

# SUPREME COURT OF YUKON

Citation: *JM v RJ*,  
2025 YKSC 31

Date: 20250604  
S.C. No.24-B0030  
Registry: Whitehorse

BETWEEN:

J.M.

PLAINTIFF

AND

R.J.

DEFENDANT

Before Justice E.M. Campbell

Appearing on her own behalf

J.M.

Appearing on his own behalf

R.J.

## REASONS FOR DECISION

### OVERVIEW

[1] The mother, J.M., and the father, R.J. were in a common law relationship and lived together from July 2002 to August 2016. They have four children. K.J., 21 years old; R.J., 19 years old, C.J., 17 years old, and L.J., 14 years old.

[2] During their cohabitation, the parties lived in Alberta. At the time of separation, the father moved out of the family home. After separation, the children resided primarily with the mother. In 2019, the mother accepted an employment opportunity in the Yukon. She moved to Whitehorse with the four children while the father remained in Alberta. The children have resided full-time with the mother since their move to Whitehorse, and

the father has had occasional parenting time with the children when they visit him in Alberta.

[3] The father paid some child support from separation to October 2023. However, at the time of the hearing, he had not made any child support payment since October 2023.

[4] The parties did not commence court proceedings in Alberta or Yukon prior to June 7, 2024, when the mother filed a statement of claim in the Supreme Court of Yukon. At the time, she also filed an application for sole custody of the children, child support, retroactive child support, and sharing of special and extraordinary expenses. Both parties are self-represented. They filed affidavit materials in support of their respective positions. These are my reasons for decision on the mother's application.

### **CUSTODY**

[5] The mother seeks custody of the minor children, C.J. and L.J. She states the children have been residing with her since separation and she has been the one making decisions and caring for them since then. The mother adds that an order confirming the current situation would facilitate her dealings with government authorities, including the Canada Revenue Agency ("CRA"). The mother states the father was very hostile after separation and continues to be. She states there has rarely been a rational conversation between them since separation, and that the father blocks her from communicating with him every time she asks for additional financial contributions for the children.

[6] The mother seized a career opportunity and transferred to the Yukon in 2019. She states that she informed the father of her decision to move to the Yukon prior to

leaving Alberta for Whitehorse with the children. She states she did not ask the father to sign any documents in that regard. However, she did ask him at some point to sign a letter requested by CRA confirming the children were in her care full time, and another letter required by the bank regarding child support to qualify for a mortgage on her home in the Yukon. She states that neither she nor the father made an application for custody, access, or support to the courts in Alberta. The mother also states the children have lived with her full-time since they moved to the Yukon.

[7] The mother states the father has had the children in his care sporadically since separation and only when it accommodates him. She states he never helped picking up or taking the children to their activities.

[8] The mother states that she has always been open to the children visiting their father in Alberta as long as it does not severely interfere with their schooling and adequate notice is provided to make travel arrangements. She adds that, when she moved to the Yukon, she told the father she would pay the fare for the children to visit him once a year. However, she states that it has been very difficult to plan any trips for the children to visit their father, and that last-minute air travel has made the costs of the children's visits more expensive. Nonetheless, the mother acknowledges the father provided his timely consent when one of the children contacted him for a passport application.

[9] The father argues he was "coerced" into consenting to and signing paperwork allowing the mother to move to the Yukon in 2019. He adds that he was told she would be away for three years only. However, he points out she has now been away for over five years. The father adds that, contrary to what the mother states in her affidavits, he

took the children every weekend he was off work when the children were still in Alberta, and he also spent time with them during the holidays.

[10] The father states it has been difficult for him to see the children on a regular basis since 2019 due to the cost of travel between Alberta and the Yukon. The father relays, as an example, that it cost him over \$2,000 to travel and stay in Whitehorse for their oldest child's high school graduation. Nonetheless, he states the children have spent time with him during the holidays. The father adds the distance between him and the children has been difficult for his mental health. He adds that he only blocked the mother from communicating with him because she was interfering with his communications with the children. The father acknowledges he did not commence any family court proceeding in Alberta or the Yukon since separation.

[11] However, the father clearly stated at the hearing that he was consenting to the mother being granted sole custody of the minor children, even after I told him he would still have an obligation as a parent to support his children financially. The father added he cares for his children and still wants to be kept informed of what is happening in their lives.

### **Analysis**

[12] As the parties were not married and the children have been habitual residents of the Yukon since 2019, the provisions of the *Children's Law Act*, RSY 2002, c. 31, as amended, apply to this proceeding.

[13] The best interests of the children is the paramount consideration in determining custody and access to the children (ss. 1, 28, 29, and 30 *Children's Law Act*).

[14] Even if I accept the father had the children with him when he was off work, and during the holidays, from separation in August 2016 to their move in 2019, I must also consider his statement in light of his explanation that he worked a lot of overtime from 2016 to 2019 to generate a gross annual income of over \$100,000 during those years. Therefore, the father would not have had a lot of time off from work to spend with his children. As a result, I find the mother has, effectively, been the primary caregiver and decision-maker for all four children since separation. In addition, the evidence reveals that, while they visit their father in Alberta from time to time, the minor children, C.J. and L.J., have lived with their mother full time since they moved to the Yukon in 2019, and they attend school in Whitehorse. Also, all four children appear to be doing well in school even if the father states he is contacted regularly by the school when one of their children misses a class. The oldest child is in university; the second finished high school in June 2024 and has decided to take a gap year; and the youngest two are in high school. Also, the mother ensured they all had access to and were involved in extra-curricular activities.

[15] In addition, the father continues to reside in Alberta where he works as a welder, and communications between the parties have been quite limited since separation.

[16] Neither parent applied for custody or access in Alberta prior to the mother commencing this family proceeding in the Yukon in 2024.

[17] Finally, despite his assertion that he was coerced into consenting to his children moving to the Yukon, at the hearing, the father clearly stated that he consented to the mother having sole custody of C.J. and L.J.

[18] As a result, I am of the view that it is in the children's best interests that I grant an order: (i) recognizing the role the mother has played and continues to play as the main caregiver and decision-maker for the children since 2016; and (ii) facilitating her dealings with all levels of government and public authorities in that regard.

[19] Sole custody of C.J. and L.J. is therefore granted to the mother.

[20] Even if an order regarding access has not been sought by the father or the mother, I am of the view that an order formalizing and reflecting the current situation regarding access is in the best interests of the minor children. Therefore, the father shall have access to and visits with C.J. and L.J., as agreed to by the parties. In addition, the father shall continue to have access to and receive information regarding C.J. and L.J., directly from their school(s).

### **CHILD SUPPORT**

[21] The mother seeks child support and retroactive child support for all four children. The mother acknowledges she has received money for the children from the father since 2016. However, she states his financial contribution has been insufficient, inconsistent, and unpredictable. The mother states that she never knows when or how much money the father will send to her for the children. The mother states she has not received any financial support from the father since October 2023. The mother points out that she used her line of credit to give \$125,000 to the father at the time of separation, which represents half the net value of the family home at the time. She also points out that the father sold his house in 2023 and that he likely had equity in that house.

[22] The mother states she and the father did not discuss or agree to an amount of child support to be paid by the father after separation. She states she tried to raise that issue with him on several occasions since separation, but the father has been very hostile towards her. She states there rarely has been a rational conversation between them since separation.

[23] The mother states the father will not communicate with her regarding child support. According to the mother, the father has blocked her number to prevent her from calling or messaging him for money; he does not respond to her emails; and he will not make efforts to communicate with her to arrange for the children to visit him in Alberta in a timely manner.

