SUPREME COURT OF YUKON

Citation: *J.M.H.* v. *E.C.H.,* 2009 YKSC 35

Date: 20090409
Docket No.: 99-D3205
Registry: Whitehorse

BETWEEN:

J.M.H.

Petitioner

AND:

E.C.H.

Respondent

Publication of the name of a child, the child's parent or identifying information about the child is prohibited by Section 173(2) of the *Children's Act*.

Before: Mr. Justice L.F. Gower

Appearances:

Shayne Fairman	For the Petitioner
E.H.	Self Represented
Debbie Hoffman	Child Advocate

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is an application by the petitioner mother to vary a consent corollary relief order. There are two children involved in this matter, and I will refer to them by their initials, the daughter K., is almost 16 years of age, and the son D., is almost 13.

[2] The parties married in 1992, separated in September 1999 and divorced in June

2001.

[3] On June 13, 2001, a consent corollary relief order was filed giving the petitioner and the respondent father joint custody of the children with primary residence of the children going to the mother and generous access granted to the father. Child support was expressed in this fashion in para. 4 and I quote:

> "The Respondent shall pay to the Petitioner child support pursuant to the Federal *Child Support Guidelines* commencing the 1st day of the month following the month in which the Respondent secures full time employment and payable on the first day of each month thereafter."

[4] That order was amended by a further consent order on July 6, 2004, which acknowledged the father's then income of $45,046 annually. It ordered that the father was to pay monthly child support of $552 per month, effective July 1, 2004; that he would pay arrears totalling $400; that he would pay 50 percent of all special or extraordinary expenses within seven days of being provided receipts or proof of such expenses by the mother; and that he would provide certain income tax information to the mother pursuant to para. 6 of the order which I will again quote:

> "The Respondent shall provide income tax information to the Petitioner on or before June 1 of each year, to allow for any adjustments in the child support payable to coincide with the changes in the Respondent's salary, in accordance with the *Child Support Guidelines,* and any amounts payable shall be effective as of June 1 of each year;"

[5] On this application to vary, the mother seeks the following changes. Firstly, from joint custody to custody of both children, and for the sake of convenience I will use the term sole custody although I recognize that that usage is sometimes frowned upon by other judges. In connection with that aspect of her application she also seeks a waiver of the father's consent for the children to travel outside of Canada, and a waiver of the

necessity for the father's signature on any future application by the children for renewals of their Canadian passports.

[6] Secondly, the mother seeks a change from generous access to specified access, that is, that the father's access to either child should only occur if initiated by that child and without further specifying dates and times of such access.

[7] Thirdly, that para. 1 of the consent order of July 6, 2004 be varied with respect to child support, and that there be an order for:

(a) retroactive adjustment of the monthly child support payable by the father based on his actual gross income in the years 2004 to present;

(b) payment of outstanding arrears after this retroactive adjustment; and

(c) child support from June 1, 2008 to date, based on the father's 2007 gross income, and ongoing child support to the end of May 2009 at the same amount.

[8] I note that the child advocate joins the mother in her application for sole custody of both children and also in the application for specified and restricted access, as I have outlined.

[9] The father filed a response to the application to vary which was not in accordance with the divorce rules of the *Rules of Court* at the time, in which he seeks a number of forms of relief including:

1. A variation of the consent corollary relief order allowing him to have the children 50 percent of the time, following his planned move to Whitehorse;
2. A reduction and variation of child support based on undue hardship and high costs of access;
3. Specific financial disclosure from the mother, and
4. Removal of the restraining order made by me on May 27, 2008, which I will come to again later.

[10] I informed the father on two previous appearances before this Court that the response document was not in order and that the type of relief he was seeking would require his own application to vary, with appropriate affidavit material in support. The father has not responded to that direction and presently has no application of any kind before the Court.

[11] Turning to my analysis of the issues, I wish to preface these remarks by stating that, in my view, the evidence on record in this hearing largely speaks for itself. Accordingly, I will not attempt to address all of the points of conflict between the evidence of the mother and the father, nor all of what I say are internal inconsistencies within the father's own evidence. I also wish to state now that I accept and rely in very large part on the submissions of both counsel.

[12] Dealing firstly with the issue of joint versus sole custody, I would like to address the mother's evidence. I begin by observing that I found the mother's testimony to be thoughtful and careful, understated, calm for the most part but understandably

emotional at times, and without exaggeration or malice. She also said very little which was negative of the father, except when the context required it.

