

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

AGNES BEAULIEU

Applicant

- and -

DON CAMSELL

Respondent

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Application for custody, child support, spousal support and division of matrimonial property.

Heard at Yellowknife, NT on July 22, 2008.

Reasons filed: August 7, 2008

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REASONS FOR JUDGMENT OF THE  
HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for the Applicant:  
Respondent was self represented

Donald P. Large, Q.C.

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REASONS FOR JUDGMENT

[1] This is an application by Ms. Beaulieu for custody, child support, spousal support and division of matrimonial property.

A) APPLICATION FOR ADJOURNMENT

[2] This trial was initially scheduled to proceed in December 2007. It was adjourned at that time, at Mr. Camsell's request, because he wanted more time to retain counsel. The trial was eventually rescheduled to proceed on July 22, 2008. On that date, Mr. Camsell appeared and sought another adjournment. He explained that he had retained counsel some months before, but that counsel had withdrawn from the case in May. Mr. Camsell further explained that the week before the trial, he had applied to Legal Aid in the hopes of getting another lawyer to assist him but he had not yet received an answer. Ms. Beaulieu opposed the adjournment request.

[3] Because Mr. Camsell knew in May that he no longer had counsel, and waited two months before doing anything about getting another one, but mostly because he

had already been granted one adjournment of the trial for the purpose of retaining counsel, I denied his adjournment application. The trial proceeded. I heard evidence from Ms. Beaulieu and from Mr. Camsell.

## B) HISTORY OF THE RELATIONSHIP

[4] The parties met in 1989 and started living together in 1990. For the first few months they stayed with a friend. They then moved to the house of Ms. Beaulieu's grandmother. In 1996, they acquired a house through a program administered by the local housing corporation. My understanding of the evidence was that the housing corporation provided funds to purchase building materials, and those accepted in the program were expected to supply the labour and build the house. They would then rent the house from the housing corporation in a "lease to own" agreement. The rent varied depending on income.

[5] Mr. Camsell completed construction in the spring of 1997. For the first few years rent was quite low because Mr. Camsell's income was below \$15,000.00. In 2001, the parties opted to obtain a mortgage to buy the housing corporation out. The evidence was not entirely clear as to what prompted this but it may have been because Mr. Camsell's income had increased and the rent was going to increase significantly as a result. In any event, the parties obtained a mortgage from the Canadian Imperial Bank of Commerce and purchased the house. The house is on leased land, and the certificate of title regarding the lease is in both the parties' names.

[6] Ms. Beaulieu was 19 years old when she began her relationship with Mr. Camsell. Her intention had been to return to school to complete her high school degree, but her plans changed after she became pregnant with their first child. That child was born in 1991. Ms. Beaulieu stayed home to care for her. The second and third children were born in 1999 and 2003. There was a short period of time where Ms. Beaulieu worked part-time before the birth of the second child, but for most of the time of the relationship, she stayed home and looked after the children.

[7] As for Mr. Camsell, during the early years of the relationship, he worked part time for the band, doing carpentry work. His income was modest, but he supported the family. He started working at the diamond mines around 1997 or 1998.

[8] The parties separated in June 2006. Since then, the children have lived with Ms. Beaulieu in the matrimonial home. Mr. Camsell visited them a few times a week in the first months following separation. The visits became more sporadic after that. There has been no overnight access since separation. Mr. Camsell explained that he sees the children when they contact him, or when he sees them around the community. He does not phone them. I understood from his evidence that he does not call the children or visit them at the house because he wants to stay away from Ms. Beaulieu.

## B) CUSTODY AND ACCESS

[9] On custody, access and child support, Ms. Beaulieu is asking that the terms of an Interim Order issued by consent on June 22, 2007 be continued. Pursuant to that Order, she has sole custody of the children and Mr. Camsell must pay \$1,588.00 per month in child support. This is the amount payable, pursuant to the *Child Support Guidelines*, R-138-98, for the support of three children when the payor parent's income is \$82,244.00. Mr. Camsell acknowledged in his testimony that this is his annual income.

