Murphy v. Murphy, 2002 YKSC 6

Date: 20020205
Docket: S.C. No. 96-D2845
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

SUSAN MARIE MURPHY

PETITIONER

AND:

KEVIN JOSEPH MURPHY

RESPONDENT

REASONS FOR JUDGMENT OF
MR. JUSTICE HUDSON

INTRODUCTION

[1] This hearing involves 2 separate applications, one brought by Mr. Murphy (hereinafter the "father"), and one brought by Mrs. Murphy (hereinafter the "mother"). The father seeks a variation of the consent corollary relief order dated January 16, 1998. He wishes to be exempted from paying child support to the mother during the period of time when the children are in his custody during their summer vacation.

[2] The mother also seeks a variation of the consent corollary relief order, namely the terms of access to the father and the amount of child support payable to her by the father.

[3] The impetus for these applications appears to be the decision of the mother and her common law partner, Cyril Johnston (hereinafter “Mr. Johnston”), to relocate to Fort McMurray, Alberta, where Mr. Johnston has gained employment as an Instrumentation Technician. The father is opposed to this move.

FACTS

[4] The mother and the father were married on August 14, 1988 in Whitehorse. There are three children of the marriage, Brendan Charles Patrick Murphy (hereinafter “Brendan”), born January 7, 1989, Trevor Allan Logan Murphy (hereinafter “Trevor”), born July 15, 1991 and Darren Kenneth James Murphy (hereinafter “Darren”), born August 23, 1992. The parties separated in 1993.

[5] After the separation in 1993, the mother was awarded interim custody of the children by court order. The father was awarded reasonable and generous access to the children. A separation agreement (hereinafter the “Agreement”) was executed by the parties on April 14, 1997. The Agreement gave the parents joint custody and guardianship of the children. The primary residence of the

children was to be with the mother, with specified access to the father. The basic custody and access terms of the Agreement were incorporated into a consent corollary relief order (hereinafter the "Order") dated January 16, 1998.

[6] The mother is employed with the City of Whitehorse as a by-law clerk. She has been on secondment to the Yukon Territorial Government since November 2000. This secondment will end on March 31, 2002. She earns approximately $47,000 per year, including benefits.

[7] The father is employed by the Yukon Liquor Corporation as the general manager of the Whitehorse liquor store. His annual income is approximately $65,000. He also operates a music business called Music Plus, which involves deejaying events in the Whitehorse area on weekends. This business generates a variable amount of income estimated at $375-$400 per month, on average. For tax purposes the business runs at a loss with many otherwise household expenses being written off. He received a $2,905.96 tax refund for the 2000 tax year.

[8] The mother entered into a relationship with Mr. Johnston in 1995. They began to cohabit in 1996. In 1999 they bought a house together in the Copper Ridge subdivision of Whitehorse. Mr. Johnston has a son from a previous relationship, Stephen Johnston (hereinafter "Stephen"), who is now 10 years old. Stephen lived with his mother at the time Mr. Johnston began his relationship

with the mother. About a year and a half ago Stephen began to live with Mr. Johnston, the mother and her children on a full-time basis. Mr. Johnston now has custody of Stephen by court order. They essentially now have a family consisting of two adults and four children.

[9] At the time Mr. Johnston and the mother began dating, he worked at the Anvil mine in Faro. He had just started his apprenticeship as an Instrumentation Technician. The apprenticeship lasted four years, with certain blocks of schooling each year that took place in Calgary at the Southern Alberta Institute of Technology. He was laid of in February 1998. He found employment with Kemass mines, which is an operation out of Smithers, B.C. He worked a two weeks on and two weeks off schedule. During the course of his employment with Kemass mines he would stay at the mining site during his two weeks on and drive back to Whitehorse from Smithers, a 1400 km drive one way, for his two weeks off.