[13] It is important to observe the mother's evidence on the extent to which the father has been involved in the children's lives since the separation. I refer here to the mother's affidavit number 4, and I can do no better than quote directly from it for the sake of convenience and completeness:

> "[18] The Respondent has never maintained regular contact with the Children since our separation over the last eight years.
>
> [19] From our separation until late 2001 the Respondent was living in Whitehorse and visited with the Children I estimate, less than 15 times.
>
> [20] In late 2001 the Respondent moved to Prince George, British Columbia and he would periodically contact the Children by telephone every few months, however, sometimes they would not hear from him for over six months.
>
> [21] In July 2003 I drove K. and D. to Edmonton to meet with the Respondent and he took them to Winnipeg for a week to visit with his family.
>
> [22] The Children spent Christmas 2003 in Prince George with the Respondent for approximately a week.
>
> [23] In July 2004 the Respondent spent one week with the Children in Vancouver.
>
> [24] In 2005 the Children spent Christmas with the Respondent and his family in Ontario.
>
> [25] During Spring Break in 2006 D. spent a little over a week with the Respondent in Vancouver.
>
> [26] In August 2006 K. spent one week with the Respondent in Vancouver.
>
> [27] In April 2007 D. spent a weekend with the Respondent in Vancouver.
>
> [28] In July 2007 D. spent two weeks with the Respondent in Vancouver.
>
> [29] On other occasions when K. had skating competitions in British Columbia the Respondent would occasionally make an appearance.

> [30] When visiting Whitehorse the Respondent would occasionally stop by our house unannounced to see the Children.
>
> [31] The Respondent has had a number of changes in his personal circumstances, including remarrying in Russia in January, 2007. The Respondent did not give any notice to the Children of his plans to remarry and did not tell the Children until May, 2007.
>
> [32] More recently the Respondent and his new wife have had a child born April 11, 2008. Once again, the Respondent did not give K. or D. any advance notice that he and his new wife were expecting a child and only told K. and D. after the child had been born."

[14] As indicated, the mother also conceded that the father visited with the children from time to time on working trips to the Yukon Territory over those years.

[15] The father attempted to put a different spin on this evidence, but for reasons which follow I did not find his evidence to be credible.

[16] I would like to turn next to a brief review of the children's circumstances. As I said, K. is now almost 16 years of age. She was described as having been involved in swimming and soccer in her early years and in figure skating, particularly from the age of six. She began competing at age seven and has been actively involved in competitive figure skating up until very recently. She began to get involved with the volleyball team in her school around the end of 2008. She has also been involved over the years in dancing and only stopped that in March of 2008. She started working her first part-time job at a local gym in Whitehorse as a receptionist in the fall of 2008. She is described as a very bright, creative and articulate young woman and was noted to have, for the most part, a very healthy group of peers and a large circle of friends.

[17] D., who is in Grade 7 and now almost 13, has been involved in swimming, soccer and baseball over the years and was described as being very musically inclined. He

initially played the drums and has since taken up saxophone lessons and most recently piano lessons. He is also heavily involved in Cadets. I gather through Cadets he has taken up the sport of biathlon, and is now also pursuing marksmanship competitions as a result of that sport. Although he is somewhat more reserved than his sister in terms of expressing his opinions and has a relatively smaller group of friends, he is also described as someone with leadership abilities and is the current president of his school class.

[18] Both children are doing well in their schooling and academic pursuits.

[19] I would like to turn next to the mother's evidence on the decisions of the children not to have contact with their father. Turning first to K.'s decision, I understand this to have resulted, finally, from a one-week visit with her father in August of 2006. Despite the mother's evidence that she always tried to encourage K. to continue to maintain contact with her father, after this particular incident K. said that she could not be "forced" to see her father if she did not want to.

[20] In answer to the child advocate's questions, the mother indicated that K.'s decision not to have contact with her father was not something that happened overnight, that it took a few occurrences to build up that thought in K.'s mind, that, according to the mother, she thought that K. had considered it long and hard. She did not want to be hurt anymore and in fact K. even continued to take telephone calls from the father for a while after she had decided to discontinue personal contact with him, and was always respectful to him over the telephone. At the moment, K. is saying that she does not want contact with the father, either directly, face to face, or by telephone or e-mail.

