

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KEITH SCOTT

Applicant

- and -

DARLENE SIBBESTON

Respondent

MEMORANDUM OF JUDGMENT

[1] The decision I am called upon to make in this case is whether Daniel Kaine Scott, a little boy born on July 27, 1994, should live with his father in Hay River or his mother in Fort Simpson. Pursuant to an order made in August of 1997, Daniel has spent alternating four month periods with each parent. He has now started school and his parents agree that the alternating four month regime is no longer appropriate. They do not agree on what would be appropriate for the next few years.

Background

Daniel's parents, Keith Scott and Darlene Sibbeston, lived together in a common-law relationship for approximately two years prior to his birth and separated four months after his birth. On separation, Daniel lived with his mother. Mr. Scott visited every day and would bathe Daniel and get him ready for bed. He would also look after Daniel when Ms. Sibbeston went out. In March of 1995, when Daniel was about eight months old, Ms. Sibbeston asked Mr. Scott to take Daniel as she was having trouble coping with being a single parent. Mr. Scott then had Daniel living with him for approximately three months.

[2] In June of 1995, Ms. Sibbeston told Mr. Scott that she wanted to have Daniel live

with her for stability. Mr. Scott testified that he was concerned about her partying lifestyle but that she said she would change that, and he returned Daniel to live with her. Mr. Scott visited every day and would bathe Daniel and put him to bed. He testified that there were times when Daniel would spend several days at his home, sometimes because Ms. Sibbeston would ask him to take Daniel overnight but would not return or ask for him for three or four days.

[3] In March of 1996, Ms. Sibbeston decided to move to Yellowknife. Although she had a good job in Fort Smith, where the parties then lived, it was a casual position which she testified she was never sure would be renewed because of funding issues. She obtained a term position in Yellowknife with the hope that it might turn into something permanent or that she would be able to find another position there.

[4] Ms. Sibbeston planned to take Daniel with her to Yellowknife, but some weeks before moving, she asked Mr. Scott to keep Daniel with him until she could get settled in Yellowknife. Daniel stayed with Mr. Scott for approximately three months, during which time, according to Mr. Scott's testimony, which was not disputed on this point by Ms. Sibbeston, there was little contact from Ms. Sibbeston. Daniel subsequently went to Yellowknife to live with Ms. Sibbeston but was back and forth several times between Yellowknife and Fort Smith, where Mr. Scott was then living.

[5] In March of 1997, Ms. Sibbeston moved with Daniel to Fort Simpson. Mr. Scott applied to the Court to settle the question of where Daniel would live and this led to the August 1997 order.

[6] Since then, Daniel has been on the four month alternating schedule referred to above. His parents have agreed between them that while Daniel is in one parent's care for four months, the other parent will have access of one week per month. That has sometimes been arranged so that access weeks are back to back, for a two week block of access.

[7] Both parents agree that this regime is no longer appropriate now that Daniel is in school. Both parents feel he needs to be settled with one of them for the time he will be in elementary school. Ms. Sibbeston proposes that Daniel live with her in Fort Simpson

for the next six or seven years. She agrees that when he reaches grade 7 or thereabouts he should attend school in Hay River where the education opportunities are better. Mr. Scott submits that Daniel should live with him in Hay River for the duration of his school years.

Mr. Scott

[8] Mr. Scott is 30 years old and works as a correctional officer at the South Mackenzie Correctional Center. He has been involved with Colleen Ronsko for four years and they have lived together for the past two and a half years. They plan to marry.

[9] Ms. Ronsko's eight-year-old daughter Alisa from a previous marriage is in her custody. She also has an eighteen-year-old son, Jeff, who has just started school in Edmonton. From all accounts, Daniel is very close to Alisa and they have a typical brother-sister relationship. Mr. Scott testified that Jeff, despite the age difference, is very good with Daniel and spends time playing with him and teaching him to use a computer. He described Daniel as idolizing Jeff. Mr. Scott was quite emotional when talking about this and clearly feels that the bond between Daniel and Jeff is a significant one. He gave Daniel's attachment to Jeff and Alisa as one reason why he feels Daniel should live with him.

[10] Mr. Scott does shift work, which allows him to spend time with Daniel during the day. For example, when he is on the afternoon shift, he spends the morning with Daniel and then the family will have lunch together at home before Daniel goes to his afternoon kindergarten class. Mr. Scott's schedule also provides for days off during the week, which allows him to spend time with Daniel at home or at the school.

