SUPREME COURT OF YUKON

Citation: *LMD v J-MP*,
2025 YKSC 77

Date: 20251205
S.C. No. 07-D3940
Registry: Whitehorse

BETWEEN

L.M.D.

Petitioner

AND

J-M.P.

Respondent

Before Justice K. Wenckebach

Counsel for the Petitioner — Shayne Fairman

Appearing on his own behalf — J-M. P.

REASONS FOR DECISION

Overview

[1] The parties in this family law matter have two children: G.M.D.P, born June [redacted], 2004 and B.E.D.P., born January [redacted], 2006 (collectively, the "Children"). The petitioner, L.M.D. is seeking an increase in the amount of child support to be paid by the respondent, J-M.P., retroactive to January 1, 2018, and payable until the Children turned 19. She also seeks that J-M.P. pay 50% of some of the Children's dental work. Finally, she seeks full compensation for legal costs in a related application, in which she sought financial disclosure from J-M.P., and costs for this application.

[2] J-M.P. filed an application as well, essentially seeking to terminate all obligations between the parties, a declaration that the money J-M.P. has paid to L.M.D. satisfies his financial obligations to the Children, and opposing the relief sought by L.M.D.

[3] For the reasons that follow, I conclude that J-M.P. should pay the table amount of child support in accordance with his income, retroactive to January 1, 2018, and the Children's dental costs as sought by L.M.D. I also conclude he should provide full compensation to L.M.D. for her application for disclosure and costs on this application.

Introduction

[4] The parties were married on July 31, 2004, and separated on February 7, 2007. They entered into a consent order on August 15, 2008.

[5] Then, after J-M.P. moved to Quebec in 2010, the parties, with the assistance of counsel, entered into a new consent order on April 20, 2011 (the "Consent Order"). The Consent Order addressed, amongst other things, child support, payment of special and extraordinary expenses (also called "s. 7 expenses"), J-M.P.'s access costs, and the exchange of financial information.

[6] In the following years J-M.P. paid child support as required by the order. He also paid for a portion of the Children's extracurricular activities. In 2017, he hired counsel to seek a reduction in child support but, in the end, no changes were made. In 2021, when G.M.D.P. was completing high school and looking to attend university, the parties again discussed changes to child support but did not come to agreement.

[7] On December 30, 2024, L.M.D. brought an application seeking that J-M.P. provide financial information from 2017 to 2024, including his corporation's financial statements. An order was granted on February 18, 2025, requiring J-M.P. to provide the

information sought. L.M.D. then brought the present application. On June 20, 2025, a further order was made reaffirming that J-M.P. was to produce financial statements from his corporation and requiring J-M.P. to provide statements for the Registered Education Savings Plan ("RESP") held by his parents for the Children.

Issues

[8] The issues are:

A. Should there be a retroactive increase to child support?

B. Should J-M.P. pay less child support than the table amount?

C. Should the money J-M.P. paid for the Children's extracurricular activities be considered part of his child support payments?

D. Should J-M.P. pay a portion of the Children's dental work?

E. Should costs be awarded to L.M.D.?

Analysis

A. Should there be a retroactive increase to child support?

[9] I conclude child support should be increased, retroactive to January 1, 2018.

Facts

[10] Under the Consent Order, J-M.P. was imputed an income of $56,700 and was required to pay $750.00 per month in child support. The order also provided that the level of child support would be reassessed in 2012. Furthermore, the parties were ordered to exchange their income information every year.

[11] J-M.P. paid child support but neither party provided the other with their financial information between 2011 and 2017. In 2017, J-M.P. hired counsel to seek a variation to the child support order. At that point, he produced his income information for the

years 2014-2017 to L.M.D. J-M.P.'s income was higher than $56,700: in 2014, he earned $69,376; in 2015 he earned $57,842; in 2016, he earned $59,641; and in 2017, his projected income was $63,200.

[12] L.M.D. also hired counsel. Her lawyer refused J-M.P.'s proposal for a decrease in child support. He also indicated that, should J-M.P. seek a decrease to child support in court, L.M.D. would seek a retroactive increase to child support, and to the amounts payable for s. 7 expenses. J-M.P. did not pursue a reduction in child support any further.

[13] J-M.P. spoke again to L.M.D. about decreasing payments of child support in March 2020. On December 13, 2021, because G.M.D.P was going to be going to university, J-M.P. asked L.M.D. to review child support payments. L.M.D. provided a substantive reply on March 2, 2022, and at that point, noted that the parties had not exchanged financial information in several years. She followed up with the request for J-M.P.'s financial information on July 24, 2022, then again on September 9, 2023, January 20, 2024, and June 15, 2024. J-M.P. did not provide his information to her.

