

~~NWTSC 99~~

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the Estate of
Rudolph Adolph Steiner, deceased;

AND IN THE MATTER OF the Dependents'
Relief Ordinance being Chapter 5 of
The Ordinance of the Northwest
Territories 1971, 2nd Session, and
amendments thereto;

BETWEEN:

THE PUBLIC TRUSTEE FOR THE NORTHWEST
TERRITORIES as next friend of BRENDA
STEINER, an infant,

Applicant

AND:

ROBERT PORRITT, KEN GAETZ and
VERNA WOZNICA as Executors of the
Estate of Rudolph Adolph Steiner,
deceased,

Respondents

Application for an Order under section 3 of the Dependents Relief
Ordinance

Heard at Yellowknife, June 12th, 1978

Judgment filed: July 12th, 1978.

Reasons for Judgment by: The Honourable Mr. Justice C.F. Tallis

Counsel Appearing: Mr. Graham Price, counsel for the applicant,
The Public Trustee for the Northwest
Territories as next friend of Brenda
Steiner, an infant

Mr. D. Spitz, counsel for the respondents

COURT OF THE NORTHWEST TERRITORIES
THE ARBITRATOR
OF AN ARBITRATOR
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MR. JUSTICE

COURT OF THE NORTHWEST TERRITORIES
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COURT OF THE NORTHWEST TERRITORIES

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VERNA WOZNICA as Executors of the
Estate of Rudolph Adolph Steiner,
deceased,

Respondents

REASONS FOR JUDGMENT of The Honourable
Mr. Justice C.F. Tallis

This is an application by the applicant The Public
Trustee for the Northwest Territories in her capacity as next
friend of the infant Brenda Steiner for an order under section 3
of the Dependants Relief Ordinance with respect to the estate of
Rudolph Adolph Steiner, deceased.

There have been numerous proceedings in connection with the administration of this estate. Without reciting the history of the administration of the estate I do, however, make reference to the terms of a consent order dated May 18th, A.D. 1976 in which a number of relevant matters were crystallized and settled. The terms of this consent order approved by Mr. Justice A.M. Dechene on May 18th, A.D. 1976 at Hay River in the Northwest Territories are as follows:

1. IT IS HEREBY ORDERED that Pauline Steiner be and is hereby made a party applicant to these proceedings at her request.
2. IT IS FURTHER ORDERED that pursuant to the Minutes of Settlement between Hazel Mary Steiner and the deceased Rudolph Adolph Steiner dated November 12, 1971 that the said Hazel Mary Steiner shall receive the sum of \$300.00 per month during her lifetime for her own use and shall receive the sum of \$100.00 per month for the maintenance of the infant child Brenda Lee Steiner until the infant child attains the age of 16 years or marries or becomes completely self-supporting (whichever event shall first occur) provided, however, that the said maintenance shall continue while the said child is completing her formal education, including university.
3. IT IS FURTHER ORDERED that the said Hazel Steiner shall further receive payment for all medical, hospital, dental and drug prescription accounts incurred by Hazel Steiner and Brenda Steiner and any reasonable extraordinary expenses with respect to the maintenance, education or welfare of the said Brenda Steiner over and above those payable by any government agency of the Northwest Territories.
4. IT IS FURTHER ORDERED that Hazel Steiner shall be entitled to live in the house presently occupied by her on Lot 829, Plan 397 Hay River and which house encroaches on Lot 828, Plan 397 Hay River. Upon the death of Hazel Steiner, the said house and property upon which it stands shall be transferred to Carol Linda Steiner, Joyce Lone Steiner and Brenda Lee Steiner in equal shares for such children to deal with the said house in any way they deem fit. In no circumstances shall the house be required to

be moved. It is further ordered that should Brenda Lee Steiner be entitled to a share in the said house while an infant such share shall be registered in the name of the Public Trustee for the Northwest Territories.

5. IT IS FURTHER ORDERED that the said house and the property on which it stands shall forthwith be transferred to Bryan Waller and Derek Spitz as trustees under the Trustee Ordinance of the Northwest Territories to carry out the provisions of this Order.

6. IT IS FURTHER ORDERED that in addition, all fire insurance and taxes on the aforesaid house and property shall be paid for Hazel Steiner by Pauline Steiner and all reasonable expenses for oil necessarily consumed in the said house shall be paid for on behalf of Hazel Steiner by Pauline Steiner. In addition, Hazel Steiner shall continue to receive the sum of \$100.00 per month in respect of the purchase price of the sale of her shares pursuant to the agreement between Hazel Steiner and Rudolph Adolph Steiner dated the 12th day of November, 1971 and which payments commenced on the 1st day of January, 1976 and shall terminate on the 1st day of October, 1992, without interest for the total sum of \$20,100.00 as will more fully appear from a copy of a promissory note attached hereto as Schedule 'A'.

7. IT IS FURTHER ORDERED that the Executors shall deposit with the Guaranty Trust Company the sum of \$50,000.00 for a period of not less than five years at a rate of interest of not less than ten per cent per annum payable monthly and the sum of \$10,000.00 for a period of not less than five years at a rate of interest of not less than nine per cent per annum payable monthly all of which interest shall be received by Hazel Mary Steiner to cover the expenses and payments above-mentioned including the \$100.00 per month payment for the child Brenda Steiner. Pauline Steiner shall pay any short fall that may be required over and above the interest paid by the Guaranty Trust Company.

8. IT IS FURTHER ORDERED that it be and hereby is noted that Hazel Mary Steiner and the solicitors for Hazel Mary Steiner and the Executors and the solicitors for the Executors acknowledge that they rely on no representations with regard to the financial position of Pauline Steiner and it is further ordered that the Executors upon meeting the requirements of this order are forever discharged from any and all claims which Hazel Mary Steiner may have had or may have against the Estate of Rudolph Adolph Steiner.

9. IT IS FURTHER ORDERED that Hazel Steiner shall

further forthwith receive the sum of \$2,400.00 in cash from the estate with the approval of Pauline Steiner.

10. IT IS FURTHER ORDERED that the said sum of \$60,000.00 shall stand as security for the payments under this Order to Hazel Mary Steiner as set out above and for the additional sum if any which the Court may order as a Payment to Brenda Lee Steiner in her pending application pursuant to the Dependents Relief Ordinance of the Northwest Territories and the order postponing such application is amended accordingly.