[21] With respect to D.'s decision not to have contact with his father, this seems to have been made after hearing of the birth of the father's daughter, D.'s half-sister, through the mother and K., after the father's telephone call to K. while she was on Vancouver Island at a skating event. This was made known to D. sometime in April 2008. Again, in answer to questions from the child advocate, the mother indicated that it was her opinion that D.'s decision in this regard was the result of a process and events which had built up over the years. At one point, D. had a vision of "having a father", and he held onto that for a while. But, when the mother was forcing the children to see the father they started to become angry at her for a while and got to the point where they were resentful about the forced visits.

[22] The mother commented about the father's most recent efforts to maintain more frequent contact with D., which she referred to in her fourth affidavit. She said that, initially, D.'s reaction to the daily telephone calls from the father was that he was excited, but then that began to diminish very rapidly. D. discussed with the mother a few of the conversations that he had had with his father over the telephone and relayed that the father had been talking negatively about both his sister K., his grandmother (the maternal grandmother who lives in the home with the mother and the two children) and his mother. Currently, D. does not want face-to-face contact with the father or telephone or e-mail contact.

[23] I will turn now to the father's evidence. In general, I found the father's testimony to be evasive, argumentative, condescending and arrogant, repetitive to the point of sounding mantra-like, often unintelligible and full of elaborate attempts to justify his conduct. I will give some examples of his evasiveness.

[24] On cross-examination, the father stated that he did not remember such things as the name of his employer in 2008, whom he had worked with between four and five weeks. He did not remember the amount of employment insurance that he earned in that year, not even an approximate amount. He claimed not to remember his complete residential address. He claimed not to remember receiving Mr. Fairman's letter of March 10, 2009, requesting the financial information, which I had directed him to provide at the family law case conference on December 15, 2008, despite that letter being sent both by e-mail and by ordinary mail.

[25] He claimed he did not remember the purchase price of his current home, not even the approximate amount, nor the amount of the down payment, despite the fact that the purchase was only about two years ago, as I understand it. And finally, he did not remember the list price of that home when the home was put up for sale within the last two years.

[26] Another reason that I have a problem with the father's credibility is that, apart from a $2,000 payment that he made to the mother on February 7, 2008, he would not admit that he paid no child support in 2008. This was despite having accepted as "mostly accurate" a record prepared by the mother of the deposits by the father into her bank account from 2004 through to 2009 inclusive, which showed only the $2,000 deposit in 2008.

[27] When asked if he was pleased or proud of K.'s accomplishments in figure skating he said he did not "understand" the question.

[28] There was an issue about the signing of the consent order of July 6, 2004. Mr. Fairman put to him in cross-examination the proposition that he had agreed to pay the amount of $552 per month in child support to which the father replied, “I did not agree. I was ordered to. I did not have counsel.” Then the father was reminded that he in fact did have counsel and was represented by Ms. Kinchen at that time.

[29] I also find the father’s reason for his sporadic access to the children, which was repeatedly “the high cost of living in Vancouver and the high cost of access”, was unsatisfactory, in that it does not deal with the fact that the father could nevertheless have continued access by way of more frequent telephone calls with the children, by way of e-mail, possibly by way of webcam communications over the computer, and by old fashioned cards and letters.

[30] I found the father was very eager to seize on instances or events as examples of “psychological abuse” by the mother. One that was noted was the time that K. said she felt like “killing” herself because, according to the mother, she was overwhelmed and had normal teenage boy problems at that time. When the father heard of this, he insisted that this was a genuine example of suicidal ideation and that the mother was irresponsible for not taking it more seriously and grilling K. as to the reason for the statement. Then there was the attention paid by the father to the mother’s smoking habit. Also, there was an example of K. having a bad experience at a skating competition in Saskatoon around the age of 12, because of the host family that K. was then residing with. The father said that could be considered as a form of child abuse or neglect, and was implicitly the mother’s fault.

[31] All this indicates how quick the father was to paint the mother in the worst possible light. It is also consistent with the complaints of the children that when they spent time with the father one of the things that hurt them the most was to hear the father speak poisonously and negatively about their mother.

