

**REDACTED VERSION**  
**KING'S BENCH FOR SASKATCHEWAN**  
**Family Law Division**

Citation: **2025 SKKB 203**

Date: **2025 12 04**  
File No.: **FLD-SC-00011-2016**  
Judicial Centre: **Swift Current**

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BETWEEN:

J.V.E.C.

PETITIONER

- and -

S.M.D.

RESPONDENT

**Appearing:**

Chelsea R.M. Campbell  
S.M.D.

for the petitioner  
self-represented respondent

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FIAT  
DECEMBER 4, 2025

ROBERTSON J.

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## INTRODUCTION

[1] The respondent-mother, S.M.D. [Mother], applies to transfer jurisdiction of an action from Saskatchewan to California. The action began in early 2016 with the filing of a Petition by the petitioner-father, J.V.E.C. [Father]. The action involves disputes over parenting of the parties’ two children.

[2] The application is dismissed because: the issue of jurisdiction was previously decided in 2016; and the Mother submitted to the jurisdiction of Saskatchewan in both a 2015 Custody and Access Agreement and in the 2017 Consent Judgment issued by this Court.

[3] While the Mother resides in California, United States of America [U.S.A.] with the children, the Father resides in Saskatchewan, Canada. The 2017 Consent Judgment entitles the Father to parenting time with the children in Saskatchewan. The Mother has denied the Father his right to parenting time in Saskatchewan since 2022 by withholding the children and by commencing competing legal actions in California.

[4] The issues raised in the California actions could and should have been dealt with by this Court on the pre-existing Saskatchewan action. The Mother’s resort to California courts created a multiplicity of actions which caused confusion and delay.

[5] My full reasons follow.

## **BACKGROUND**

### **Evidence**

[6] The parties filed the following affidavits for this application. (There are other affidavits filed which pertain to other applications):

- Mother's affidavit sworn September 16, 2023 [Mother's 2023 Affidavit]
- Mother's affidavit sworn October 11, 2025 [Mother's 2025 Affidavit]
- Father's affidavit sworn November 4, 2025 [Father's Affidavit]

### **Timeline of events**

[7] The following summary of events is derived from the Court record:

#### 2008

Spousal relationship begins in California

#### 2010

January Father deported from California to Mexico

[...] M.J.E. born

#### 2013

March Mother and children resumed cohabitation with Father in Vancouver, British Columbia

October Mother and children return to San Diego, California

#### 2014

February [...] E.E.E. born

2015

- July 22 Parenting Agreement executed by Mother  
Summer Father and M.J.E. move to Shaunavon, Saskatchewan  
December 22 Custody and Access Agreement executed by parents

2016

- February 8 Father filed Petition in Swift Current  
June 10 Ball J. issued Fiat confirming Saskatchewan jurisdiction over M.J.E., but not E.E.E.: 2016 SKQB 204

2017

- March 6 Schwann J. issued Consent Judgment and Child Support Order

2022

- December 7 Mother filed Request for Domestic Violence Restraining Order in San Diego, California. California Court issued Temporary Restraining Order prohibiting Father from contact with Mother and children on *ex parte* application of Mother  
December 29 California Court issued order assuming emergency jurisdiction over custody of children

2023

- June 22 Keene J. issued Fiat dismissing Mother's application to transfer jurisdiction, without prejudice to future re-application  
July 14 California Court denied Father's application to recognize jurisdiction of Saskatchewan Court  
September 18 Mother filed Application for Variation of a Final Order seeking transfer of jurisdiction to California  
October 17 Keene J. issued Fiat directing parties proceed to family dispute resolution (mandatory mediation)

2025

- August 20 California Court issued Permanent Domestic Violence Restraining Order prohibiting direct contact by Father, with order to continue until January 1, 2028

October 27	Father filed Answer to Mother's Application for Variation
November 10	Tomka J. granted Mother's application for an exemption from mandatory mediation to allow the application for transfer of jurisdiction to be heard
November 25	Robertson J. heard Mother's application for transfer of jurisdiction, with decision reserved

**Relevant events**

[8] The Mother is a citizen of the U.S.A.