11. IT IS FURTHER ORDERED that on the death of Hazel Mary Steiner the said sum of \$60,000.00 shall be paid out to Pauline Steiner less any sum ordered by the above Honourable Court to be retained as security for any and all sums payable to Brenda Lee Steiner if any and further less any sums ordered by the above Honourable Court to be retained as security for the payment of any balance due to Hazel Mary Steiner in respect of the price of shares sold in Territorial Expeditors Ltd. to Rudolph Adolph Steiner by Hazel Mary Steiner.

12. IT IS FURTHER ORDERED that no payments shall be made from the principal portion of the said sum of \$60,000.00 without an order of a Judge of the Supreme Court of the Northwest Territories after due service upon the Public Trustee for the Northwest Territories.

13. IT IS FURTHER ORDERED that the Guaranty Trust Company shall acknowledge service of this order and undertake to the Public Trustee of the Northwest Territories that it will act only in accordance with this order.

14. IT IS FURTHER ORDERED that such sums retained as security for the interest of Brenda Lee Steiner shall be paid out to Pauline Steiner at such time as the above Honourable Court may deem fit pursuant to paragraphs 12 and 13 aforementioned.

15. IT IS FURTHER ORDERED that Hazel Mary Steiner shall not be entitled to any other payments from the estate other than those set out above.

16. IT IS FURTHER ORDERED that Mr. Bryan Waller, the solicitor for Hazel Mary Steiner, shall receive the sum of \$500.00 and all disbursements in connection with the application from the Estate by way of costs.

17. IT IS FURTHER ORDERED that should Pauline Steiner default in any payment, payment may be made to Hazel Mary Steiner from the capital sum deposited at Guaranty Trust and

a further sum of \$5,000.00 shall immediately become due and payable in respect of the payments for which Pauline Steiner is responsible, such sum to be used by Hazel Steiner in respect of such payments for which Pauline Steiner is responsible only. Upon the said sum of \$5,000.00 being so used, should Pauline Steiner again default a further sum of \$5,000.00 shall be paid from the monies held by Guaranty Trust and the same step shall be taken on each occasion of a default by Pauline Steiner. It is further ordered that such sums payable under this paragraph be paid to Bryan Waller and Derek Spitz as trustees pursuant to the Trustee Ordinance for the Northwest Territories and the said trustees shall make payments to Hazel Mary Steiner for the said sums.

18. IT IS FURTHER ORDERED that the Executors shall forthwith transfer Lot 830, Plan 397 Hay River, to the residuary legatee, Pauline Steiner.

19. IT IS FURTHER ORDERED that Lot 828 will be transferred to Bryan Waller and Derek Spitz as trustees under the Trustee Ordinance of the Northwest Territories but may be sold at the request of Pauline Steiner on the following terms and conditions: the garage will be moved and a driveway built so that a car can be parked thereon. Further access must be made for the delivery of oil to the said house. Further an outdoor electrical outlet shall be installed. Three months notice shall be given for the removal of the said garage. It is further ordered that upon the sale of the said Lot 828 the funds therefrom shall be held as further security for the payments to Hazel Mary Steiner and Brenda Steiner in the manner provided in this order.

20. IT IS FURTHER ORDERED that at the expiry of the term for which the funds shall be invested with Guaranty Trust the funds shall be re-invested for a further five years.

21. IT IS FURTHER ORDERED that the sum of \$5,000.00 shall be invested by the Executors at interest in respect of the claim of George Crowe and Territorial Expeditors Ltd.

22. IT IS FURTHER ORDERED that the sum of \$25,000.00 shall be paid to Macdonald, Spitz, and the firm of Padgett & Rost in the litigation of the State of Hawaii relating to the claims of the Estate of Rudolph Adolph Steiner, Pauline Steiner, Brenda Lee Steiner and shall be used for that purpose only and upon the termination of the said action in Hawaii any balance remaining from the said sum of \$25,000.00 shall be paid to the said residuary legatee Pauline Steiner.

23. IT IS FURTHER ORDERED that Kenneth Albert Gaetz shall be paid from the Estate the sum of \$1,000.00 as an interim payment for his fees and disbursements as Executor such payment not representing payment to date, Robert Porritt shall be paid from the Estate the sum of \$1,500.00 as an interim payment for his fees and disbursements as Executor such payment not representing payment to date and Verna Ellen Woznica shall be paid from the Estate the sum of \$2,500.00 as an interim payment for her fees and disbursements as Executor such payment not representing payment to date. It is further ordered that a sum of \$5,000.00 shall be retained by the Executors as security for further payment of their fees and disbursements.

24. IT IS FURTHER ORDERED that the balance of the assets in the Estate after all the payments and security above-mentioned being attended to shall be paid and transferred to Pauline Steiner."

Prior to the proceedings on May 18th, A.D. 1976 the applicant commenced an application for relief under the provisions of the Dependents' Relief Act. After the consent order of May 18th, A.D. 1976 was granted application was made on behalf of the respondents for an order staying the motion under the Dependents' Relief Ordinance which was brought by the applicant on behalf of the infant Brenda Steiner. This application for a stay of proceedings was dismissed by Mr. Justice A.M. Dechene of this court and the application was adjourned sine die.

This application has now been renewed by notice of motion dated June 9th, 1978. This motion was served on counsel for the respondents.

Prior to the applicant renewing this application the respondents made an application by notice of motion dated June 2nd, A.D. 1978 for an order dismissing the within application

with costs.

When these two matters came on before me at Yellowknife on the 12th day of June, A.D. 1978 counsel for the respondents candidly acknowledged that he was not seriously pursuing his application for an order for dismissal indicating that the proceedings were initiated with a view to bringing this matter to a completion.

Under the circumstances, I accordingly turn to a consideration of the application brought by the Public Trustee as next friend of the infant Brenda Steiner. The applicant filed the affidavit of Hazel Steiner who is the mother of the infant Brenda Steiner and former wife of the deceased until the granting of a decree absolute for divorce on August 10th, 1972.

