CV 06886

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LOUISE DELORME

Applicant

- and -

GRANT SPEIRS

Respondent

MEMORANDUM OF JUDGMENT

This is an application for variation of two child support orders. Both orders were made pursuant to maintenance legislation, not the *Divorce Act*, but similar principles apply.

One order was made in 1987 by the Court of Queen's Bench of Alberta. That order directed child support to be paid by the respondent in the sum of $120.00 per month for the child, William, who was born in 1985. The second order, made in 1988 by this court, directed the respondent to pay child support of $300.00 per month for the child, Ernestine, who was born in 1987. The applicant seeks a variation to $750.00 per month per child.

Counsel were prepared to rely solely on the affidavit material filed, without cross–examinations or corroborative evidence on disputed facts. No issue was taken with the proposition that circumstances have changed sufficiently over the years that a variation is warranted. The only issue is quantum.

Applicant's counsel has provided calculations based on the formula mandated by

Levesque v Levesque (1994), 4 R.F.L. (4th) 375 (Alta. C.A.). At current income levels this would require a gross support payment of $1,700.00 per month.

Applicant's counsel, however, has also provided calculations showing the results if the respondent were to pay a gross sum of $1,200.00 per month. This would result, taking into account the tax consequences, in approximately $1,000.00 in after–tax dollars to the applicant. This would cost the respondent, in after–tax dollars, approximately $750.00. This amount is slightly higher than the amount the respondent would be obligated to pay under the federal child–support guidelines expected to become law later this year.

Respondent's counsel suggests that the guidelines figure, which is $725.00 for both children, would be an appropriate amount. In response, applicant's counsel cautions me that the guidelines are not law and therefore I should not bind myself to them. I hasten to point out that the guidelines, technically, would only apply to actions under the *Divorce Act*, although I suspect they will become highly persuasive in actions under other support statutes.

Numerous judgments have held that, while the guidelines are not yet to be applied as law, they do provide a useful standard in determining reasonable support levels and should not be lightly disregarded: see, for example, *Ho v Foget* (1996), 21 R.F.L. (4th) 60 (N.B.C.A.), and *Wright v Wright* (1996), 21 R.F.L. (4th) 201 (Sask. C.A.).

The difficulty I have in this case is that, while the guidelines, once implemented,

would bear no tax consequences, the current regime does impose both tax liabilities (for the recipient) and tax benefits (for the payor). There has to be an adjustment for these consequences. Once the new regime takes effect the amount can revert to the actual guidelines figure.

Taking all of these circumstances into account, and recognizing that the estimated tax consequences to the applicant are not capable of detailed calculation because of her present financial status, as well as considering some of the special circumstances in the respondent's situation, I have concluded that a reasonable amount of support would be the gross sum of $1,000.00 per month. The two orders will therefore be varied so that each provides for support of $500.00 per month for the respective child. The variation will be effective as of April 1st, 1997.

The applicant seeks costs. Considering the financial circumstances of both parties, an award of costs would only detrimentally affect the respondent's ability to pay the support. In addition these proceedings were simplified greatly by the respondent's concession that variation was warranted. Therefore there will be no order as to costs.

Dated this 17th day of March, 1997.

J. Z. Vertes
J.S.C.

To: Elaine Keenan Bengts,
Counsel for the Applicant

Steve T. Eichler,
Counsel for the Respondent

CV 06886

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LOUISE DELORME

Applicant

- and -

GRANT SPEIRS

Respondent

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