[10] Mr. Johnston completed his journeyman certification in March 2001. He began to search for new employment. He sent out various applications and resumes in Whitehorse. Nothing satisfactory materialized from these efforts. He even attempted to find work in an alternate field, but to no avail. By early September 2001 he had received two job offers, one with Alcan in Kitimat, B.C. and the other with Pope and Tait in MacKenzie, B.C. At that time he also had an interview set up with his current employer, Albian Sands, in Fort McMurray,

Alberta, a place about which he had heard many favourable things. With the security of at least two job offers, Mr. Johnston quit his job with Kemass mines on September 4, 2001.

[11] On the first Friday in September 2001, the mother and Mr. Johnston sat down with the children and discussed the prospect of moving. The mother and Mr. Johnston vary in their evidence as to whether Fort McMurray was mentioned. This is a variation that I find insignificant. The children reacted to the possibility of a move generally with interest. The mother called the father the next day to discuss the impending move with him. He was not happy with the prospect. There was a variation between the parties as to the words used in the conversation.

[12] On September 16, 2001, Mr. Johnston was offered employment with Albian Sands in Fort McMurray. He accepted the offer. On September 19, Mr. Johnston and the mother signed a listing agreement in order to sell their house in Whitehorse. The house was put on the market on October 1, 2001 and was sold on October 19, 2001. The deal closed at the end of November 2001. Since that time, the mother and the children, as well as Stephen, have resided with her sister in crowded circumstances.

[13] Mr. Johnston started his employment with Albian Sands in mid-October 2001. He has been living in an apartment in Fort McMurray since that time. In

early November 2001, the mother visited Fort McMurray. She and Mr. Johnston purchased a house on November 9, 2001. The house is currently under construction and will be completed on February 22, 2002. The purchase of this home was facilitated by a large signing bonus that Mr. Johnston received from his new employer. Other benefits of his new employment include the following:

- Dental benefits
- Medical benefits
- Generous life insurance (premiums paid by the company)
- Vision care benefits
- Relocation allowance
- Post-secondary education allowance for the children

A brochure outlining these and other benefits is filed as Exhibit 12 in these proceedings.

[14] I am of the view that continued employment with this company will enable the boys and their family to achieve security.

ISSUES

[15] The issues to be determined on these applications are as follows:

1. Has there been a material change in circumstances with respect to the access provisions contained in the consent corollary relief order?

2. Is it in the best interests of the children to vary the access provisions of the consent corollary relief order and thereby remove an impediment to the move to Fort McMurray?

3. Has there been a material change in circumstances with respect to the amount of child support payable by the father?

4. What is the proper Guideline amount?

5. Has there been a material change in circumstances with respect to the father paying child support during the period he has custody of the children during the summer?

THE LAW

[16] The applicable statute in this case is the *Divorce Act*, R.S. 1985, c. 3. The relevant sections state as follows:

> **Factors**
> 16.(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
>
> **Past conduct**
> 16.(9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
>
> …
>
> **Factors for custody order**
> 17.(5)Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the

> marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.
>
> **Conduct**
> 17.(6) In making a variation order, the court shall not take into consideration any conduct that under this *Act* could not have been considered in making the order in respect of which the variation order is sought.
>
> **Maximum Contact**
> 17.(9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.

[17] Section 14.(a) of the Child Support Guidelines reads as follows:

> **Circumstances for variation**
>
> 14. For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order;
>
> > (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof; …

[18] Section 16 of the Child Support Guidelines reads as follows:

> **Calculation of annual income**

> 16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" …

[19] The leading case with respect to the variation of custody orders in which access is sought to be altered to allow a change of residence is the case of *Gordon v. Goertz,* [1996] 2 S.C.R. 27. Briefly, the facts were that the parties resided in Saskatoon until they separated in 1990. A petition for divorce was issued by the wife and the wife was granted permanent custody of a young child with the father receiving generous access. When the father learned that the mother intended to move to Australia to study orthodontics, he applied for custody of the child, or alternatively, an order restraining the mother from moving the child from Saskatoon. The mother cross-applied to vary the access provisions of the custody order to permit her to move the child's residence to Australia. The mother's application was allowed at trial. The Saskatchewan Court of Appeal upheld that order and the appeal was taken to the Supreme Court of Canada.

