

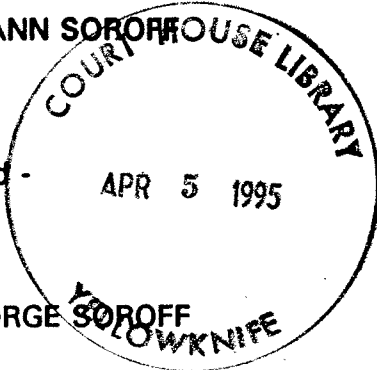
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JACQUELINE ANN SOROFF

- and -

DOUGLAS GEORGE SOROFF



Applicant

Respondent

An Interlocutory Application for Child Maintenance
 Pursuant to the *Domestic Relations Act*, R.S.N.W.T. 1988, ch. D-8

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.E. RICHARD

Heard at Yellowknife, Northwest Territories
on March 10, 1995

Reasons filed: March 28, 1995

Counsel for Applicant: Sarah Kay

Counsel for Respondent: Adrian Wright

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REASONS FOR JUDGMENT

1 The parties were married in Alberta in 1982. They moved to Hay River, N.W.T. in 1991. They have three children - aged 2, 6 and 8. In August 1994 problems arose in the marriage, and the parties separated. The children reside with the mother in the former matrimonial home in Hay River. The father presently resides in Calgary, Alberta.

2 At issue on the present application is the level of child support to be paid by the father to the mother on an interim basis. That this is an application for interim relief only, pursuant to the provisions of the *Domestic Relations Act*, R.S.N.W.T. 1988, Ch. D-8, was confirmed by counsel at the hearing of the application (notwithstanding the wording of the notice of motion filed November 21, 1994).

3 The mother seeks interim child maintenance of \$700.00 per month for each child. Counsel on her behalf cites the Levesque formula [Levesque v. Levesque (1994) 4 R.F.L. (4th) 375 (Alta C.A.)] and the financial data in the mother's affidavit in support of the request for this level of maintenance.

The guidelines suggested in Levesque for the assistance of a trial judge in the determination of reasonable child maintenance awards can be summarized as follows:

1. Calculate the combined gross income of the two parents.
2. Calculate a reasonable sum for child-care costs.
3. Apportion responsibility for the child-care costs between the parents in accordance with each parent's portion of the combined gross income.
4. Adjust the apportionment to reflect the consequences of income tax.
5. Further adjust the apportionment, if necessary, because of other special circumstances.

5 The amount of the respective current incomes of the parties is not in dispute. The father currently is in receipt of long term disability payments of \$3,689.53, or \$44,274.36 per annum. The mother presently receives annual salary of \$28,355.64 from her employment with the school board in Hay River.

6 What is in dispute is the calculation of child-care costs.

7 The mother is now living in a common law relationship with another man in the former matrimonial home in Hay River. In the mother's affidavit sworn on February 27, 1995 she attaches a financial statement of monthly income and expenses.

8 In her statement of monthly expenses, she provides an estimate of each kind of expense and groups these into four broad categories - housing expenses, living expenses, transportation expenses and miscellaneous expenses. She also provides, for each item,

an estimate of the children's portion of that expense. The summary of the estimated monthly expenses is as follows:

<u>Monthly Expenses</u>	<u>Amount</u>	<u>Children's Portion</u>
Housing	1,088.00	732.14
Transportation	225.00	55.00
Living	1,552.00	1,312.00
Miscellaneous	<u>275.00</u>	<u>180.00</u>
	\$ 3,140.00	\$ 2,279.25

9 It is not clear in Mrs. Soroff's affidavit whether the household expenses (in particular, those grouped under "housing" and "living" expenses) represent only the estimated expenses of she and her three children or the total household expenses of she, her three children and her common law partner.

10 It appears that in her financial statement Mrs. Soroff has apportioned three-quarters, or 75%, of most of the so-called "soft-costs" (see Levesque, p.389 - 390) to the three children. No specific rationale is given for the use of this factor. The use of this factor is particularly relevant if the estimated total expenses represent the expenses of a household unit comprised of two adults and three children.

11 I note that in Mrs. Soroff's financial statement she acknowledges that she is in receipt of the Child Tax Benefit from the federal government for the children. Yet, no consideration is given to these monies being applied in reduction of the children's annual child-care costs (as was done, for example, in Shuparski v. Mair S.C.N.W.T., #CV 05191, January 4, 1995, at p. 8-9)

2 As was clearly stated in Levesque, the selection by a trial judge of a reasonable sum for child care is an exercise in judgment. It is not an exact science. I note that the recent report of the Federal/Provincial/Territorial Family Law Committee indeed discredits any notion that these costs can be estimated precisely.

13 In the present case, after taking into consideration the affidavit evidence presented on this interim application I am satisfied that a minimum monthly sum of \$1,900.00 is a reasonable figure for the child care costs for the three Soroff children, for purposes of this interim application.

14 Such an amount is, in general terms, not inconsistent with the broad litmus test for "reasonableness" provided in Levesque at pages 394-395.

15 Mr. Soroff's proportionate responsibility for these child-care costs is 61%, or \$1,150.00. This figure should be "grossed-up" to take into consideration the tax consequences of these funds to Mrs. Soroff, so that she nets the sum of \$1,150.00 per month, in accordance with step (4) of the Levesque guidelines. As counsel are not (as yet) in agreement as to the percentage factor to be used in the tax gross-up calculation, I will leave it to counsel to do the necessary calculations, and to submit a joint memorandum with the draft Order.

16 After the tax gross-up, this award of child maintenance will be an amount that is not at variance with the result one would obtain by applying the Child Support

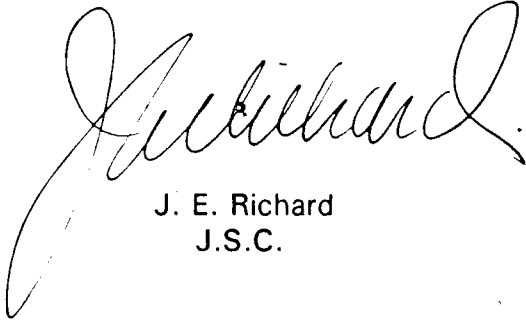
Formula recommended by the Federal/Provincial/Territorial Family Law Committee in its January 1995 report.

17

On the material presented on this interim application, I see no reason to make any further adjustment, under step (5) of the Levesque guidelines.

18

An Order will issue directing the Respondent to pay the monthly child maintenance calculated as above, commencing on the first day of April 1995, and on the first day of each month thereafter, until further Order of the Court.



J. E. Richard
J.S.C.

Dated at Yellowknife, Northwest Territories
this 28th day of March, 1995

Counsel for applicant: Sarah Kay

Counsel for respondent: Adrian Wright

CV 05417

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