[9] The Father is a citizen of both Canada and Mexico. He is barred from entering the U.S.A. because he once overstayed the time allowed on his visa allowing entry to the U.S.A.

[10] The parties are parents of two children: M.J.E., born on August [...], 2010, [M.J.E.] so age 15; and E.E.E., born on February [...], 2014, [E.E.E.], age 11. The children are American citizens.

[11] In 2015, the Mother and Father entered into parenting agreements for the children: a short-form "Parenting Agreement between Mother and Father" dated July 22, 2015; and a longer and more formal "Custody and Access Agreement" dated December 22, 2015.

[12] In 2015, the Mother was residing in California. The Mother signed the Parenting Agreement on July 22, 2015. She later executed a "California All-Purpose Acknowledgment" for that agreement before a notary public in San Diego, California on August 21, 2025.

[13] The Custody and Access Agreement dated December 22, 2015 in clause 22 acknowledged that both parties had received independent legal advice. There are corresponding Certificates of Independent Legal Advice appended to the agreement.

The Father was in Saskatchewan on December 18, 2015 when he executed his copy of the agreement. The Mother was in California on December 22, 2015 when she executed her copy of the agreement before a California lawyer.

[14] The Custody and Access Agreement was a comprehensive agreement. Under the Custody and Access Agreement, the parents had joint custody of the children. The Custody and Access Agreement in clause 3 provided that the primary residence of M.J.E. would continue to be with the Father until the start of the 2016/17 school year, when the primary residence of M.J.E. would be with the Mother in California. The Custody and Access Agreement thereafter provided the Father with specified parenting time, including during holidays and summer vacation. Exchanges would be at the San Diego International Airport and the Regina or Saskatoon International Airports, both of which are in Saskatchewan.

[15] The Custody and Access Agreement in clause 17.1 provided that the law of Saskatchewan would apply:

17.0 **APPLICABLE LAW**

17.1 The proper law of this Agreement shall be the law of Saskatchewan. Both parties attorn to the jurisdiction of Saskatchewan to address custody and access matters in relation to the Children.

[16] On February 8, 2016, the Father filed his Petition in response to the Mother withholding access contrary to their Custody and Access Agreement. On March 10, 2016, the mother filed Notice of Application objecting to this Court assuming jurisdiction. That issue was considered at length and decided by Ball J. in his Fiat dated June 10, 2016, reported at 2016 SKQB 204 [*Ball Fiat*]. The *Ball Fiat* at para 35 held that the Court had jurisdiction over both children, but at para. 42 declined jurisdiction over E.E.E. because of his residence with the Mother in California.

[17] On March 6, 2017 Schwann J. granted a Consent Judgment [*Schwann Judgment*] and a Child Support Order. Paragraph 3 of the *Schwann Judgment* states that the parties “consent to the jurisdiction of this court in relation to the Children.” Both parties were represented by lawyers who signed the Consent Judgment and Child Support Order on behalf of their clients.

[18] The *Schwann Judgment* gave the parents joint custody of the children. The *Schwann Judgment* is silent as to where the parents resided, but provides for the children to travel to the Father’s home during summer and school breaks. From the *Ball Fiat* and the Mother’s affidavits, I gather that she has remained resident with primary residence of the children in San Diego, California while the Father remained resident in Saskatchewan.

[19] On June 20, 2021, the Mother made a complaint to the Calgary Police Service that the Father had assaulted the older child when he was visiting the Father in December 2019. The Calgary Police Service took a statement from the Mother and forwarded the complaint to the Shaunavon detachment of the Royal Canadian Mounted Police [RCMP] for investigation. The Father, who was then out of town, was contacted and brought the children to the Shaunavon detachment where they were interviewed on August 10, 2020. The interviewing officer, RCMP Cst. Curti concluded:

I found these children truthful and not afraid of their father. They seem to have a caring relationship with each other and it seems quite genuine.