[20] The judgment was rendered by McLachlin J. (as she then was). The judgment contains rulings which have been uniformly followed. The judgment outlines a two-step procedure whereby a threshold condition is met by the satisfactory proof of a material change in the circumstances of the child since the last custody order was made. The second step deals with the best interests of the child or children. The case is concisely summarized, starting at paragraph 49 of the judgment, which reads as follows:

C) *Summary*

49. The law can be summarized as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.

2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.

3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.

4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.

5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.

6. The focus is on the best interests of the child, not the interests and rights of the parents.

7. More particularly the judge should consider, *inter alia*:

> (a) the existing custody arrangement and relationship between the child and the custodial parent;
>
> (b) the existing access arrangement and the relationship between the child and the access parent;
>
> (c) the desirability of maximizing contact between the child and both parents;

> (d) the views of the child;
>
> (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>
> (f) disruption to the child of a change in custody;
>
> (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
>
> 50. In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[21] The threshold condition is described in *Gordon v. Goertz, supra* at para. 13, as follows:

> 13 It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[22] Both counsel in the case at bar are in agreement that the evidence before the court satisfies the threshold condition and that the material change affecting the child, namely the decision to move, has occurred. As the order was a consent order, item number 3 referred to above becomes of less significance, but in any

event, it is agreed that what is being proposed could not have been reasonably contemplated by the judge making the initial order.

THE BEST INTERESTS OF THE CHILD

[23] The question to be answered here may be seen to be paraphrased appropriately at para. 25 of the *Gordon v. Goertz, supra* decision:

> 25 The reduction of beneficial contact between the child and the access parent does not always dictate a change of custody or an order which restricts moving the child. If the child's needs are likely to be best served by remaining with the custodial parent, and this consideration offsets the loss or reduction in contact with the access parent, then the judge should not vary custody and permit the move. This said, the reviewing judge must bear in mind that Parliament has indicated that maximum contact with both parents is generally in the best interests of the child.

[24] Also, with general relation to the case, at para. 48, the following is said:

> 48 While a legal presumption in favour of the custodial parent must be rejected, the views of the custodial parent, who lives with the child and is charged with making decisions in its interest on a day-to-day basis, are entitled to great respect and the most serious consideration. The decision of the custodial parent to live and work where he or she chooses is likewise entitled to respect, barring an improper motive reflecting adversely on the custodial parent's parenting ability.

[25] In the case at bar, the parents have joint custody and the father's access is specified. The father pays child support to the mother. Therefore, I equate "custodial parent" in the above quotation to the mother for the purposes of interpreting and applying the above to the case at bar.

[26] The mother and her sister, Mrs. Pearson, testified. Both witnesses gave their testimony in a forthright manner with candour and spoke from an ability to observe and relate the conduct of the father and of Mr. Johnston, as it affected the children. They agreed that the father was a loving and caring parent but lapsed from time to time in his parental duties. They described Mr. Johnston as a helpmate who was a considerate and faithful life partner to the mother, and they detailed his many positive attributes as they observed them.

[27] Accepting that there may be a bias in their testimony, I nonetheless felt that they made an effort to be fair and to stick to their factual observations without judgment.

[28] The father testified on his own behalf. Mrs. Knight, who is a friend and an acquaintance; his sister, Ms. Kelly; and a friend, Jo-Ann Pollock also testified. The witnesses, Knight, Kelly and Pollock, had a limited vantage point to describe to the court the relationship between the children and the father in that they observed them together sporadically and, in some cases, at some considerable time in the past. It is noteworthy that the sister, Ms. Kelly, related her observations based on seeing the father once or twice a month with the children, and in earlier years, three to four times per month. These witnesses were not in any position to attest to the relationship between Mr. Johnston and the children. At least, they were not asked any question on that subject.