[24] The mother was aware of the father's income during their relationship. She knew, from their 2015 joint tax returns, attached to one of her affidavits, that he declared a net income of \$95,989.48 that year.

[25] The mother states she did not apply to the courts in Alberta or the Yukon to seek child support prior to 2024 because she was very busy raising four children on her own, managing their childcare and extra-curricular activities all the while working a full-time job to meet their needs. She states she did not have family nearby to help her with the children. In addition, she could not afford a lawyer. The mother also states that she kept hoping the father would do the right thing and support his children. She explains that she has more time to herself now that the children are older and some of them have their driver's licence.

[26] Finally, the mother states the father has never contributed to the children's extra-curricular activities. The mother gave as an example that, in December 2023, the father

refused to contribute financially to allow C.J. to attend a swimming competition in Victoria, British Columbia.

[27] The father is a welder and a member of the Boilermaker Contractors Association & International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Local Lodge 146) in Alberta. The father states he has supported and wants to continue to support his children within his financial means. He adds that he always made sure to contribute to and maintain the dental and medical coverage for his children through his work. In addition, the father states he has sent money directly to the children and bought things for them since separation. In addition, he has paid for them to travel to Alberta to visit him.

[28] The father states that he only blocked the mother from communicating with him because she was interfering with his relationship with the children.

[29] The father submits that I should take his overall situation and, more particularly, his financial means in consideration in determining child support and retroactive child support. The father states that he is financially strapped and that he had to sell his house in 2023, because he was unable to make his mortgage payments. He states he has approximately \$15,000 outstanding on his line of credit to pay. He also states he is dealing with depression, which impacts his ability to work full time. Also, the father points out there are a few hundred members in his union, and, every time a member declines work, their name goes back to the end of the list. As a result, once work is declined, it takes weeks before a member makes it back to the top of the list and is offered work again. The father submits this system also impacts his work schedule and ability to work every year.



[30] The father acknowledges he received a substantial amount from the mother for his share of the family home in 2016 but asserts he did not get his fair share of the family assets at the time of separation. The father asserts that he never received his share of the mother's RRSPs and property in Ontario. I understand from these last comments that the father is asking me to take into consideration the issue of division of assets he raised when determining the amount of child support and/or retroactive child support to pay.

### **Analysis**

[31] It is well established that child support is the right of the child (*DBS v SRG*, 2006 SCC 37 ("*DBS*") at para. 38); that parents have a legal obligation to support their children in a manner commensurate to their incomes (*DBS* at para. 54, *Yukon Child Support Guidelines*, OIC 2000/63 ("*Yukon Guidelines*"), *Federal Child Support Guidelines*, SOR /97-175 ("*Federal Guidelines*")); and that this parental obligation exists independently of any court order (*DBS* at para. 54; *Michel v Graydon*, 2020 SCC 24 ("*Michel v Graydon*") at para. 10; *Family Property and Support Act*, RSY 2002, c. 83, s. 32).

[32] In addition, child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together (*DBS* at para. 38).

[33] Section 36 of the *Family Property and Support Act* and s. 3(1) of the *Yukon Guidelines* provide that the amount of child support payable for a child under the age of majority, which is 19 years old in the Yukon, is the amount set out in the *Federal Guidelines*.

[34] Section 36 of the *Family Property and Support Act* and s. 3(2) of the *Yukon Guidelines* provide that child support may be payable for an adult child. Section 3(2) provides as follows:

3(2) Unless otherwise provided under these Guidelines, if the child to whom the order for child support relates is at least the age of majority, the amount of child support to be ordered for the child is

- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs, and other circumstances of the child and the financial ability of each parent to contribute to the support of the child.

[35] Nonetheless, the court may award an amount of child support that is different than the amount determined under s. 3 of the *Yukon Guidelines*, if the court finds that the paying parent would otherwise suffer undue hardship (s. 10 *Yukon Guidelines*).

[36] Also, in this case, since the children have resided primarily with their mother since separation, ss. 8 and 9 of the *Yukon Guidelines* regarding split or shared residency do not apply.

[37] As a result, the father's income is the only income relevant to determine the amount of base child support to be provided under the applicable guidelines.

### **Prospective Child Support**

#### *(i) Determination of the father's income for child support purposes*

[38] The father attached his Notices of Tax Assessment for 2016 to 2023, inclusive, to his first affidavit, dated October 24, 2024. I note that the father did not file that affidavit with the court registry in advance of the hearing. He only provided a copy to the mother.

As the father appeared by phone from Alberta on the application, I was told about that affidavit at the commencement of the hearing and obtained a copy from the mother. I reviewed the content of the affidavit with the father at the hearing, in part because the copy was faint and difficult to read, and I asked him to formally file his affidavit with the court registry after the hearing. Unfortunately, the father failed to do so. However, as I reviewed the affidavit with the father in court and as the copies of his Notices of Assessment are of good quality, I am of the view that it is in the interest of both parties and the children that I consider the father's first affidavit and attached materials on this application despite its defects.

[39] The notices of tax assessment attached to the father's first affidavit reveal his gross annual income (line 150 or 15000 depending on the year) from 2016 to 2023:

2016	\$101,667
2017	\$125,944
2018	\$114,796
2019	\$122,047
2020	\$76,942
2021	\$108,520
2022	\$115,946
2023	\$86,204

[40] The mother submits that the father's past income reveals he is intentionally underemployed and living off the profits of the sale of his house. The mother points out that prior to 2023, and aside from 2020, the father always made over \$100,000 per year.

[41] The father states he had to sell his house in 2023 because he fell behind on his mortgage payments and was facing foreclosure by the bank. The father also states that his income was higher before 2023 because of all the overtime work he put in. The father states he is suffering from depression and there are days where it is difficult to get himself to work.

[42] The father asks the court to take into consideration the amount of union dues, and other amounts deducted from his total income, as well as the income taxes he paid, to determine the amount of child support he should pay. The father also states that he plans on upgrading his welding ticket by taking courses that run over one to two semesters to increase his employability. The father submits this will have an impact on his ability to work and his income over the next few years.

[43] The father did not file, prior to the hearing, any evidence regarding several topics he addressed during his submissions. However, at the hearing, I gave him additional time to file affidavit materials in support of his submissions regarding: the circumstances surrounding the sale of his house (foreclosure) and other debts he may have, his diagnosis and treatment for depression, the process followed by his union to assign or offer work to its members, money available to his children for post-secondary education through his Indian Band in Alberta, and money he provided directly to his children. The father attempted to file an affidavit after the hearing by faxing it to the registry. However, the document was not filed because it did not comply with the *Rules of Court*.

Nonetheless, the registry kept a copy of that second affidavit on file. I note that the father attached documents to his second affidavit that I authorized him to file during the hearing. In addition, I am of the view that it is in the interest of both parties and,

ultimately the children, that I consider those documents. As a result, I will consider the information contained in the father's second affidavit and attachments despite its non-compliance with the *Rules of Court*.

[44] Section 14 of the *Yukon Guidelines* provides that a parent's annual income is to be determined using the source of income set out under the heading "Total income" in the T1 General form issued by the CRA and is to be adjusted in accordance with Schedule III of the *Federal Guidelines*.

[45] In accordance with the applicable guidelines, the income taxes the father paid are not deductible from his gross annual income to establish his income for child support purposes. The father's union dues, in the amount of \$616.80 (\$51.40 per month), are the only contributions that are deductible from his total annual income for child support purposes (ss. 14 to 18 of the *Yukon Guidelines*).