(Father’s Affidavit, Exhibit A, police report at p. 23)

[20] The file was concluded without charges. In doing so, RCMP Sgt. McPhee wrote on August 20, 2021:

Both children and father SOC [Subject of Complaint] interviewed in Shaunavon. Information received that an incident happened in Shaunavon where the 10 year old was not listening

to parent. SOC admitted to slapping child lightly on the head and stated he physically moved the child towards his bedroom but he fell down which he did not mean to happen. This appears to be an isolated event with no injury. The father apologised to the child afterwards and no further events have occurred. The younger child reports no events where he was struck. This event does not appear to have public interest in pursuing charges due to the lack of pattern of abuse, non-injury and non-egregious nature of the assault. Father SOC was warned and instructed about what was acceptable in physical discipline.

(Father's Affidavit, Exhibit A, police report at p. 20)

[21] On August 27, 2022, the Mother made a complaint to the Shaunavon detachment of the RCMP that the Father did not intend to return the children on time. RCMP officers investigated and determined that the Father intended to return the children a day late because he was dealing with a family emergency in the form of his sick girlfriend. Police attended to the Father's Shaunavon home on August 30, 2022 and the children were returned to the Mother. The Father was cautioned by police. (Father's Affidavit, para. 4 and Exhibit A police report)

[22] The children travelled between their parents' homes until October 31, 2022, after which the Mother refused to have the children travel to Canada to see their Father.

[23] In December 2022, the Mother obtained an *ex parte* order from a California Court restraining the Father from contact with the Mother and children because of excessive and abusive telephone calls to the Mother complaining about the withholding of the children. The California Court determined these calls to be domestic violence under California law.

[24] On February 23, 2023, the Mother filed a Notice of Application seeking transfer of jurisdiction to California. On June 22, 2023, Keene J. issued a Fiat dismissing the mother's application to transfer the file to San Diego, California, but without prejudice to her applying again.

[25] On September 18, 2023, the Mother filed Application for Variation of a Final Order again seeking transfer of jurisdiction to San Diego, California and by Application Without Notice seeking an exemption from the mandatory mediation requirement. On September 27, 2023, Keene J. directed that the Mother's application for an exemption from mediation be made by notice.

[26] On September 29, 2023, the Mother filed an Appearance Day Notice seeking an exemption from mediation. On October 17, 2023, Keene J. dismissed the request for an exemption and directed that the parties proceed to mediation. The ordered family dispute resolution did not happen.

[27] The Father has had very limited parenting time with the children since 2022. His access has been limited to telephone calls and four visits with the children in Tijuana, Mexico in June 2023, December 2024, March 2025 and summer 2025. The June 2023 visit was unscheduled and for five minutes with E.E.E. (Mother's 2023 Affidavit at para. 16). The three other visits were apparently authorized by the California Court and were supervised by the Mother's family. (Mother's 2025 Affidavit, paras. 36-37 and Exhibit Q)

[28] On October 14, 2025, the Mother again applied by Appearance Day Notice for an exemption from mediation. On November 10, 2025, Tomka J. granted a temporary exemption from family dispute resolution to allow the mother's application for a transfer of jurisdiction to be heard on November 25, 2025, but with the proviso that, if transfer was denied, the requirement to proceed to family dispute resolution would remain.

[29] On November 25, 2025, the parties appeared in Swift Current chambers and argued the Mother's application for transfer of jurisdiction. The Mother appeared by telephone. Chelsea Campbell appeared by telephone as the Father's lawyer. The Father attended in person.

## **ISSUE**

[30] Should this Court decline jurisdiction in favour of California?

## **ANALYSIS**

[31] I will comment on the form of application and credibility of the Mother before turning to the issue of whether the Court should transfer jurisdiction to California.

### **Form of Application**

[32] The form of the Mother's application is questionable. There is an Appearance Notice filed October 14, 2025, which asks to have her "previously filed Application for Variation of a Final Order heard before the Court." That would presumably refer to her application filed September 18, 2023. Recognizing the Mother is self-represented and in the absence of any objection, I waive any defect in form.

### **Mother's credibility**

[33] The Father points out discrepancies that he says cast doubt on the Mother's credibility into question. I noted additional concerns. I will give a few examples.

[34] First, the Mother says she was under duress when she signed the 2015 agreements. I find this doubtful for three reasons. The two agreements were signed months apart. The Mother was in another country, far from the Father, when she signed the agreements. And she executed the agreements before a California notary public and lawyer, including receiving independent legal advice for the Custody and Access Agreement. She also consulted other lawyers that year. (*Ball Fiat* at paras 15, 19 and 21-22) Justice Ball considered the Mother's claim that the 2015 Custody and Access Agreement was invalid because of the claimed coercion and rejected that claim. (*Ball*

*Fiat*, para 39) In doing so, he commented on her likely motivation.