[29] The trial was two days in length and there was no testimony casting either the father or the mother in a bad light in terms of their relationship with the children, including their love and affection for them. This is a case, therefore, in which a decision must be made between the claims of two good parents.

[30] It is my observation, however, on the evidence, that the mother attends to her parental duties and to the general and specific welfare of her children at a significantly higher level of interest and consistency than does the father. Continued close association between the children and the mother is in their best interests.

[31] Evidence regarding the husband's relationship with the children is to the effect that he is a loving parent. The children reciprocate this love and are proud of their father. He, on occasion, has attended their sporting activities, such as soccer, swimming and t-ball. In recent times he has taken them to bowling and table tennis events. Mrs. Knight testified as to what she viewed as a very agreeable relationship at the time she saw them at table tennis. The father is an executive in the table tennis club and is very fond of bowling.

[32] Mr. Johnston's son, Stephen, has become a member of the household of the mother and Mr. Johnston with the three Murphy children. The evidence is that Mr. Johnston acts appropriately and is highly supportive of the children and treats each of them equally, including his son, Stephen. He has taught them to ride

bicycles, and according to the mother attends to their needs without fail. He participates in discipline, which does not involve physical punishment, but rather the deprivation of privileges such as Nintendo games.

[33] Of course a comparison of the children's father and Mr. Johnston, two completely different individuals, is not appropriate to anything unless it can assist in determining whether granting the request of the mother or refusing it is in the best interests of the children. I have been told that in this case, in determining what is in the best interests of the children, that it is not possible to point to any stresses in the relationship between the new family headed by the mother and Mr. Johnston and the father – in spite of the one instance of confrontation between Mr. Murphy and Mr. Johnston which did not develop into anything long lasting.

[34] Neither the father nor the mother speak ill of the other in the presence of the children. The mother takes care and exerts an effort to maximize the contact of her sons with their father. She has made offers of extra access time over and above the court order, which are usually not taken up by the father.

[35] The father has been in the employ of the Territorial Government and, as has been noted, is the manager of the Whitehorse liquor store. He has been employed by the Yukon Liquor Corporation for many years, which speaks to his stability.

[36] There are some matters of concern around the evidence which lead me to make a conclusion regarding the depth of his relationship with the children. These observations are regrettable, but are necessary in considering whether reducing the contact he has with his children is in their best interests or not.

[37] First, is the evidence concerning the use of 12-year old Brendan as a babysitter for his younger siblings. In some instances this task would extend to 2:00 a.m. The father testified that he understood that Brendan would go to bed at 10:00 p.m. In my view, this shows a lack of good judgment.

[38] I accept that there were many opportunities for the father to exercise increased access which were not taken up and that his attendance for his access visits was irregular and that he was lax in indicating the pick-up times to begin the access visits.

[39] The father agreed that he was frequently late with his support payments but that he sometimes had extra bills to pay and simply didn't have the money. The evidence shows that there was a payment due of $500.00 on August 1, 2001 and on that date there was $2,499 in his bank account. The payment was made on August 7th. Again, on August 15th, it was the same situation. A $500.00 payment was not made and there was approximately $3,000 in the bank account. The payment was seven days late. The significance of this is not the lateness of

the payment but his testimony that he did not have the money at the payment date.

[40] I find it worthy of comment that the father transports his children to the sports in which he is interested in – table tennis and bowling, and note that they are both indoor sports. I took from that that he was giving his own interests priority over that of the children.

[41] There is evidence, which I accept, that when the opportunity arose to arrange a specialist appointment to treat Brendan's health problem, the father did not seize on it.

[42] His sworn financial statement does not take into account income tax refunds of $2,900, $2,000 and $1,500 in the years 2000, 1999 and 1998 respectively.

[43] I do not give any weight to the failure to comply with the garbage-free lunch days nor the lack of wrapping of a birthday present, which was purchased in the presence of a child at Wal-Mart. I do not think it laudable that he would change the children's diapers when he had access. Witnesses testified that they found this to be indicative of a high level of parental attention. I do not think so, because it is something all parents are expected to do.