[46] I note that, aside from 2020 where the father's income would have been negatively affected by the Covid-19 pandemic, the father's income for 2023 is \$20,000 to \$40,000 lower than the gross annual income he has declared since 2016.

[47] At the hearing, the father submitted as an explanation that he is suffering from depression, has accumulated debts, and has had to sell his house because he fell behind on his mortgage payments.

[48] In his second affidavit, the father filed the first page of a letter, dated April 27, 2023, he received from legal counsel for the Canadian Imperial Bank of Commerce ("CIBC") entitled "Foreclosure by Canadian Imperial Bank of Commerce". The letter states the father had to update his information with the bank as well as pay the outstanding arrears on his mortgage, as of April 27, 2023, in the amount of \$7,853.09

as well as other smaller amounts, including legal fees, to bring his mortgage into good standing. However, the second page of that letter is missing.

[49] The father also attached a copy of a text message sent from someone the father appears to know to another person indicating that the father required legal representation with respect to the sale of his house.

[50] While I am prepared to consider the first page of the CIBC letter as confirming that the father did fall in arrears in his mortgage payments, I am not prepared to accord any weight to the text message considering its many unknowns. In any event, the mother does not dispute that the father sold his house in or around 2023.

[51] However, I am left somewhat perplexed by the fact that the father did not provide any information regarding the proceeds of the sale of his house and the equity, if any, in the house. In addition, the father did not provide any document regarding the line of credit he mentioned in his submissions.

[52] Considering the substantial amount of money (\$125,000) the father received from the mother at the time of separation and his income before and since separation, I find it is more probable than not there was equity in the house, despite the total amount due to the CIBC on the mortgage, which the father did not provide.

[53] Also, in determining the amount of child support or retroactive child support due, I am not prepared to consider the father's argument that the mother owes him an undetermined amount of money for what he states was his share of the mother's alleged RRSPs and property in Ontario at the time of separation because there is no information regarding those assets before me, and the father never filed any application seeking the division of those assets in a court of competent jurisdiction.

[54] However, the father did provide a letter from a registered psychologist, dated November 22, 2024, confirming that the father has been under his professional care for depression. The letter states:

During the course of his treatment, Mr. [J.] has demonstrated steady and meaningful progress in managing his symptoms of depression.

[55] As a result, I am satisfied, on balance, that the father has been suffering from depression which has impacted his ability to work in 2023 and 2024. In these circumstances, it would be inappropriate, at this time, to impute income on the father or rely on his pattern of income under s. 15 of the *Yukon Guidelines* to determine his 2023 income for child support purposes.

[56] Therefore, I find that the father's income for 2023, for the purpose of determining the current level of child support, is \$85,587.20, which corresponds to the amount that appears at line 15000 of his 2023 income tax assessment less his annual union dues (\$86,204- \$616,80)<sup>1</sup>.

*(ii) Amount of prospective child support payable by the father*

[57] The parties have two minor children and two adult children.

[58] Based on an annual income of \$85,587.20, the table amount of monthly child support for an Alberta resident is:

- for two children, \$1,252.69 per month;
- for three children, \$1,653.16 per month; and
- for four children, \$1,981.15 per month.

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<sup>1</sup> The father's 2024 Notice of Tax Assessment was not available at the time of the hearing.

[59] In accordance with ss. 3(1) of the *Yukon Guidelines*, the table amount is applicable for the two minor children, C.J. and L.J., who both reside in Whitehorse with their mother, unless I find undue hardship.

[60] As for the adult children, R.J. and K.J., the first question to determine is whether they are still “under their parent’s charge but unable, because of illness, disability, or other cause, to withdraw from their parent’s charge or to obtain the necessities of life” (s. 1, definition of “child”, *Family Property and Support Act*).

[61] R.J. is on a gap year since finishing high school in June 2024. K.J. attends an undergraduate university program outside the Yukon.

[62] Post-secondary education may constitute an “other cause” for an adult child to remain under their parents’ charge (see *GTF v KLF*, 2009 YKSC 72 (“*GTF*”), decided under the *Divorce Act*, RCS, 1985, c. 3. - the definition of the word “child” under the *Family Property and Support Act* is essentially identical to the definition of the expression “child of the marriage” under s. 2 of the *Divorce Act*).

[63] However, the court must be satisfied that “the child’s educational pursuits are reasonable” and, if so, that “it is appropriate that the pursuits be financed by the parents” (*Nordeen v Nordeen*, 2013 BCCA 178 (“*Nordeen*”) at para. 16).

[64] In *Nordeen*, the Court of Appeal for British Columbia reiterated, at paras. 16-17, that the factors set out in *Farden v Farden* (1993), 48 RFL (3d) 60 at 64-5, are useful indicators to consider in making that determination. However, these factors do not constitute a “checklist” or a set of statutorily mandated criteria:

- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;



- (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
- (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
- (4) the ability of the child to contribute to his own support through part-time employment;
- (5) the age of the child;
- (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
- (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
- (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

(See also *GTF* at para. 27)

[65] Generally, child support for an adult child attending post-secondary education should be determined under the “condition, means, needs and circumstances of the child ” approach and the financial ability of each parent to contribute to the support of the child pursuant to ss. 3(2)(b) of the *Yukon Guidelines* (see *WPN v BJN*, 2005 BCCA 7 (“*WPN*”) at paras. 40-45; *GTF* at para. 23. Both cases were decided under the *Divorce Act* and the *Federal Guidelines*. However, the wording of ss. 3(2) of the *Yukon Guidelines* is essentially identical to ss. 3(2) of the *Federal Guidelines*. Also, the wording of s. 7 of the *Yukon Guidelines* is essentially the same as s. 7 of the *Federal Guidelines*).

[66] Justice Levine, writing for the Court of Appeal for British Columbia, explained in *WPN*:

[40] In the case of an adult student living away from home, Martinson J. provided the following rationale for finding that the “usual *Guidelines* approach” is inappropriate ([*Griffiths v Griffiths*, 1998 BCJ No 2000 (SC)] at paras. 16-18):

The usual *Guidelines* approach is based on certain factors that normally apply to a child under the age of majority. That is, the child resides with one or both parents. The child is generally not earning an income and is dependent on his or her parents.

The usual *Guidelines* approach is, in most cases, based on the understanding that, though only the income of the person paying is used to calculate the amount payable, the other parent makes a significant contribution to the costs of that child’s care because the child is residing with him or her.

The closer the circumstances of the child are to those upon which the usual *Guidelines* approach is based, the less likely it is that the usual *Guidelines* calculation will be inappropriate. The opposite is also true. Children over the age of majority may reside away from home and/or earn a significant income. If a child is not residing at home, the nature of the contribution towards the child’s expenses may be quite different.

...

[42] In my opinion, in principle, support for an adult child who is entitled to child support because of his or her attendance at a post-secondary institution generally should be determined under s. 3(2)(b). The “table amount”, as noted by Martinson J. in *Wesemann*, contemplates a contribution by the non-custodial parent to the expenses borne by the custodial parent in providing a home for the child. The fact that the “table amount” increases incrementally and not absolutely for additional children supports that interpretation of the intention of the Guidelines. The “table amount” does not contemplate a child’s contribution, which is an important factor in considering the amount of support a student requires.

[43] None of the cases I have reviewed considered the interaction among s. 3(2)(b), s. 7 and a separation agreement. The relevance of that interaction in this case is that the parties agreed that the father would pay the “Table Amount” and that “all costs of education” would be “special and extraordinary expenses” they would share equally.

