argued, with both parties represented by solicitors, and judgment rendered on April 6, 1992. The motions judge adjourned the application sine die with a direction that the parties either settle this issue or move quickly to get the matter ready for trial. Both aspects of this direction made eminent good sense but neither one was achieved.

5 At the hearing on the motion for interim support, the husband indicated that he was voluntarily paying the wife support of $425 per month and would continue to do so. In July, 1992, however, the husband gave notice to the wife's lawyer that he was (a) stopping these voluntary payments as of the end of August, and (b) henceforth going to be acting as his own lawyer.

6 In December of 1992 a new solicitor acting on behalf of the husband filed a Notice to Produce Documents. However, throughout these entire proceedings, no Demand of Notice, Answer, or Counter-Petition, had been filed on behalf of the husband. So, on

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February 10, 1993, the husband was noted in default. It should be made clear that the wife's solicitor cannot be faulted in any way for noting in default. She gave ample time and numerous warnings to the husband's solicitor that this was going to be the next step.

7 On June 2, 1993, the wife's solicitor moved, in accordance with accepted practice, for a divorce judgment and corollary relief order on an ex parte basis with only the affidavit evidence of the petitioner in support. Also, in accordance with ethical practice, she disclosed in the ex parte application the fact that the husband was represented by a solicitor and her dealings with him.

8 The chambers judge who reviewed the ex parte application issued the divorce judgment but deferred on the corollary relief until he met with both counsel in his office. That meeting was simply to settle the wording of the corollary relief order and did not constitute a hearing on the substantive issues relating to it.

9 The corollary relief order that was eventually entered reads:

> **The parties hereto having been divorced by a Divorce Judgment rendered on the 2nd day of June, 1993, and this matter having come on for hearing in the absence of the parties and counsel, and upon considering the pleadings and the affidavit of Theresa Evoy as presented, it is hereby ordered:**
>
> **1. That the question as to division of matrimonial property be and is hereby severed from all other issues in this action, and is adjourned *sine die.***
>
> **2. That the Respondent shall pay to the Petitioner the sum of $1000.00 per month on the first day of each and every month, commencing in the month immediately following the issue of this Order, and continuing on the first day of each**

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> 2. That the Respondent shall pay to the Petitioner the sum of $1000.00 per month on the first day of each and every month, commencing in the month immediately following the issue of this Order, and continuing on the first day of each

**and every month thereafter, by way of spousal support.**

**3. The Respondent shall be at liberty to move this Court to vary the amount of the spousal support hereby ordered, provided that such application is brought no later than June 21st, 1993.**

**4. The Respondent shall be at liberty to move to set aside default with respect to the property matters only, provided that such application is sought no later than June 21st, 1993.**

**5. The Petitioner shall be entitled to her costs of the divorce, to be taxable forthwith.**

10 The husband now applies pursuant to the provisions contained in paragraphs 3 and 4 of this order.

## A PRELIMINARY OBSERVATION

11 One may perhaps be forgiven for stating the obvious. This case has become overly complicated for no good reason.

12 If the husband had filed an Answer and Counter-Petition, disputing the wife's claims, the matter could have proceeded in the normal course through pre-trial discoveries and a trial on the merits. But now, I am asked to decide the question of support on the merits based only on competing affidavits without the benefit even of cross-examination and without production of documents. Litigants run a big risk when they ask judges to make substantive decisions when they themselves have not gathered together all of the evidence.

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13 With respect to the property claim, if I simply set aside the default then the parties could be back at "square one" on that issue and then go through all of the time and expense of litigating it. But if I do not set aside the default the wife could, theoretically, apply unilaterally and ex parte for judgment.

14 All of these complications (and attendant costs) could have been easily avoided by the simple step of filing a response to the Petition for Divorce.

15 To top things off, it appears that neither counsel gave much if any attention to the requirements of Practice Direction No. 27 issued on March 5, 1993. Those Directions were enacted for a reason and all counsel should have regard to them for contested applications.

