Date: 1999 07 02
Docket: No. 6101-02512

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CHRISTINE MARY TANNER

Petitioner

-and-

LARRY ALAN SIMPSON

Respondent

REASONS FOR JUDGMENT

[1] The trial of this divorce action was held before me in March of 1997. The issues tried were child custody and support with respect to the parties' two sons and matrimonial property.

[2] At the time of trial, the federal *Child Support Guidelines* under the *Divorce Act* had not yet come into effect. Counsel addressed their submissions to both the then governing law on child support and the prospective *Guidelines*. In my decision, rendered on May 9, 1997, after the *Guidelines* had come into effect, I ordered that the Respondent pay child support to the Petitioner in the *Guidelines* amount for their two sons who live with her. Based on the Respondent's income of $72,750.00 at the time of trial, that amount was $1008.00 per month with the exception that I ordered he not pay anything during any month in which he has access for four consecutive weeks.

[3] An appeal was taken from the judgment rendered after trial and in the result, the Court of Appeal directed that the issue of child support be addressed by way of a variation application in this Court.

[4] Both counsel agree that I can reconsider the order I made at trial in light of the fact that a number of issues which arise from the application of the *Child Support Guidelines* were not argued or dealt with at trial. It also became clear during the hearing of this

application that there have been some changes to the parties' financial positions since the trial.

[5] The Respondent's application is for a reduction in the amount of support retroactive to the date of the trial judgment. He argues that this is really a situation of split custody and therefore the calculation of child support should be as set out in s. 8 of the *Guidelines*. Alternatively, he argues that payment of the amount calculated under the *Guidelines* would result in undue hardship to him by reason of three factors: an unusually high level of debt, access costs and his responsibility for the support of his daughter from a prior relationship.

The income of the parties

[6] The Petitioner is employed with the Workers' Compensation Board of the Northwest Territories. At the time of trial, her yearly employment income was $86,700.00. She had total income in 1998 of $93,000.00 and in 1999 for a one year term acting position will earn $102,000.00 plus $3700.00 as a school board trustee for a total of $105,700.00 for *Guidelines* purposes .

[7] The Respondent is now employed with the Government of Nunavut. His salary is $72,637.59 per year, inclusive of a taxable Northern Allowance. He also receives rental income of approximately $7000.00 per year. Accordingly, his income for *Guidelines* purposes is $79,637.59 per year. The *Guidelines* amount payable at that level for two children is $1091.00 per month.

The split custody argument

[8] Section 8 of the *Guidelines* provides:

> 8. Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

[9] Section 2(1) of the *Guidelines* defines "child" as a child of the marriage. That in turn leads to the definition of child of the marriage found in the *Divorce Act*:

> 2(1) "child of the marriage" means a child of two spouses or former spouses who, at the material time,

> (a) is under the age of majority and who has not withdrawn from their charge, or
>
> (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;
>
> 2(2) For the purposes of the definition "child of the marriage" in subsection (1), a child of two spouses or former spouses includes
>
> (a) any child for whom they both stand in the place of parents; and
>
> (b) any child of whom one is the parent and for whom the other stands in the place of a parent.

[10] The evidence at trial was that the parties lived together in a common-law relationship for approximately two years before marrying in 1989. They separated in 1993. Their sons, Michael and Mark, were born in 1990 and 1991. While the parties were together, Jean, the Respondent's daughter from an earlier relationship, lived with them. She will be 19 years of age in December of this year. Jean has always lived with the Respondent and still does. Her biological mother lives in another community and sees little of her, although they are in contact. The Respondent has never sought child support from the biological mother, whose ability to pay is unknown.

[11] Therefore, this can be a situation of split custody only if Jean comes within the definition of child of the marriage. That requires a finding that the Petitioner stands in the place of a parent to Jean and that Jean is unable to withdraw from the charge of her parents or to obtain the necessaries of life.

[12] In the Petition for Divorce, the Petitioner referred to Jean as a child of the marriage and sought access to her according to Jean's wishes.