[44] In *Karhoffer*, McKinnon J. suggested that if s. 3(2)(b) is applied, then s. 7 should not be considered and the court must decide what amount is appropriate. He noted that ss. 3(2)(b) and 7(1) both require consideration of the means of the child. He cited McLean as authority for the proposition that where the order is made under s. 3(2)(b) instead of s. 7, the court may nonetheless apply the expense sharing principle (see paras. 70-72).

[45] In my view, child support determined under s. 3(2)(b) does not necessarily preclude a specific award for “special and extraordinary expenses” under s. 7, where appropriate. The existence of a separation agreement that expressly deals with specific expenses may lead to such an approach.

[67] Nonetheless, the statutory approach under the *Yukon Guidelines* requires that child support for an adult child be established, even in a case involving a student attending post-secondary education, at the table amount under s. 3(2)(a) unless it is found to be an inappropriate approach in the circumstances.

[68] I note the mother also seeks contributions from the father for K.J.’s post-secondary expenses under s. 7 of the *Yukon Guidelines*. In addition, both parties are self-represented, and, from the documents she filed, the mother appears to seek child support for K.J. only when K.J. resides with her in Whitehorse.

[69] There were no agreements between the parents regarding child support and/or s. 7 expenses, at or after separation.

[70] The evidence before me is that R.J. turned 19 in January 2025. He graduated high school in June 2024 and decided to take a gap year to travel before continuing with

his post secondary education. R.J. continued to hold casual employment with the City of Whitehorse; his plan was to use his income to fund his gap year, potentially travel during that time, and help fund his post-secondary education. He also planned to apply for an out-of-territory engineering program in 2025. Also, R.J. accumulated sufficient funds to purchase a vehicle at a cost of \$12,000 in 2023-2024. Until October 2024, R.J. continued to reside with his mother and his siblings free of charge. R.J. bought a ticket to visit his father and friends in Alberta in October 2024. He had no fixed plans after that trip.

[71] Considering his situation, including his employment and decision in June 2024 to take a gap year to work and travel for, at least, a year, I find that R.J. is currently self-sufficient and not under the charge of his parents. As a result, child support is not currently payable for him. However, if, for example, R.J. does enroll in post-secondary education in 2025, as planned, or potentially later, he may again be found to be under the charge of his parents, and child support may become payable for him again (see *Hillhorst v Amaral*, 2018 ONSC 3782).

[72] K.J. is 21 years old. She is enrolled full time in the second year of a psychology program at a Canadian university outside the Yukon.

[73] K.J. has applied for and received a grant from the Yukon government to help with the costs of her education outside the Yukon. For the 2024-2025 school year, K.J. has received a total of \$7,552<sup>2</sup> in grant from the Yukon government. At the time of the hearing, K.J. was in the process of applying for a Canada Student Loan.

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<sup>2</sup> The grant was attributed as follows: \$1,500 for travel/airfare and \$178 per week for 34 weeks (\$6,052).

[74] K.J.'s tuition and fees for the 2024-2025 school year amount to \$5,418.33. In September 2024, her mother paid the first installment of those fees in the amount of \$2,561.13. The mother also paid for K.J.'s air travel to attend university in August because K.J. had yet to receive the first portion of her grant.

[75] During the school year, K.J. shares an apartment with a friend. She pays \$1,100 a month in rent, plus half the utilities. She also paid an \$1,100 damage deposit for the apartment. K.J. uses her savings from her summer employment to pay for her accommodations. When she is not in school (May to August), K.J. resides with her mother in Whitehorse free of charge.

[76] These set expenses do not include the costs of groceries, clothing, books, transportation, and other reasonable living expenses K.J. incurs while attending university.

[77] K.J. works as a lifeguard at the university pool during the school year. This year, she was offered approximately six hours of work per week at an hourly rate of \$19. From May to August 2024, K.J. worked in Whitehorse and was able to set aside \$5,000 from her summer employment.

[78] The mother and/or K.J. applied for financial assistance for post-secondary education to the father's First Nation, but K.J. was denied funding. While the father insists that funding is available for K.J. through his First Nation, he did not provide any documents confirming this is the case despite having the opportunity to do so after the hearing. He also stated that K.J. could have applied for post-secondary programs in Edmonton and could have stayed with him for free but she never followed up on his offer.

[79] The evidence reveals K.J. is a successful student committed to her full-time post-secondary studies in a psychology program she chose in pursuit of higher education, which, I am of the view, is reasonable in light of the circumstances. While enrollment in a full-time university course load in psychology is certainly demanding, K.J. has nonetheless found and maintained part-time employment that allows her to contribute to the payment of her expenses. K.J. also took active steps to apply for government loans and grants to help cover the costs of her post-secondary education. Despite her efforts, K.J.'s income as well as her student grant and potential loan from the federal government are clearly insufficient to cover all the expenses related to her costs of living and reasonable pursuit of a university degree in psychology. Indeed, the evidence reveals the mother continues to help K.J. financially with her education, travel and living expenses, even when K.J. is away at university. Also, K.J. resides with her mother, free of charge, when she is not in university. In my view, at this stage of her young adult life, K.J. remains under the charge of her parents and is unable to withdraw from their charge. As a child dependant, K.J. is entitled to the financial support of her parents, to the extent they are capable of doing so (s. 32 *Family Property and Support Act*). As a result, I find that child support is payable by the father for K.J.

[80] The father has been and continues to be gainfully employed as a welder. However, the father stated at the hearing that he intends to take training courses on a full-time basis to upgrade his welding ticket in the near future, which, he stated, will negatively impact his income in the short term. However, at the time of the hearing, he was not enrolled in any such program(s). In addition, while the father's symptoms of depression have impacted his ability to work as much as he used to, as he explained at

the hearing, his psychologist expressed the view that the father is responding well to his care and “has demonstrated steady and meaningful progress in managing his symptoms of depression”. Finally, while the father provided evidence that he had to sell his house to avoid foreclosure proceedings, he did not provide any information regarding the proceeds of the sale of his house nor any documents regarding other debts he may still be responsible for at this time. As stated earlier, considering the sizeable amount he received from the mother at the time of separation, it is more probable than not that the father had equity in his house when it was sold. In my view, the evidence provided by the father regarding his financial situation falls far short from meeting the criteria for undue hardship.

[81] As K.J. is the third child entitled to child support from her father, base child support for her under s. 3(2)a) of the *Yukon Guidelines* would amount to an additional \$400.47 per month to be paid by the father to the mother in child support. As stated above, based on the father’s income, the amount of child support payable for the two minor children is \$1,252.69 per month while child support for three children would amount to \$1,653.16 per month.

[82] I acknowledge that using the amount of base child support produced by the child support tables has generally been found to be an inappropriate approach to determining the amount of child support payable for an adult child attending university away from home, and that courts have generally applied the “condition, means, needs and circumstances of the child” approach instead (see s. 3(2)(b) *Yukon Guidelines*).

[83] However, considering that K.J. resides with her mother free of charge four months per year, that the mother continues to pay for a number of K.J.’s living, travel and

education expenses even when she is not at home, that the mother has consistently covered K.J.'s travel expenses to allow her to return to the Yukon for the holidays in December/January; that the mother has to maintain a house big enough to house K.J. when she is back from university; considering K.J.'s limited income and ability to contribute to her expenses while in university; and considering the history of strained communications between the parties regarding financial support, which militates in favour of a predictable and stable amount of support, I am of the view that using the table amount of child support for K.J. (\$400.47 per month, year round) is reasonable and appropriate in this case.