**SETTING ASIDE DEFAULT**

16 The husband's application to set aside the noting in default is limited, by the terms of the corollary relief order, to the wife's claim for a division of matrimonial property. This claim was joined in the Petition for Divorce and I set it out in full:

17 **The particulars of the Petitioner's application for division of matrimonial property are as follows:**

**a) The Petitioner, throughout the marriage, contributed both directly and indirectly to the financial well-being of the family and she therefore seeks an equal division of all matrimonial property.**

**b) The Petitioner states that the property to be divided includes the following items:**

**(i) A house and 128 acres of land located in Frambois, Nova Scotia;**

**(ii) A home in L'Ardoise, Cape Breton, Nova Scotia, which is currently the subject of an agreement for purchase and sale;**

**(iii) Household furniture and effects in the possession of the Respondent in Yellowknife, Northwest Territories;**

**(iv) A vehicle and boats in the possession of the Respondent;**

**(v) Household furniture and effects in the possession of the Petitioner;**

**(vi) Household furniture and effects located in the home in Frambois, Nova Scotia;**

**(vii) The Respondent's employment pension plan;**

**(viii) The potential proceeds of litigation presently being conducted by the Respondent with respect to a wrongful dismissal which occurred during the marriage;**

**(ix) Such further and other assets as might be determined at trial;**

18 As will be readily apparent, this is not a complete pleading as one would find in a formal statement of claim. This is in keeping with the spirit of the rules which permit the joinder of various family-related causes of action in the one divorce proceeding. The need for steps to be taken beyond this basic pleading, however, in the case of a trial of the issue, is also recognized by Rule 4(4) of the Transitional Divorce Rules (1986) which permits a judge to give directions as to how such issue is to be tried.

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19 The significance of a noting in default (and this is a point that is often overlooked) is that it traditionally has been deemed to be an admission by the defendant and sets up an estoppel as to the specific relief claimed: **Kok Hoong** v. **Leong Mines**, [1964] 1 All E.R. 300 (P.C.). For that reason, an application to open up a noting in default is governed by the same principles as setting aside a default judgment: **Wilson Arches** v. **Sayers**, [1974] 2 W.W.R. (Alta.C.A.). This is clearly contemplated by Supreme Court Rule 166 which allows the court to "set aside or vary any judgment entered upon default ... or may permit a defence to be filed by a party who has been noted in default."

20 The principles applicable on this application are well known:

1. The application should be made as soon as possible after the judgment has come to the knowledge of the defendant.

2. Mere delay will not bar the application unless an irreparable injury will be done to the plaintiff or the delay has been wilful.

3. The application should be supported by an affidavit setting out the circumstances under which the default arose and disclosing a defence on the merits.

4. It is not sufficient to merely state that the defendant has a good defence on the merits. The affidavits must show the nature of the defence and set forth facts which will enable the court or judge to decide whether or not there was matter which would afford a defence to the action.

5. If the application is not made immediately after the defendant has become aware of the judgment, the affidavits should explain the delay in making the application. And if the delay is of long standing, the defence on the merits must be clearly established.

See **Cook** v. **Howling**, [1986] N.W.T.R. 109 (S.C.); **Costa** v. **Sanavik Co-Op. Assn.** (1980), 15 C.P.C. 27 (N.W.T.S.C.).

21 This case does not easily fit within the parameters defined by these principles.

22 First of all, there is the lack of specificity in terms of the pleading itself. What triable issues are there? Is the husband going to say that there should be an unequal division of property and, if so, how unequal should it be? The presumption is that spouses in a long-term marriage share assets equally. If there is to be a deviation from that presumption, then the burden of proof will be on he or she who seeks the unequal division.

23 Second, there is an obvious delay by the husband in responding to this claim. The material on file reveals that even after the husband was noted in default, the wife's solicitor gave a deadline to the husband's solicitor to bring this application before she would move for judgment. There was no response. Furthermore, the husband failed to appear for examinations for discovery in September even though served with a notice to do so. There was no communication from the husband's solicitor for over 3 months prior to the ex parte application.

24 The wife's counsel argues that the husband deliberately ignored these proceedings. In such cases a litigant will not be allowed to set aside default: **Winwest Drywall &**

**Building Supply Ltd.** v. **Bruneau et al** (1986), 74 A.R. 358 (Q.B.).

25 The husband's solicitor, in his oral argument, took responsibility for not filing a Demand of Notice at least so as to prevent default. But, as the wife's counsel submits, solicitor's delay will often not be a good enough excuse to set aside default: **Howey** v. **Great-West Life Assurance Co.** (1984), 48 C.P.C. 181 (Ont.H.C.J.).

26 On the other hand, the husband has consistently maintained his intention to contest the wife's claims. This was evidenced in his letter of July 20, 1992, informing his wife's solicitor that he would be representing himself. This was also evidenced by the service of a Notice to Produce Documents by the husband's solicitor in December of 1992. The types of documents sought appear to relate directly to the property claim. Finally, the material reveals that also in December the husband's solicitor forwarded a draft of a divorce judgment for the wife's approval and suggested severance of the other issues.