[13] The Respondent, in his Answer and Counter-Petition, agreed with the access sought. The Respondent proposed joint custody of Jean with primary care and control to remain with him. He did not ask that the Petitioner pay child support for Jean but submitted that his sole financial responsibility for Jean be considered when determining the quantum of support for the children living with the Petitioner.

[14] When this matter came on for trial, the claims with respect to Jean were effectively abandoned. I was not asked to make any order for custody, access or support relating

to Jean. The Respondent did argue that his responsibility to support Jean should be taken into account in determining his other child support obligations. Although Jean testified at trial, her evidence went mostly to the relationship between her father and her brothers as well as her own relationship with her brothers, all of which was relevant to the Respondent's ultimately unsuccessful claim that the boys should live alternately one year with him and one with the Petitioner.

[15] The term "child of the marriage" was recently considered by the Supreme Court of Canada in *Chartier v. Chartier*, [1998] S.C.J. No. 79. Bastarache J., speaking for the Court, held that although the Court must address the needs of the child as of the date of the hearing or order, the existence of the parental relationship under s. 2(2)(b) of the *Divorce Act* must be determined as of the time the family functioned as a unit.

[16] With respect to the proper test for determining whether a person stands in the place of a parent, the Court said:

> Whether a person stands in the place of a parent must take into account all factors relevant to that determination, viewed objectively. What must be determined is the nature of the relationship. The Divorce Act makes no mention of formal expressions of intent. The focus on voluntariness and intention in Carignan, supra, [*Carignan v. Carignan* (1989), 61 Man. R. (2d) 66 (C.A.)] was dependent on the common law approach discussed earlier. It was wrong. The Court must determine the nature of the relationship by looking at a number of factors, among which is intention. Intention will not only be expressed formally. The court must also infer intention from actions, and take into consideration that even expressed intentions may sometimes change. The actual fact of forming a new family is a key factor in drawing an inference that the step-parent treats the child as a member of his or her family, i.e., a child of the marriage. The relevant factors in defining the parental relationship include, but are not limited to, whether the child participates in the extended family in the same way as would a biological child; whether the person provides financially for the child (depending on ability to pay); whether the person disciplines the child as a parent; whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child; the nature or existence of the child's relationship with the absent biological parent. The manifestation of the intention of the step-parent cannot be qualified as to duration, or be otherwise made conditional or qualified, even if this intention is manifested expressly. ...
>
> Nevertheless, not every adult-child relationship will be determined to be one where the adult stands in the place of a parent. Every case must be determined on its own facts and it must be established from the evidence that the adult acted so as to stand in the place of a parent to the child.

[17] In support of his position that Jean is a child of the marriage, the Respondent points to the fact that the Petitioner described her as such in her pleadings. He argues that there was a family relationship over the six years of cohabitation and marriage and that there was nothing unusual in the evidence at trial that would negate a parent-child relationship between Jean and the Petitioner. He has not, however, made an application for support for Jean from the Petitioner, nor for an order for custody. He takes the position that under the pre-*Guidelines* law it was not necessary for him to seek support for Jean from the Petitioner as his responsibility for her could be taken into account in determining his child support obligations for the boys. While that may be so, the wording of s.8 of the *Guidelines* suggests that a parent invoking split custody should be seeking support for the child in his or her care from the other parent.

[18] The Petitioner argues that the evidence at the trial and not the pleadings should determine whether Jean is a child of the marriage. She takes the position that she never acted as a parent to Jean while the parties lived together and that this was not an issue at trial because by then any relationship she did have with Jean had been mutually abandoned.

[19] Since it is the Respondent who submits that the Petitioner should be considered to stand in the place of a parent to Jean and be responsible for her support, he bears the onus of proving that Jean is a child of the marriage: *Nishnik v. Smith* (1998), 39 R.F.L. (4th) 105 (Sask. Q.B.).

[20] I have reviewed the evidence at trial and it is simply insufficient to enable me to come to a conclusion as to whether the Petitioner acted as a parent to Jean, taking into consideration the factors set out by the Supreme Court in *Chartier*. There was virtually no evidence about the relationship between the Petitioner and Jean or the role played by the Petitioner in relation to Jean. This is understandable since there were no claims relating to custody of or support for Jean at the time of the trial. But the Respondent's affidavit filed on this application does not provide enough information either, bearing in mind that the onus is on him.