The affidavit of Hazel Steiner sets forth the following facts:

- "1. THAT I adopt and incorporate by reference herein Exhibits "A", "B", "C" and "D" of the Affidavit of PAULINE STEINER, filed, and I refer to such Exhibits herein as if such Exhibits were marked and filed together with this my Affidavit.
2. THAT I was the lawful wife of Rudolph Adolph Steiner from the date of our marriage on June 14, 1947 until the granting of the Decree Absolute of Divorce ending our marriage on 10th August, 1972 as indicated by Exhibit "C".
3. THAT Rudolph Adolph Steiner got his start in the North by working with my father, Jack Cameron, a well known fisherman, trapper and trader who assisted the said deceased in starting up his many northern enterprises and ventures.

4. THAT there were three daughters born lawful issue of the marriage, Carol Linda and Joyce Lorna Steiner, who were adults under the law of the Northwest Territories at the time of Rudolph Adolph Steiner's decease, and the Applicant, Brenda Steiner, born December 21, 1965, who was approximately nine years of age at her father's death.

5. THAT because of the wide separation in the ages of the Applicant and her two older sisters, the deceased treated the Applicant as his "pet" daughter and constantly gave her gifts and extended special attention to her that was not afforded to the two older girls.

6. THAT this attention continued after our Divorce and although Rudolph Adolph Steiner travelled frequently in connection with his businesses and resided in Fort Simpson for a greater part of the time, he always made a special effort whenever he came to Hay River to visit Brenda, take her on outings and give her gifts.

7. THAT Brenda continues to speak of her father and any specific mention of his death causes her to become emotionally upset and distraught.

8. THAT the Application herein was commenced by way of Originating Notice of Motion within the time specified by the Dependents' Relieft Ordinance but was adjourned sine die on certain terms and conditions as set forth in the Consent Order annexed hereto as Exhibit "E" to this my Affidavit.

9. THAT the Order, Exhibit "E" aforesaid, was altered in part by the Consent Order of May 18, 1976 marked as Exhibit "D" wherein certain sums were ordered to be held in a specified trust for the purpose of securing the Applicants claim herein.

10. THAT the Applicant has not proceeded with the Motion pending the outcome of the Hawaiian litigation referred to in the Respondent's Affidavit as I am advised by my solicitor, R. Bryan Waller, and do verily believe that the Court hearing this matter would have wished to be apprised of any funds available through the Hawaiian litigation in order to have a full and accurate financial picture in this matter. That while the Estate bore the cost of carrying the Hawaiian litigation, I am advised by my solicitor that it was agreed that the Applicant would bear a proportionate share of the fees when the matter was concluded and funds were available for the satisfaction of such fees. I am further advised by my solicitor and do verily believe that the agreed settlement

figure of \$30,000.00 U.S. funds was arrived at as a result of negotiations between the Applicant's solicitor, R. Bryan Waller and Mr. Spitz, solicitor for the Estate, and that the settlement figure took into account a contribution towards the total fees by the Applicant. It is also true however, that had no settlement been concluded or had the action in the Hawaiian litigation been unsuccessful, the Applicant would not have been called upon nor required to pay any of the substantial legal fees advanced on her behalf by the estate.

11. THAT the Applicant does not dispute the valuation placed on the Estate in the Affidavit of Pauline Steiner, but points out that as the primary beneficiary of the estate, the said Pauline Steiner received in excess of \$500,000.00.

12. THAT I believe that the said Pauline Steiner was the wife of Rudolph Adolph Steiner for a period of approximately seven months prior to his decease.

13. THAT with reference to paragraph 9 of the Respondent's Affidavit an application requiring Proof of the Will in Solemn Form was a proper application given the strange circumstances of Steiner's death, circumstances of the Attestation of the Will and the fact the Will was not dated. Although the application was dismissed, the Court did Order the Applicant's costs to be paid by the Estate and those costs were later fixed upon application to His Lordship Mr. Justice Dechene in the amount of \$1,000.00.

14. THAT since the execution of the Minutes of Settlement in November, 1971, I have found that the sum of \$100.00 does not make adequate provision for the proper maintenance and support of the Applicant, Brenda Steiner.

15. THAT I have no special skills because of a painful arthritic condition in my legs and back and I am unable to work and I am therefore dependent on those monies which I receive from the Estate pursuant to the Minutes of Settlement incorporated into the Will of Rudolph Adolph Steiner for the care and support of myself and my infant daughter.

16. THAT Brenda is presently enrolled as a Grade 7 student but finds school and her associations with school mates to be difficult and has a poor record of attendance as a result.

17. THAT the following is a summary of usual household expenses for necessities.

Total grocery bill including personal supplies, soap, toothpaste, etc. (\$80.00 per week x 52)	\$4,160.00
Utilities for the residence	
Power - \$70.00 x 6	
\$50.00 x 6	
Telephone \$6.00 x 12	
Water & Sewer \$25.00 x 12	1,100.00
1/2 of the above expenses attributable to Brenda	2,630.00
Other clothing including jeans, slacks, underwear, dress up, shoes and winter outfit	300.00
School and hobby supplies	100.00
ANNUAL TOTAL	\$3,030.00
Less present allowance	<u>1,200.00</u>
Deficiency	\$1,830.00

18. THAT I am inadequately able to care for and maintain Brenda on the allowance of \$100.00 per month. This sum was set in November, 1971 and the cost of all necessities in the Town of Hay River has increased dramatically from that date. Furthermore as Brenda grows older, her demands with respect to adequate clothing and spending money for entertainment have increased as is normal of a girl of her age.

19. THAT I am presently making regular payments on a small bank loan and have no other assets other than the household furniture and an old car of little value which I use only to travel around Hay River as it is cheaper than travelling by taxi.

20. THAT I feel my daughter Brenda is being deprived of substantial advantages which she would have received had her father been alive and I am unable to provide her with amenities which are commonly enjoyed by other children of her age in this district such as new clothes and a bicycle.

21. THAT as the maintenance of \$100.00 per month would only continue past Brenda's sixteenth birthday in the event she was continuing her education and as I think it would be unlikely that she would continue with her schooling after age sixteen, any maintenance payable for her support would cease before her entitlement to her Estate from the Public Trustee upon reaching her majority.