[84] In coming to this conclusion, I have also considered my decision not to make an order regarding the sharing of s. 7 expenses, at this time.

[85] Therefore, starting June 15, 2025, the father shall pay monthly child support for C.J., L.J., and K.J. to the mother in the amount of \$1,653.16 per month.

[86] K.J.'s eligibility for child support shall be reassessed in two years, when she is expected to complete her undergraduate university program, or before if her circumstances change materially.

### **Retroactive child support**

[87] Section 38(1)(e) of the *Family Property and Support Act* specifically contemplates retroactive child support awards.

[88] Since parents have the legal obligation to support their children in a way that is commensurate to their income, independent of any court order, retroactive child support orders are not truly retroactive because they simply enforce a parent's "unfulfilled



obligations that have accrued over time” (*DBS* at paras. 131-132, *Colucci v Colucci*, [2021] 2 SCR 3 at para. 36 (“*Colucci*”).

[89] As such, retroactive child support awards “are not confined to ‘exceptional circumstances’ or ‘rare cases’” (*Michel v Graydon* at para. 10, quoting *DBS* at para. 5).

[90] As further explained in *Michel v Graydon*:

[31] As to Mr. Graydon’s conduct as the payor parent in this case, it is really this simple. When a payor parent fails to pay the appropriate amount of child support, the recipient parent is left to shoulder the burden. If the recipient parent does not have the means to provide their child reasonable support, the child suffers. Both the recipient parent and the child may experience hardship because of a payor parent’s neglect. Seen in this light, it bears repeating that retroactive child support is not exceptional relief (*D.B.S.*, at para. 5): there is nothing exceptional about judicial relief from the miserable consequences that can flow from payor parents’ indifference to their child support obligations. This is not to say that hardship is required to ground an award for retroactive child support, as there is also nothing exceptional about relief that creates a systemic incentive for payor parents to meet their obligations in the first place. Just as an order of child support is intended to provide children with the same standard of living they enjoyed when their parents were together (*D.B.S.*, at para. 38), an order of retroactive child support provides an (albeit imperfect) remedy where that does not occur. And as this Court recognized in *D.B.S.*, “courts are not to be discouraged from defending the rights of children when they have the opportunity to do so” (para. 60).

[91] However, “a retroactive increase in [child] support will not always be appropriate.

... The court must exercise its discretion to determine whether a retroactive award should be given at all, and how far back it should extend” (*Colucci* at para. 38).

[92] In *DBS* at para. 133, the Supreme Court of Canada sets out four factors to consider to determine whether to award retroactive child support:

- (a) the recipient parent’s delay in seeking retroactive support;

- (b) the payor parent's conduct;
- (c) the child's circumstances; and
- (d) any hardship caused by a retroactive award.

(*Michel v Graydon* at paras. 10 and 29; *Colucci* at para. 38)

[93] The same considerations apply when a retroactive order is sought after the child support beneficiary ceases to be a dependent child (*Michel v Graydon* at para. 29).

[94] In determining whether to make a retroactive award, the court must also be alive to and balance the differing interests at play:

- (a) the child's interest in receiving the appropriate amount of support to which they are entitled;
- (b) the interest of the parties and the child in certainty and predictability; and
- (c) the need for flexibility to ensure a just result in light of fluctuations in payor income

(*Colucci* at para. 46)

[95] As stated in *Colucci*, at para. 46, "[t]he child's interest in a fair standard of support commensurate with income is the core interest to which all rules and principles must yield. A fair result that adequately protects this interest will sometimes lean toward preserving certainty, and sometimes toward flexibility."

[96] Once the court determines that a retroactive child support award is warranted, the court must determine the amount to award. There are two components to that determination: (i) the date of retroactivity, and (ii) the amount of child support that "would adequately quantify the payor parent's deficient obligations during that time" (*DBS* at para. 117).

(i) *Date of retroactivity*

[97] The date to which an order will be retroactive should, generally, be the date when “effective notice” was given to the payor parent (*DBS* at para. 118). Effective notice in this context simply requires that the recipient parent “broach[es]” the subject of an increase in child support. As stated in *DBS*:

[121] ... any indication by the recipient parent that child support should be paid, or if it already is, that the current amount of child support needs to be re-negotiated. Thus, effective notice does not require the recipient parent to take any legal action; all that is required is that the topic be broached. Once that has occurred, the payor parent can no longer assume that the *status quo* is fair, and his/her interest in certainty becomes less compelling.

[98] However, it should be expected that recipient parents will move discussions forward after giving effective notice. As a result, it will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice (legal action) was given to the payor parent (*DBS* at para. 123).

[99] There is an important *caveat* to the three-year presumptive rule. Where the payor parent engages in blameworthy conduct (irrespective of the degree of blameworthiness), there is no reason to continue to protect their interest in certainty beyond the date when their circumstances changed materially. In those cases, the date of retroactivity will go back where the increase child support should have been paid (*DBS* at para. 124; and *Colucci* at para. 40). Blameworthy conduct has been found to include, not only the most egregious cases of deception or intentional evasion, but also “cases of mere passivity and ‘taking the path of least resistance’” (*Colucci* at para. 41 quoting *Burchill v Roberts*, 2013 BCCA 39 at para. 30). Of note, blameworthy conduct

has been found to include a payor parent's failure to disclose a material increase in their income.

[100] In *Colucci*, the Supreme Court of Canada added the following regarding the date of retroactivity:

[43] In practice, then, the date of retroactivity is frequently adjusted to align with the date of the material increase in income, despite the “general rule” of varying to the date of effective notice in *D.B.S.* (para. 118). It would be “untenable to suggest that a parent who fails to provide financial disclosure can assume that the amount being provided is adequate because the recipient parent has not brought a court application” (*Brear*, at para. 74, per Pentelchuk J.A.). Further, even where the payor has disclosed increases in income, the *D.B.S.* factors may support extending a retroactive increase of support back to the time of the change in income.

(ii) *Quantum of the retroactive award*

[101] The child support guidelines apply to the determination of the amount of a retroactive child support award (*Family Property and Support Act*, s. 36).

[102] However, courts “must still ensure that the quantum of the award fits the circumstances” (*DBS* at para. 128).

[103] As with the Federal regime, there are two ways the territorial statutory scheme allows the court to “affect the quantum” of a retroactive award (*DBS* at para. 128).

[104] First, the court can affect the quantum of the award through the exercise of the discretion it is provided under the *Yukon Guidelines*. Section 10 of the *Yukon Guidelines* is one of those discretionary provisions. A finding of undue hardship under s. 10 can lead to a lesser amount being awarded. In *DBS* at para. 129, the Supreme Court of Canada stated that: “it will generally be easier to show that a retroactive award causes undue hardship than to show that a prospective one does.” The court also noted that

the circumstances leading to undue hardship are not closed under the Federal regime. Similarly, the circumstances that may cause undue hardship listed at para. 10(2) of the *Yukon Guidelines* are not exhaustive.

[105] Second, the court may also affect the amount of the award by departing from the presumptive date of retroactivity if it leads to an unfair result having regard to all the circumstances of the case:

[130] A second way courts can affect the quantum of retroactive awards is by altering the time period that the retroactive award captures. While I stated above that the date of effective notice should be chosen as a general rule, this will not always yield a fair result. For instance, where a court finds that there has been an unreasonable delay after effective notice was given, it may be appropriate to exclude this period of unreasonable delay from the calculation of the award. Unless the statutory scheme clearly directs another outcome, a court should not order a retroactive award in an amount that it considers unfair, having regard to all the circumstances of the case.