[21] The Respondent points to the Petition, in which the Petitioner referred to Jean as a child of the marriage. However that reference was made in the context of asking for access to Jean and was qualified by saying that any access should be in accordance with Jean's wishes. In any event, the claim for access was abandoned by the time the case got to trial and there was no adjudication on it.

[22] In my view, whether a child is a child of the marriage within the meaning of the *Divorce Act* is a conclusion of law rather than a fact which can be admitted. Even if the reference in the Petition could be construed as an admission for purposes of child support issues, it is not of assistance without a factual basis against which to assess it.

[23] For the foregoing reasons, I am not satisfied that the Respondent has met the onus of showing that the Petitioner has stood in the place of a parent to Jean and that Jean is a child of the marriage. It follows that I am not satisfied that s. 8 of the *Guidelines* applies to invoke the split custody calculation of child support.

Undue hardship application

[24] The Respondent pleads that payment of the *Guidelines* amount will cause him undue hardship. Section 10(1) to (4) of the *Guidelines* provides as follows in that regard:

> 10.(1) On either spouse's application, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.
>
> (2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:
>
> (a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;
>
> (b) the spouse has unusually high expenses in relation to exercising access to a child;
>
> (c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;
>
> (d) the spouse has a legal duty to support a child, other than a child of the marriage, who is
>
> (i) under the age of majority, or
>
> (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessaries of life; and

> (e) the spouse has a legal duty to support any person who is unable to obtain the necessaries of life due to an illness or disability.
>
> (3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the spouse who claims undue hardship would, after determining the amount of child support under any of sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other spouse.
>
> (4) In comparing standards of living for the purpose of subsection (3), the court may use the comparison of household standards of living test set out in Schedule II.

[25] A number of cases have referred to the fact that a claim of undue hardship involves a two step process. The first step is that undue hardship must be found to exist. If it is found to exist, the court goes on to a comparison of the standard of living in the households of the parties: *Jackson v. Holloway*, [1997] S.J. No. 691 (Q.L.) (Sask. Q.B.).

[26] The Respondent relies on subsections (a), (b) and (d) of s. 10(2).

S. 10(2)(a) - responsibility for an unusually high level of debt

[27] Section 10(2)(a) provides that circumstances that may cause a spouse or child to suffer undue hardship include a spouse having responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living.

[28] In *Jackson v. Holloway*, McIntyre J. observed the following about s. 10(2)(a):

> While s. 10(2)(a) refers to responsibility for an unusually high level of debts there are three conditions which must be satisfied: (1) an unusually high level of debt; (2) reasonably incurred; (3) either to support the spouses and their children prior to separation or to earn a living. It is an accepted principal that payment of child support must take priority over payment of debt. It is presumably for this reason that debt as a basis to deviate from the guidelines has been circumscribed in the way in which it has. It is restricted to circumstances in which the family unit, having enjoyed a benefit in the past as a result of debt incurred, may have to in some manner share in the present burden of that debt. Alternatively the debt enables the payer to presently earn a living from which the child support can be paid.

[29] The Respondent claims that he has been responsible for an unusually high level of debt as a result of the Respondent not paying her share on a joint line of credit the parties maintained.

[30] The joint line of credit was dealt with at trial as an aspect of matrimonial property. The evidence was that after the first year of their marriage, the parties took out a $120,000.00 line of credit, secured by a mortgage against the family home. The line of credit was used by both parties for various business and personal matters. Each paid the principal he or she had borrowed against the line of credit and interest was apportioned accordingly.

[31] The parties separated in July of 1993. The Petitioner did not pay her share of the principal owing ($37,000.00) until November of 1996. She did not pay her share of the interest owing at that time but conceded at trial that she was responsible for it and that judgment should issue against her in the amount of approximately $8100.00. She has now paid off that judgment.