22. THAT I make this Affidavit in support of an application for an Order directing that the monthly maintenance payable to Brenda be increased in such amount for such a period of time as this Honourable Court deems meet, or alternatively be fixed by a lump sum payment or lump sum payments in accordance with the provisions of the Dependents' Relief Ordinance.

"Hazel Steiner"
HAZEL STEINER

SWORN BEFORE ME at the
City of Yellowknife in
the Northwest Territories
this 12th day of June, A.D.
1978.

A Commissioner for Oaths for
the Northwest Territories"

IBIT "E" "IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of the Estate of Rudolph
Adolph Steiner, Deceased;

AND IN THE MATTER of the Dependents
Relief Ordinance being Ch. 5 of the
Ordinances of the Northwest Territories
1971 Second Session, and Amendments
thereto.

B E T W E E N :

THE PUBLIC TRUSTEE FOR THE NORTHWEST
TERRITORIES as Next Friend of BRENDA
STEINER, an Infant

Applicant

and

DEREK SPITZ, PETER COMBE, ROBERT

PORRITT, KEN GAETZ and VERNA
WOZNICA, as Executors of the Estate
of Rudolph Adolph Steiner, Deceased

Respondents

BEFORE THE HONOURABLE)
MR. JUSTICE W. G. MORROW)
IN CHAMBERS)
At the Court House in the City of
Yellowknife, Northwest Territories,
on Thursday the 26th day of
September, 1974

CONSENT ORDER

UPON the application of Counsel for the Applicant and Counsel for the Respondents; AND UPON it appearing that Counsel for the Applicant and the Respondents are desirous that this matter be adjourned;

IT IS HEREBY ORDERED and directed that this application be adjourned sine die upon the following terms and conditions:

1. That this adjournment is made completely without prejudice to the Applicant with respect to any limitation under the Dependents Relief Ordinance of the Ordinances of the Northwest Territories and without prejudice to any other accretion of time before this application is heard;
2. That the Respondents agree that no other party is required to be served with notice of these proceedings at this time save Gary Richard Vooro who the Respondents undertake to give notice of these proceedings forthwith;
3. That the Applicant may bring this matter before this Honourable Court at any time on reasonable notice to the Respondents;
4. That the Respondents will preserve assets in the Estate of Rudolph Adolph Steiner in a value of at least \$100,000.00, which value shall be determined by the value shown in the Application for Grant of Probate in the said Estate, and no assets beyond this value shall

be disposed of by the Respondents except under reasonable notice to the Applicant. The sum of \$100,000.00 is agreed by the Respondents and the Applicant to be a convenient figure and does not reflect any admission by either party as to proper quantum on the application;

5. That the Applicant be and hereby is permitted to amend the Originating Notice of Motion by deleting the names of Derek Spitz and Peter Combe, which amendment shall be permitted without costs;
6. That there shall be no costs to either party for this adjournment.

"W.G. Morrow"
J. S. C.

At the hearing of this application I granted leave to the applicant to call the deponent Hazel Steiner to give viva voce on certain additional matters. Mrs. Steiner was examined in chief and cross-examined and particular reference was made to the contents of paragraph 17 dealing with a summary of usual household expenses.

After hearing the evidence of the witness Hazel Steiner I am satisfied that she is a credible witness and in particular I find that her summary of expenses in paragraph 17 is not in any way exaggerated. In many respects her evidence as to costs were very modest. I am prepared to take judicial notice of the fact that the cost of living in the Northwest Territories is on the average substantially higher than in most southern jurisdictions.

The evidence filed on behalf of the respondents in connection with this application consisted of the affidavit evidence of Pauline Steiner. This affidavit sets forth the following facts:

- "1. I am the residuary legatee of the Will of my late husband, Rudolph Adolph Steiner, who died on or about the 22nd day of February, 1974, in Hawaii, and as such have a personal knowledge of the matters herein deposed save where stated to be on information and belief. I attach a duplicate original of the Grant of Probate issued pursuant to the fiat of His Lordship Mr. W.G. Morrow in the above Honourable Court together with the Will of my husband attached hereto and such Grant of Probate is now shown to me and marked as Exhibit "A" to this my Affidavit. The original Grant of Probate with Will attached is in the office of the Clerk of the above Honourable Court.
2. Further attached hereto and now shown to me and marked as Exhibit "B" to this my Affidavit are the Minutes of Settlement which were made an order of Court in the divorce proceedings between Hazel Mary Steiner and my late husband. The original of the said Minutes of Settlement are filed with the Clerk of the above Honourable Court.
3. Now shown to me and attached hereto and marked as Exhibit "C" to this my Affidavit is a copy of the Decree Absolute relating to the divorce between Hazel Mary Steiner and my deceased husband. The original of the Decree Absolute is filed with the Clerk of the above Honourable Court.
4. From the Exhibits above-mentioned it appears that the child Brenda Lee Steiner received the sum of \$100.00 per month as maintenance under the Will until the child attains the age of 16 years provided, however, that the said sum remains payable while the child is completing a formal education including University and is residing with her mother, Hazel Mary Steiner.
5. On the 18th day of May, 1976, the Honourable Mr. Justice A.M. Dechen granted an Order in the above Honourable Court a copy of which is attached hereto and now shown to me and marked as Exhibit "D" to this my Affidavit. The original of the said Order is filed with the Clerk of the above Honourable Court. As appears from paragraphs 2 and 3 the

provision for the payment of \$100.00 per month for the maintenance of the child Brenda was repeated including that the said maintenance is to continue while the child is completing a formal education and His Lordship deleted the requirement that it was necessary for the child to reside with the mother to receive the said maintenance. Further His Lordship ordered that the child should receive all medical, hospital, dental and prescription expenses and any reasonable extraordinary expenses with regard to her maintenance, education or welfare. In addition the Canada Pension allowance for the child is in the sum of \$48.19 per month. In addition the said Hazel Steiner and the child Brenda are entitled to occupy a home in Hay River, on Lot 829, Plan 397, Hay River, which is one of the largest homes in Hay River in one of the best residential areas of Hay River and which home will be transferred to Brenda and her two sisters, Carol and Joyce, upon the death of Hazel Steiner. In addition the taxes and the expenses for oil consumed in the said home are paid. Further pursuant to the Order of the Honourable Mr. Justice A.M. Dechene above-mentioned the aforesaid payments have been secured.

