

6101-02381

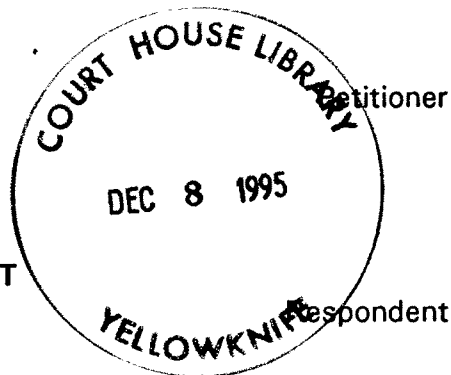
## IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DONNA LEIGH RUPERT

- and -

ALBERT PATRICK RUPERT

MEMORANDUM OF JUDGMENT

The petitioner's application to vary the amount of child support as set out in the Corollary Relief Order of June 26, 1995, is granted.

The Corollary Relief Order contemplates review without the necessity of establishing a threshold test of a material change of circumstances. With this review, however, that initial tolerance is now eliminated and any future application will have to meet that test.

The parties agree on the guiding principles:

- (i) the parents have a joint obligation to support their children;
- (ii) the obligation is to be apportioned between the parents according to their relative abilities to contribute to the performance of the obligation; and,
- (iii) child support takes precedence over the parents' personal debts, wants or expectations.

Petitioner's counsel has provided a calculation for child support in accordance with the formula dictated by Levesque v. Levesque (1994), 20 Alta. L.R. 429 (C.A.). That formula is premised on an estimate of child care expenses of \$545.54 per month per child. This is based on a gross amount of \$2,511.43 for four children (before application of child tax credits).

The Levesque formula may give the impression that the calculation of the necessary level of child support is merely a mathematical exercise. It is not. There is still a wide area for the exercise of discretion. It is recognized, however, that the essential part of the analysis is a realistic assessment of the expenses attributable to care of the children.

In this case I note that in her estimate of monthly expenses the petitioner has allocated a portion of certain expenses on a straight division between her and the children. This may be appropriate for some things (such as food) but inappropriate for others. For example, the rent of \$748.44 is attributed into fifths with the children's portion then calculated at four-fifths of that amount. Yet it is unrealistic to think that if the petitioner were alone that her rent would only be one-fifth of \$748.44. Similarly the same reasoning applies to the other housing expenses. Under transportation expenses the petitioner has simply divided those in half yet nowhere does she say that she would not have her vehicle if she did not have the children with her.

Taking these factors into account I think a more realistic estimate of monthly child care costs would be \$2,000.00 for the four children. After applying the child tax credit that comes to \$418.00 per child or \$1,254.00 for three children. The respondent's share (at 57.4%) is \$240.00 per child or \$720.00 for three children. Applying a gross-up for the impact of taxation (\$435.81 at the petitioner's marginal tax rate of 37.7%) the total comes to \$1,155.81 or \$385.27 per child.

To this calculation I must apply some discretionary analysis taking into account the respondent's financial circumstances to achieve what would be a fair, just and maintainable support figure. I also take into account that if, as now, one of the children resides with him, he will have child care costs for that child that are not offset by any contribution from the petitioner.

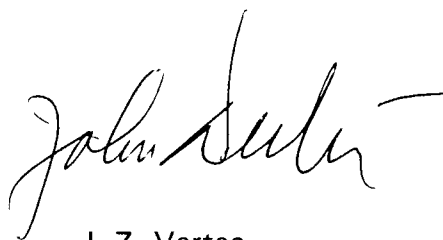
I therefore order as follows:

1. The Corollary Relief Order is varied by deleting paragraphs 2, 4 and 5 therefrom.
2. In substitution for paragraph 2 will be:

The Respondent shall pay to the Petitioner for the support of the children of the marriage the sum of \$350.00 per month for each child in the care and maintenance of the Petitioner. The payments are to commence on the first day of the month following issuance of this order and continuing thereafter on the first day of each and every month so long as the child in respect of whom the support is paid remains a child of the marriage within the meaning of the *Divorce Act*.

3. The Petitioner will have her costs of this application which I hereby fix in the sum of \$400.00 inclusive of disbursements.

Dated this 4th day of December, 1995.

A handwritten signature in cursive script, appearing to read "John Vertes", with a long horizontal flourish extending to the right.

J. Z. Vertes  
J.S.C.

To: Andrew Fox,  
Counsel for the Petitioner

Scott Duke,  
Counsel for the Respondent

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NORTHWEST TERRITORIES**

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BETWEEN:

**DONNA LEIGH RUPERT**

Petitioner

- and -

**ALBERT PATRICK RUPERT**

Respondent

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**Memorandum of Judgment of the  
Honourable Mr. Justice J. Z. Vertes**

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