[32] There is also the question of the father's evidence about telling the children of his remarriage. At one point in his evidence he stated that when he was married he did not want to tell the children over the phone. Rather, at the first opportunity to be in Whitehorse was for their birthdays which, because they are both born on May 31st, was on May 31, 2007, is when he told them of the marriage. That was very different from the evidence that he gave on cross-examination by Mr. Fairman, where the father referred to D. having visited with him in person in April in 2007 in Vancouver and that D. "must have known" that he and his partner were married at that time because they had wedding rings.

[33] I was also troubled by the father's evidence in response to hearing of D.'s reaction to the news of the birth of his half-sister. I repeat that the mother and K. had learned of this news by a telephone call from the father to K. while the two of them were at a skating competition on Vancouver Island. D.'s reaction was described by the mother as follows. When the mother and K. returned to Whitehorse and D. received the news from them, the mother had intentionally taken him for a car ride so that he could not "run away", as I understood it. She said that D. was very upset because the father had not told him earlier, that he screamed and swore and banged his head on the window for a while, and that he felt like the father did not trust him with telling him this information earlier. When the father was reminded about D.'s reaction to this news, he

said he could understand the reaction because, “He wants his Dad so badly”, which was coupled with the father’s repeated references to D. “yearning for his father.” That evidence simply made no sense to me.

[34] Related to that is the father’s apparent misunderstanding of D. regarding the contact that he had with him by phone in March of 2008. The father said that that contact was a “lifeline” for D. He also said that he and D. had “a wonderful visit” in the summer of 2007, when D. was baptized, seemingly against his will, by his father. I refer to the mother’s evidence here when she described D.’s reaction upon returning from that visit with the father. She said that she spent several months lifting D. back up after that two-week visit. When she went to meet him at the airport he got off the plane and broke down into tears. He gave her the longest hug that he had ever given her. He apologized for something and then said that he was angry with the mother for not having stood up more for him because she made him go on that trip. Even though the mother had assured D. that the baptism would not occur on that trip because she had called the father and had specifically spoken to him about it and said that D. was not ready for it, in fact the baptism went ahead anyway. As a result, D. did not want to see any of his friends for a significant period of time and remained in his room, was very depressed and had to be encouraged to go out on walks and to get back into a normal routine.

[35] As a result of all of these examples, and others which were in the evidence that I have not referred to, I conclude that the father not only has a blind spot with respect to his relationship with the children, he is borderline delusional, if not beyond that. I refer also to the submission of the child advocate, with which I agree, that the father’s lack of

insight into his own responsibility for his current relationship with his children is "stunning and troubling."

[36] The father is apparently unable to accept other people's points of view. It would seem that there is no way but his way. At one point in his evidence he said that the children need to hear, "Yes, he is right", in reference to himself.

[37] The references by the father to the maternal grandmother were repeatedly that she was the primary source of hatred towards him in the mother's household. He effectively accused the maternal grandmother of having taught the children to hate the father and, as a result, he says that the children are now alienated from him. He described this conduct on the part of the maternal grandmother as a form of "psychological abuse" of the children. He inferred that the maternal grandmother has "delusional ideas" about him and that she has been rude and condescending to him and has denigrated him to the children without reason. Then he said that he "really care[s] for her a lot." I find such a statement to be completely disingenuous.

[38] The father could not explain why he did not tell the children of the pregnancy of his new wife with their half-sister until the phone call to K. in April of 2008 and could not explain the fact that he never did tell D. directly of that news.

[39] In short, the father did not accept any responsibility for how the children feel about him at the present time.

[40] In my view, joint custody is no longer appropriate in these circumstances both because of the limited or inability of the father to communicate constructively with the

mother and to participate in constructive decision-making, but, more importantly, that the continuation of joint custody may be problematic for the children and would not be in their best interests.

[41] I agree with the submission of Mr. Fairman that the mother has been primarily responsible for making decisions for the children over the years; that the children are bright and talented; they are articulate; they appear to be well-raised and have good peer groups; and the credit for that should be given to the mother. The father seems unable to appreciate that fact at all. As pointed out by the child advocate, he said nothing in over four hours of testimony which would in any way indicate a positive regard for the mother as having raised the children in a constructive fashion.

[42] Clearly, there are difficulties in communication between the mother and the father. As I have said, the father has a distinct point of view on many things; he is argumentative and evasive and unwilling to accept other's views. I accept that the mother has tried to encourage her children to maintain a relationship with their father to the point of losing the trust of her children in her.