6. The expenses in relation to the aforesaid home include oil for which a payment in approximately the sum of \$1,800.00 per annum is made and taxes in respect of which the sum of approximately \$1,200.00 per annum is made. Both Hazel Steiner and the child require payment in respect of medical prescriptions of which the sum of approximately \$1,500.00, per annum is made. Some years ago the child Brenda visited me and I bought her a complete wardrobe. I have since offered to have the child for holidays and would be prepared to furnish some clothes for her but Hazel Steiner refuses to allow the child to have anything to do with me.

7. The Estate and I brought an action in Hawaii in respect of my husband's death. The hotel which owned the property on which he was killed and the main shareholder of the hotel Company who put up the wall on which my husband was killed and the State of Hawaii were sued. The cause of action related to defects in the building of the wall part of which collapsed on my husband and killed him while he was sitting on the wall which was placed on the public beach. I was fully responsible for the fees of all the lawyers involved including the firm of Macdonald, Spitz, and the firm of Padgett & Rost in Hawaii. As the case was a strong one I was advised not to enter into a

contingency agreement and became liable for enormous fees and disbursements which I paid as the matter proceeded. Disbursements for experts and other expenses was approximately \$20,000.00 and fees approximately \$40,000.00. I invited the two adult daughters of my husband, Carol and Joyce, to join in the action and invited Mr. Waller to have Brenda joined in the action as a Plaintiff. I carried all the expenses for everyone. We were able to settle the matter and under Brenda's settlement she received the sum of \$30,000.00 U.S. at a time when the exchange was approximately 1.13 Canadian dollars to the United States dollar. Brenda consequently should have approximately \$2,700.00 per year in addition to the monies due under the Will and have the nest egg from the Hawaiian litigation and her one-third interest in the property in Hay River all intact. In addition Brenda receives a pension from the Canada Pension fund in the sum of approximately \$48.00 per month.

8. The realization of the assets in the Estate of my late husband was not as successful as anticipated mainly owing to the position in Hay River because of the route taken by the Alaskan pipeline.

9. The Taltson River property mentioned in the Application for Probate has no real market value. I have been unable to dispose of the lease relating to Lot 7, Block G, as set out in the Application for Probate. Because of the encroachment of the house I am unable to realize on Lot 828, mentioned in the Real Estate portion of the Application for Probate. The mining claim mentioned is of no value. The stocks and shares realized far less than was anticipated. The sale of the Cross-Arctic Transport Ltd. machinery brought in approximately only \$40,000.00 so that the value of the Cross-Arctic shares was only approximately \$50,000.00. The unsecured debts proved very difficult to collect and it was not possible to collect from Goulet, Townsend, Pope or Dugan at all. The steamships turned out to be practically valueless. Further an attack was made on the Will by Hazel Steiner and the daughters and a full scale trial was required to prove the Will in solemn form. The Will was proved in solemn form but costs of all parties was ordered payable from the Estate and exceeded \$12,000.00. Further there was strenuous dispute over the security for Hazel Steiner and Brenda Steiner and an application before The Honourable Mr. Justice A.M. Dechene was necessary. Prolonged negotiations took place before the matter could be resolved and heavy legal expenses were involved in this matter as well. Heavy taxes were payable to the Receiver General in respect of the Cross-Arctic and

Territorial companies and by the Estate. A more realistic value of the Estate would be a little over \$300,000.00. Further it was necessary to place \$60,000.00 with the Guaranty Trust Company pursuant to the Order of the Honourable Mr. Justice A.M. Dechene. Those funds remain at the Guaranty Trust Company.

10. In the Hawaiian matter I received \$259,000.00 U.S., as part of the settlement and the Estate is to receive \$1,000.00. Further the State of Hawaii has undertaken to pay a further \$30,000.00 U.S., to me , but I am unable to say when this will be received.

11. I make this Affidavit in support of an application for the dismissal of the above-mentioned application.

SWORN BEFORE ME at the City)
of Edmonton, in the Province)
of Alberta, this 2nd day of)
June, A.D. 1978.)

"Pauline Steiner"

PAULINE STEINER

A NOTARY PUBLIC in and for
the Province of Alberta. "

Exhibit "A" "

DUPLICATE ORIGINAL

CANADA)
NORTHWEST TERRITORIES)

By the oath which you have taken as Administrator you are bound to render a true account of your administration whenever required by law so to do. You are required to file within two years after the grant, in the office of the Clerk of the Court which made the grant a statement of account, duly verified under your oath, showing how the estate has been dealt with.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BE IT KNOWN that on the 24th day of April A.D. 1974, the last Will and Testament of Rudolph Adolph Steiner late of the Village of Fort Simpson in the Northwest Territories deceased, who died on or about the 22nd day of February A.D. 1974, at Maui in the State of Hawaii one of the United States of America and who at the time of his death had a fixed place of abode at Fort Simpson, Northwest Territories was proved and registered in the said Supreme Court, a true copy of which said last Will and Testament is hereunder written, and that the administration of all and singular the property of the said deceased and any way concerning

his Will was granted by the aforesaid Court to Robert Porritt, Kenneth Albert Gaetz and Verna Ellen Woznica the coexecutors named in the said Will having been first sworn well and faithfully to administer the same by paying the just debts of the deceased, all taxes and duties payable in respect of his estate and the legacies contained in his Will so far as they are thereunto bound by law, and by distributing the residue (if any) of the property according to law, and to exhibit under oath a true and perfect inventory of all and singular the said property, and to render a just and true account of their executorship and to surrender this grant whenever required by law so to do.

IN WITNESS WHEREOF this grant has been issued, under the Seal of the Court, pursuant to the fiat of His Lordship W.G. Morrow.

Clerk of the Court"

"LAST WILL AND TESTAMENT

THIS IS THE LAST WILL AND TESTAMENT of me RUDOLPH ADOLPH STEINER, of the Town of Hay River, in the Northwest Territories.