[39] ... The most likely inference is not that she was coerced, but that she entered into the agreement as a ploy to avoid the inconvenience of bringing a Hague Convention application.

[35] Second, the RCMP investigation (into her complaint that the Father was intending to delay return of the children) observed that the Mother misled police with a changing story about her return flight. The RCMP report entered August 30, 2022 records:

S.M.D. wanted to take the children so she could get to her flight in Calgary. She had not yet booked the flight even though she had previously said she did. ...

[36] Third, the Mother says her Saskatchewan lawyer gave her bad advice. Being familiar with the lawyer and standards of legal practice in Saskatchewan, I doubt her account. (The Court record shows that the Mother was represented by Adrien McBride in 2016 and 2017.) For example, in the Mother's 2023 Affidavit at para. 11 she wrote:

... as I mentioned in my previous affidavit dated February 22, 2023 my attorney Adrian at the time advised me that no documents were needed for my case because "I had a strong case" according to him, he said no evidence was needed and he just simply wrote an objection to this court and did not allow me to file any more evidence. ...

[37] Fourth, the Mother, when confronted by Father's counsel at the hearing of this application, admitted that she had cited cases that may not exist. She attributed this to her use of Google and said I could ignore that part of her brief. However it occurred, the effect is to mislead the Court and waste opposing counsel's time trying to verify non-existent cases.

[38] Taken alone, any one of these examples might be discounted. But the cumulative effect raises real concern about her credibility and some of her claims.

## Law governing transfer of jurisdiction

[39] *The Children's Law Act, 2020*, SS 2020, c 2, s 7(1)(a) allows the Court to transfer jurisdiction in specified circumstances:

### Transfer of jurisdiction

7(1) If the court is of the opinion that it is in the best interests of the child to do so, the court may:

- (a) request that an extraprovincial tribunal assume jurisdiction with respect to an application for a parenting order; or
- (b) adjourn an application to allow the parties to pursue an application for a parenting order before an extraprovincial tribunal.

(2) For the purposes of subsection (1), the court may refer an application for a parenting order to the jurisdiction in which:

- (a) the child is a national;
- (b) the child has property;
- (c) the parties have commenced an action for separation or divorce; or
- (d) the child has a substantial connection.

(3) If, on the request of the court, an extraprovincial tribunal agrees to assume jurisdiction with respect to an application, the court may transfer jurisdiction to the extraprovincial tribunal.

(4) On the request of an extraprovincial tribunal, the court may accept the transfer of jurisdiction from the extraprovincial tribunal with respect to an application.

[40] *The Court Jurisdiction and Proceedings Transfer Act*, SS 1997, c C-41.1, ss 4 and 10 are also relevant:

### **Proceedings against persons**

**4** A court has territorial competence in a proceeding that is brought against a person only if:

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim;
- (b) during the course of the proceeding, that person submits to the court's jurisdiction;
- (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding;
- (d) that person is ordinarily resident in Saskatchewan at the time of the commencement of the proceeding; or
- (e) there is a real and substantial connection between Saskatchewan and the facts on which the proceeding against that person is based.

...

### **Discretion as to the exercise of territorial competence**

**10(1)** After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to try the proceeding.

(2) A court, in deciding the question of whether it or a court outside Saskatchewan is the more appropriate forum in which to try a proceeding, shall consider the circumstances relevant to the proceeding, including:

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
- (b) the law to be applied to issues in the proceeding;
- (c) the desirability of avoiding multiplicity of legal proceedings;

- (d) the desirability of avoiding conflicting decisions in different courts;
- (e) the enforcement of an eventual judgment; and
- (f) the fair and efficient working of the Canadian legal system as a whole.

***Ball Fiat and res judicata***

[41] Justice Ball, in the *Ball Fiat*, decided the issue of jurisdiction on the Mother's 2016 application objecting to the Court assuming jurisdiction. Unless there is a material change in law or circumstances which would justify a different decision, I should respect that decision under the doctrine of *res judicata*, which includes judicial comity.