[44] Generally speaking, there is an aura of unreliability in the relationship of the father with his children and his relationship with the mother. This unreliability would likely escape the children's observations and not mar their love and pride for him. I am inclined to agree with the mother's counsel, who referred to the parent's faulty prioritization of his own concerns over those of his children. I also agree with the observation that when Mrs. Knight, Ms. Pollock and Ms. Kelly observed that he relates well to his children, that his actions to the contrary in the matters indicated above speak louder than words and appearances.

[45] The only evidence with relation to the mother and Mr. Johnston and their relationship *vis-à-vis* each other and with the children was highly satisfactory. Mr. Johnston's energy and drive in securing his journeyman's status and overcoming heavy odds to do it, is, to me, significant.

[46] There is, in fact, only one choice between two options in this case:

1. The court can vary the access provisions of the corollary relief order, thus permitting the mother, Mr. Johnston and the children to move to Fort McMurray. The father's access to the children could be diminished and the relationship might be strained.
2. The court denies the application. The mother stays in Whitehorse with her children as a single, working parent for a matter of eight months or so, and Mr. Johnston leaves his employment with Albian and returns and seeks employment in a difficult market. The father

> is thereby perhaps able to increase his time with his children and to strengthen the relationship.

The question is, which of these is in the best interests of the children?

[47] My assessment is that the unit composed of the mother, Mr. Johnston and the four children is a working entity, functioning appropriately for the benefit of all four children. I regard the move to Fort McMurray on a financial and security basis to be very beneficial. It will enable this family to flourish. I find that the fringe benefits described in Exhibit 12, in the long run, could undoubtedly benefit the children. I also find that since this family has been together for six years that nothing should be unreasonably placed in their way which might tend to separate them.

[48] In making the order permitting the move, I believe the father's relationship can be enhanced by all forms of communication and by a positive attitude in accepting the changes that occur and working from there. I am fully satisfied that the mother and Mr. Johnston will do all that they reasonably can to assist the father in maintaining his good relationship with his sons. They will undoubtedly assist in the matter of access.

[49] In reviewing the summary of the *Gordon v. Goertz, supra* case, at para. 49, I have examined the evidence and considered the submissions to determine

what is in the best interests of the children relating to their needs and the ability of each parent to satisfy them. I have given respect to the views of the mother, to which she testified with clarity. I have made my decisions based upon the unique circumstances in this case and have only sought guidance from other cases where the analysis was of assistance.

[50] In reaching my conclusion I have placed the focus on the best interests of the children. I have considered the evidence relating to the existing custody arrangement and find that it is in the best interests of the children that this relationship be maintained and nourished. I consider the opportunity for this family in Fort McMurray to be an outstanding one. I have considered the relationship between the father and the children and his access arrangements. I am satisfied that the move to Fort McMurray would not, disastrously, minimize the contact and feel there are ways to maximize it.

[51] Counsel for the father made much of the wording in *Gordon v. Goertz, supra* where McLachlin J. refers to “full contact”. I think this reference to “full contact” rather than maximum contact is a slip, with all due respect to the learned Justice of the Supreme Court of Canada (as she then was) and that efforts to achieve full contact would be doomed from the beginning. Maximum contact is what the statute calls for, and this to be as is consistent with the best interests of the children. In my view, the opportunity in Fort McMurray is in the best interests

of the children. The contact the children will have with their father will be the maximum achievable in keeping with the best interests of the children.

[52] I am satisfied that the only reason for the move is the employment secured by Mr. Johnston, who will be seeing to the major financial, physical and other immediate needs of these children in the foreseeable future. There is no evidence of an intent to reduce the father's access.

[53] There will be disruptions to the children on removal from Whitehorse, but these kinds of things occur to children who, in functional families, move from one community to another. I take judicial notice of the ability of children to adapt to these changes. I see no changes likely here which defy adaptation.