1. I HEREBY REVOKE all Wills and Testamentary Dispositions of every nature or kind whatsoever by me heretofore made.
2. I HEREBY NOMINATE, CONSTITUTE AND APPOINT DEREK SPITZ of 900 Bank of Montreal Building, in the City of Edmonton, in the Province of Alberta; ROBERT PORRITT of Box 100, in the Town of Hay River, in the Northwest Territories; REVEREND KEN GAETZ of Box 1005, in the Town of Hay River, in the Northwest Territories; and VERNA WOZNICA of Box 1606, in the Town of Hay River, in the Northwest Territories, as the Executors and Trustees of this my Will and I hereinafter refer to them as my Trustees.
3. I GIVE, DEVISE AND BEQUEATH all my property of every nature and kind and wheresoever situate, including any property over which I may have a general power of appointment to my said Trustees upon the following trusts, namely:

(a) To use their discretion in the realization of my estate with power to my Trustees to sell, call in or convert into money any part of my estate not consisting of money at such time or times in such manner and upon such terms, and either from cash or credit or for part cash and part credit as my said Trustees may, in their uncontrolled discretion decide upon, or to postpone such conversion of my estate or any part or parts thereof for such length of time as they may think best, and I hereby declare that my Trustees may retain any portion of my estate in the form in which it may be at my death (notwithstanding that it may not be in the form of an investment in which Trustees are authorized to invest trust funds, and whether or not there is a liability attached to any portion of my estate) for such length of time as my said Trustees may, in their discretion, deem advisable, and my Trustees shall not be held responsible for any loss that may happen to my estate by reason of so doing.

(b) To pay out of and charge to the capital of my general estate my debts, funeral and testamentary expenses and all estate inheritance and succession duties or taxes whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever that may be payable in connection with any property passing (or deemed so to pass by any governing law) on my death or in connection with any insurance on my life or any gift or benefit given or conferred by me either during my lifetime or by survivorship or by this my Will or Codicil thereto and whether such duties or taxes be payable in respect of estates or interest which fall into possession at my death or at any subsequent time; and I hereby authorize my Trustees to commute or prepay any such taxes or duties. This direction shall not extend to or include any such taxes that may be payable by a purchaser or transferee in connection with any property transferred to or acquired by such purchaser or transferee upon or after my death pursuant to any agreement with respect to such property.

(c) To give to each of my employees that have been in my employment for a full year immediately prior to the date of my death the sum of Five Hundred (\$500.00) Dollars, when their employment with me ceases.

(d) To continue to pay to MRS. VERNA WOZNICA the salary she is receiving at the time of my demise in order that she may act as an advisor on the Accounting and Operations of my holdings, and that RON DOUGLAS remain at the salary he is receiving at the time of my demise as long as required in the opinion of my Trustees as Operation advisor, as Mr. Douglas is well versed with the company equipment and its operations.

(e) To pay to HAZEL MARY STEINER the payments as outlined in the Agreement of Divorce held by my Solicitors, MACDONALD, SPITZ, to the extent of that Agreement and as per the Agreement, until the Agreement has been fulfilled or until her death whichever shall be the soonest.

(f) I authorize and empower my Trustees as soon after my death as my Trustees in their discretion shall see fit out of the capital of my general estate to expend a sum not exceeding FIVE HUNDRED (\$500.00) DOLLARS for the purpose of providing food and liquid refreshments for and holding a gathering of my employees, not so much as a memorial to me but merely as an outward manifestation of my own feelings towards them, and it is also my wish that the manner in which this gathering shall be held will rest with the discretion of my Trustees.

(g) To pay or transfer the residue of my estate to my wife PAULINE ANNE STEINER for her own use absolutely.

4. I HEREBY DECLARE that my Trustees when making investments for my estate shall not be limited to investments which, in their uncontrolled discretion, they deem advisable and my Trustees shall not be liable for any loss that may happen to my estate in connection with any such investments made by them in good faith.

IN TESTIMONY WHEREOF I have to this my Last Will and Testament written upon this and the preceding three pages of paper, subscribed my name this day of A.D. 19 .

SIGNED, PUBLISHED AND DECLARED)
by the said Testator, RUDOLPH)
ADOLPH STEINER, as and for his)
Last Will and Testament, in the)
presence of us, both present)
at the same time, who at his)
request, in his presence and in)
the presence of each other, have)
hereunto subscribed our names)
as witnesses.")

"Rudolph Steiner"

ibit "B"

"JUDICIAL DISTRICT OF THE NORTHWEST TERRITORIES

BETWEEN:

HAZEL MARY STEINER,

PETITIONER

- and -

RUDOLPH ADOLPH STEINER,

RESPONDENT

MINUTES OF SETTLEMENT
SUBJECT TO APPROVAL
OF THE COURT

WHEREAS the parties hereto are husband and wife, having been married at the Town of Hay River, in the Northwest Territories, on the 14th day of June, A.D. 1947;

AND WHEREAS there are three children, issue of the said marriage, namely;-

CAROL LINDA	born January 4, 1953
JOYCE LONE	born March 23, 1954
BRENDA LEE	born December 21, 1965

AND WHEREAS the Petitioner has commenced an action against the Respondent in the Territorial Court of the Northwest Territories, Judicial District of the Northwest Territories, being Action No. 6101-28, claiming among other things dissolution of the marriage, custody of the aforesaid infant children, maintenance for the Petitioner and infant children, and costs;

AND WHEREAS the Respondent has filed a Demand of Notice to the aforesaid action;

AND WHEREAS the parties hereto have agreed to settle the claim for custody of the infant children, alimony for the Petitioner, maintenance for the aforesaid infant children, and other matters in dispute, and the parties hereto wish to resolve their differences by agreement;

SUBJECT TO THE APPROVAL OF THIS HONOURABLE COURT
THE PARTIES HERETO AGREE AS FOLLOWS,-

1. THE RESPONDENT COVENANTS AND AGREES that the Petitioner shall have the legal custody and management of the three infant children, issue of the said marriage, provided that the Respondent shall have access to the said children at all reasonable times.