(DBS)

(iii) *Should retroactive child support be awarded, and, if so, in what amount?*

[106] All four children were minors at the time of separation. However, K.J., the oldest, turned 19 in January 2023, and the second child, R.J., turned 19 in January 2025.

[107] Therefore, the first question to determine is whether the mother can claim retroactive child support for the parties' adult children.

[108] Section 34 of the *Family Property and Support Act* provides that:

(1) A court may, on application, order a person to provide support for their dependants and determine the amount thereof.

(2) An application for an order for the support of a dependant may be made

(a) by the dependant;

(b) if the dependant is a child, by a parent of the child or by a person who has lawful custody of the child;

(c) by a director designated under the Child and Family Services Act if the child is in the care or custody of the director under that Act;

(d) the director of human resources under the Social Assistance Act, if assistance is being paid to or in respect of the dependant under that Act. [emphasis added]

...

[109] Section 38(1) of the *Family Property and Support Act* provides that:

(1) In an application under section 34 or 37, the court may order that:

(a) an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;

...

(e) the payment of support be made in respect of any period before the date of the order;

...

[110] Earlier in these reasons, I found that R.J. is no longer a dependant child and, consequently, is not currently entitled to child support. However, R.J. met the definition of a dependant “child” for whom child support was payable when his mother filed her application for retroactive child support on June 7, 2024, because R.J. was still under the age of majority at the time and he had not yet finished high school (s. 1 definition of “child” *Family Property and Support Act*,). As a result, I find that the mother had the statutory right to apply for retroactive child support for R.J. pursuant to ss. 34(2)(b) (see *DBS and Michel v Graydon*).

[111] I am also of the view that, even after R.J. finished high school in June 2024, he was entitled to continued financial support from his parents, as a minor, until he withdrew from the charge of his parents (s. 1 definition of “child” *Family Property and Support Act*). In my view, in light of R.J.’s young age as well as his plan to take a year off from school to work and to travel, R.J. was entitled to financial support from his parents until October 2024, when he left his mother’s residence to travel to Alberta. As R.J. was under the age of majority throughout that time, base child support was payable for him.

[112] As for K.J., I also find that she was still a dependent child for child support purposes in June 2024, when her mother filed her application for child support, because, at the time, K.J. was enrolled as a full-time student in her undergraduate program in university; she was residing with her mother for free during the summer; and, while she had a summer job to help fund her second year of university and had received a government grant to help finance her out-of-territory living and education expenses, she was unable to withdraw from the charge of her parents. Therefore, the mother was, and continues to be, entitled to seek retroactive child support for K.J. as well.

[113] As a result, I do not need to weigh in on whether a parent would have a statutory right, under s. 34 of the *Family Property and Support Act*, to apply for retroactive child support for a child who no longer meets the definition of a dependant “child” under the act at the time the application is made.

[114] However, as K.J. finished high school in June 2022 and turned 19 in January 2023, I find it opportune at this point to determine whether K.J. has remained a child dependant entitled to continued child support between June 2022 and June 2024.

[115] In the summer of 2022, K.J. was still a minor and had just finished high school. As such, she was still a dependant child at the time and base child support was payable for her pursuant to s. 3(1) of the *Yukon Guidelines*.

[116] From September 2022 to April 2023, K.J. was enrolled in an out-of-territory Theatre & Arts certificate program. Her tuition fees were in the amount of \$10,385. In addition, the fees associated with her books and supplies amounted to \$800. K.J. paid \$400 per month in rent and had to purchase her own groceries. K.J. bought a vehicle in 2020 that she also used while she was away studying. Her mother has paid for the registration and insurance for that vehicle since 2020. K.J. decided to return home in Whitehorse over the Christmas break.

[117] K.J. worked part-time during her school year. Her gross pay amounted to \$614.61. She also received a scholarship from the school in the amount of \$300.

[118] In addition, K.J. was the recipient of a Yukon Excellence Award and obtained a Yukon Grant to pursue post-secondary education. She received a total of \$11,208 from the Yukon government in 2023.

[119] The father raised concerns with the seriousness of K.J.'s decision to enroll into the Theatre & Arts Program in 2022-2023, calling it a gap year. I take from his submissions that he does not think child support was due for K.J. during that time.

[120] K.J. enrolled in an arts certificate that she started a few months after finishing high school. While K.J. decided to change course and pursue a university degree in



psychology afterwards, the arts program nonetheless remains a valuable educational experience. I note that K.J. was still considered a minor in the Yukon for half her school year in the Theatre & Arts program. The Yukon grant K.J. received from the government as well as her part-time employment demonstrate she took active steps to help finance her studies. Also, the Yukon Excellence Award she received reveals she is a successful student. In addition, despite K.J.'s reasonable efforts to finance her post-secondary studies outside the Yukon, the evidence reveals she needed help financially to meet her living expenses, and her mother helped her meet her financial needs. In my view, K.J. remained a dependent child entitled to child support during her first year of post-secondary studies in 2022-2023.

[121] From May 2023 to August 2023, K.J. came back to Whitehorse and lived with her mother and siblings free of charge. During that time, she resumed her summer employment in Whitehorse. Her gross pay for 2023 was just shy of \$6,000.

[122] From September 2023 to April 2024, K.J. was enrolled in her first year of a psychology program at a university outside the territory. K.J. lived in residence for her first year. The total cost for tuition, residence, meal plan and fees amounted to \$19,969.50 for that first year. In addition, K.J. had other expenses to cover, such as books, household items, and travel. The evidence reveals her mother helped her with all these costs. The mother also paid for K.J.'s travel costs to return home in Whitehorse for the summer in May 2024.

[123] K.J. applied and received a scholarship in the amount of \$2,000 from the university. As stated earlier, K.J. received a total of \$11,208 in grants from the Yukon government in 2023. Also, K.J. worked part-time during the school year and made

\$963.47 (gross pay). In my view, for the same reasons I stated earlier, K.J. remained a child under the charge of her parents in 2023 and 2024.

[124] In my view, K.J. has remained a dependant child entitled to child support from September 2022 to date, because she has been enrolled in full-time post-secondary studies and continues to require financial assistance from her parents. In addition, I note she only reached the age of majority in January 2023.

[125] There are cases where parents do not have the financial means to support their children in the pursuit of post-secondary education. In those cases, successful students, who would otherwise be entitled to their parents' financial support, may have to find full-time employment prior to starting post-secondary education or attend their post-secondary program part-time to finance their post-secondary studies on their own. However, this is not one of those cases. The father made over \$100,000 in 2022 and approximately \$85,000 in 2023. The mother, as evidenced by her affidavit materials, has continued to support K.J. financially throughout that time.

[126] Based on the mother's continued financial support of K.J.'s living, education, and travel expenses since K.J. started attending out-of-territory post-secondary education in September 2022; based on the fact that K.J. has continued to reside with her mother every summer since she finished high school and that the mother had to maintain a home that can accommodate K.J.'s return; based on K.J.'s limited capacity to contribute to her expenses as a full time post-secondary and university student since September 2022 through part-time work and government grants, based on the fact that K.J. only turned 19 years old in January 2023, and the history of strained communications between the parties, which militates in favour of a predictable and stable amount of

support, I am of the view that the base child support approach and the amount(s) of child support it leads to for K.J., as the fourth child entitled to support from September 2022<sup>3</sup> to October 2024 (\$327.99 per month, year round), and third child entitled to child support from November 2024 to May 2025 (\$400.47 per month, year round), is appropriate.