[10] Mr. Camsell asks the Court to make an order for joint custody, with the day to day care of the children to alternate between the parties every two weeks. He says he would like the children to be with him when he is not at the mine. If such an alternating schedule is not possible, he says he would be prepared to stop working at the mine and find other employment in the community to facilitate a shared custody arrangement.

[11] Decisions about custody and access of children must be based on what is in the best interests of those children. The evidence that Ms. Beaulieu has been the primary caregiver to the children their entire lives is not contested, nor is it contested that they have been in her sole care since separation. Although there has been some access, it has been sporadic over the last two years. There really is no evidence to show that it would be in the best interests of the children to disrupt their living situation at this time.

[12] Mr. Camsell seemed to suggest in his evidence that the oldest child, D.B., is not happy living with Ms. Beaulieu and would prefer living with him. No admissible evidence was adduced at trial to support this assertion. D.B. will turn 17 in October.

She is at an age where she can have a fair bit of control on how much time she will spend with her father and on where she will live.

[13] Even final orders dealing with custody, access, and child support, are subject to variation proceedings if circumstances change. If D.B. decided she wanted to go live with her father, for example, applications could be made to the Court to vary the Order I am making today to reflect this change in circumstances. But for the time being, given the evidence presented at trial, there is no basis for the Court to change the current situation as far as custody and day to day care of the children are concerned.

## C) CHILD SUPPORT

### 1. Ongoing Child Support

[14] With respect to child support, Mr. Camsell recognizes that he has to pay child support but he is concerned about his other expenses and financial responsibilities. Mr. Camsell is supporting his current spouse, and they have just had a baby. Mr. Camsell testified about his monthly expenses, and said he was having difficulties to make ends meet.

[15] Child support is generally determined by applying the *Child Support Guidelines*, and is driven by the income of the payor parent and the number of children being supported. Pursuant to section 12 of the *Guidelines*, the Court has jurisdiction to vary the amount of support if ordering payment of the guideline amount would result in hardship. In my view, Mr. Camsell's evidence falls short of establishing that type of hardship.

[16] Mr. Camsell lives in a house that belonged to his father, who is now deceased. He and his new family will be able to live there as long as they want. That house is larger than the house where Ms. Beaulieu lives with her three children. Mr. Beaulieu pays general maintenance costs but does not pay any rent. He makes a good income working at the mine. I recognize that he has to deal with various financial obligations, but so does Ms. Beaulieu.

[17] Child support, it must be remembered, is the right of the children, and is for their benefit. Mr. Camsell has acknowledged that his income is in line with the figure that was used in determining his child support obligations in the Interim Order of June 22,

2007. The evidence does not establish that this is a case where the Court should order child support in an amount that is less than what the *Guidelines* prescribe.

[18] It is also appropriate for the parties to share child care expenses, in proportion to their respective incomes. Ms. Beaulieu will have to provide Mr. Camsell receipts or other adequate documentation to show what the child care expenses were on any given year.

[19] Both the child support and Mr. Camsell's share of child care expenses stand to be affected by variations in his annual income. To avoid the need for the parties to come back to Court to seek variations of my Order, it will provide a structure for the parties to exchange income information, and for the readjustment of Mr. Camsell's child support obligations in accordance with his income. Hopefully the parties will be able to exchange information and agree to the necessary adjustments to the child support payments, using the *Guidelines*. They should also be able to calculate the portion of child care expenses Mr. Camsell will be responsible for. If issues arise about any of these issues and the parties are unable to resolve them, applications can be made to this Court. Hopefully, that will not be necessary.

[20] I would add that the *Children's Law Act* provides that a parent has the obligation to support a child; the term "child" refers to a person who is a minor and has not withdrawn from the charge of the parents, or a person who is the age of majority or over, but who is unable to withdraw from the charge of the parents for various reasons, including disability, illness, or the pursuit of reasonable education. This is relevant in this case because it is conceivable that Mr. Camsell's legal obligation to support D.B. could come to an end within a few years from now. Whether it will or not will depend on whether D.B. withdraws from the charge of her parents. If she does, Mr. Camsell's child support obligations would have to be adjusted to reflect that he is supporting two children instead of three.