[54] It is also to be noted that the schooling for Brendan will be more agreeable in that he will be among the older groups in the school, rather than being among the younger groups. The school will be three blocks away, although through a busy intersection. All three children will go to the same school. The children will come home from school to a mother who has not been through the stresses and strains of a work-a-day world, but will be in a position to instantly devote her time to caring for them.

[55] Having reviewed the evidence and deliberated thereon, I am of the view that the best interests of the three children mandate that the court vary the order

to permit the move to Fort McMurray, and I so order. I believe the move should be timed to take place when the transfer from one school to another would be most beneficial to the children. If there is any danger in losing a year's standing in school by reason of the move, then the move should be postponed until that danger no longer exists. I would expect, with my limited knowledge of the school calendar, that the spring break would possibly be the best time.

[56] With respect to the mother's application to vary child support, I accept Mr. Horembala's submissions and order that the child support be revised to $1,235.00, which should commence on February 1, 2002.

[57] The application of the husband for relief from the payment of support during the time he has the children on an access visit must fail as no material change of circumstances has been disclosed, let alone proven. The circumstances that exist now, and are complained of, existed when the original order was made.

[58] There remains a consideration of access to Mr. Murphy. Obviously, on the evidence, much can be done to facilitate reciprocal visits between the father and his sons. My suggestion is that there be liberal and generous access, and unlimited telephone, fax and e-mail access. Most importantly, my suggestion is that the mother pay for one-half of the travel costs (not the food and lodging) of two visits per year to or from Whitehorse to Fort McMurray, as may be desired or

arranged. To clarify, I am suggesting that one-half the cost of an airline ticket or one-half of the equivalent mileage allowance by some governmental authority that may be chosen. The father should have, minimally, seven days access each Christmas, one four-week period in the summer, and some of the spring break. The question of separating the children for the purposes of access will, I am sure, arise. I expect that the parties will be able to make appropriate arrangements.

[59] With these suggestions, I am following the judgment of the British Columbia Court of Appeal in *Nunweiler v. Nunweiler,* [2000] B.C.J. No. 935 (C.A.) (QL), in which the court made suggestions but invited the parties, should they fail to come to an agreement on the matter, to return to court.

[60] For the record, I have found the case of *Woods v. Woods*, [1996] M.J. No. 324 (C.A.) (QL) to be informative. While there are some factual differences, it is a case where a move to a new place of employment was approved, notwithstanding a considerable distance resulting between the child, his mother and his grandparents. Twaddle J.A., speaking on behalf of the court and referring to *Gordon v. Goertz, supra* stated:

> In a pithy summation (which I found of much assistance), McLachlin J. said (at p. 27):
>
> > In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is

> the best interests of the child in all the circumstances, old as well as new?

Except for what I view as the unfortunate use of the phrase “full contact”, I agree with Twaddle J.A.

[61] As I did in the case of *Moyer v*. *Moyer*, [1993] Y.J. No. 138 (S.C.) (QL), I found the words of Monnin J.A. in *Korpesho v. Korpesho* (1983), 31 R.F.L. (2d) 449 at 451 to be of interest:

> Society permits divorce and permits or even encourages remarriage. Once a second stable union has been established, the new spouses or their new family unit must be allowed to live in a normal family life.
>
> In a country as vast as ours, with various economic regions, people may have to move from one province to another in search of employment or to better one’s type of employment …

[62] In *Levesque v. Lapointe,* [1993] B.C.J. No. 23 (C.A.) (QL) at page 21, the following was said:

> We are all of the view that this appeal must be allowed. The interests of the children are best served by being with the parent who has been primarily responsible for their care. The evidence supports the view that the appellant will ensure the continuing involvement of the respondent and his wife in the children’s lives.

[63] Nothing was said as to costs. It is often that in such delicate matters such as this, that it is agreed that each side will bear its own costs. However, if that is

not the agreement, I will hear counsel on the matter.

_____
Hudson J.

E. Joie Quarton	Counsel for the Petitioner
Edward Horembala, Q.C.	Counsel for the Respondent