[11] Ms. Ronsko works a standard work week with a local company. The family eats supper together and participates in a number of extra-curricular activities in the evenings. They take the children swimming or skating and Mr. Scott also takes Daniel and Alisa golfing. Family chores are divided up, with the children having responsibility for their pets and to tidy their bedrooms and pick up after themselves. The functions and activities the adults and children engage in are mostly family-oriented.

[12] Ms. Ronsko testified that Mr. Scott takes an active interest in what the children do and is very patient with them.

[13] Both Ms. Ronsko and Mr. Scott testified that Daniel is very much aware that Ms. Sibbeston is his mother and Ms. Ronsko his step-mother. He occasionally asks questions about his two mothers, which they answer. Ms. Ronsko testified that although she was introduced to him as Colleen, he now calls her Mommy or Mom, which is also what he calls Ms. Sibbeston when he is talking about her. Sometimes he will refer to Ms. Sibbeston as his “other” Mom. Ms. Ronsko acknowledged that he has a bond with his natural mother, Ms. Sibbeston, that he does not have with her.

[14] A neighbour, Mr. O’Brien, testified that he sees Mr. Scott looking after Daniel and Alisa and involved in activities with them. Mr. Collins, who is Ms. Ronsko’s stepfather and sees the family at least once a week, testified as to how Mr. Scott has created a bond with Ms. Ronsko’s children and how Daniel fits into the family they have established.

Ms. Sibbeston

[15] Ms. Sibbeston was born in 1971 and grew up in Fort Simpson, where she has many relatives, including her mother. She has a diploma in business management studies. She has lived in Fort Simpson since leaving Yellowknife in March of 1997. She testified that she made the move because she obtained a full-time job in Fort Simpson and has family and support there. She and Daniel lived with her mother until September of 1997, then with a friend for six months, then again with her mother. Since July of 1998 she has lived in her own home. She works daytime hours and has arranged for babysitters when Daniel is in her care. She testified that her employer is quite lenient and so she was able, for example, to take Daniel to and from swimming lessons during her working hours this summer.

[16] Ms. Sibbeston is with Daniel before she takes him to the sitter in the morning and at lunchtime and then again after she finishes work. She reads to or plays with him until supper is ready and after supper they often go to a community event. She testified that Daniel prefers to visit with people than to stay home with her so she encourages him to be with other children. On weekends, they go to the park and visit friends and relatives. While he was with her this past summer, Daniel was in a gymnastics program on Saturday mornings as well as the swimming lessons. In Ms. Sibbeston’s home, Daniel is responsible for dressing himself and brushing his teeth, cleaning up after playing and keeping his room tidy.

[17] Two witnesses, Ms. Browning and Ms. Gardiner, testified that Ms. Sibbeston maintains a good home for Daniel and looks after him well. Both witnesses have children and they get together with Ms. Sibbeston and Daniel for visits and other activities.

Daniel

[18] All the witnesses who spoke about Daniel described him as a child who is curious, polite, happy, talkative, active and affectionate. He is said to have a mind of his own. Both parents referred to some behavioural problems which they see as indicators that Daniel is having trouble coping with the adjustment when he goes from one household to the other. Both Ms. Ronsko and Mr. Scott said that Daniel wets his bed when he returns from Ms. Sibbeston's and that it takes him four or five days to get over it. Ms. Sibbeston said that he does it about three times a month when he is staying with her, not only when he comes to her from Mr. Scott. The bed-wetting seems, therefore, to be more of a problem when he is at Ms. Sibbeston's than when he is at Mr. Scott's, although Ms. Sibbeston is taking steps to deal with it.

The applicable law

[19] This case is governed by the *Children's Law Act*, S.N.W.T. 1997, c. 14, which provides, as the common law has for some time, that questions of custody and care of children must be determined in accordance with the best interests of the child [s. 17(2)]. It also lists, in s. 17(3), a number of factors which must be considered in determining the best interests of the child. I will not refer to each of those factors specifically, but have taken all of them into account.

Review of the evidence on Daniel's best interests

[20] Both parents in this case clearly love Daniel and want what is best for him. There is no suggestion that either parent provides inadequate care. I was not asked to order a home study report under s. 29 of the *Children's Law Act* (which would be paid for by the parties) and the Court does not have government-funded access to a professional who would provide an independent assessment as to how Daniel gets along in each parent's care. Since we do not have that resource, I can only look at the evidence at trial and, in accordance with the factors set out in the *Children's Law Act*, decide what appears to

me to be in Daniel's best interests.