[43] Since the children have made their decision to discontinue contact with their father, they have not wavered in that position over time. They have met on several occasions with the child advocate and have maintained the consistency of that view.

[44] I also agree with the submissions of the child advocate that it is very telling, as I indicated a moment ago, that the father could not say one good thing about the mother's efforts to raise the children; that he seems incapable of saying anything positive about the mother to anyone, including the children; and that that is one of the

things that the children find most difficult in their communications with the father - the fact that he continues to say negative things about her.

[45] Despite all that, the children have tried. They have pursued visits with the father, they have taken telephone calls well past their level of comfort, and well past the mother's level of comfort, to the point of risking the children's trust in her.

[46] So for those reasons, I conclude that there has been a material change in circumstances since the consent corollary relief order in the views of the children towards their father and that it would be appropriate to make the change from joint custody to custody of both children in favour of the mother. Consistent with that I will order that the father's consent for either child to travel outside of the country is no longer required, nor is the father's signature required on any future application or renewal for their Canadian passports.

[47] With respect to the issue of access, for the same reasons I find it appropriate to order a change from generous access to specified access and, more particularly, that the father's access to either child should only occur if initiated by that child, without further specifying dates and times of such access. Related to that, I agree with Mr. Fairman that it is appropriate to continue the restraining order which I made on May 27, 2008. Specifically, the father shall be restrained from attending at or near the residence of the mother, the place of her employment, or either of the schools of the children, without the written consent of the mother. I agree with Mr. Fairman on this point that, having made that order, the father should have no need to attend at any of those venues for any reason in any event.

[48] I turn lastly to the matter of child support and I note generally here that the father did not seriously challenge the evidence of the mother in this area. The mother has filed as an exhibit a record of the payments that she has received from the father by way of automatic deposits beginning August 11, 2004, up until the final payment which was made February 7, 2008. Those payments total $29,002.50.

[49] It is also important to note here before going too much further, that the original consent corollary relief order directed that the father was to pay child support as soon as he secured full-time employment. According to the mother's third affidavit, initially there was an agreement in writing between the parties that the father would pay a reduced amount of child support, but that beginning in January 2003 he was to pay $400 per month to the mother. That was to be paid by way of a $1,200 lump sum for the first three months, and $400 per month for the remaining nine months of 2003. In fact the father paid $1,000 in April 2003, $200 in May 2003 and $650 in August 2003, for a total of $1,850 for that year. Therefore, he is in default of that agreement.

[50] In addition, the mother has indicated that, while the father had been employed full-time for over one and a half years to the point of swearing that third affidavit in December 2003, he had consistently failed to meet his child support obligations. So, before we even get into the years 2004 and following, it appears that the father was already behind in his child support obligations.

[51] The other issue that arises here is the father's failure to provide annual updates of his income tax information to the mother. He argued that the order of July 6, 2004, which I quoted earlier, should be interpreted as meaning that he was only to provide the

income tax information in accordance with the *Child Support Guidelines* and that s. 25 of the *Guidelines* refers to that obligation being triggered upon written request by the other parent. In my view, that is an unsustainable argument. It is splitting hairs with the clear language of para. 6 of that order, which is, that the respondent shall provide income tax information to the petitioner on or before June 1st of each year. The next part of that paragraph is to allow for any adjustments in the amount of child support in accordance with the *Child Support Guidelines,* but not that the provision of the tax information was to be in accordance with the *Guidelines*. If that was the case, as Mr. Fairman submits, there would have been no need to specify that the information be provided on or before June 1st of each year. In any event, the upshot is that the father has not complied with that order and has only recently, in response to the mother's application to vary, filed information verifying his actual income in the years 2004 through 2008.

[52] For the record, in 2003 the father earned a gross income of $51,466. That would have resulted in child support for two children, based on the *British Columbia Child Support Tables*, of $779 monthly. In 2004 he earned $52,795. That would have translated into a child support payment of $800 monthly. In 2005 he earned $63,089, which would have resulted in monthly child support of $952. In 2006 he earned $61,887, which would have resulted in monthly child support of $936. In 2007 he earned $55,721, which would have resulted in monthly child support of $843.