[21] Variations in parents' incomes from one year to the next and other changes in circumstances are part of the reality that must be factored in when dealing with family law cases. That reality sometimes makes it challenging to craft a final order that disposes of all the issues and reduces the need for further court proceedings. I understand that both parties wish to move on with their lives, but it is inevitable that they will have to communicate for some time yet about these matters, for the sake of

their children. The only way to avoid further court proceedings will be for them to work cooperatively within the framework my Order.

## 2. Retroactive Child Support

[22] Ms. Beaulieu seeks an order for retroactive child support, going back to November 2006. According to the evidence, until then, she had access to portions of Mr. Camsell's salary because that salary was deposited into a joint bank account and she was able to withdraw funds from it. Mr. Camsell acknowledges that some months after separation he rearranged his banking so that his pay cheques would no longer be deposited into that account. He says he did this because there was never any money in the account for his use.

[23] In *D.B.S. v. S.R.C.*; *L.J.W. v. T.A.R.*; *Henry v. Henry*; *Hiemstra v. Hiemstra* 2006 SCC 37, the Supreme Court of Canada set out the guiding principles to be followed when dealing with the issue of retroactive child support. The Court recognized in no uncertain terms that parents' obligations to support their children exists, whether the other parent requests the support or not. The Court also recognized that retroactive child support can be ordered to make up for a parent's failure to provide adequate support for his or her children.

[24] Determining how far back in time the retroactive support order should reach is not a straightforward question. Depending on the circumstances, different dates of retroactivity are appropriate. The date where one party puts the other on notice that they are claiming child support is often the one that is appropriate to use. That notice does not have to be done through formal court proceedings. It can simply be a question of one parent raising the topic of child support with the other.

[25] I must take into account that Ms. Beaulieu accessed funds from the couple's joint account for a number of months after separation. Presumably, the funds that Ms. Beaulieu withdrew were used, among other things, for the day to day needs of the children. There is no evidence as to how much money was withdrawn. Mr. Camsell's evidence was that there was very little money left in the account for his use, which was what caused him to rearrange things so that his pay cheques would no longer be deposited in the joint account.

[26] Based on all of this evidence, it cannot be said that Mr. Camsell did not contribute to the support of his children after the separation, and under the circumstances, it would not be appropriate for the retroactive child support to go back to the date of separation. Given the lack of evidence about how much money was withdrawn, and Mr. Camsell's claim that a significant portion of his wages was taken out of the account until he changed his banking arrangements, I am not satisfied that the retroactive order should reach as far back as November 2006 either. This is a case where, in my view, the date of retroactivity which is most fair to both parties is the date of effective notice.

[27] There is no evidence of when, if at all, Ms. Beaulieu raised the topic of child support with Mr. Camsell prior to these proceedings being commenced. The Originating Notice claiming child support was served on Mr. Camsell on March 28, 2007. As of that date, Mr. Camsell was clearly on notice that Ms. Beaulieu was claiming child support from him, irrespective of the funds she had been able to access through the joint account in earlier months. As I have already alluded to, the Interim Order requiring Mr. Camsell to pay child support was issued on June 22, 2007. In my view, retroactive child support should be ordered for the three months that passed between the service of the Originating Notice and the issuance of the Interim Order. The retroactive child support will be based on the same annual income as the order for ongoing child support.

#### D) DIVISION OF PROPERTY

[28] The *Family Law Act* S.N.W.T. 1997, c. 18 sets out a comprehensive scheme for the division of matrimonial property after the breakdown of a relationship. The general approach is that the parties are presumed to be entitled to share equally in the value of what was acquired during the relationship. A party claiming the unequal division of that value has a very high onus to meet.

[29] Applying this framework in this case is somewhat problematic because there is limited evidence about the matrimonial assets, and the evidence that was adduced about the value of those assets is approximate to say the least.