27 I note as well that the wife failed to respond to the Notice to Produce. This may be due to the impression that no response was required due to the noting in default. But 6 weeks passed by between service of the Notice and the noting in default. Even after default, a defendant can still demand production of documents: **Jackson** v. **Stadnick** (1981), 32 A.R. 176 (Q.B.).

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28 Is there a defence on the merits? As noted before the only "defence" would be that the wife is not entitled to an equal division. To determine that question, and to rebut the presumption of equal division, the court will have to consider all of the circumstances relating to the acquisition, maintenance, and disposal of the property by the parties as well as the uses to which each item of property was put. The entire question of an equitable division of property is the triable issue.

29 Taking all of these circumstances into consideration, I have decided that, in the interest of doing justice between the parties, the noting in default should be set aside. I so order. However, with a view to expediting a resolution of this matter, and to put the onus on the husband, I further direct as follows:

1. Each party is to prepare a written brief setting out, with particularity but concisely, what property is to be considered for division, how it should be divided, and why it should be divided that way.

2. The husband's brief, entitled "Respondent's Brief on Property Claim", is to be filed and served by no later than August 31, 1993. If this deadline is not met, the wife may move ex parte for judgment.

3. The wife's brief, entitled "Petitioner's Brief on Property Claim", is to be filed and served within 30 days of receipt of the husband's brief.

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4. Each brief is to have attached to it an itemized list of all documents that are in that party's possession that are relevant to the property claim.

5. The parties may conduct examinations for discovery, exchange written interrogatories, or demand production of documents, as they are advised, but all such interlocutory proceedings are to be concluded within 90 days of the exchange of briefs.

6. The parties should jointly apply for a trial date at the conclusion of the period for interlocutory steps.

7. If either party wishes to present at trial evidence by way of affidavit, that party should bring the appropriate application for leave to do so pursuant to Rule 279(2).

8. The trial judge may make such further directions as he or she deems advisable.

30 If further directions or clarification of any of these points are required, counsel may see me in chambers.

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**VARIATION OF SPOUSAL SUPPORT**

31 The corollary relief order provided for spousal support payments of $1,000 per month but with leave reserved to the husband to apply to vary the amount. The first question that has to be addressed is whether I am precluded from examining the wife's **entitlement** to support or whether I am restricted to examining the **quantum** only. This begs the question as to whether this application is truly one for "variation" or one to assess de novo the claim for support.

32 I have concluded that I am entitled to examine the wife's entitlement to support as well as quantum. There are several reasons for this conclusion.

33 The corollary relief order was obtained on an ex parte application subsequent to noting the husband in default. The ex parte application was therefore a motion for default judgment and the usual rules of procedure apply: **Martins** v. **Martins** (1987), 60 O.R. (2d) 215 (H.C.J.). Rule 166 provides for setting aside or varying a default judgment. Rule 343 provides for a rescission or variation of any order obtained ex parte. If the default judgment or ex parte order is set aside, then the original application is heard de novo: **Burns & Dutton Concrete & Constr. Co. v. Dominion Insurance Corp**. (1966), 57 D.L.R. (2d) 327 (B.C.C.A.).

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any time if there is a change in circumstances. There is therefore no point including a clause in the order respecting variation. The only reason to do so, and to provide a deadline as was done here, is to explicitly recognize the fact that the order was made without a full consideration of the merits. And I think it is indisputable that there was no adjudication on the merits.

35 Furthermore there was a lack of evidentiary base so as to enable the chambers judge to fix the quantum on the merits.

36 The Petition for Divorce filed in July of 1991 did not set out a specific amount in the claim for support. The financial statements attached to the Petition show the wife's monthly income as $566 (consisting primarily of support payments) and her expenses as $883. Her application for interim support sought $650 per month. Her affidavit in support of the ex parte application on June 2, 1993, says only that she is employed and earning $1,350 per month. So, as of June 2, there would have been no explicit notice to the husband that she was seeking $1,000 per month nor was a complete financial picture of the parties' status provided to the chambers judge.

37 Therefore, I conclude that I can consider both entitlement and quantum on the merits. Furthermore, I conclude that this is not a "variation" application as contemplated by s.17 of the Divorce Act so the husband does not have to meet a threshold test of showing a change in circumstances.