[21] There are some differences in the family circumstances. With Mr. Scott, Daniel has a father and step-mother as well as siblings. Although this situation has been in place for only two years, they function as a family. Daniel has known Ms. Ronsko for most of his young life. Ms. Ronsko's parents live in Hay River and see the family weekly and Mr. Scott's parents, who live in Fort Smith, visit or are visited frequently.

[22] Ms. Sibbeston is a single parent and there are no other children in her household, although Daniel has several friends and young cousins in Fort Simpson. There was no evidence that she has encouraged any contact between Daniel and Ms. Ronsko's children when Daniel is with her, although there was evidence that in his room at her house, there are pictures of Mr. Scott and his family.

[23] Mr. Scott testified that he can be a good role model to Daniel. He testified that Daniel likes the outdoors and likes to do what Mr. Scott does. I have already referred to the evidence about Daniel's relationship with Jeff.

[24] The issue of cultural upbringing and ties was raised. Ms. Sibbeston is Metis; Mr. Scott is not. Counsel for Mr. Scott pointed out that the question of Daniel's Metis heritage was raised for the first time in these proceedings in Ms. Sibbeston's trial brief. Ms. Sibbeston admitted in her testimony that she had not raised the cultural issue at all in the interim proceedings.

[25] I conclude from this that Ms. Sibbeston did not, at least until now, consider the question of Daniel's cultural heritage as a priority. Nevertheless, she has raised it now and it is a factor to be considered under s. 17(2)(c) of the *Children's Law Act*.

[26] I would think that when considering this factor, the Court will be concerned about the importance cultural upbringing and ties have to the parties in the specific case and whether one parent is better able to foster or encourage the child's cultural heritage or help the child deal with that heritage, for example, in a case where the child may encounter discrimination. Conversely, the Court will consider whether one parent is

lacking in sensitivity to the child's heritage or is negative about it.

[27] In this case, the evidence is that prior to Ms. Sibbeston raising cultural heritage as an issue, Mr. Scott heard about the Aboriginal Head Start program in Hay River. He made inquiries and learned that it is a preschool program for aboriginal children, aimed at giving them a head start on learning the alphabet and numbers and also about their culture. Mr. Scott testified that he was excited about the program and considered it to be a perfect opportunity for Daniel. He spoke to Ms. Sibbeston about it and proposed that he would give up his summer time period with Daniel so that Daniel could stay with him in Hay River and attend the program, which runs from September to April. Ms. Sibbeston refused. She testified that she did not want to miss her time with Daniel and she thought that he would get the same benefit from attending preschool in Fort Simpson. When Daniel did go to spend his four months with Mr. Scott commencing in January, Mr. Scott was able to obtain a spot for him in the second half of the Aboriginal Head Start program. Mr. Scott also helped out with the program on occasion on his days off. All of this occurred before Ms. Sibbeston raised Daniel's Metis heritage as an issue in these proceedings.

[28] Ms. Sibbeston admitted that she did not become involved in Metis cultural activities when she was younger, but said that she thinks differently now that she has a child of her own. She would like Daniel to attend Slavey immersion classes in Fort Simpson, an opportunity she did not have when she was young, although she did grow up hearing Slavey spoken in her home.

[29] Mr. Scott testified that he is willing to enrol Daniel in Slavey language classes in Hay River. He is also willing to arrange for Daniel to attend Metis and other aboriginal cultural events that are available. He enjoys hunting and has taken Daniel with him. Ms. Ronsko, who, like Mr. Scott, has spent virtually her whole life in the Northwest Territories, also testified that she feels it is important that Daniel learn about his Metis heritage. She has looked into fiddling and jigging lessons, activities in which Daniel has expressed an interest.

[30] I see no reason to think that Daniel will be adversely affected as regards his heritage with either parent. I am satisfied on the evidence that Mr. Scott will take steps to foster Daniel's Metis heritage out of concern for Daniel. Although Ms. Sibbeston may

be less likely to take as active steps in that regard, I think that her attitude may be more casual about it simply because she lives in a predominantly aboriginal community and is surrounded by the culture. I find her explanation that she did not agree that Daniel could start in the Aboriginal Head Start program in Hay River during what was to be his time with her was reasonable: she did not want to miss her four months then scheduled and she thought he would get the same type of program at preschool in Fort Simpson. In the end, I conclude that Daniel's cultural upbringing and ties will be well-served with either parent.

