

CV 04781

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of the *Domestic Relations Act*, R.S.N.W.T.
1988 c.D-8 as amended;

AND IN THE MATTER of the *Judicature Act*, R.S.N.W.T.
2988 c.J-1, as amended.

BETWEEN:

CATHERINE ANGUTTITAUROQ

Applicant

- and -

NICK KAMEEMALIK

Respondent

MEMORANDUM OF JUDGMENT

On July 15, 1993, the applicant brought proceedings seeking legal custody of her child, a girl born in 1987. She also sought monthly support of \$450.00 from the respondent, the child's father.

On September 13, 1993, an order was issued by this court granting the relief sought by the applicant. The respondent did not appear at the hearing either in person or by counsel. Leave was expressly reserved for the respondent to apply to set aside the order. The formal order was served on the respondent on October 7, 1993.

On January 25, 1996, the respondent filed an application to set aside the order on the basis that he is not the father of the child. This position has since been abandoned. He did, however, seek alternative relief: variation of the quantum of support; cancellation of accumulated arrears; and, a stay of enforcement of the existing support order. Although this matter has been in Chambers on several occasions since then, the original applicant, the mother, has not appeared. She was given notice in various ways. On May 6, 1996, an order was issued temporarily suspending the enforcement of the respondent's support obligations.

At the hearing before me on June 3, 1996, I had the benefit of information provided by Ms. Terry Hawkins, the Maintenance Enforcement Officer. I thank her for her assistance in this matter.

After the original support order was made, the payments fell into arrears. The respondent's salary was garnisheed. For the past year or so he has been in an apprenticeship programme receiving government wage subsidies. Through some error on the part of the government, his entire wages have been transmitted to the maintenance enforcement office pursuant to their garnishee. Ms. Hawkins confirmed that the government should have exempted the sum of \$380.00 per month at least from the garnisheed amount pursuant to the relevant legislation. This was not done. The result is that the respondent went into even greater debt to support himself and his new family. However, as also confirmed by Ms. Hawkins the result is that all support arrears have

now been paid off. As of today's date, the respondent is current in his support obligations.

Respondent's counsel characterized this situation as one of "overpayment". It is true that the government in error remitted more funds than they should have to the maintenance enforcement office. But it is not, strictly speaking, an "overpayment". The respondent did not receive the benefit of the statutory exemptions but he did have a liability to satisfy. He did not "overpay" on his support payments. In fact he is exactly where he should be — paid up to date.

Respondent's counsel submits that there should be a retroactive variation of the quantum so as to alleviate the financial hardship suffered by her client due to the overzealous garnishment of his wages. The variation can be then used to off-set future obligations. The difficulty with this argument is two-fold.

First, why should the child and her mother suffer now and in the future because of the errors of the government? Presumably there is still a need for support.

Second, even if we assume that under the *Domestic Relations Act* one could retroactively vary support payments (a highly dubious assumption in my view), there is no evidence to justify a variation in the past. Nor is this a situation of present inability to pay arrears since there are no arrears in fact. Furthermore, the respondent took no

steps in the over two years since the support order was made to vary its terms. He should not now seek to do something retroactively that he could and should have done at the time.

The essential issue at the present is the quantum of on-going support. Unfortunately there is inadequate information as to the parties' current financial circumstances so as to determine if a variation is warranted.

I therefore order as follows:

1. The respondent Kameemalik will file and serve a motion for variation of the quantum of child support returnable in regular Chambers.
2. The motion and supporting affidavit material (including up-to-date financial information) will be served on the applicant Anguttitauruq with at least 10 days' notice. She can then file material in response.
3. The stay of enforcement proceedings is lifted. This is done on two premises:
 - (a) the expectation that the respondent will keep making his support payments until his motion is adjudicated; and,
 - (b) if there are any future garnishments, the Maintenance Enforcement Officer will ensure that only the appropriate amounts are diverted and paid out.

In all other respects, the respondent's application is dismissed. There will be no costs.

Dated this 5th day of June, 1996.

A handwritten signature in cursive script, appearing to read "John Vertes", with a horizontal line extending to the right.

J. Z. Vertes
J.S.C.

To: Ms. D.R. Peters (articling student),
On behalf of the Respondent

Ms. Terry Hawkins,
Maintenance Enforcement Officer

Ms. Catherine Anguttitauruq,
25 Taylor Road,
Yellowknife, NT X1A 2L2

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