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38 On the issue of entitlement, the Supreme Court of Canada recently stated that the fundamental purpose of spousal support is to relieve economic hardship related to the marriage. In Moge v. Moge, [1993] 1 W.W.R. 481, Madam Justice L'Heureux-Dubé stated (at page 540):

> **Marriage and the family act as an emotional and economic support system as well as a forum for intimacy. In this regard, it serves vital personal interests, and may be linked to building a "comprehensive sense of personhood." Marriage and the family are a superb environment for raising and nurturing the young of our society by providing the initial environment for the development of social skills. These institutions also provide a means to pass on the values that we deem to be central to our sense of community.**
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> **Conversely, marriage and the family often require the sacrifice of personal priorities by both parties in the interests of shared goals. All of these elements are of undeniable importance in shaping the overall character of a marriage. Spousal support in the context of divorce, however, is not about the emotional and social benefits of marriage. Rather, the purpose of spousal support is to relieve *economic* hardship that results from "marriage or its breakdown." Whatever the respective advantages to the parties of a marriage in other areas, the focus of the inquiry when assessing spousal support after the marriage has ended must be the effect of the marriage in either impairing or improving each party's economic prospects.**
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> **This approach is consistent with both modern and traditional conceptions of marriage in as much as marriage is, among other things, an economic unit which generates financial benefits (see M.A. Glendon, *The New Family and the New Property* (Toronto: Butterworths, 1981)). The Act reflects the fact that in today's marital relationships, partners should be expected and are entitled to share those financial benefits.**

39 In Moge, there were a number of other significant comments.

40 First, it was held that what the Divorce Act requires is a fair and equitable distribution of resources to alleviate the economic consequences of marriage or marriage breakdown. Needless to say this applies to both spouses regardless of gender. The reality, however, is that in most marriages the wife is the economically disadvantaged

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partner.

41 Second, the equitable distribution that is contemplated can be achieved in many ways: by support payments (by lump sum or periodically, of indefinite or limited duration), by the division of property, or by a combination of the two.

42 Third, spousal support orders are essentially a function of the evidence in each case. There is no formula that can be applied to each situation.

43 Finally, and perhaps most significantly, no one objective set out in the Divorce Act is paramount. All of the objectives noted in the Act are to be applied to achieve an equitable sharing of the economic consequences of the marriage or its breakdown.

44 Those objectives are set out in s.15(7) and are parallelled in s.17(7) which was the specific subsection under consideration in **Moge**:

45

**15.(7) An order made under this section that provides for the support of a spouse should**

**(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;**

**(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);**

**(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and**

**(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.**

What all this means is that the "means and needs" of the parties are not the exclusive criteria for determination of support but they are still to be considered. In addition, the level of support to be ordered will generally relate to the length of the marriage. Since marriage is viewed as a joint endeavour, the longer the marriage endures, the closer the economic union, so greater will be the claim to equal standards of living upon dissolution of the marriage.

All of this is not to detract from the goal of economic independence for both of the ex-spouses. That independence, however, is to be achieved in a framework of fairness and equity as between the two of them. As stated by Hart J.A. in Heinemann v. Heinemann (1989), 20 R.F.L. (3d) 236 (N.S.C.A.) at page 274:

> Although as a general rule marriage does not entitle one of the spouses to a pension for life, there may be circumstances where due to the length of the marriage and the age of the parties and the marketability or employment skills, permanent maintenance is required. This course should be the exception and every effort should be made to cut the relationship between the spouses to the greatest extent possible so that each can pursue his or her own independent life in the future.

In this case I am satisfied that the wife is entitled to support.

The marriage was one that lasted for 25 years. They raised two children. While the wife worked during the last few years of cohabitation, for the most part she performed what some would call the "traditional" roles of mother, wife, and homemaker. At separation her employment prospects were limited, however, she has since obtained

and in July, 1992, she completed a social worker's course. She is almost 48 years old so it cannot be said she is too old to achieve economic self-sufficiency. It should be noted, however, that she is starting her road to self-sufficiency at a distinct disadvantage because of her age and cannot be expected to achieve all she could have achieved if she had started down that road at a much earlier age.