[127] Again, in coming to this conclusion, I have considered my decision not to make an order regarding the sharing of s. 7 expenses, at this time.

[128] Since separation, the father has paid some child support to the mother. The amounts of child support paid by the father over the years were compiled by the mother based on her banking records.

[129] The father does not dispute the mother's numbers. However, he states that he provided additional financial support directly to his children that should also be considered. As stated earlier, I indicated to the father at the hearing that he could file additional documents to support his submissions. However, other than the evidence that he transferred \$3,000 in December 2023 and \$1,200 in May 2024 to R.J., the father did not file any evidence of direct payments to his children. In addition, I note that his 2023 transfer payment to R.J. was to pay for the costs of travel to Alberta for Christmas. The father states the mother should have paid for half these travel costs for the children. Also, half the amount transferred to R.J. in May 2024 was used to purchase a plane ticket for the father to attend R.J.'s graduation in Whitehorse. Therefore, while I am prepared to consider the 2023 and 2024 payments as part of the circumstances

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<sup>3</sup> Base child support was payable for K.J. under s. 3(1) of the *Yukon Guidelines* until she reached the age of majority in January 2023.

relevant to the determination of the issue of retroactive child support, in my view, only half the 2024 transfer to R.J. (or \$600) may be computed as child support.

[130] As seen in the table below, based on the father's annual income from 2016 to 2023, the amount of child support paid by the father to the mother to date for the four children falls far short of the amount of base child support due under the *guidelines*:

Year	Annual income (Notice of Tax Assessment Line 150 or 15000 less union dues <sup>4</sup> )	Table amount for a payor parent residing in Alberta	Child Support Paid	Difference
2016	\$101,050.20 (\$101,667 - \$616.80)	\$9,004.20  (\$2,251.05/month <sup>5</sup> September to December for four children)	\$5,000	\$4,004.20
2017	\$125,327.20 (\$125,944 - \$616.80)	\$33,257.06  (\$2,760.81 from January to October <sup>6</sup> ; and \$2,824.48 for November and December <sup>7</sup> for four children)	\$12,000	\$21,257.06
2018	\$114,179.20 (\$114,796 - \$616.80)	\$31,089.12  (\$2,590.76/month for four children)	\$11,500	\$19,589.12
2019	\$121,430.20 (\$122,047 - \$616.80)	\$32,916.36  (\$2,743.03/month for four children)	\$12,365	\$20,551.36
2020	\$76,325.20 (\$76,942 - \$616.80)	\$21,232.20  (\$1,769.35/month for four children)	\$11,500	\$9,732.20
2021	\$107,903.20 (\$108,520 - \$616.80)	\$29,507.64  (\$2,458.97/month for four children)	\$5,000	\$24,507.64
2022	\$115,329.20 (\$115,946 - 616.80)	\$31,378.92  (\$2,614.91/month for four children)	\$5,950	\$25,428.92

<sup>4</sup> R.J. only provided his union dues for 2024, which total \$616.80. While R.J.'s union dues may have fluctuated over the years, I have nonetheless decided to use that amount to establish his annual income for child support purposes for 2017 to 2024.

<sup>5</sup> Under the 2011 *Federal Child Support Tables*

<sup>6</sup> Under the 2011 *Federal Child Support Tables*

<sup>7</sup> Under the 2017 *Federal Child Support Tables*

2023	\$85,587.20 (\$86,204 - \$616.80)	\$22,789.83  (\$1,981.15/month for four children)	\$12,950	\$9,839.83
2024	\$85,587.20 (\$86,204 - \$616.80)	\$23,773.80  (\$1,981.15/month for four children from January to September and \$1,653.16 for three children for October to December)	\$600  (directly to R.J.)	\$23,173.80
2025	\$85,587.20 (\$86,204 - \$616.80)	\$8,265.80  (\$1,653.16/month for three children - January to May)	0	\$8,265.80

[131] The father has paid a total of \$76,865 in child support for the children since 2016. However, based on the applicable child support guidelines, it is a total of \$243,214.93 in base child support that should have been paid. Based on those numbers, the difference amounts to \$166,349.93 in base child support that has not been paid to the mother since 2016.

[132] The evidence reveals that there has never been an agreement or even meaningful discussion regarding the amount of child support to be paid by the father to the mother since separation. Also, the mother did not attest to any specific or approximate date where she would have broached the subject of additional child support with the father for the first time. While the mother stated that the father took steps to block her from communicating with him to prevent her from raising the topic of child support with him, it is unclear when those attempts started because, as she stated, she was hoping he would do the right thing. However, I note that the mother included her statement regarding her difficulty to communicate with the father about money within the section of her affidavit no. 2 that specifically pertains to the year 2019.

[133] In her affidavit evidence, the mother also relayed a conversation she had with the father in 2023 where he would have told her he was selling his house and would provide

money for the children once his house was sold. However, the father stopped making child support payments in October 2023. The father did not deny having that conversation.

[134] The evidence also reveals that, despite knowing of the father's good annual income at the time of separation and his steady employment as a welder, the mother did not take any steps to seek additional child support through the courts before 2024. However, I am prepared to accept that, being the primary caregiver of four children in addition to working full time, would leave very little time to prepare, file, and appear in a family court proceeding as a self-represented litigant. I note that the mother did not file information regarding her current and past income in this proceeding despite being given the opportunity to do so at the hearing. In addition, she did not file materials supporting her statement regarding the running outstanding amount on her line of credit. Nonetheless, I am prepared to accept, considering the very limited amount of financial support she received from the father and the costs of raising four children, that hiring a lawyer may have proven to be financially challenging for the mother, as she stated in one of her affidavits. Considering the mother's circumstances, I find that, at least, some of the delay in formally pursuing child support through the courts is reasonable.

[135] The evidence reveals the father's gross income remained mostly over \$100,000 after separation. As a result, the child support payments he made over the years were clearly not commensurate to his income.

[136] The father does not deny blocking the mother from communicating with him at some point. However, his evidence is that he blocked her communications because she was interfering with his relationship with the children. He adds that, during the period of

2019 to 2021, the mother would be in the background listening to his conversations with the children, she would then take the phone, ask about money, and this would put stress on him and the children. There is no evidence before me that the father took any steps to even try to ascertain the extent of his child support obligation towards his children nor discuss this issue with the mother in the children's absence. Also, there is no evidence the father disclosed his true income to the mother over the years. When one compares the father's pre-separation net income of 2015, which was known to the mother, with the father's post-separation net income, as disclosed by his notices of assessment, the father's income in 2016 to 2019, 2021 and 2022 was \$5,000 to \$20,000 higher than his pre-separation income of 2015.

[137] In addition, the father stopped sending child support payments to the mother in October 2023. While there is evidence that the father's lower income in 2023 is linked to his diagnosed symptoms of depression, and while there is evidence that he fell in arrears in his mortgage payments and faced foreclosure in 2023, as stated earlier, the evidence he filed regarding his financial situation at the time falls quite short of showing that he stopped paying child support because he could not afford to pay anymore.

[138] In my view, the father's actions throughout the years in consistently failing to meet his child support obligations, considering his reported income, are not without blame. There is therefore evidence that would support fixing the date of retroactivity as far back as 2016, since the father failed to meet his base child support obligations from the time of separation.