2. THE RESPONDENT SHALL PAY to the Petitioner the sum of THREE HUNDRED (\$300.00) DOLLARS per month for alimony and maintenance for the Petitioner, it being understood and agreed that should the circumstances of the parties change, either party shall be at liberty to apply to the Court for variation of the alimony and maintenance payable herein.

3. THE RESPONDENT SHALL PAY to the Petitioner for the maintenance and support of the infant child, BRENDA LEE, the sum of ONE HUNDRED (\$100.00) DOLLARS per month, the aforesaid maintenance shall continue until the said infant child attains the age of Sixteen (16) years, or sooner marries, or becomes completely self-supporting (whichever event shall first occur); PROVIDED, HOWEVER, that the aforesaid maintenance shall continue while the said child is completing her formal education, including University, and is residing with the Petitioner.

4. THE RESPONDENT COVENANTS AND AGREES with the Petitioner that he will assume and pay all reasonable medical, hospital and dental accounts incurred by the Petitioner and the aforesaid infant children and any reasonable extra-ordinary expenses with respect to the maintenance, education or welfare of the aforesaid infant children over and above those payable by any Government agency of the Northwest Territories and it will be the Petitioner's responsibility to obtain such payment under any effective existing legislation.

5. THE RESPONDENT HEREBY AGREES that he will either purchase or build a residence in the Town of Hay River which is reasonable and adequate for the Petitioner's use. Should the Respondent not be satisfied with such house to be purchased or the plans, specifications and site of such house to be built it will be in the sole impartial discretion of her solicitor, Donald J. Buchanan, Esq., to determine what constitutes reasonable and adequate accommodation for the Petitioner's use. It is understood and agreed that the purpose of this clause is to provide the Petitioner with smaller and less expensive accommodation on less expensive land than that which she presently occupies while approximating her standard as heretofore set. The Respondent shall transfer the property abovementioned to a trustee on the trust that the said property shall be available for the Petitioner's use

exclusively during her lifetime and the Petitioner shall be entitled to live on the property or lease the property with consent of the Trustee. In the event of the Petitioner's death the house shall be transferred to the three children of the marriage in equal shares for them to deal with as their own. The Petitioner undertakes as soon as possible to move to such accommodation after approval thereof. Until such time as such approval for the accommodation aforesaid is approved as above mentioned, the Petitioner shall be entitled to the sole use and occupation of the premises in which she is presently living.

6. THE RESPONDENT COVENANTS AND AGREES with the Petitioner that he will pay for all oil, insurance and taxes on the aforesaid house and property.

7. THE RESPONDENT SHALL FORTHWITH PAY to the Solicitor for the Petitioner the sum of ONE THOUSAND (\$1,000.00) DOLLARS in satisfaction of the Petitioner's claim for costs.

8. IT IS RECORDED that the interest of the Respondent within a company known as Territorial Expeditors Ltd. has been dealt with in a separate agreement.

9. IT IS UNDERSTOOD AND AGREED between the parties hereto that the aforesaid terms of this Agreement are subject to the approval of the Court at such time as the Decree Nisi of divorce may be granted herein.

10. THE PARTIES HERETO COVENANT to comply strictly with the terms of this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 12th day of November, A.D. 1971.

SIGNED, SEALED & DELIVERED
In the presence of:

Witness to signature of:

"Verna E. Woznica"

Witness to signature of:

"Hazel Mary Steiner"

Hazel Mary Steiner

"R. Steiner"

Rudolph Adolph Steiner"

it "C"

"IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES
JUDICIAL DISTRICT OF THE NORTHWEST TERRITORIES

BETWEEN:

HAZEL MARY STEINER,

PETITIONER

- and -

RUDOLPH ADOLPH STEINER,

RESPONDENT

BEFORE THE HONOURABLE)
MR. JUSTICE)
COURT HOUSE, YELLOWKNIFE, NWT) ON TUESDAY, THE
10TH DAY OF OCTOBER,
A.D. 1972.

DECREE ABSOLUTE

THE PETITIONER having made application for a decree making absolute the decree nisi herein whereby this Court did decree and adjudge that the Petitioner be divorced from the Respondent spouse unless sufficient cause be shown to this Court within three (3) months from the date thereof why the said decree should not be made absolute and no such cause having been shown,

1. THIS COURT DOTH DECREE AND ADJUDGE that the Decree Nisi herein dated the 12th day of November, A.D. 1971, be and it is hereby made absolute and that the Petitioner, HAZEL MARY STEINER, whose marriage to the Respondent, RUDOLPH ADOLPH STEINER, was solemnized at the Town of Hay River, in the Northwest Territories, on the 14th day of June, A.D. 1947, is hereby divorced from the said Respondent.

"A. Stewart"

Clerk of the Territorial Court

ENTERED this 10th day of
October, A.D. 1972.

"A. Stewart"

Clerk of the Territorial Court

LET THIS DECREE ABSOLUTE ISSUE:

"W.G. MORROW"

JUSTICE OF THE TERRITORIAL COURT

With the above background I turn now to a consideration of the merits of the application brought on behalf of the infant Brenda Steiner. Section 3(1)(a) of the Dependants Relief Ordinance R.O. 1974, chapter D-4 provides as follows:

3.(1) Where a person

(a) dies testate without making in his will adequate provision for the proper maintenance and support of his dependants or any of them,

a judge, on application by or on behalf of the dependents or any or them, may, notwithstanding the provisions of the will or the Intestate Succession Ordinance, order that such provision as he deems adequate be made out of the estate of the deceased for the proper maintenance and support of the dependants or any of them.

Sections 5 and 6 of the Dependants Relief Ordinance provide as follows:

5.(1) A judge, upon the hearing of an application under this Ordinance, may

(a) inquire into and consider all matters that he deems should be fairly taken into account in deciding upon the application;

(b) in addition to the evidence adduced by the parties appearing, receive such other evidence as he deems necessary or proper;

(c) accept such evidence as he deems proper of the deceased's reasons, so far as ascertainable,

(i) for making the dispositions made by his will, or

(ii) for not making adequate provision for a dependent,

including any statement in writing signed by the deceased; and

(d) refuse to make an order in favour of any dependent whose character or conduct is such as, in the opinion of the judge, disentitles the dependent to the benefit of an order under this Ordinance.

