

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DARCALEE HOPSON

Applicant

- and -

HARRY JAMES HOPSON

Respondent

MEMORANDUM OF JUDGMENT

I hereby refuse confirmation of the Provisional Order made by the Honourable Mr. Justice E.P. MacCallum of the Court of Queen's Bench of Alberta on February 28, 1996. These are my reasons for doing so as required by s.19(12)(c) of the *Divorce Act*.

The material reveals that the order varied by the Provisional Order was an interim order made on December 16, 1991. That interim order terminated upon issuance of a Corollary Relief Order on May 7, 1992 (see attached Appendix "A" to this memorandum). The child support provisions in the interim order and the Corollary Relief Order are identical but the fact is that it was only the interim order that was placed before Mr. Justice MacCallum. It appears that no mention was made, either in the applicant's affidavit or in the submissions of applicant's counsel to Mr. Justice MacCallum, of the existence of the Corollary Relief Order.

I conclude that, since the Provisional Order purports to vary an order that no longer has any force or effect, it was made without jurisdiction.

While this is sufficient to dispose of this application, I cannot leave this matter without expressing my concerns over what appears to me to be significant non-disclosure on the application made in Alberta. Besides not including the Corollary Relief Order, there was no mention made of what the respondent says was a 6 or 7 month period of reconciliation during which the arrears, which are noted in passing in the applicant's affidavit, accumulated. Those arrears have been paid but there may be a credit due to the respondent. The applicant's claims as to child care costs may also be incomplete or outdated based on the respondent's evidence.

For these reasons, I direct counsel for the Minister of Justice of the Northwest Territories to forward to the Clerk of the Court of Queen's Bench in Alberta and to the Attorney-General for Alberta copies of (a) this memorandum and (b) the transcript of the proceedings before me.

Dated this 31st day of July, 1996.

J. Z. Vertes

J.S.C.

To: Rebecca Veinott
Counsel for the Minister of Justice

James R. Posynick
Counsel for the Respondent

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