

SUPREME COURT OF YUKON

Citation: *CPL v SMY*,
2025 YKSC 47

Date: 20250805
S.C. No. 24-B0050
Registry: Whitehorse

BETWEEN:

C.P.L.

PLAINTIFF

AND

S.M.Y.

DEFENDANT

Before Justice K. Wenckebach

Appearing on her own behalf

C.P.L.

Appearing on his own behalf

S.M.Y.

REASONS FOR DECISION

Overview

[1] The plaintiff, C.P.L. and the defendant, S.M.Y., were in a common law relationship between 2005 and 2007. They have one child of the relationship, B.P.Y.-L. He is 18 and will turn 19 in October (the “Child”).

[2] C.P.L. brought a Notice of Application for child support and special and extraordinary expenses for the Child, and in particular, that S.M.Y. pay for half of the Child’s post-secondary education¹. At the hearing, C.P.L. addressed the issue of special

¹ In her Notice of Application C.P.L. sought that S.M.Y. pay a “proportionate amount” of the special and extraordinary expenses. At the hearing, however, she sought that he pay half the s. 7 expenses. S.M.Y. did not seem taken by surprise by this submission and was able to respond. I will therefore consider whether S.M.Y. should pay half of the Child’s s. 7 expenses.

and extraordinary expenses only. C.P.L. submits that the parties signed a separation agreement in 2008 which stated that S.M.Y. would pay 50% of the Child's special and extraordinary expenses; and S.M.Y. should pay half of the Child's university expenses in accordance with the agreement.

[3] S.M.Y. disagrees. He also seeks that the requirement that he pay child support end after May 31, 2025.

[4] For the reasons set out below, I conclude that the parties should share the Child's university costs equally. I also deny S.M.Y.'s request that he no longer pay child support after May 31, 2025.

Facts

[5] The parties' separation agreement provides that S.M.Y. will pay child support and half of the Child's special and extraordinary expenses. It contains no mechanism for changing the amount of special and extraordinary expenses to be paid if the parties' incomes change. The parties did not get legal advice before signing the separation agreement and waived getting independent legal advice. At the time of the agreement, it was agreed S.M.Y. earned \$36,000. The agreement does not indicate how much C.P.L. earned.

[6] For the 2024-25 school year, the Child attended university outside the Yukon. C.P.L. gave the Child \$5,000 for the school year. The Child also obtained \$12,452 in grants, bursaries and scholarships. The Child's total university costs were \$16,332. C.P.L. also paid for the Child's travel to and from university and for a trip at Christmas.

[7] C.P.L. earned: \$91,073 in 2021; \$95,313 in 2022; \$109,489 in 2023; and \$121,346 in 2024. S.M.Y. lives in Germany. Based on his income tax information,

C.P.L. estimates that S.M.Y. earned (in Canadian dollars): \$30,722 in 2020; \$21,522 in 2021; and \$32,867 in 2022. S.M.Y. provided his 2023 income tax information, but it was unfortunately not translated from German to English.

Issues

- A. Should S.M.Y. pay a portion of the Child's post-secondary education costs?
- B. If so, how much should S.M.Y. pay?
- C. Should child support payments end as of May 31, 2025?

Analysis

A. *Should S.M.Y. pay a portion of the Child's post-secondary education costs?*

[8] In his submissions, S.M.Y. stated that he was not opposed to paying a portion of the Child's post-secondary education costs. He did, however, express concerns that suggested otherwise. For instance, S.M.Y. submits that he should not be required to pay for the Child's travel, as he could have attended Yukon University. He also filed affidavit evidence in which he questioned why the Child was attending university, rather than, for instance, taking a trade. He also noted that the Child did not get a job to help contribute to his schooling.

[9] In making these submissions, S.M.Y. seems to be taking the position that, while he is not opposed to paying for part of the Child's post-secondary education generally, he is opposed to paying for it here because the Child should have chosen another program and should not have gone away for his education. I have therefore considered whether S.M.Y. should be paying for the post-secondary expenses at all; and I conclude that he should pay for a portion of the Child's university expenses.

[10] In determining whether the costs for the Child's post-secondary education should be shared, I must consider whether they are reasonable and necessary (s. 7.1, *Child Support Guidelines*, OIC 2000/63).

[11] I conclude that post-secondary education is necessary for a young adult studying for their first degree. S.M.Y., himself, implicitly concedes it is.

[12] The questions used to assess whether the costs are reasonable include: is the child enrolled in a course of studies? Are the studies full-time or part-time? Did the child apply for loans or other financial assistance? Does the child have a reasonable and appropriate plan? Does the child contribute to his own support? How old is the child? What was the child's past academic performance, and how are they doing now in school? What plans did the parents make for the child's education, especially when the parents were together? These questions do not form a checklist, but the court must apply the pertinent factors to the facts of the case (*Farden v Farden*, 1993 CanLII 2570 (BCSC) at 8).

[13] Here, there is little evidence to answer these questions. Both parties alluded to the Child's challenges at school, but there was no detailed evidence about what his challenges were or why he may be more suited to a trade than a university education. As his grades were good enough to be admitted to university, I conclude that he has the aptitude to get a university degree. I come to this conclusion despite the fact he has chosen not to continue on in university.

[14] The Child did not work part-time while in school, but he did receive the Yukon Grant and other bursaries, which paid for a large portion of his education. Both parents also agreed that it was in the Child's best interests to attend some form of post-

secondary education. Given these factors, I conclude it was reasonable for the Child to attend university.

[15] As to whether he should have attended Yukon University, I take judicial notice that Yukon University does not provide the full slate of educational programs that other universities do. It was, therefore, also reasonable for the Child to leave the Yukon to attend university.