[32] The Respondent says that as a result of the Petitioner's failure to pay her portion of the debt in a timely fashion, he was left servicing a monthly debt of approximately $700.00, which went to interest only and not reduction of the principal. He states that his debt load increased from something less than $50,000.00 at the time of separation to approximately $80,000.00 at the time of trial, to close to $150,000.00 at the time he swore his affidavit in February of 1999. He says that much of this debt relates specifically to the fact that the Petitioner refused to pay her portion of the debt for three years after separation and that this had an impact on his and Jean's lifestyle that has compounded itself. The only details he gives are references to having sold his vehicle and other assets and having had to refinance his mortgage in order to pay out the line of credit and legal costs relating to the trial of this matter. It is not clear to me whether the refinancing was for purposes of retiring his portion of the line of credit only or for the portion also owed by the Petitioner.

[33] The legal costs of the trial do not fall within s. 10(2)(a). The Petitioner has repaid what she owed on the line of credit. The Respondent has also repaid what he owed on the line of credit. The debts he currently owes were not incurred prior to the separation, nor were they incurred to earn a living. They do not come within s. 10(2)(a).

[34] I am not satisfied on the evidence that the Respondent's debt load is the result of the Petitioner's failure to pay her share of the debt at an earlier date rather than his own financial choices and decisions made after the separation.

[35] In addition, the fact that the Respondent was responsible for interest on the line of credit until the Petitioner paid her share should not affect the child support he must pay because the line of credit was part of the matrimonial property claim. Any extra interest or charges attributable to the Petitioner's failure to make her share of the payments earlier than she did were properly part of that claim.

S.10(2)(b) - unusually high access expenses

[36] The Respondent also relies for his undue hardship application on the cost of exercising access between Iqaluit, where he lives, and Yellowknife, where his sons live.

[37] Section 10(2)(b) requires that the party claiming undue hardship have unusually high expenses in relation to access.

[38] The Respondent has found ways to reduce what would otherwise be the cost of air travel between Iqaluit and Yellowknife specifically for the purpose of access. His expenses for 1996 show that in that year, his sons' travel cost him $1440.00 (12 x $120.00) at special airline rates for two trips. In his affidavit filed on this application, he estimates a minimum of $2000.00 per year for two access visits per year, assuming excursion fares or use of points provided by family members at reduced cost.

[39] As has been noted in other cases, the legislators in drafting the *Guidelines* must have contemplated that significant expenses usually are incurred in the exercise of access after marriage breakdown. The legislation requires that access expenses be more than just high to provide a basis for a claim of undue hardship. They must be unusually high: *Williams v. Williams*, [1997] N.W.T.R. 303 (S.C.).

[40] As I noted in *McCarthy v. McCarthy*, [1997] N.W.T.J. No. 69, many parents, whether resident or non-resident in the Northwest Territories, incur substantial expenses to exercise access to their children living in the Northwest Territories. The access expenses in this case are less than those at issue in the *McCarthy* case. As in that case, I see no basis upon which to find that the Respondent's access expenses are unusually high.

[41] I think it is also appropriate to consider that the Respondent has annual income of $79,637.59. At that income, access costs of $2000.00 per year cannot be said to be unusually high.

S. 10(2)(d) - legal duty to support a child

[42] The Respondent submits that if Jean is found not to be a child of the marriage, then I should consider his application based on undue hardship under s. 10(2)(d) of the *Guidelines*: that he has a legal duty to support a child, other than a child of the marriage, who is either under the age of majority or of the age of majority but is unable, by reason of illness, disability or other cause, to obtain the necessaries of life.

[43] At the time of trial, Jean was 16 years old; she will be 19 and will therefore reach the age of majority in December of this year. Jean is presently attending Arctic College in her first year of a two year program in environmental technology. She intends to continue on to university after completion of that program. The Respondent has never received support from Jean's biological mother and his counsel submitted that he would likely be unsuccessful should he attempt to do so in light of the mother's circumstances.

[44] Counsel for the Petitioner argued that I should take into account that the Respondent has not sought support from Jean's biological mother and that the Respondent has the onus of doing so. In my view, however, whether the Respondent could or could not obtain a support order against the biological mother is irrelevant, at least for purposes of this aspect of the hardship application. The question is whether the Respondent has the legal duty to support Jean and whether that circumstance would cause him to suffer undue hardship if he has to pay what would otherwise be the *Guidelines* amount for his two sons. In this case, while Jean is under the age of majority, the Respondent does have the legal duty to support her so the only issue is undue hardship.

