

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOHN ROLAND LAVOIE

Petitioner

- and -

BARBARA ANN LAVOIE

Respondent

Application for variation of an existing child support order.

Heard at Yellowknife, NT: October 28, 2004

Reasons filed: January 11, 2005

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Petitioner: Sheila M. MacPherson
Respondent was Not represented.

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REASONS FOR JUDGMENT

[1] This is an application for a variation of an existing child support order made by this Court on April 21, 1987. The Respondent mother is ordinarily resident in Saskatchewan and has not had notice of this application and accordingly the resulting order is provisional only. Given the limited nature of the relief sought on this application, I am satisfied that the issues can be adequately determined by proceeding in this fashion pursuant to section 18 and 19 of the *Divorce Act*.

[2] The parties were divorced in 1987. By Order of this Court of April 21, 1987, the Respondent mother was required to pay to the Petitioner father for the support of their daughter, Arlene Theresa Lavoie born November 27, 1981, child support on the following terms:

That the Respondent shall pay to the Petitioner for the support of the child of the marriage the sum of \$200.00 per month for the child, commencing on the 1st day of April, 1988 and continuing on the 1st day of each and every month

thereafter. The payment of maintenance will continue to be payable until one of more of the following occurs:

- i) the child ceases to be in full time attendance at an education institution;
- ii) the child ceases to reside with the Petitioner;
- iii) the child marries;
- iv) the child becomes nineteen years of age; or
- v) the child dies.

[1] The mother's obligation to pay \$200.00 a month child support under the existing Order ceased on her daughter's 19th birthday on November 27, 2000.

[2] However, the daughter Arlene continues to be in full time attendance at an educational institution. She and her father ask that the mother be required to contribute to Arlene's maintenance until such time as she has completed her post secondary education.

[3] There is ample authority for the proposition that a child over the age of majority who is in full-time attendance at an educational institution is a "child of the marriage" and therefore entitled to support. And it is trite law that both parents have a joint financial obligation to maintain their children in accordance with their relative abilities to contribute to the performance of that obligation.

[4] The applicant father has no information concerning the mother's actual income but is aware that she is employed.

[5] On this application the father provides evidence that he has paid an average amount of \$366/month for the past three years to maintain the child while attending university. On this application he asks that the Court require the mother to pay to him one-half of that amount, i.e. \$183.00 in monthly child support, rather than an amount

based on the mother's guideline income (which amount may well be higher). In my view this request is reasonable and supported by the evidence.

[6] A provisional Order will issue varying the Court's Order of April 21, 1987 substituting the child support paragraph to the following:

1. The Respondent shall pay to the Petitioner for the support of the child Arlene Theresa Lavoie the sum of \$183.00 per month, or the 1st day of each month commencing February 1, 2005 for so long as the child remains in full-time attendance at college or university.

[7] I ask that the father's counsel take out a formal Provisional Order, and I direct Mr. Holden of Legal Division to send the necessary documentation to the Attorney General for forwarding to Saskatchewan in compliance with s.18 for the *Divorce Act*. That documentation should include:

- a) The Order of April 21, 1987;
- b) the father's Notice of Motion filed herein on October 7, 2004;
- c) the father's affidavit filed September 29, 2004 in CV 2004/0286;
- d) the father's Brief of Law filed October 7, 2004 in CV 2004/0286;
- e) the Provisional Order granted herein; and
- f) these Reasons.

J.E. Richard,
J.S.C.

Dated at Yellowknife, NT
this 11 day of January 2005

Counsel for the Petitioner: Sheila M. MacPherson
The Respondent was not represented

S-6101-01515

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