[53] Using those updated figures for actual income in the years 2004 to date, Mr. Fairman provided a table, which I filed as Exhibit 4 in this hearing, which indicates that the father should have paid a total, to April 2009, of $48,001 in child support. In fact,

the father paid $29,002.50 in child support. The difference of $18,998.50 is therefore owing in arrears. For clarity, I am acceding to the request to retroactively vary. I find the arrears to be in that amount and I order that they be paid on an ongoing basis at the rate of $100 per month.

[54] The child support payable from June 1, 2008 to date is based on the father's 2007 income of $55,721, and therefore translates into a monthly payment of $843. (However, the period from June 1, 2008 to and including April 2009 has been addressed in the arrears calculation in the preceding para.). I note that the father's obligation is to provide the updated tax information on or before June 1st of this year, 2009, and following the provision of that information, (and I specifically direct that it be provided, regardless of whether he receives a written request from the mother) an adjustment can be made, if necessary.

[55] The mother has not sought any relief with respect to s. 7 expenses noting that the existing order of July 6, 2004 requires the father to pay 50 percent of all such expenses within seven days of being provided receipts or proof of payment of such expenses. She has not sought any retroactive payment of those special or extraordinary expenses and she may or may not in the future provide such receipts to the father. In any event, there is no further need for me to make an order in that regard.

[56] I note for the record that the child advocate takes no position with respect to these child support issues.

[57] Counsel, have I omitted anything in any of these areas?

[58] MS. HOFFMAN: No, My Lord. I didn't hear what you said with respect to the repayment of the arrears, whether it was how much per month you had ordered.

[59] THE COURT: At the rate of $100 per month is what I said.

[60] MS. HOFFMAN: $100 per month.

[61] THE COURT: Do you wish to speak to costs or is there anything that I have omitted from dealing with the issues?

[62] MR. FAIRMAN: Yes, I'd like to address costs. I think it might be worthy of note as well, My Lord, that the arrears you have indicated of $18,998 repayable at a rate of $100 per month would take E.C.H. the better part of 15 years to pay back.

[63] THE COURT: Well, that is assuming his financial circumstances do not improve. It sounds like they may in the coming weeks or months or years.

[64] MR. FAIRMAN: All right, My Lord. Perhaps it would be prudent then to indicate something further to that effect so that -- my submission would be that at the present time, on your remarks, that repayment schedule would be a fixed one, and perhaps Your Lordship may wish to indicate something further to indicate that it is open or subject to further application by J.M.H. in the future to accelerate the payments with some sort of arrangement.

[65] THE COURT: I am open to that being a term of the order. I guess I had assumed that if E.C.H.'s circumstances changed for the better or changed for the

worse that would constitute a material change and would justify an application by either side to vary, either up or down, repayment of the arrears. But if you wish to include some language to that effect in terms of the order, I have no problem.

[66] MR. FAIRMAN: Thank you, My Lord. I will try and work something out. And yes, with respect to the issue of costs, I'll be brief. The rule in accordance with our *Rules of Court* is that the practice certainly is that costs are ordinarily awarded to the successful party. On all of the points which were sought in the application to vary J.M.H. has been successful. On all of the points with respect to the child support variation she has been successful, and I think most importantly, with respect to the matters of custody and access, she's been successful. And in the circumstances I would ask that she be awarded her costs of this proceeding. There was no offer to settle provided to E.C.H., so I would be seeking that it simply be a direction by the Court that she be awarded costs.

[67] THE COURT: All right. E.C.H., do you have any submissions on that?

[68] THE RESPONDENT: Well, based on the outcome of these proceedings and your ruling, Your Honour, I'll just leave that decision to the Court. As you well know, that we're not working and that's -- that's hard.

[69] THE COURT: I am having a little hard time hearing you. Can you speak up a bit?

[70] THE RESPONDENT: As you know my financial position is dire and that would certainly be an added stressor for that and it would be a burden for the additional costs on top of the arrears that I am required to pay.

[71] THE COURT: Okay, thank you for that. Ordinarily costs follow the event. The mother has been successful in this application and I order that costs be awarded in her favour.

[72] MS. HOFFMAN: Just one final matter, My Lord. Perhaps if the requirement that E.C.H. sign the final order be dispensed with?

[73] THE COURT: I will make that order but I will direct that the order come up to me for review before it is issued and that a copy be sent to E.C.H. in due course.

[74] MS. HOFFMAN: Thank you, My Lord.

[75] MR. FAIRMAN: Thank you, My Lord.

[76] THE COURT: Thank you.

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GOWER J.