

CV 05750

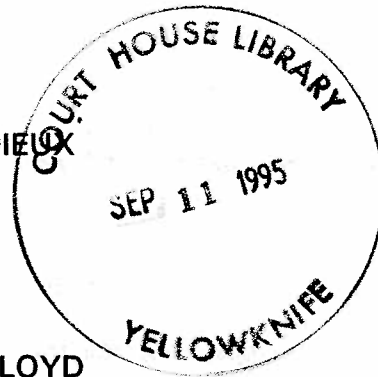
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TINA ROBIN CADIEUX

- and -

KEVIN DONALD LLOYD



Applicant

Respondent

MEMORANDUM

Some ten days after coming to Hay River in the Northwest Territories from Grande Prairie, Alberta, late in April 1995, the applicant Tina Robin Cadieux made an *ex parte* application to me, in Chambers at Hay River, for an order granting her interim sole custody of the two children of the relationship between the parties and restraining the respondent Kevin Donald Lloyd from contacting her or them until further order. The applicant mother also sought an order requiring the respondent father to pay her \$600.00 a month as child support for each of the two children.

2 On the basis of the affidavit material presented to me on that application, it appeared that the mother had reason to fear for her personal safety in view of earlier incidents in which she had been subjected to physical violence and threats of such violence by the father. It also appeared that she had reason to fear for the safety of the children and that they might be abducted from her by the father.

3 Among other things, it appeared from the affidavit material that sole
custody of the older child, now six years of age, had been granted to the mother by
a consent order issued out of the Court of Queen's Bench of New Brunswick, Family
Division, Judicial District of Fredericton dated June 12th 1991. The younger child is
now 3 years old.

4 On that application I made an order granting temporary interim sole
custody of the children to the mother and restraining the father from molesting,
interfering with or annoying the mother and the children and from contacting any of
them except through a member of the Law Society of the Northwest Territories until
further order. In addition, I directed that a copy of the order was to be delivered
forthwith to the Commander of the Royal Canadian Mounted Police detachment at
Hay River, for the purposes of s.127 of the *Criminal Code*, if required. And I granted
leave to the father to apply to set aside or vary this order on due notice to the
Applicant through her solicitor.

5 The mother filed a notice of motion late in May this year seeking a
confirmation and extension of the *ex parte* order and a variation of the New Brunswick
order to require the father to pay the mother child support amounting to \$600.00 a
month for each of the two children. Having experienced difficulty in effecting
personal service of the *ex parte* order, and the originating notice and supporting
material, on the father, the mother obtained a second *ex parte* order granting her leave
to effect service on the father of those documents substitutionally. Such service was
effected on May 31st 1995.

6 Today, the father's notice of motion and supporting material, filed last
Friday, came on to be heard on short notice, along with that filed by the mother in
May. The father seeks liberal and generous interim access to the children, including
six weeks during July and August this year and such other times as he can arrange
for visitation, on reasonable notice and subject to the children's attendance at school.
He does not question or challenge this Court's jurisdiction in respect of custody of the
children. On the contrary, he asks instead that the restraining order be set aside to
the extent that it relates to the children; and, furthermore, that the sole permanent
custody of the children be awarded to him instead of to the mother.

7 On the mother's behalf, I understand counsel to say that she agrees to
reasonable access to the children by the father, on reasonable notice to her; but that
she does not agree to unsupervised access or to the prolonged access proposed by
the father. She fears, I gather, that he will refuse to return the children to her if he
is allowed to remove them from the Northwest Territories; and she points to his
criminal record and past alcohol abuse as indicating a need for considerable caution
in granting him access to the children.

8 As I indicated in Chambers, there are conflicting allegations of fact in the
affidavit material filed by the parties and it is not possible, simply on a reading of the
material, to resolve those allegations. There is also an indication that the father may
have been mistakenly identified with another individual, namely his brother, whose
bizarre and violent conduct is mentioned in an affidavit filed on behalf of the mother.

Once again, this cannot be satisfactorily resolved merely by reading the affidavit materials. Nevertheless, there is enough in those materials to persuade me that the father has an alcohol problem and a temper which together give grounds for the mother's apprehensions about his future conduct not only towards her but also towards the children.

9 It is not disputed that the mother is, and has always been, the primary caregiver in relation to the two children. Nor is there any doubt as to there being a complete and final separation between the parties. Indeed, the father takes the position that he has no objection to the restraining order remaining in force with reference to his having no future contact with the mother except through a member of the Law Society. That indicates to me there is no present hope for any joint custody order or arrangement; and it brings into question the prospects for suitable paternal access arrangements even under supervision.

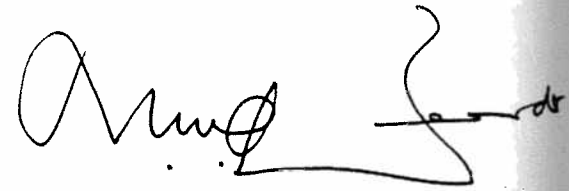
10 In all the circumstances, an order shall therefore issue, as follows:

1. the mother shall continue to have sole custody of the children until further order;
2. the father shall have reasonable access to the children, on reasonable notice to the mother, as the parties may agree or as further ordered by the Court;
3. the father shall not remove either or both of the children from the Northwest Territories, or cause them to be so removed, except with

the written permission of the mother first obtained or as authorizes by a qualified nurse or physician in a medical emergency, subject to further order;

4. the father shall not molest, interfere with or annoy the mother or contact either of the children or her except through a member of the Law Society of the Northwest Territories, or as arranged beforehand in writing through a member of that Society, subject to further order;
5. the father shall pay the mother, as child support, the monthly sum of \$600.00 for each of the children, commencing on July 5th 1995 and thereafter on the first business day of each month, until further order;
6. the mother shall cause a copy of this order to be delivered forthwith to the Commander of the Royal Canadian Mounted Police detachment at Hay River for the purposes of s.127 of the *Criminal Code*, if required;
7. the order shall be endorsed with a notice quoting s.127(1) of the *Criminal Code*; and
8. the order shall be served forthwith upon the father by delivery of a copy thereof to his solicitor, Ms. Elaine Keenan-Bengts of Yellowknife, which service shall be a good and sufficient service upon him.

11 There will be no award of costs, in view of the father's attornment to the jurisdiction of this Court, in the circumstances.



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

Yellowknife, Northwest Territories
June 27th 1995

Counsel for the Applicant
Tina Robin Cadieux: Mr. Charles Thompson

Counsel for the Respondent
Kevin Donald Lloyd: Ms. Elaine Keenan-Bengts

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MEMORANDUM OF THE
HONOURABLE MR. JUSTICE M.M. de WEERDT

