

# IN THE SUPREME COURT OF BRITISH COLUMBIA

<b>BETWEEN:</b>	)	
	)	
NORBERT HORST KARRASCH	)	<b>REASONS FOR JUDGMENT</b>
	)	
<b>PETITIONER</b>	)	<b>OF THE HONOURABLE</b>
	)	
<b>AND:</b>	)	<b>MR. JUSTICE MEREDITH</b>
	)	
LOUISE ELLEN KARRASCH	)	<b>(IN CHAMBERS)</b>
	)	
<b>RESPONDENT</b>	)	

Date and place of hearing: July 4, 1995  
Vancouver, British Columbia

Counsel for the respondent/applicant: R.A. Henderson

Counsel for the petitioner/respondent: P.G. Kent-Snowsell

1 Mrs. McColl (formerly Karrasch) applies for an order pursuant to s. 17 of the *Divorce Act, 1985*, that the order of His Honour Judge MacKinnon made the 9th day of February, 1982, be varied to provide that the petitioner pay the sum of \$375 per month, per child, and that such variation in child support be made retroactive to August 1993. The order had provided that the petitioner would pay support of \$175 per month, per child, for the two infant children of the marriage; namely, Scott Norbert Karrasch, born November 7, 1977, and Steven Drew Karrasch, born July 13, 1980.

2 I hold that the application must be dismissed. The reason is that Mrs. McColl has more income at her disposal to look after the two boys than does Mr. Karrasch. I note in any event, that on September 8, 1981, shortly after their separation, it was agreed between the parties that:

*The husband shall pay to the wife for the maintenance of the children so long as the said children are in the custody of and residing with the wife, or until the said children reach the age of 19 years, marry or become self-supporting, whichever event shall first occur, the sum of \$175 per month per child commencing on the 1st day of the month following the month in which this agreement is dated and on the 1st day of each and every month thereafter.*

Those payments have been regularly made since the date of the agreement.

3 The relevant portion of s. 17 of the *Divorce Act* reads:

17(8) A variation order varying a support order that provides for the support of a child of the marriage should

- (a) recognize that the former spouses have a joint financial obligation to maintain the child; and
- (b) apportion that obligation between the former spouses according to their relative abilities to contribute to the performance of the obligation.

4           The application must be based upon the proposition that s. 17(8)(b) confers on me the jurisdiction to apportion the joint financial obligations to maintain the children according to "their relative abilities". Even if Mr. Karrasch had more than Mrs. McColl this would be a surprising result in view of the fact that Mrs. McColl entered into the agreement having been given extremely competent legal advice. That agreement contains the following:

INDEPENDENT ADVICE

20. *The husband and the wife and each of them*

- (a) acknowledge that each is fully aware of the property, prospects and estate of the other and has made full disclosure of all assets and liabilities;*
- (b) has had independent legal advice;*
- (c) has carefully read the foregoing agreement and knows the contents thereof;*
- (d) understands their respective rights and obligations under this agreement;*
- (e) enters this agreement without undue influence or fraud or coercion or any misrepresentation whatsoever, and signs this agreement voluntarily as their own free agent.*

5           But even if I have jurisdiction to alter the obligation deliberately undertaken by Mrs. McColl, as between Mr. Karrasch and Mrs. McColl towards the children, I must take account of the fact

that the income available to the respondent includes that of her husband Ian McColl. They both have the two boys to look after.

6           On the other hand, Mr. Karrasch, having married again, has two adopted children to look after. Mrs. McColl has more income available to her to look after the two boys than the petitioner has to look after his two adopted children. I therefore hold under the circumstances, that even if I had jurisdiction to alter the terms of the agreement, I should not do so given the respective incomes of the two family units.

7           As I say, the application must be refused. The petitioner is entitled to his costs.

"Meredith, J."

July 12, 1995  
Vancouver, British Columbia