[30] The main asset is the matrimonial home. Ms. Beaulieu says it is in need of repairs. The house apparently shifts and this has caused some damage to the drywall and a door frame. Ms. Beaulieu believes it is necessary to replace the foundation of the

house, which would represent an investment in the range of \$12,000.00. She estimates that with a new foundation in place, the house would be worth between \$60,000.00 and \$65,000.00.

[31] Mr. Camsell believes that the house is worth a lot more. He says that the mortgage that was obtained in 2001 does not reflect the value of the house because the sales price charged by the housing corporation took into account the fact that he had done all the labour. In addition, Mr. Camsell does not believe that the house needs a new foundation. He says the house has always shifted because when the water tank gets filled, there is a spillover which drains into one of the pilings that the house sits on. Mr. Camsell believes that the house is worth between \$120,000.00 and \$129,000.00.

[32] Neither party provided much of a basis for their estimates as to the value of the house. There is no independent evidence, such as an appraisal, to assist the Court in resolving the conflict in the evidence on that issue.

[33] Apart from the house, the matrimonial assets include the contents of the matrimonial home, three snowmobiles and a 1987 Ford Truck that is currently not working. Ms. Beaulieu believes that Mr. Camsell could fix the truck and use it if he chose to.

[34] Both parties testified about the matrimonial debts that existed at the time of separation. There is a conflict in their evidence as to the amount of those debts and the extent to which each party paid them off. Neither of them adduced documentary evidence to support their respective positions as to debt amounts. The parties are in agreement, however, that Ms. Beaulieu has been the one paying off the mortgages since a few months after separation.

[35] Mr. Camsell admits that he received, after separation, a substantial sum in income tax returns for taxation years that predated the separation. Ms. Beaulieu claims that she saw the documents relating to those taxation years and believes that Mr. Camsell was to receive an amount in the range of \$30,000.00. Mr. Camsell says that the amount that he in fact received was \$18,000.00.

[36] Finally, Mr. Camsell acknowledges that he has had a pension plan since he started working with the mines. He could not say what his pension plan was worth at the time of separation or at the time of trial.

[37] The uncertainty and vagueness in the evidence, and the lack of documents to support most of the parties' respective assertions, leave the Court in a very difficult position as far as the analysis and calculations that must ordinarily be undertaken pursuant to the provisions of the *Family Law Act*.

[38] Fortunately, by the end of the evidence, the parties were essentially agreed about how the matrimonial property could be divided. Mr. Camsell said he did not mind turning over his property interests in the matrimonial home and its contents. What he wants is one of the three snowmobiles for hunting and trapping purposes; he also wants to recover his personal belongings, such as his tools and his clothing. Ms. Beaulieu says that Mr. Camsell's personal belongings have been in the storage area of the house for some time and that she has told him on several occasions that he could come and pick them up at any time. She does not object to Mr. Camsell getting the newer of the three snowmobiles. She also thinks he should have the Ford truck. Mr. Camsell says that he does not think that the vehicle can be made roadworthy, but that he could have some use for it in the bush, to haul wood and do other chores.

[39] As the parties' positions with respect to division of property is largely consistent, I am satisfied that the issue can be dealt with along those lines.

[40] The only item of real contention has to do with the division of Mr. Camsell's pension. Ms. Beaulieu asks that I order Mr. Camsell to file additional documents showing the value of the pension, sever that issue from the rest of the case, and deal with it at a later date.

[41] I realize that the evidence about the value of Mr. Camsell's pension is, and has been, within his control. I also realize that there have been issues, in this case, with Mr. Camsell providing the financial information he was required to provide. Orders were issued on May 4 and May 25, 2007, requiring him to comply with his obligations in this regard. He has filed some information, but evidently did not provide information about his pension plan.

