

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the
Domestic Relations Act

AND IN THE MATTER OF the
Maintenance Act;

BETWEEN:

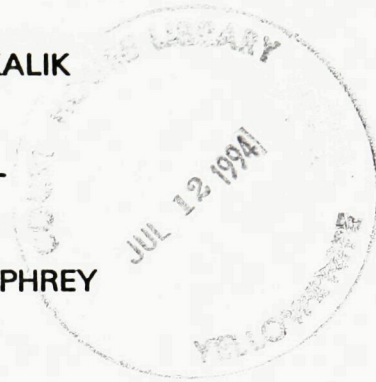
LOOEE OKALIK

- and -

IAN C. PUMPHREY

Respondent
(Applicant)

Applicant
(Respondent)



Application to set aside a child support order denied for the time being and directions given with a view to proceedings under s.28(4)(b) of the **Domestic Relations Act**.

Heard at Yellowknife on October 12th 1993

Judgment filed: October 14th 1993

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Applicant (Respondent): Ms. Elaine Keenan Bengts

Counsel for the Respondent (Applicant): Ms. Karen M. Shaner

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF AN
ORIGINAL WRIT OF HABEAS CORPUS

AND IN THE MATTER OF THE
MOTION FOR WRIT OF HABEAS CORPUS

BETWEEN

YASOBI BINA YALOWITZ, WIFE OF
YASOBI BINA YALOWITZ

Respondent
(Applicant)

YASOBI BINA YALOWITZ, WIFE OF
YASOBI BINA YALOWITZ

Respondent
(Applicant)

Application to set aside a child support order dated for the first year and the first
year of the respondent's child's residence in the Northwest Territories and
to set aside the order of the court dated for the first year and the first
year of the respondent's child's residence in the Northwest Territories.

Filed at Yellowknife on October 13, 1993

Judgment filed October 14, 1993

REASONS FOR JUDGMENT OF THE JUDGE OF THE COURT OF APPEALS



Counsel for the Respondent (Applicant): Ms. Elaine Koshan, LL.B.

Counsel for the Respondent (Applicant): Ms. Joan M. Stone, LL.B.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF the
Domestic Relations Act**

**AND IN THE MATTER OF the
Maintenance Act;**

BETWEEN:

LOOEE OKALIK

**Respondent
(Applicant)**

- and -

IAN C. PUMPHREY

**Applicant
(Respondent)**

REASONS FOR JUDGMENT

The father of a four-year-old child born out of wedlock asks the Court to absolve him of his legal obligation to pay child support under a court order made against him in this Court pursuant to the **Domestic Relations Act**, R.S.N.W.T. 1988, c. D-8. He makes his request on grounds of a lack of the financial means to pay the support ordered.

The child is in the mother's sole custody, as ordered by the Court in 1990. Mother and child have resided at Ottawa since that time. The father now resides at Whitehorse, Yukon Territory, where he is attending an educational institution.

The parties met initially at Iqaluit in the Northwest Territories. When the

mother was about to give birth to the child, in 1989, the father left Iqaluit for Arviat on the west coast of Hudson Bay in the Northwest Territories. The mother already had another child from a different relationship. That child is also in her care, and has been with her throughout, although she receives no support for it from its father. The mother was in Yellowknife in 1990 before moving to Ottawa. Her cohabitation with the father at Iqaluit had been somewhat discontinuous since they first met in 1987 and it ceased in 1989. The mother now has, in addition, a third child, almost two years old, who is also in her care at Ottawa. She claims that the father of the four-year-old is also the father of this third child. The father of the four-year-old denies his paternity of this third child.

4 To date, no proceedings have been brought in this Court (or, it appears, in any other court) in respect of the father's alleged paternity (or duty to support or contribute to the support) of the third child. That child is mentioned only in the mother's affidavit sworn on September 13th 1993 and in the father's affidavit in response, sworn on September 24th 1993. The mother states that she has used the money which she has received from the father for both the second and third of the children although the court order requiring him to pay child support was made for the support of only the second child.

5 The mother has had employment at Ottawa since 1990, earning in the region of \$30,000 to \$45,000 a year (depending on whether one accepts her evidence or that of the father). She states that she has been obliged, however, to resign her position there and take a six-month contract instead. She says that she does not know

what will happen after that.