B. How much should S.M.Y. pay?

[16] C.P.L. argues that the separation agreement should apply and that S.M.Y. should pay 50% of the Child's university costs. She is seeking that S.M.Y. pay \$5,000, just as she did. S.M.Y. did not state the portion he should pay but submitted that it should not be half.

[17] I conclude S.M.Y. should pay half of the Child's costs for university.

Law

[18] The separation agreement raises two issues. First, separation agreements are often negotiated at a time of great stress and when the parties may be vulnerable. Courts must, then, determine if the circumstances in which the agreement was made were fair. The court will examine whether either party was particularly vulnerable, whether oppression was used or unfair pressure was exerted. The court will also consider the length of the time of the negotiations, the conditions in which they took place, whether full financial disclosure was made and whether the parties had legal assistance when making their agreement (*Miglin v Miglin*, 2003 SCC 24 at para. 81; *Anderson v Anderson*, 2023 SCC 13 at para. 34).

[19] If the circumstances of the negotiation were fair, then the court must also consider whether the agreement should take precedence over the legislation that regulates the payment of child support and s. 7 expenses (here the *Family Property and Support Act*, RSY 2002, c 83 (“FPSA”), and the *Child Support Guidelines*).

[20] The FPSA has provisions that set out when a separation agreement will take precedence over the legislation, and when it should be set aside. Separation agreements must meet certain formal requirements, however, for these provisions to apply.

[21] If an agreement does not meet the formal requirements set out in the FPSA, the court will apply the legislation rather than upholding the agreement. That does not mean the agreement is irrelevant, however. The court may still give it weight in conducting its analysis. How much weight it will be given depends on the context of the case. A child’s rights cannot be waived by their parents; thus, the parents cannot bargain away their child’s right to financial support. The court is at liberty to disregard an agreement that does not adequately respect the child’s rights (*Willick v Willick*, [1994] 3 SCR 670 at 727). If, however, the agreement provides adequate support for the child, then reasonably the court should give the agreement more weight. Giving the agreement increased weight in these circumstances recognizes that negotiated resolutions are preferable to litigation. Ultimately, the court will not be bound by the agreement, but it may play an important role in its decision.

Analysis

[22] In the case at bar, the parties provided little evidence about the circumstances in which the separation agreement was negotiated. Examining the agreement itself, the

separation agreement is short and was written without the benefit of legal assistance. However, the parties also waived independent legal advice. The provision about special and extraordinary expenses is straightforward. S.M.Y. knew that he would be required to pay for half of the Child's special and extraordinary expenses while the Child was a child of the relationship. I conclude that the process of negotiations was fair.

[23] Turning to whether I should apply the agreement or the legislation, the agreement does not meet the formal requirements for the *FP*SA to apply, as under the *FP*SA, the separation agreement must be witnessed (s. 60(1)) but C.P.L.'s signature was not witnessed.

[24] I must therefore determine the weight to be given to the agreement. The particular issue to be decided is what portion of the Child's university expenses S.M.Y. should pay. Section 7(2) of the *Child Support Guidelines* provides that the "guiding principle" is that payment of child support is proportionate to the parties' incomes. Proportionate payment is not required, however. The Court has the discretion to order the parties to split the payment of special and extraordinary costs differently.

[25] In this case, the agreement provides adequate financial support to the Child. The parties entered into the agreement voluntarily. In the 13 years since the agreement was signed, this is how the parties have arranged their affairs. Moreover, this is not a sudden or unexpected cost. Both parties recognized that the Child might pursue post-secondary education. I will, therefore, give the separation agreement significant weight.

[26] S.M.Y. argues that his income is not high, and he suffers from chronic injuries, making it difficult to continue his work. S.M.Y. does make less than he did in 2008. At that point, he earned \$36,000 and he now earns somewhere between \$20,000 and

\$32,000. Inflation also has an effect; however, S.M.Y. has not provided evidence about the effect of inflation on his income. It is, therefore, difficult to tell how significant his change in income is. Moreover, C.P.L. attested that S.M.Y. went into business on his own in 2012 and submits he may be underemployed. S.M.Y. disputes this but does not provide independent corroborating evidence that he cannot make as much money as he did in 2008. I will therefore order that S.M.Y. pay 50% of the Child's university expenses.

[27] This does not mean, however, that S.M.Y. should be required to pay \$5,000 towards the Child's university costs. C.P.L. states that the Child's total expenditures for university are \$16,332. The Child contributed \$12,452. The difference needed to cover his costs, then, is \$3,880. Although C.P.L. provided \$5,000 to the Child, she does not explain why she gave him more than he needed to cover his costs. I therefore order that S.M.Y. pay \$1,940, which is half of \$3,880, for the Child's university costs.

[28] I will also order that S.M.Y. pay half of the Child's costs for travel to and from university, as requested by C.P.L. This includes his trip at Christmas as well as to go to university in September and return for the summer. The total amount for these trips is: \$1,106.86; and S.M.Y. owes \$553.43.

C. Should child support payments end as of May 31, 2025?

[29] S.M.Y. submits that child support should end because the Child is now working full-time. He is therefore no longer a dependant for the purposes of child support.

S.M.Y. states that the Child is in a "well-paid position" but provides no specific evidence about how much he earns. There is insufficient evidence to conclude that the Child is

capable of being financially independent. I will therefore not order that child support terminate as of May 31, 2025.

Conclusion

[30] I grant C.P.L.'s application for half the costs of the Child's special and extraordinary expenses for university and deny S.M.Y.'s request that payment of child support cease as of May 1, 2025.

WENCKEBACH J.