[139] The mother states that she has been financially struggling since separation. The lack of financial support from the father has meant that she has had to cash out

retirement investments; she has not been able to maximize RESP contributions for the children; and her line of credit runs around \$20,000 outstanding. As a result, she states the children have missed out on sporting activities and other outings because she could not afford to pay for those expenses. In addition, she states the family usually buys things on sale and the children never had brand new items, such as phones. The mother adds that the children have worked as soon as they were able to in order to buy things for themselves that she cannot buy for them. The evidence regarding R.J.'s and K.J.'s part-time employment supports the mother's statement in that regard. However, further affidavit evidence from the mother also reveals that she was able to ensure the children could engage in extra-curricular activities. Also, in the last few years, she paid for the extra fees (\$450) associated with an outdoor education program for one of the children and a class trip outside the Yukon (\$2,500) for another.

[140] As indicated earlier, the father states he sent money directly to the children to help pay for their expenses. In addition, he states that he has consistently contributed to his medical and dental plans for the children. Again, while the father was afforded the opportunity to file documents supporting his statement that he sent money directly to the children, he only filed evidence of the two e-transfers to R.J. mentioned earlier in these reasons. However, the mother acknowledged that the father's dental plan helped pay for L.J.'s braces.

[141] In my view, the evidence reveals that, while the mother has ensured the children had access to extra-curricular activities and some educational outings, the children's standard of living has nonetheless been negatively impacted, to some degree, by the lack of child support; and the three children who remain under the charge of their



parents, continue to be negatively impacted, to some degree, by the lack of financial support from the father.

[142] In my view, in light of the circumstances, it is appropriate to award retroactive child support to the mother for the children.

[143] In this case, formal notice was provided on June 7, 2024, when the mother filed her statement of claim with her application and first affidavit.

[144] While no specific date of effective notice emerges from the evidence, the affidavit materials reveal that a specific conversation took place between the mother and the father in 2023 where he told her he would provide money for the children after he sold his house. However, he did not do so. In addition, based on the mother's affidavit materials and the father's response, I am of the view the mother broached the subject of insufficiency of child support with the father, in or around 2019, which led to the father taking steps to block communications from the mother.

[145] In addition, I found that the father is not without blame in failing to meet his financial support obligations towards his children since separation, and that the father's conduct could justify fixing the date of retroactivity to 2016. However, if I were to fix the date of retroactivity to 2016, the father would owe an amount of \$166,349.93 in retroactive child support.

[146] Considering the father's current and past income, as well as his recent history of depression, which he has taken steps to address; the travel costs he paid for the children in 2023 to visit him in Alberta; the monthly amount of child support I deemed payable starting June 15, 2025 (\$1,653.16 per month); and despite the lack of

information regarding the equity in his house, I am of the view that such a significant award would cause undue hardship to the father.

[147] Based on the above-noted considerations, and the uncertainty regarding the date of effective notice (which could go as far back as 2019), I am of the view that an award going back to June 1, 2021, or three years from the date of formal notice (July 7, 2024), which would amount to \$83,921.14, would also cause undue hardship on the father.

[148] In my view, an award of retroactive child support going back to June 1, 2022, two years prior to the date of formal notice, which amounts to \$56,968.89<sup>8</sup> is warranted and appropriate considering the circumstances of this case.

[149] The total amount of retroactive child support due by the father to the mother shall be paid through monthly payments of \$500 starting on June 15, 2025, and, thereafter, every 15<sup>th</sup> of the month until the arrears are paid in full.<sup>9</sup> This payment is in addition to the monthly amount of prospective child support I ordered the father to pay.

[150] Finally, as the father's income is relevant to establishing child support, he shall provide his income tax return or notice of assessment to the mother by July 1 every year – this year, by July 1, 2025 - for the purpose of adjusting child support, on an annual basis, as appropriate.

### **SPECIAL AND EXTRAORDINARY EXPENSES**

[151] The mother seeks an order that she and the father each pay 50% of all reasonable special and extraordinary expenses for the children under s. 7 of the *Yukon*

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<sup>8</sup> The mother's affidavit evidence reveals the father did not make any child support payment in 2022 from June 7 to December 31.

<sup>9</sup> If the 15<sup>th</sup> of the month falls on a weekend or a statutory holiday, the payment will be due the next working day.

*Guidelines.* She also seeks an order for retroactive contributions by the father to special and extraordinary expenses already incurred for the children.

[152] The mother states that the father has never contributed financially to the children's extracurricular activities, including their involvement in competitive swimming, and to other expenses such as driver's education, and post-secondary tuition fees for the eldest.

[153] However, in response to the mother's statement that he refused to help one of their children attend a swim meet in British Columbia in December 2023, the father responded that the mother was the one who wanted the children to be enrolled in competitive swimming, and that, at least, one of the children told him he no longer wished to participate in swim meets

[154] The mother states that K.J.'s post-secondary tuitions were funded by K.J.'s own savings, Yukon Grant funds, and the mother's contributions

[155] In addition, the mother states that L.J. got braces in 2023. The total cost of her dental treatment is \$8,803. The father's and the mother's respective extended health benefits covered \$3,812.16. However, the mother states that Non-Insured (First Nation) Health Benefits refused to provide any funding. As a result, the mother has already paid \$3,112.84 and there is an outstanding balance of \$1,878 that remains to be paid. The mother states that she will have to pay the remaining amount in full if the court does not order the father to contribute to those costs.

[156] Finally, the mother states she paid for the children's enrollment in competitive swimming and other related training.

[157] The mother filed invoices and receipts supporting her claim for K.J.'s post-secondary tuitions and the costs of L.J.'s braces. She also filed a number of invoices regarding competitive swimming and related training for the children.

[158] The guiding principle with respect to special and extraordinary expenses is that they are shared between the parents in proportion to their respective income (s. 7(2) *Yukon Guidelines*). As stated earlier, the mother did not file evidence regarding her current and past income despite being given the opportunity to do so and being advised that her income was relevant to the determination of the parties' sharing of s. 7 expenses.

[159] As the mother's relevant financial information is missing, I decline to make any finding or order regarding the sharing of s. 7 expenses at this time. However, it is open to the mother to perfect her evidentiary record and re-apply for an order regarding s. 7 expenses in the future.

## **CONCLUSION**

[160] The mother shall have sole custody of the minor children, C.J. and L.J.

[161] The father shall have access to and visits with C.J. and L.J., as agreed to by the parties. In addition, the father shall continue to have access to and receive information regarding C.J. and L.J., directly from their school(s).

[162] Starting June 15, 2025, and thereafter every 15<sup>th</sup> of the month, the father shall pay child support to the mother in the amount of \$1,653.16 per month for K.J., C.J., and L.J.

[163] The amount of monthly child support payable for K.J. shall be reassessed when she completes her undergraduate degree, in approximately two years, or before if her circumstances change materially.

[164] The father shall provide his income tax return or notice of assessment to the mother by July 1 every year – this year by July 1, 2025 - for the purpose of adjusting child support, on an annual basis, as appropriate.

[165] A retroactive award of child support to the mother in the amount of \$56,968.89 is warranted. Retroactive child support shall be paid by the father to the mother through monthly payments of \$500 starting on June 15, 2025, and, thereafter, every 15<sup>th</sup> of the month until the arrears are paid in full. The parties may apply to the Court to have the total amount of retroactive child support adjusted if the father paid child support to the mother between the date of the hearing and the date of these Reasons for Decision.

[166] Child support may be enforced through the Maintenance Enforcement Program.

[167] The Court declines to make an order regarding special and extraordinary expenses under s. 7 of the *Yukon Guidelines* at this time.

[168] As she was mostly successful with her application, the mother is awarded costs of this application payable within 30 days in the form of a lump sum award in the amount of \$170, which corresponds to her court filing fees in this matter.

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CAMPBELL J.