There have been no less than nine appearances in Chambers in these proceedings since they were commenced by the mother in mid-1990. Initially, the Court ordered monthly amounts of \$400 a month on a limited interim basis while awaiting the filing of further affidavit material. On November 5th 1990, this was increased to \$450.00 a month, on a continuing interim basis until March 15th 1993, when it was reduced to \$200 a month for the period April-August (inclusive) 1993. That was done when the father persuaded the presiding judge that he was without adequate means to continue paying \$450.00 a month in child support.

At that time the father also asked to have the then arrears of support expunged. The Court did not grant that relief but adjourned the application until August 3rd 1993 pending receipt of an updated financial statement from the father by that date. In February 1993 the father deposed that all he could afford was \$200.00 a month, based on his receipt of unemployment insurance benefits and a student loan.

In his affidavit sworn on August 3rd 1993 the father deposed that his unemployment insurance benefits would cease that month. He stated in that affidavit that he intended to support himself on the basis of student loans while continuing his education and that he intended to supplement this by taking part-time employment. The father also deposed that he had purchased preferred and voting shares in the Arviat Development Corporation some two years before to a value of between \$25,000 to \$30,000, and that these shares are held in trust in the mother's name for the legal benefit

of the four-year-old child. He says that his student loan for the academic year 1993-4 amounts to only \$5400.

9 In her affidavit sworn on September 13th 1993 the mother says she has learned very little about the shares mentioned in the father's affidavit material. She says that, at this point, the shares are of very little practical use and are not available to meet the day to day needs of the children.

10 It is against this background that I am asked to consider the respective submissions of counsel for the parties.

11 Although reference is made to the **Maintenance Act, R.S.N.W.T. 1988, c. M-1**, in the style of cause in these proceedings, the orders made to date have not been made in the exercise of any jurisdiction by this Court under that Act. As held in **Rebus v. McLellan**, [1993] N.W.T.R. 186, 43 R.F.L. (3d) 196, this Court is without jurisdiction to make a maintenance order pursuant to that Act. I therefore confine what follows to the **Domestic Relations Act**.

12 Subsection 28(4) of the **Domestic Relations Act** reads as follows:

(4) The Court may make an order for the maintenance of a child by payment from time to time

- (a) by the father or by the mother, or
- (b) out of an estate to which the child is entitled,

of a sum that the Court considers reasonable, having regard to the pecuniary circumstances of the father or the mother or to the value of the estate.

If, as the father states and the mother seems to acknowledge, there is an "estate" (in the sense of trust property) to the benefit of which the child here in question is entitled, the desires of both parents (and, more importantly, the needs of the child) may be met by an order for child support to be made from out of that "estate" pursuant to s.28(4) of the **Domestic Relations Act**. Neither parent, however, seems either willing or able to move the Court in proper fashion to enable the Court to make an appropriate order for the child's benefit under paragraph 28(4)(b) of the Act.

I therefore direct the Clerk to forthwith send a copy of these reasons for judgment to each of the Public Trustee and the Superintendent of Child Welfare under cover of a letter inviting them to instruct counsel, jointly or as they may see fit, to investigate the facts pertaining to the "estate" above referred to and, if the facts so warrant, to make application either to be joined as an intervenor in these proceedings or otherwise as may appear appropriate, all with due expedition, so as to enable the Court to exercise its powers under paragraph 28(4)(b) of the **Domestic Relations Act**. And I direct the Clerk to report to me weekly as to the progress of the matter.

Pending further order, the amount payable in respect of the child's support under the order of the Court made on November 5th 1990 shall remain unchanged except that only \$200.00 a month shall be payable as ordered and payment of the balance of \$250.00 a month shall be suspended subject to further order. It will thus be very much in both parties' interests to co-operate promptly and fully in any steps taken, as above outlined, under paragraph 28(4)(b) of the **Domestic Relations Act**.

16 Counsel may meet with me by appointment should they require any further directions, or if this decision gives rise to any doubt or difficulty as to its formalisation. Counsel for the father shall have carriage of the order but will of course seek the endorsement of counsel for the mother as to approval of the formal order as to being the order made, failing which counsel should see me to settle the terms of the order without delay.

17 Costs are reserved pending the working out of this decision as above indicated.

A handwritten signature in black ink, appearing to read 'M.M. de Weerd', with a long horizontal line extending to the right.

M.M. de Weerd
J.S.C.

Yellowknife, Northwest Territories
October 14th 1993

Counsel for the Applicant (Respondent): Ms. Elaine Keenan Bengts

Counsel for the Respondent (Applicant): Ms. Karen M. Shaner



CV 02387

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BETWEEN:

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Respondent
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REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE M.M. de WEERDT