[42] While the *Ball Fiat* applied *The Children's Law Act, 1997*, SS 1997, c C-8.2 (since rep), the relevant legislation remains much the same under *The Children's Law Act, 2020*. If necessary, I would adopt his reasons and decision. To be clear, I do not find that it is in the best interests of the children to transfer jurisdiction to California.

[43] From the materials filed, it appears that there is no material change in circumstances since the time of the *Schwann Judgment*, at least as to residence of the parties and children.

[44] The Mother's 2025 Affidavit at para. 4, says "There was a substantial change in circumstances and on December 2022, I filed for an emergency restraining order in the state of California." She goes on at para. 34 to say the San Diego Court granted her a Temporary Restraining Order. The Mother's 2025 Affidavit goes on at para. 38 to state that on August 20, 2025, the San Diego Superior Court granted a Permanent Violence Restraining Order against the Father.

[45] The involvement of the California Court, like the denial of the Father's parenting time, result from the unilateral actions of the Mother. I do not find that this constitutes a change of circumstances to affect or justify transfer of jurisdiction.

[46] In *Pangracs v Dick*, 2009 SKCA 14 at paras 20-21, 320 Sask R 285, Richards J.A. (as he then was) for the Court of Appeal, held that a unilateral move outside Saskatchewan by one parent did not change the "habitual residence" of the child under *The Children's Law Act, 1997*:

[21] The reference in s. 15(1) to the children being resident "at the commencement of the application for the order" does not undermine this conclusion. If a child is physically removed from Saskatchewan, he or she does not, by that fact alone, cease to be habitually resident in this province. An interpretation of the *Act* which permitted such a result would create a situation where a parent could summarily defeat the jurisdiction of the Saskatchewan courts over custody and access matters by the simple expedient of moving a child across a provincial boundary. Removal of the child would make s. 15(1)(a) inapplicable while, at the same time, s. 15(1)(b) would not confer jurisdiction because, as required by s. 15(1)(b)(i), the child would not be "physically present in Saskatchewan".

[22] Section 15(4) speaks directly to this potential difficulty by stating that "[t]he removal or withholding of a child without the consent of *the person entitled to custody* of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process by the person from whom the child is removed or withheld". The same qualification must be read into s. 15(1) in circumstances where, as here, it is not clear which parent is entitled to custody. Any other view of the *Act* would create a significant, and clearly unintended, gap in the jurisdiction of Saskatchewan courts.

[Emphasis in original]

[47] In *Fiegehen v Kendrick*, 2009 SKQB 168, 333 Sask R 306 [*Fiegehen*], Gunn J. granted an application under ss. 15 and 16 of *The Children's Law Act, 1997* declaring that Saskatchewan was the appropriate jurisdiction in relation to a child then residing in Quebec. The paternal grandmother had taken the child from Saskatchewan with permission of the mother, but then refused to return the child. Justice Gunn found that this unilateral action could not change the habitual residence of the child and should not be rewarded:

[26] The habitual residence of a child cannot be changed by the actions of one party without some action by the other party either explicitly or implicitly: *Van Wyk v. Van Wyk*, 2005 SKQB 514 at para. 18. (Barclay, J.).

...

[30] In all of the circumstances, I find that Hannah's habitual residence is Saskatchewan and that Tammy's act in withholding Hannah in Quebec without Amanda's consent has not changed Hannah's habitual residence. I further find that there has been no acquiescence by Amanda, nor any undue delay in seeking due process.

[31] Tammy should not be rewarded with her choice of jurisdiction by simply moving Hannah across a provincial boundary.

[48] In *Kozey v Kozey*, 2015 SKQB 133 at paras 50 – 51, 474 Sask R 109, Megaw J. cited *Fiegehen* in concluding that the Court had jurisdiction to deal with the parenting of a child who had been taken to Russia by the child's mother, who then commenced legal action in Russia:

[50] In the trial decision of *Fiegehen v Kendrick*, 2009 SKQB 168, 333 Sask R 306, Gunn J. states this issue very succinctly and appropriately as follows:

31 Tammy should not be rewarded with her choice of jurisdiction by simply moving Hannah across a provincial boundary.

[51] On the facts of the case before me, the respondent should not be rewarded for keeping the child in Russia and commencing proceedings in that jurisdiction despite the child's lack of connection there.