(2) In estimating the weight to be given to a statement referred to in paragraph (1)(c), the judge shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement. 1971(2nd), c.5, s.5.

6.(1) A judge, in any order making provision for maintenance and support of a dependant, may impose such conditions and restrictions as he deems fit.

(2) A judge may order that the provision for maintenance and support of a dependant be made out of and charged against the whole or any portion of the estate of the deceased in such proportion and in such manner as to him seems proper.

(3) Provision for maintenance and support of a dependant may be made out of income or capital of the estate of the deceased or both and may be made in one or more of the following ways, as the judge deems fit, namely,

- (a) an amount payable annually or otherwise;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned, absolutely or in trust or for life, or for a term of years or for the benefit of the dependant.

(4) Where a transfer or assignment of property is ordered under subsection (3), the judge may

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the judge may direct; or
- (b) grant a vesting order. 1971(2nd), c.5, s.6.

In this particular case it is common ground between the parties that the applicant receives more than the \$100.00 per month payment for her maintenance and support. She will in accordance with the documents earlier recited receive a one-third interest in a house in Hay River and in the meantime, taxes, insurance, fuel, medical and dental bills are all paid by the estate.

During the course of argument both counsel candidly indicated that the real issue in this litigation centered on consideration that should be given to the sum of \$30,000.00 received on behalf of Brenda as a result of the litigation in Hawaii.

It is common ground that the Public Trustee has in fact received the said sum of \$30,000.00 on behalf of the infant Brenda Steiner but no application has been made to draw on this money for additional maintenance or support for the infant Brenda Steiner.

Learned counsel for the applicant contended on behalf of Brenda Steiner that the court should attach no weight to the fact that \$30,000.00 has been obtained for Brenda. It was strenuously urged that in determining whether or not relief should be granted under the Dependents Relief Ordinance no consideration should be given to this matter and that accordingly it should not be taken into account in deciding the application.

Learned counsel for the respondent vigorously contended that the \$30,000.00 received on behalf of Brenda Steiner by the Public Trustee should be taken into account. It was submitted that this fact is very relevant in determining whether or not relief should be granted on this application.

Learned counsel for the applicant cited the following,

inter alia, cases in support of his position:

Re Willan Estate (1951-52), 4 W.W.R. (N.S.) 114;
Re Barclay Estate (1952), 5 W.W.R. (N.S.) 308;
Re Maitland Estate (1953-54), 10 W.W.R. (N.S.) 673;
Re Edwards Estate; Re Family Relief Act (1961-62),
36 W.W.R. 605;
Re Chugg Estate (1965), 51 W.W.R. 666;
Re Allardice v. Allardice (1910), 29 N.Z.L.R. 959
(N.Z.C.A.) affirmed (1911) A.C. 730 and Bosch v.
Perpetual Trustee Co. Ltd. (1938) 2 W.W.R. 320;
Re Lawther Estate (1947), 1 W.W.R. 557.

Learned counsel for the respondent cited the following, inter alia, cases in support of his position:

Rill v. Miller 9 D.L.R. (3d) 211;
Re McMaster Estate 21 W.W.R. (1957) 603;
Nickle v. Jones et al /1974/ 3 W.W.R. 385.

I have carefully reviewed the evidence in connection with this application and in my opinion the deceased failed to make reasonable provision for the maintenance of the infant Brenda Steiner. I am, however, of the opinion that the fact that \$30,000.00 was obtained for the benefit of Brenda Steiner as a result of the efforts of the executors of the estate should be taken into account in determining this matter. It is obvious to me that the amount required for reasonable maintenance of a child will increase as the age of the child increases. Furthermore, it is to be hoped that the infant Brenda Steiner will be encouraged to take further education or further vocational training for use in later life. If adequate funds are available her mother should be able to offer some encouragement in this connection.

Under sections 5 and 6 of the Dependants Relief Ordinance, supra, this court is given a wide power to make the order which it deems proper. In the exercise of that power and taking into account the bequests to the applicant Brenda Steiner as well as the sum of \$30,000.00 which was obtained for her benefit as a result of the efforts of the executors of the estate, I direct the payment of the sum of \$5,000.00 on behalf of the dependant Brenda Steiner as reasonable maintenance for her as contemplated by the Ordinance. I would further direct that such payment be made to the Public Trustee for the Northwest Territories on behalf of the infant applicant. In arriving at this conclusion I have taken into account the fact that in due course the sum of \$30,000.00 will undoubtedly be invested at a reasonable interest rate for the benefit of the infant Brenda Steiner. I would also add that under the circumstances I think the Public Trustee would be quite justified in entertaining an application for additional funds for Mrs. Hazel Steiner to use in the care, education, maintenance and upbringing of her daughter the applicant Brenda Steiner.

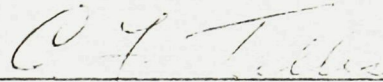
I further direct that the provision for the additional sum of \$5,000.00 on behalf of the dependent Brenda Steiner be charged to the residue of the estate and further order and direct that the costs of the applicant in connection with this application be paid out of the estate and as requested by counsel I am prepared to fix a lump sum inclusive of disbursements. I award the applicant

total costs in the amount of \$1,000.00.

I further direct that the costs of the respondents be paid out of the estate on a solicitor and client basis.

Leave is reserved to counsel to apply to this court for further directions if the same are necessary.

DATED at the City of Yellowknife, in the Northwest Territories, this 12th day of July, A.D. 1978.



C.F. TALLIS
J.S.C.

NO. 819

IN THE SUPREME COURT OF THE NORTHWEST
TERRITORIES

IN THE MATTER OF the Estate of Rudolph
Adolph Steiner, deceased;

AND IN THE MATTER OF the Dependents
Relief Ordinance being Chapter 5 of
The Ordinance of the Northwest Territories
1971, 2nd Session, and amendments thereto

B E T W E E N :

THE PUBLIC TRUSTEE FOR THE NORTHWEST
TERRITORIES as next friend of BRENDA
STEINER, an infant,

Applicant

AND:

ROBERT PORRITT, KEN GAETZ and VERNA
WOZNICA as Executors of the Estate of
Rudolph Adolph Steiner, deceased,

Respondent

REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE C.F. TALLANT

