

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DOUGLAS ROMAN BRUCE SEATON THOMPSON

Applicant

- and -

LUCIE ANN CAROLINE MERILISS THOMPSON

Respondent

MEMORANDUM OF JUDGMENT

[1] The applicant seeks (a) an order varying the support provisions contained in a *Decree Nisi* issued by the Supreme Court of the Yukon Territory in 1982; and (b) rescission of all arrears accumulated pursuant to those provisions. The applicant now resides in Yellowknife. The respondent was served with notice of this application in British Columbia but she has not responded either by counsel or in person. The hearing of this application was thus on an *ex parte* basis.

[2] With respect to spousal support, the applicant has presented evidence showing various agreements between himself and the respondent which result in no liability for spousal support arrears. With respect to child support, the evidence presented shows that the child, who is now 19 years old (and thus no longer technically a “child of the marriage” as that term is defined in the *Divorce Act*), has been independent since 1994. There is also evidence as to arrangements made between the parties over the years to accommodate their changing circumstances. There is also an unexplained span of many years preceding enforcement of the arrears. This does not preclude a claim for the arrears. It is merely a factor in assessing the applicant’s evidence as to the agreements made over the years with the respondent. The applicant says he was advised of the claim in June, 1997.

[3] Based on the evidence presented to me, undisputed as it is at this point, I conclude that the relief requested should be granted. This is not a situation of the payor simply not paying the amount ordered when he should have. Here the evidence indicates a series of mutually

acceptable arrangements over many years with respect to the amount of support payable. The evidence presented supports the conclusion that all such support obligations have been satisfied. Therefore, the arrears are hereby cancelled in their entirety.

[4] Furthermore, the evidence reveals material changes of circumstance in the lives of the parties and the child since the *Decree Nisi* was issued. I therefore also order the variation of the *Decree Nisi* by deleting the spousal and child support provisions.

[5] The applicant's counsel submitted that I can issue a "final" order. Upon further consideration I have concluded that I can only issue a "provisional" order. This is due to the combined effect of sections 17.1 and 18(2) of the *Divorce Act*. Where the respondent in an application to vary support is resident in another jurisdiction, an order can only be provisional unless the respondent accepts the jurisdiction of this court or both parties agree to proceed under s. 17.1. Neither situation is present here.

[6] I think, however, in light of the fact that this is a provisional order only, it would be prudent to also order a stay of all enforcement proceedings until the order is confirmed or otherwise in the British Columbia courts.

[7] I direct the Clerk of the Court to forward a copy of this Memorandum, together with the other documents stipulated by s.18(3) of the *Divorce Act* and in accordance with Rule 29(2) of the N.W.T. Divorce Rules, to the Deputy Minister of Justice for the Northwest Territories as the representative of the "Attorney General" (as that term is used in s.18 of the *Divorce Act*). The Act stipulates the steps the Attorney General must then take. Counsel for the applicant is, of course, responsible for preparing and filing the formal provisional order.

[8] Dated this 20th day of January, 1998

J. Z. Vertes
J.S.C.

To: Jill A. Murray,
Counsel for the Applicant

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN:

DOUGLAS ROMAN BRUCE SEATON THOMPSON

Applicant

- and -

LUCIE ANN CAROLINE MERILISS THOMPSON

Respondent

MEMORANDUM OF JUDGMENT OF THE
HONOURABLE J. Z. VERTES