[31] Mr. Scott expressed concerns about the quality of education in Fort Simpson and particularly whether the standards are equivalent to those across Canada. His information came mainly from discussions with other parents. It was clearly hearsay and can be used only as evidence that he has made inquiries about and has taken an interest in Daniel's education opportunities. Ms. Sibbeston called two witnesses who have children in the school in Fort Simpson and both were pleased with what is available there.

[32] There is no evidence upon which I can conclude that what is available to Daniel at elementary school in Fort Simpson is any way inferior to what is available in Hay River. As counsel for Mr. Scott acknowledged, either way Daniel will get an education.

[33] Daniel has no special needs. Both parents are employed and are able to provide him with the necessities of life. Mr. Scott raised some concerns about Ms. Sibbeston's drinking, but there was no evidence that she drinks to excess or that any drinking she does interferes with her care of Daniel. Although she admitted that there were two or three occasions when she had been out partying and did not return to get Daniel from the babysitter as arranged, these appear to have taken place two to four years ago. Although Mr. Scott and Ms. Ronsko do not generally use alcohol, I do not think that the fact that Ms. Sibbeston does is, without more, a significant factor.

[34] Mr. Scott and Ms. Ronsko also raised concerns about the amount of drinking generally that goes on in Fort Simpson but these concerns appear to have arisen for the most part from isolated incidents and do not lead me to conclude that Fort Simpson is an unsuitable place for children.

[35] Mr. Scott and Ms. Ronsko appear to have created a stable family unit. Ms. Sibbeston has moved around more. Her moves between communities were reasonably explained. Although she has moved her residence a few times since returning to Fort Simpson, she has been at her current residence for over a year. One thing that is of concern is the fact, acknowledged by Ms. Sibbeston, that Daniel has had seven different daycare providers while in her care in the last twelve months. These have included Ms. Sibbeston's mother and her aunt as well as other people. No explanation was offered for this.

[36] Each of Mr. Scott and Ms. Sibbeston have had Daniel in their care for substantial periods of time and it cannot be said that one more than the other has been primarily responsible for his care in the last two years. I note that there have been two occasions, described above, prior to the August 1997 order, when Ms. Sibbeston asked Mr. Scott to take over Daniel's care because she was having difficulties or wanted help. Mr. Scott cooperated with her in that regard.

[37] Section 17(2)(k) says that I must consider "the willingness of each person seeking custody to facilitate access between the child and a parent of the child who is seeking custody or access". There was quite a difference in the evidence as to how Mr. Scott and Ms. Sibbeston communicate with each other when Daniel is in their care.

[38] Mr. Scott testified that when Daniel is in his care, he keeps Ms. Sibbeston informed about the child's activities. When Daniel talks to Ms. Sibbeston on the telephone, Mr. Scott will sit nearby and remind him of things he has done so that he can tell his mother about them. He sends Daniel's drawings with him when he goes to stay with Ms. Sibbeston. In contrast, Mr. Scott testified that Ms. Sibbeston does not tell him about Daniel's activities when he is in her care and unless Daniel himself talks about it, he does not know what the child is doing.

[39] Ms. Sibbeston acknowledged that Mr. Scott keeps her informed about Daniel's activities. She admitted that when Daniel is with her she does not communicate with Mr. Scott about what Daniel does in Fort Simpson. Her counsel addressed this in his submissions by saying that there is a fine line between privacy and necessary information and that any concerns in this regard could be addressed by terms in an order.

[40] However, Ms. Sibbeston did not say in her evidence that she has concerns about her privacy. In any event, the information at issue is information about Daniel's activities, not her own. She gave no explanation for why she does not provide Mr. Scott with information about Daniel's activities, for example his enrolment in preschool, who

his babysitters are and where he can be reached when in their care. Her failure to provide information extends to her telephone numbers at work and at home and not telling Mr. Scott about her move to her present home until after the move. She acknowledged that she has not given Mr. Scott numbers where she could be contacted in the event something were to happen to Daniel. Again, no explanation was offered.

[41] Ms. Sibbeston did not tell Mr. Scott that she had arranged for Daniel to attend counseling. Her explanation for this was that she arranged the counseling because she wanted to know how Daniel was doing in her care and did not think it important for Mr. Scott to know about it. Mr. Scott testified that when he found out about the counseling and asked her about it, she told him it was none of his business.

[42] Another aspect of lack of communication was Mr. Scott's complaint that he can rarely reach Daniel when he does have a telephone number because he cannot get an answer at Ms. Sibbeston's home. He bought Ms. Sibbeston an answering machine to resolve this but says that he often leaves messages late at night because there is no answer. He gets no response to the messages he leaves.

[43] Ms. Sibbeston's explanation was that she is either upstairs or sleeping when the telephone rings and does not go downstairs to answer it. She agreed that she does not return Mr. Scott's calls to Daniel and leaves it up to him to call back. She did not complain that he calls too often or offer any other reason for not returning the calls or having Daniel call him.

[44] Based on this evidence, I can only conclude that Ms. Sibbeston deliberately chooses not to keep Mr. Scott involved or informed while Daniel is in her care. There was no recognition in her evidence that there is a benefit to Daniel if Mr. Scott is involved and in touch when Daniel is in Ms. Sibbeston's care. Ms. Sibbeston does not appear from the evidence to have acknowledged any obligation in that regard beyond dealing with Mr. Scott about his access weeks during her four month care periods.

[45] This is significant because I am satisfied on the evidence that Daniel's relationship with his father is an important and beneficial one but I am not satisfied that Ms. Sibbeston will encourage that relationship. Nor was there any indication in her evidence that she recognizes or will encourage the relationship Daniel has with Jeff and Alisa. On the other hand, I am satisfied that if Daniel is in Mr. Scott's care, his relationship with Ms. Sibbeston will be encouraged.

[46] There was evidence of other access problems. Mr. Scott testified about problems

with Ms. Sibbeston agreeing to access dates and then canceling them or refusing to abide by them and not giving other options. On a couple of occasions, the disputes were only resolved with the assistance of legal counsel. Mr. Scott feels that Ms. Sibbeston is sometimes unreasonable and gave examples when he had asked for his access to start on specific dates and Ms. Sibbeston refused because of her own plans and then would not consider other options. After legal counsel became involved, she did agree with what Mr. Sibbeston had requested and then did not follow through with the plans which had been her reason for denying the access dates in the first place. Ms. Sibbeston did not take issue with much of this evidence. She says that she does write back to Mr. Scott about suggested access dates.

[47] There were also issues raised about Ms. Sibbeston refusing to cooperate with Mr. Scott with respect to meeting at a half way point of the four hour drive between Hay River and Fort Simpson to drop off or pick up Daniel. Ms. Sibbeston agreed that she had probably refused to meet at the half way point a few times. She also acknowledged that Mr. Scott had agreed with her request to meet at a point convenient to her. Some of the problems in this regard seem to arise from the parties' different schedules and the fact that Mr. Scott has more flexibility during the week than Ms. Sibbeston does.

[48] I find it difficult to draw any firm conclusions from the evidence I heard about problems arranging access except to say that the fact that Daniel goes back and forth at relatively short intervals may make it more difficult to organize access than if he were with one parent and the other parent had identified access periods, such as every second Christmas, every July, and so on. Clearly, however, there have been problems which I hope and expect the parties will be able to put behind them when Daniel is settled into one home.

[49] Both parties have proposed specific access for the parent with whom Daniel does not reside. The access Mr. Scott proposes for Ms. Sibbeston is somewhat more generous than what she proposes for him should Daniel live with her.

[50] Counsel for Ms. Sibbeston placed some emphasis on Mr. Scott's career aspirations. Mr. Scott testified that he has always wanted to become a police officer and he has submitted applications to the R.C.M.P. and the Calgary police force. He has not been accepted as yet and may not be. It was submitted that if he is accepted, this could mean a move from the Northwest Territories either permanently or on a temporary basis for training and that this would not be good for Daniel.

[51] In my view the prospect of Mr. Scott leaving the Northwest Territories to pursue

a career in policing is too uncertain at this time to be taken into consideration on the issue of where Daniel should live for the next few years. I also take into account Mr. Scott's testimony that the interests of the family, including Daniel and Ms. Sibbeston, will determine what he does. I accept that testimony as credible. Mr. Scott has shown in the past a willingness to put Daniel's interests before his own, for example, by giving up the opportunity of employment as a firefighter in Winnipeg.

Positions of the parties

[52] Mr. Scott explained his reasons for wanting Daniel to live with him. He feels that he keeps the lines of communication with Ms. Sibbeston open, that there are advantages to a two parent household in terms of the adults being able to help each other, that he and Ms. Ronsko have established a stable, family-oriented life. He also referred to Daniel's attachment to his siblings and his own ability to spend time with Daniel because of his shift schedule. He feels he can be a good role model for Daniel. He is concerned that there is such a lack of communication and cooperation on Ms. Sibbeston's part that he will not have much contact with Daniel if the child lives with Ms. Sibbeston. He also testified that he hopes that if Daniel does stay with him, Ms. Sibbeston will take a more active role in promoting his cultural heritage.

[53] Ms. Sibbeston testified that she feels having Daniel live with her for the next six or seven years and then with his father for highschool will give Daniel the opportunity to be with each parent. She said that she feels it is fair to all of them that not just one parent have Daniel's whole life.

Conclusion

[54] Counsel for Ms. Sibbeston argued that I should order that Daniel be in her care until he reaches grade 7 on the basis of equality between the parents. However, the law is clear that I must make my decision based on what I determine from the evidence is in the best interests of the child, not what is fair to the parents: *R. v. R.*, (1983), 34 R.F.L. (2d) 277 (Alta. C.A.).

[55] Both Mr. Scott and Ms. Sibbeston are good parents. Both have a lot to offer Daniel. The most important difference between them is that Mr. Scott makes the effort to keep Ms. Sibbeston involved in Daniel's life when Daniel is living with him, while Ms. Sibbeston does not do the same in relation to Mr. Scott. As I indicated above, she does not seem to recognize that Daniel will benefit from his father's continuing involvement; her approach is instead to leave Mr. Scott out of the picture during the time that Daniel

is with her. In some instances, her failure to provide information shows poor judgment, such as not providing telephone numbers where Mr. Scott might contact her in case of an emergency concerning Daniel.

[56] At this stage, Daniel has already started kindergarten in Hay River as of August 26. Mr. Scott indicated that he is in a class with some of the same children he was with in the Aboriginal Head Start program. There would therefore be some disruption to Daniel should he now have to change home and school.

[57] Daniel has already had to cope with the stress of constantly moving back and forth between his parents. They both recognize that the transitions have caused some problems and that stability is important now. In my view, stability requires not only a settled home and schedule but also the continuing involvement and cooperation of both Mr. Scott and Ms. Sibbeston. On the evidence, I find that Mr. Scott is the more willing and the more likely of the two to ensure those conditions.

[58] All considered, I have concluded that Mr. Scott should have the day to day care and control of Daniel. Ms. Sibbeston will have the access proposed in Mr. Scott's trial brief as follows:

- a) every third weekend from Friday evening until Monday evening;
- b) all statutory long weekends not included in a), with the exception of Easter weekend;
- c) in all odd numbered years, the second week of the Christmas school vacation;
- d) in all even numbered years, the entire Christmas school vacation;
- e) Easter weekend in all even numbered years;
- f) every spring break for the duration of the spring break, provided that if the Easter weekend falls within the spring break in an odd numbered year, Mr. Scott will be entitled to have Daniel for the Easter weekend;
- g) summer access from the Sunday following the last day of school each spring until the Sunday prior to the first day of school in the fall of each year, subject to the following periods of access to Mr. Scott:
 - (i) in even numbered years, one week to include Daniel's birthday;

(ii) in odd numbered years, one week which will not include Daniel's birthday;

(iii) such other period as might be agreed upon and arranged between the parties;

h) telephone access at all reasonable times;

i) such other access as can be arranged from time to time on agreement of the parties.

For purposes of the exercise of access and Daniel's travel, the parties shall meet at a point half way between Fort Simpson and Hay River unless otherwise agreed between them.

[59] Should counsel wish to speak to the access provisions for the purpose of fine-tuning them, they may do so. It occurs to me that the access set out in a) above would mean Daniel would miss a day of school and the parties may wish to consider whether that is advisable.

Costs

[60] Counsel asked for the opportunity to speak to costs when my decision is released. It seems to me that in a case like this, where both parents agree that a change to the established regime is required and both have a reasonable case to put before the court, costs may not be appropriate. However, should counsel not be able to agree, they may speak to costs by arranging a date for that purpose in Yellowknife or, alternatively, by filing written submissions on the issue within thirty days of the date this memorandum is filed.

V.A. Schuler,
J.S.C.

Dated at Yellowknife, NT, this
28th day of September 1999

Counsel for the Applicant: Elaine Keenan-Bengts
Counsel for the Respondent: James Brydon

CV 07189

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