[45] Jean has some income of her own. She receives tax-free student financial assistance of $600.00 per month for those months in which she attends school. The Respondent says that the $600.00 per month is spent by Jean on various expenses for school and clothing but that he is responsible for some of those expenses as well as the cost of her food and shelter. The Respondent acknowledges that Jean will have access to student financial assistance for her university education.

[46] Jean also works part-time and the Respondent's income tax information indicates that he has declared her income ranging from $2100.00 to $4400.00 per year for the years 1995 to 1997. He has not provided any information for 1998 nor in response to the Petitioner's statement that Jean has recently told her that she is working at three different part-time jobs while attending school. Presumably some of the expenses that

are not covered by the financial assistance Jean receives for school can be covered by her employment income.

[47] At the time of the trial, Jean was attending high school. I took into account in my judgment of May 9, 1997 that the Respondent had the responsibility of supporting her but found that there was no reason to depart to any significant degree from the *Guidelines* amount payable for the two sons. Without reference to s. 10, I ordered that no support would be payable for any month in which the Respondent had access for four consecutive weeks. I understand from counsel that this has effectively meant that the Respondent has paid support for eleven months of the year.

[48] Since then, a number of cases have noted that the fact that a payer spouse supports more than one family is not uncommon and that although that circumstance may result in a certain degree of economic hardship, that hardship is not necessarily "undue": *Messier v. Baines*, [1997] S.J. No. 627 (Q.L.) (Sask. Q.B.); *Hansvall v. Hansvall*, [1997] S.J. No. 782 (Q.L.) (Sask. Q.B.); *Camirand v. Beaulne*, [1998] O.J. No. 2163 (Q.L.)(Ont. Gen.Div.).

[49] In determining whether the Respondent's obligation to support Jean results in undue hardship in this case should he have to pay the *Guidelines* amount for his sons, I take into account the following:

(a) the Respondent earns a substantial yearly income, $79,637.59. Even if he pays $1091.00 per month under the *Guidelines* for his two sons, and $2000.00 per year is deducted for access costs, that still leaves him with a reasonable income upon which to support himself and Jean;

(b) Jean's education costs are now and will in the future be largely covered by the financial assistance she receives for that purpose. Such assistance is properly taken into account in deciding whether an adult child comes within the definition of "child of the marriage" and whether a parent has the legal obligation to contribute to the support of such child: *Bradley v. Zaba* (1996), 18 R.F.L. (4th) 1 (Sask. C.A.). In the meantime, while Jean is under the age of majority, it is appropriate to take into account the availability to her of financial assistance in assessing the claim of undue hardship;

(c) Jean also has the means of contributing to her own support through her part-time employment;

(d) there is no objective evidence that the Respondent and Jean are suffering any hardship. It appears from the affidavit of the Petitioner that Jean was able to pay the cost to stay for a week in a hotel in Yellowknife when visiting last year. The Petitioner says that Jean has accompanied the Respondent on trips to China, Montreal and Newfoundland since the trial in March of 1997 and that while the Respondent's travel costs may have been paid by his employer, Jean's would not have been. The Respondent did not refute this evidence;

(e) the Respondent says that he has had to sell some assets, particularly his vehicle. However, when considered with the fact that his salary has increased since the trial and the lack of evidence that his lifestyle has otherwise been adversely affected, the sale of those assets does not, in my view, mean that he is suffering undue hardship.

[50] On this issue, the Respondent submits that I should consider that the cost of living is higher in Iqaluit than in Yellowknife, where the Petitioner lives. He refers to the cost of renting an apartment, although I agree with counsel for the Petitioner that is irrelevant in his case in any event since he owns his home. He has submitted data to show that the cost of food is substantially higher in Iqaluit than in Yellowknife. That data also shows that Iqaluit is not the only place in the Northwest Territories where the cost of food is higher than in Yellowknife.

