

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JIMA McLEAN

Applicant

-and-

ALASTAIR F. McLEAN

Respondent

MEMORANDUM OF JUDGMENT

[1] This is an application for interim spousal support.

[2] The parties were married in 1985 in Kuwait. The applicant was an Iraqi citizen, 40 years old at the time, living and working in Kuwait. The respondent, 35 years old at the time, held dual citizenship in Canada and the United Kingdom and was working on contract in Kuwait. It is conceded that after marriage the applicant assumed a traditional role as wife and homemaker. After the Iraqi invasion of Kuwait in 1990, the parties managed to leave the country, at different times, and resettled in Newfoundland. The respondent sponsored the applicant as a landed immigrant to this country. The parties separated in 1993 and eventually divorced in 1995. There were no children of the marriage.

[3] During the divorce proceedings in Newfoundland, the applicant, through her counsel, raised the issue of spousal support. It was not addressed however in those proceedings. The transcript of the hearing in the Newfoundland court indicates that, although a divorce judgment was granted, the applicant's right to bring a future application for support was reserved.

[4] The respondent relocated to Yellowknife after the divorce. The applicant remained in the former matrimonial home in Newfoundland and obtained training as a hairdresser. The respondent encouraged her to move to Yellowknife for work and

supported her for her first few weeks in Yellowknife. The parties continue to live and work in Yellowknife.

[5] The applicant has continued to work as an independent hairdresser. Her net income over the past five years has fluctuated between \$13,000 and \$19,000 annually. The respondent works for an engineering company and in 2000 his approximate net income was \$86,000. He has assets, including a home in Yellowknife and another in Alberta, and a pension and various benefits from his employment.

[6] In May, 2000, the applicant filed a Petition for Corollary Relief seeking spousal support and a division of matrimonial property. The scheme set out in the *Divorce Act* (1985) contemplates that a corollary relief claim can be a distinct proceeding brought in conjunction with a divorce proceeding or after a divorce judgment is granted. Therefore, even though this claim is brought more than five years after the parties were divorced, it is an application of first instance.

[7] The *Divorce Act* sets out various factors to consider in determining spousal support. Under section 15.2(4) the court is to consider the condition, means, needs, and other circumstances of the parties, including the years of cohabitation and the functions performed by them during cohabitation. The objectives of an order for spousal support are set out in section 15.2(6) of the Act. An order should (a) recognize any economic advantages or disadvantages to the person arising from the marriage or its breakdown; (b) apportion between the spouses any financial consequences arising from the care of children (a matter not relevant to this case); (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and (d) insofar as practicable, promote the economic self-sufficiency of each spouse. All of these objectives must be taken into account and no one objective, such as self-sufficiency, is paramount.

[8] The statutory criteria for granting an interim support order are the same as those considered in granting a final support order. The only difference lies in the scope of the inquiry which is necessarily more limited at the interim stage. An interim order is usually meant to simply provide a reasonable and acceptable temporary arrangement to alleviate economic disparities.

[9] In my opinion, the situation presented by this case arguably comes within the parameters of the “needs-based support” model outlined by the Supreme Court of Canada in *Bracklow v. Bracklow* (1999), 44 R.F.L. (4th) 1. The applicant adopted a traditional role in the marriage; she immigrated to Canada following her husband; and the breakdown of the marriage has resulted in economic disadvantage to her.

[10] In this case the applicant has had to support herself in a new country, with certain limitations such as difficulty with the English language, and her need is obvious. In *Choudhury v. Paul*, [1993] N.W.T.J. No. 31, I canvassed a number of cases where support was awarded (even in marriages of short duration) in similar circumstances. It is highly likely that a certain amount of support, perhaps time-limited, would have been awarded to the applicant if the claim had been pursued at the time of the divorce and it is not inconceivable that it will be at trial now.

[11] Taking into account the relative means and needs of the parties,, and the fact that the after-tax cost to the respondent will be significantly less than the gross amount of the support, I order that the respondent pay interim spousal support of \$1,200 per month. The payments will commence as of June 1, 2001, and continue to be payable on the first day of each month thereafter pending further order of the court. Costs of this application will be reserved for the trial judge.

J. Z. Vertes
J.S.C.

Dated this 22nd day of May, 2001.

To: Jill A. Murray
Counsel for the Applicant

Margot L. Engley
Counsel for the Respondent