[42] That being said, there are certain procedural steps that Ms. Beaulieu could have taken, prior to setting this matter down for trial, to compel Mr. Camsell to provide this information. She chose not to do so, no doubt to avoid further delays, but it was her choice nonetheless. The trial proceeded on July 22 at her request, and over Mr. Camsell's request for an adjournment. Under those circumstances, I think that it is appropriate to dispose of the issues as completely as possible, with some finality, and on the basis of the evidence adduced at trial.

#### E) SPOUSAL SUPPORT

[43] In the trial brief filed on her behalf, Ms. Beaulieu stated that she would forego her claim for spousal support if she was successful in obtaining sole ownership of the matrimonial home. This is also the position she took at the conclusion of the trial. Given this, there will be no order for spousal support.

#### F) CONCLUSION

[44] For the above reasons, an Order will issue in the following terms:

1. The Applicant shall have sole custody of the children D.B, born October 23, 1991, T.C. born June 28, 1999, and J.C., born April 26, 2003.
2. The Respondent shall have liberal and generous access to the children as agreed by the parties from time to time.
3. With respect to ongoing child support,
  - (a) The Respondents shall make monthly child support payments in the amount of \$1,588.00, on the basis of an annual income of \$82,244.00;
  - (b) Child support payments will continue to be payable on the 22<sup>nd</sup> day of each month.
  - (c) The Respondent's child support obligations will be readjusted every year based on his annual income of the previous year, as set out in Paragraph 10 of this Order.

(d) If any of the children is no longer a “child” as defined in section 57 of the *Children’s Law Act*, the amount of child support will be adjusted accordingly.

4. The Respondent will pay retroactive child support in the amount of \$4,764.00, at a rate of no less than \$400.00 per month, commencing on August 22, 2008, until the amount has been paid in full.

5. Effective January 1, 2008, the Respondents shall pay a proportionate share of child care expenses, pursuant to section 9 of the *Child Support Guidelines*. The share to be paid by each party shall be calculated in proportion with their respective income, and in accordance with Paragraph 10 of this Order.

6. The Applicant is granted sole ownership of the house located on the property legally known as Lot Nine (9), Block Eight (8), Plan 1486, Rae-Edzo.

7. The Registrar of Land Titles is hereby directed to cancel the existing certificate of title regarding to the leasehold on the property legally known as Lot Nine (9), Block Eight (8), Plan 1486, Rae-Edzo, and to issue a certificate of title in the name of the Applicant only.

8. The Applicant is granted sole ownership of the contents of the house referred to at Paragraph 6, with the exception of the Respondent’s personal belongings, including his clothes and his tools.

9. The Respondent is granted sole ownership of the 2002 Grand Touring snowmobile, the 1987 Ford truck, his personal belongings including his clothes and tools, currently stored inside the house referred to at Paragraph 6, and on the land referred to at Paragraph 7.

10. For the purpose of adjusting the child support obligations and calculating each party’s share of the child care expenses:

(a) the parties will provide each other, no later than June 1 2009, copies of their income tax returns and any notices of assessment for the taxation year 2008, and will continue to

exchange this information no later than June 1 every subsequent year, for the previous taxation year;

(b) the Applicant will provide to the Respondent, no later than June 1, 2009, copies of all receipts regarding child care expenses for the year 2008, and will thereafter continue do so no later than June 1 of each subsequent year for child care expenses of the previous year;

(c) the Respondent's child support obligations will be adjusted in accordance with his 2008 income, effective September 1 2009, and will thereafter be adjusted effective every September 1 in accordance with his income of the previous year;

(d) the parties' shares of child care expenses will be calculated proportionately each year in accordance with their respective income, and on the basis of the receipts provided to the Respondent by the Applicant.

[45] Although this matter proceeded as a trial, in the end, many matters raised in the Originating Notice were not contested. The only contentious issue was custody. Under the circumstances, there will be no order as to costs.

L.A. Charbonneau  
J.S.C.

Dated at Yellowknife, NT, this  
7<sup>th</sup> day of August 2008

Counsel for the Applicant: Donald P. Large, Q.C.  
The Respondent was Self-Represented

S-1-FM2007000046

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