[51] To accept the argument that undue hardship can result from differences in the cost of living as between communities may well fly in the face of the objectives of the *Guidelines*, as set out in s. 1:

> 1. The objectives of these Guidelines are
>
> (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
>
> (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
>
> (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and

> (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[52] Because each province and territory was allocated its own *Guidelines* amounts when the legislation came into effect, I assume that some thought was given to what differences there should be in the amounts as between the various provinces and territories of Canada. To adjust for differences in the cost of living within a province or territory could, especially in the Northwest Territories, make the *Guidelines* almost meaningless. It would not ensure consistent treatment of spouses and children who are in similar circumstances. It would not make the calculation of child support orders more objective. For that reason, while recognizing that the list of circumstances in s. 10(2) which may cause undue hardship is not exhaustive, I think caution should be used in accepting the cost of living as a factor that might cause undue hardship. In any event, I do not view it as such in this case in light of the Respondent's income.

[53] Considering all the circumstances, I find that the Respondent has not shown that payment of the *Guidelines* amount would cause him undue hardship either by reason of his responsibility for Jean's support or for any of the other reasons he has put forth. I need not, therefore, go on to the comparison of standards of living test in s. 10(4).

[54] I should add that I have considered whether there is any merit to the hardship application based on the Respondent's responsibility to support Jean for the period of time from the trial decision to when Jean would have completed high school. There is no evidence of any financial assistance being available to Jean at that time. There is some evidence, to which I have referred, of her having income from part-time employment. Taking into account the Respondent's income and all of the evidence, I find there is no evidence of undue hardship for that period of time.

[55] The undue hardship application is therefore dismissed. Based on his income of $79,637.59, I order that the Respondent pay child support in the amount of $1091.00 per month for his two sons. That amount will be payable commencing July 1, 1999. As undue hardship has not been shown, the exception I made in the judgment rendered May 9, 1997 for the month the boys spend with the Respondent is not available under the *Guidelines*. For the same reason, that part of the judgment which applies to child support for the period May 1, 1997 to June 30, 1999 is varied so that the support is payable for all months and there is no exception for months in which the Respondent had access for four consecutive weeks.

[56] Although it is not necessary for purposes of this judgment, there is another issue that warrants comment for future reference. The Petitioner objected to producing any information about the income of her common-law spouse. This may have been the result of a misunderstanding as to the purpose for which that information was sought by the Respondent. The information is, of course, relevant to the standard of living comparison should the Court use the test in s. 10(4) after having determined that undue hardship exists. If the information is not produced at the first instance, then an application for child support where undue hardship is invoked may simply be adjourned pending the receipt of that information once the Court has made a finding of undue hardship. This may result in delay which would not have been necessary had the information been produced in the first place.

[57] If the Court finds that undue hardship is established, and the income information of members of the parties' households is not provided, then s. 2 of Schedule II of the *Guidelines* provides that the Court may impute income in the amount it considers appropriate. It may be as well that the Court will order a third party to disclose the information. It has been held that in providing for the disclosure of third party information for purposes of the s. 10(4) test, the state has made the child's interests paramount over the individual's rights to privacy: *Souliere v. Leclair* (1998), 38 R.F.L. (4th) 68 (Ont. Gen. Div.).

[58] As I have said, my ruling in this case makes it unnecessary that I consider the household income of the Petitioner. However, had I ruled that the Respondent had been successful in establishing undue hardship, the information as to the income of anyone else in her household would clearly have been relevant.

Access

[59] The Respondent also submitted that the order I made as to access in May of 1997 be varied so that he has either Christmas or spring break access during each school year. I would have thought that was something the parties could agree on, since my judgment after trial did not specify when those periods of access were to take place, but only that they would be alternating. In any event, counsel for the Petitioner did not object to the Respondent's proposal that he have access for spring break in the year 2000 and then alternate Christmas and spring break access each school year. I therefore make that order.

Costs

[60] Because this application arose as a result of the *Guidelines* coming into effect between trial and judgment, I order that the parties bear their own costs. This does not affect the costs judgment given after the trial.

V.A. Schuler
J.S.C.

Dated at Yellowknife, Northwest Territories
this 2nd day of July, 1999

Counsel for the Petitioner: James D. Brydon

Counsel for the Respondent: Sheila M. MacPherson