50 While it is not specified in the affidavit material, I presume that the husband has a lengthy work history. He is almost 51 years old and currently holds senior positions in the labour movement both federally and territorially. Until February of this year he also held an appointment as a member of the Northwest Territories Workers' Compensation Board. While there is no information provided as to his total income for the past 12 months, he does state in a recent affidavit that he had a "diminishment in net annual income of approximately $29,000 per year" as a result of his appointment not being renewed. Even with that "diminishment" the husband says that his current net monthly income is $3,680.

1 In my opinion, the wife fits into the category of those women who require transitional support to become self-supporting. This transitional support may be quite lengthy but I do not think she is in the category of someone requiring permanent life-long support because there is a strong possibility of her achieving self-sufficiency in the future. But it is too speculative for me to impose any definite time line so I think the most appropriate measure would be to direct periodic reviews.

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In my opinion, the wife fits into the category of those women who require transitional support to become self-supporting. This transitional support may be quite lengthy but I do not think she is in the category of someone requiring permanent life-long support because there is a strong possibility of her achieving self sufficiency in the future. But it is too speculative for me to impose any definite time line so I think the most appropriate measure would be to direct periodic reviews.

52 On the issue of quantum, the information provided throughout the course of these proceedings is woefully inadequate. As I have already said, there is no information as to the husband's total income for the past twelve months. All I have is the bare statement of his net monthly income. Similarly there is no information as to the wife's total income for the past 12 months. I am told that she has held part-time jobs, off and on for 6 of the past 12 months, and that she is currently unemployed with no income and no immediate prospect of permanent employment. The husband says that she could have a permanent job, in the field for which she is now qualified, if she was willing to move to another community but she is not willing to do that. The wife does not comment on this submission.

53 On the issue of unemployment, I note with interest the comment made by Lamer J. in his dissenting opinion in **Messier** v. **Delage** (1983), 35 R.F.L. (2d) 337 (S.C.C.), at page 362:

> **A divorced spouse who is "employable" but unemployed is in the same position as other citizens, men or women, who are unemployed. The problem is a social one and it is therefore the responsibility of the government rather than the former husband. Once the spouse has been retrained, I do not see why the fact of having been married should give the now single individual any special status by comparison with any other unemployed single person.**

54 I do not suggest that the wife must take any and every step to become employed. I quote this only as a reminder that the mere fact of unemployment is not sufficient to maintain a claim for support if all other factors point to a fair and equitable distribution of

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> A divorced spouse who is "employable" but unemployed is in the same position as other ordinary men or women who are unemployed. The problem is a social one and it is therefore the responsibility of the government rather than the former husband. Once the spouse has been retrained, I do not see why the fact of having been married should give that new single and autonomous person special status by comparison with any other unemployed single person.

I do not suggest that the wife must leave [illegible] and [illegible] seek to become employed. I quote this only as a reminder that the [illegible] alone is not sufficient to maintain a claim for support if all other factors point to a fair and equitable distribution of

the financial consequences of marriage.

55 One peculiar circumstance in this case is that both parties have now entered new common-law relationships.

56 The wife is living with a man who she says is currently on a two-year education leave from his job. She says that he receives "some" financial assistance but she does not provide any details. She says that she has, now, no income and expenses of $985 per month.

57 The husband is living with a woman and together they are the legal guardians of her three young grandchildren. As noted previously, his monthly net income is $3,680 and he reports monthly expenses of $4,142. The difference is apparently made up of drawings on a line of credit for which he is indebted in the sum of $14,000.

58 A curious fact, however, revealed by the documents on file, is that in March of 1992, when the application for interim support was heard, the husband reported net monthly income of only $3,003 (some $676 less than at present). Yet he says that in February of 1993 he suffered a "diminishment" of $29,000 in net annual income. Also, in March he reported monthly expenses of only $3,515 (some $627 less than at present). These discrepancies are not explained.

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59 The husband's financial statements do not indicate how much of his expenses are directly attributable to his new "family" but I note that he is the sole source of income. The wife's financial statements similarly do not indicate how much of her expenses are attributable to her relationship and how much, if any, is covered by her common-law partner.

60 This lack of detail is significant since the formation of a common-law relationship by either spouse is relevant to the adjudication of a support claim in so far as that relationship bears economic consequences: **Squires** v. **Squires** (1988), 72 Nfld. & P.E.I.R. 91 (Nfld.U.F.C.).

61 The husband's financial obligation may be abated somewhat by the pecuniary benefit the wife obtains from her common-law relationship. Conversely, however, just because the husband has undertaken new family obligations, he is not relieved of his legal responsibility to the wife although it is a factor to be taken into account. There is no mathematical formula for these factors since it always depends on the circumstances of the particular case.

