

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application pursuant to s.17(1) of the *Divorce Act, 1985* to vary the terms of the Divorce Judgment issued by the Court of Queen's Bench of Alberta, Judicial District of Medicine Hat, on March 29th 1995

BETWEEN:

MARIE LOUISE SUZANNE ROBERTSON

Applicant

- and -

**DARREN ROBERTSON, also known as
DARREN JOHN ROBERTSON**

Respondent

MEMORANDUM OF JUDGMENT

The applicant seeks to vary the terms of the divorce judgment respecting custody of the two children of the marriage. The divorce judgment issued out of the Court of Queen's Bench of Alberta provided that the respondent will have sole custody of the children. It further provided that the applicant herein was "to have reasonable access with supervision as may be required from time to time by the Director of Child Welfare or agent of the Director". Both parties are now in this jurisdiction. The children are with the respondent. There is no child welfare supervision. There has been no access.

When counsel appeared before me in chambers on February 12, 1996, I directed that they provide me with a proposal for supervised access. They could do so

either jointly or separately, but their submissions were to be filed by February 29th. I have received a submission on behalf of the respondent. Nothing has been filed on behalf of the applicant.

I sought proposals because, in my view, having regard to the long term interests of the children, I thought that one should at least see if some type of steady relationship could be re-established between the applicant and the children. It would be impossible to assess the merits of this variation application in the absence of some evidence as to the interaction of the parties and the children. This is irrespective of the substantive threshold issue of whether there has been a change in circumstances.

There is some controversy over the question of whether interim orders can be made on variation applications. This is discussed, for example, in chapter 17:1.07 of T.W. Hainsworth, *Divorce Act Manual* (1996 update). Without deciding that question, I conclude that I am able to direct a temporary access arrangement since the judgment does contemplate access. At this point I am only addressing the terms of that access.

Having reviewed the proposal submitted on behalf of the respondent and the other material filed to date, I make an interim order with the following directions:

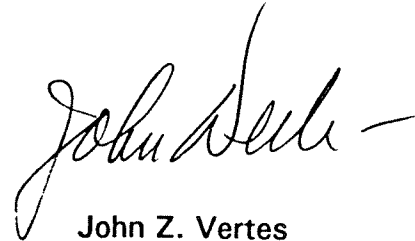
1. The applicant will have supervised access to the children, starting March 16, 1996, for a period of three (3) hours each Saturday sometime mutually agreeable to the parties between 10.00 a.m. and 4.00 p.m.
2. The access will take place on the premises and surrounding grounds of the Anglican Church in Hay River, provided that the church authorities agree.

Failing that, the access will take place on the premises and surrounding grounds of the Hay River Women's Centre.

3. The access will be supervised by either Reverend Scofield of the Anglican Church or by a social worker mutually acceptable to the parties. Prior to the commencement of the access visits, the supervisor is to confirm in writing to counsel for both parties their willingness to serve and their undertaking that, in the event of any difficulties, they will immediately communicate such difficulties in writing to both counsel. The supervisor is also to acknowledge to both counsel his or her agreement to provide a report to this court if requested by the court to do so. The supervisor is to be introduced to the children by the respondent well in advance of the first access visit. If there are problems encountered during the course of any access visit, the supervisor will have absolute power to terminate that visit.
4. The respondent will deliver the children to the place of the access visit prior to the applicant's arrival and will pick them up after the applicant's departure.
5. The costs associated with access, if any, and including any fees charged by the supervisor, will be paid by the applicant.
6. This matter will be placed on the chambers list for June 3, 1996, at 10.00 a.m., at which time the question of continued access and other related matters can be addressed.

If further directions are required, or a modification to this arrangement becomes necessary, counsel may see me in chambers.

Dated this 1st day of March, 1996.

A handwritten signature in cursive script, appearing to read "John Vertes", followed by a horizontal line.

John Z. Vertes
J.S.C.

Counsel for the Applicant: Elaine Keenan Bengts

Counsel for the Respondent: James D. Brydon

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HONOURABLE MR. JUSTICE J.Z. VERTES**