[49] I am satisfied that the *Ball Fiat* is sufficient reason to dismiss the Mother's application because the issue of jurisdiction has already been decided. However, in case I am wrong, I will go on to consider the Mother's arguments as to why this Court should decline jurisdiction in favour of California and the statutory criteria under *The Court Jurisdiction and Proceedings Transfer Act*.

### **Mother's reasons for transfer of jurisdiction**

[50] The Mother in her brief of law at para. 2 says Saskatchewan does not have jurisdiction because: the Custody and Access Agreements were obtained under duress which vitiates her consent; the habitual residence of the children is not in Saskatchewan; and California is the proper forum. I will briefly address each of these reasons.

[51] The Mother's claim that the parenting agreements are invalid because they were obtained under duress or by coercion is addressed above. I reject that claim.

[52] I agree that the children's current habitual residence is now in California, but that is not decisive. As discussed above, the parties attorned to Saskatchewan as the jurisdiction for parenting issues.

[53] I disagree that California is the proper forum.

### ***The Court Jurisdiction and Proceedings Transfer Act***

[54] *The Court Jurisdiction and Proceedings Transfer Act* is reproduced above. Section 4 provides that a Court has jurisdiction if any one of the enumerated criteria are present. On the facts of this case, I am satisfied that Saskatchewan has jurisdiction under

clauses 4(b), (c) and (e). The parties submitted and attorned to the jurisdiction of the Court. There is a real and substantial connection to Saskatchewan in that the Father resides in Saskatchewan and is entitled to exercise his parenting rights in Saskatchewan.

[55] *The Court Jurisdiction and Proceedings Transfer Act* in s. 10 provides criteria for the Court to consider on an application to transfer jurisdiction to another jurisdiction as “the more appropriate forum”. This recognizes that, even if the Court is entitled to assume jurisdiction, the Court has discretion to transfer jurisdiction if there is a more appropriate forum. I will therefore review the statutory criteria.

[56] With respect to “comparative convenience and expense for the parties”, whichever jurisdiction is chosen will be to some disadvantage to the non-resident. However, the Father will be especially disadvantaged because he cannot enter the U.S.A., so he would be unable to personally appear in a California Court. The Mother has been able to bring applications and appear remotely in this Court.

[57] With respect to “the law to be applied”, I expect the laws of California and Saskatchewan are similar. However, the agreements and *Schwann Judgment* were made and applied under Saskatchewan law for the past decade. There is little to be gained and likelihood of potential problems from starting anew with foreign laws.

[58] With respect to “the desirability of avoiding multiplicity of legal proceedings” and “the desirability of avoiding conflicting decisions in different courts”, the past events illustrate the problems when one party unilaterally commences competing legal actions in another jurisdiction. The applications the Mother made in California could have been brought in Saskatchewan under the existing action. In my view, that would have been far preferable. In *Boehringer Ingelheim (Canada) Ltd. v Englund*, 2007 SKCA 62 at para 34, 299 Sask R 298, the Saskatchewan Court of Appeal quoted Sir George Jessel from *McHenry v Lewis*, [1883] 22 Ch D 397: “It is *prima facie* vexatious to bring two actions when one will do.”

[59] With respect to “the enforcement of an eventual judgment”, that again would favour Saskatchewan. It is open to the Mother to seek to vary the *Schwann Judgment* in Saskatchewan. International treaties make these kind of judgments and orders enforceable across borders.

[60] With respect to “the fair and efficient working of the Canadian legal system as a whole”, I am well satisfied that this Court can and should continue to adjudicate disputes between the parties over parenting of the children.

### **Conclusion**

[61] In conclusion, it is not obvious why this Court should cede jurisdiction to California or that California is a more appropriate forum. On the contrary.

[62] I therefore decline to exercise my discretion to decline jurisdiction and dismiss the application for transfer of jurisdiction.

\_\_\_\_\_  
J.  
D.N. ROBERTSON