62 I note as well that in 1992 the wife received a total of $4,350 in financial contributions from the husband. The sum of $1,650 came directly from his pocket while the sum of $2,700 came from his share of certain mortgage proceeds collected by the wife.

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62 I note as well that in 1992 the wife received a total of $4,350 in financial contributions from the husband. The sum of $1,650 came directly from his pocket while the sum of $2,700 came from his share of certain mortgage proceeds collected by the wife.

63 Having regard to all of these circumstances, and because of the lack of sufficient particulars of the parties' respective financial status, I find that I must be somewhat arbitrary. The wife is entitled to support but her present employability and her new relationship as well as the husband's current financial circumstances suggest to me that an award of $1,000 per month is excessive.

64 I therefore vary the corollary relief order so as to provide for spousal support payments, by the husband to the wife, of $600 per month. This is approximately the amount under consideration at the interim hearing last year. These payments shall commence on July 1, 1993, and continue on the first day of each and every month thereafter until further order.

65 I will not at this time put a duration on the support obligations. I will however provide for future review on the happening of certain events. I do this for two reasons.

66 First, as noted in **Moge**, an equitable distribution of financial consequences may depend to some extent on the division of matrimonial property. That issue is still to be tried in this case.

67 Second, the wife's financial circumstances may be significantly altered if she obtains permanent employment as a social worker. At this point in time I cannot speculate on if or when that may take place.

63 Having regard to all of these circumstances, and because of the lack of sufficient particulars of the parties' respective financial status, I find that I must be somewhat arbitrary. The wife is entitled to support but her present employability and her new relationship as well as the husband's current financial circumstances suggest to me that an award of $1,000 per month is excessive.

64 I therefore vary the corollary relief order so as to provide for spousal support payments, by the husband to the wife, of $560 per month. This is approximately the amount under consideration at the interim hearing last year. These payments shall commence on July 1, 1993, and continue on the first day of each and every month thereafter until further order.

65 I will not at this time put a duration on the support obligations. I will however provide for future review on the happening of certain events. I do this for two reasons.

66 First, as noted in Moge, an equitable distribution of financial consequences may depend to some extent on the division of matrimonial property. That issue is still to be tried in this case.

67 Second, the wife's financial circumstances may be significantly altered if she obtains permanent employment as a social worker. At this point in time I cannot speculate on if or when that may take place.

8 Accordingly, I direct that the support obligation may be reviewed, at the instance of the husband, upon (a) conclusion to the matrimonial property litigation, and (b) the wife obtaining permanent employment. To that extent, I order that the wife forthwith advise the husband if and when she secures permanent employment.

69 Just so there is no confusion over the implications of my directions for review, I do not consider any such review to come within the ambit of s.17(10) of the Divorce Act: **Haigh** v. **Haigh** (1991), 33 R.F.L. (3d) 161 (B.C.C.A.). All of the other variation options provided by s.17 of the Act are, however, available to both parties in addition to the review options I have set.

Finally, I should note that I have given some consideration to the tax consequences of this support order. The monthly payments will be deductible by the husband so he should see some benefit. The wife will have to include the payments in her taxable income but, until she is employed, this should have no impact on her tax liabilities. Counsel should give careful consideration to income tax consequences in any future hearings.

**CONCLUSION**

71 My orders for the disposition of these applications are contained within the body of these reasons.

Accordingly, I direct that the support obligation may be reviewed, at the instance of the husband, upon (a) conclusion to the matrimonial property litigation, and (b) the wife obtaining permanent employment. To that extent, I order that the wife forthwith advise the husband if and when she secures permanent employment.

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CONCLUSION

My orders for the disposition of these applications are contained within the body of these reasons.

72 On the question of costs, as I stated earlier, all of this could have been avoided if the husband or his solicitor had been more diligent in responding to the Petition for Divorce. So, even though the husband has been somewhat successful on these matters, I am of the view that he should pay the wife's costs of this application.

73 I hereby fix the wife's costs in the sum of $500. Those costs are to be paid by the husband within 60 days otherwise the wife may take out judgment for that amount.

John Z. Vertes
J.S.C.

Counsel for the Petitioner: Elaine Keenan Bengts
Counsel for the Respondent: Thomas H. Boyd

6101-02081

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THERESA EVOY,

PETITIONER

- and -

JAMES M. EVOY,

RESPONDENT

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES