

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BRENDA JOAN GABEL

Plaintiff (Applicant)

-and-

RICHARD ALAN GABEL

Defendant (Respondent)

MEMORANDUM OF JUDGMENT

- [1] This is an application for interim spousal support.
- [2] The parties were married in 1983 and separated in 1994. They have one child, born in 1991. In the early years of the marriage the applicant worked full-time while the respondent continued his education for an engineering degree. After the birth of their child, however, the applicant stayed at home with only periodic part-time employment.
- [3] The applicant began to develop problems associated with depression after a miscarriage in 1994. She started a nursing education programme but her depression grew worse. She has been hospitalized for significant periods of time between 1997 and June of 1999. She continues on medication and in therapy. She is unable to work and has no income. She lives with her mother in Calgary who supports her.

- [4] The respondent continues his employment as an engineer in Yellowknife. His annual income, inclusive of benefits, has been approximately \$89,730. He has the care of the child of the marriage. He is now living with another woman (there is no evidence however as to her contribution, if any, to the respondent's total household income). The respondent has accepted employment in Ontario and is planning to move to Kapuskasing. His income is expected to drop to approximately \$70,000 per year.
- [5] These proceedings were commenced in August, 1999. In December, two orders were issued requiring the respondent to pay \$1000 as support for each of the months of December, 1999, and January, 2000. No support had been paid prior to December. Since then the respondent has continued paying \$1,000 per month. He is prepared to continue paying \$1,000 per month as interim support until the trial of this action. The applicant seeks interim support of \$3,000 to \$4,000 per month.
- [6] Spousal support is a matter of judicial discretion to be exercised having regard to the dictates of the relevant statutory provisions. This is not a divorce action so, strictly speaking, the provisions of the *Divorce Act* (Canada) do not apply. The applicant chose to bring these proceedings for support, joint custody, and a division of family property, by way of Statement of Claim under the *Family Law Act*, S.N.W.T. 1997, c.18. That statute applies to married and non-married "spouses". An examination of the relevant factors and objectives relating to an award of spousal support, as set out in sections 15 and 16 of the *Family Law Act*, shows that the over-all statutory framework is essentially the same as that set out in section 15.2 of the *Divorce Act*. Thus the principles developed in the jurisprudence under the federal statute are equally relevant to cases under the territorial statute.
- [7] One of the principles emanating from that jurisprudence is that, if one spouse suffers hardship as a result of the marriage breakdown, the fact of marriage itself may justify support for that spouse. In *Bracklow v. Bracklow* (1999), 169 D.L.R. (4th) 577, the Supreme Court of Canada held that the breakdown of the marriage had placed the wife in a state of economic hardship. At the time of trial, she was unemployed for a long time, living in subsidized housing, and supported by disability benefits. The husband was earning approximately \$45,000 per year. The co-habitation in that case was of shorter duration than in the present case. The court held that Mrs. Bracklow was entitled to support due to the "mutual obligation theory of marriage" which places the primary burden of support for a needy partner who cannot attain post-marital self-sufficiency on the partners to the relationship (at para. 31). This "mutual obligation" burden seems to be explicitly recognized in s.15 of the *Family Law Act*.

- [8] The statutory criteria for granting interim support are identical to those relating to a final support order. The only difference is the scope of the inquiry which is necessarily more limited at the interim stage. As noted in many cases, an interim support order is usually one that is meant to provide a reasonably acceptable, short-term, solution until the trial where an in-depth examination of all the relevant factors can be made (including any issue as to the applicant's on-going disability). It is meant to keep the recipient at a reasonable standard of living having regard to the means and needs of the parties.
- [9] At this time I am satisfied that the applicant has suffered an economic hardship because of the breakdown of the marriage. I take into account that this was a relationship where, after the birth of their child, the applicant became dependant on the respondent's income as a result of the manner in which the parties structured the family's economic life. I acknowledge that the respondent carries the sole financial burden for child care but that is a factor, at this stage, going to quantum of, not entitlement to, support. There is no doubt that, at this stage, the respondent's ability to support himself is far greater than that of the applicant. Her need has been demonstrated.
- [10] The actual quantum of interim support is somewhat difficult to rationalize with clarity. As the respondent's counsel said at the hearing, we do not have evidence as to a budget for the applicant so we do not know what her "needs" are. On the other hand, as submitted by applicant's counsel, any budget would be totally artificial. The applicant has no income and all her needs, such as they are at the moment, are being shouldered by her mother. One then falls back on making a reasonable assessment of the "means" available to the respondent. I also note that the actual after-tax costs to the respondent of any support order will be significantly less than the gross support amount paid (since the payments are tax deductible to him).

[11] For these reasons, I order that the respondent pay interim support of \$1,800 per month. This amount will be due as of July 1st, 2000, and will continue to be due on the first day of each month hereafter until further order of this court. Costs of this application will be reserved to the trial judge.

J. Z. Vertes,
J.S.C.

Dated at Yellowknife, Northwest Territories this 5th day of July, 2000.

Counsel for the Plaintiff (Applicant):	Katherine R. Peterson, Q.C.
Counsel for the Defendant (Respondent):	Elaine Keenan-Bengts