[14] On December 30, 2024, L.M.D. filed a Notice of Application seeking that J-M.P. produce his financial information for the period between 2017-2024. On February 18, 2025, the Court ordered J-M.P. to provide the information sought by L.M.D. Once ordered to do so, J-M.P. provided his income tax information for those years. A further order requiring the parties to exchange financial documents was made on June 20, 2025.

[15] J-M.P.'s income between 2018 and 2024, in accordance with his Notices of Assessment was:

- 2018: $108,831
- 2019: $39,716
- 2020: $74,131
- 2021: $85,509
- 2022: $96,503
- 2023: $91,131
- 2024: $68,585

[16] J-M.P. was self-employed between 2018-2023, but L.M.D. does not argue that, for the purposes of calculating child support, J-M.P.'s income should be assessed at a higher rate.

Law

[17] A recipient seeking a retroactive increase in child support must show that there has been a material change in circumstances (*Colucci v Colucci*, 2021 SCC 24 at para. 114 *("Colucci)*).

[18] If a material change in circumstances is demonstrated, the presumption is that a variation to child support will be ordered, retroactive to the date the recipient gave the payor effective notice that they were requesting an increase. Effective notice occurs when the recipient broaches the subject of a change in child support. Generally, however, there is a limit to how far back the order for variation will go. As a rule, the date of retroactivity will be no more than three years before formal notice of the application to vary is given (at para. 114).

[19] The court has, however, the discretion to depart from the presumptive date of retroactivity where the results would be unfair. In those circumstances, as well, the date

of retroactivity may extend longer than three years. The factors the court may consider when determining if it should exercise its discretion include: delay by the recipient in seeking a variation in child support; blameworthy conduct by the payor; the circumstances of the children; and any undue hardship the payor may experience (at para. 114).

[20] Blameworthy conduct includes the failure to disclose a material change in income. Where the payor fails to disclose a material change in income, the date of retroactivity will generally be the date the payor's income increased (at para. 114).

[21] Once the court establishes the date of retroactivity, the amount of support for each year is to be calculated in accordance with the *Federal Child Support Guidelines,* SOR/97-175 (the "*Guidelines*") (at para. 114).

Analysis

Material Change in Circumstances

[22] In the case at bar, the question is whether there was a material increase in J-M.P.'s income in 2018. Because the parties effectively agreed to keep child support the same in 2017, a potential sub-issue is whether J-M.P.'s 2018 income should be compared to his imputed 2011 income or his 2017 income. In the end, however, it does not matter which date is used. In 2011, J-M.P. was imputed an income of $56,700. In 2017, J-M.P. earned $63,200. In 2018, J-M.P. earned $108,831. There is unquestionably a material change in circumstances from both 2011 and 2017.

Presumptive Date of Retroactivity

[23] J-M.P. brought up the possibility of changing child support with L.M.D. in March 2020. Pursuant to *Colucci*, the date of effective notice is the date the recipient brings up

the topic of child support. In this case, however, it was J-M.P. who first brought up changing child support. I conclude, however, that March 2020 should be used as the date of effective notice. Notice is important because it signals to the other party that the amount of child support may change *(DBS v SRG*, 2006 SCC 37 ("*DBS*") at paras. 121-122). Here, when J-M.P. brought up the issue of child support, he not only knew that child support might change, he also knew from past experience that L.M.D. may seek an increase in child support. The date of effective notice is, therefore, March 2020.

[24] March 2020 is not the presumptive date of retroactivity, however. L.M.D. provided formal notice to J-M.P. on December 31, 2024, when he was served with L.M.D.'s application for his financial information. Because the date of retroactivity is generally three years from the date formal notice is provided, the presumptive date of retroactivity is, therefore, December 31, 2021.

Change from Presumptive Date

[25] L.M.D., however, seeks that child support be retroactive to January 1, 2018, rather than December 31, 2021. I must therefore consider whether setting the date for a retroactive increase in child support to December 31, 2021, would be unfair. I will address whether L.M.D. delayed in seeking a change in child support; whether J-M.P. engaged in blameworthy conduct; the circumstances of the Children; and whether J-M.P. would suffer undue hardship if he were liable for an increase to child support earlier than December 31, 2021.

[26] L.M.D. has not explained why, between 2018 and 2022, she did not speak to J-M.P. about child support. There is, however, other evidence about concerns L.M.D. has about speaking to J-M.P. about financial matters. In discussing s. 7 expenses,

L.M.D. states that she prefers a system of payment which requires less communication, because J-M.P. sends her derogatory and negative communications when discussing monetary matters.

[27] The emails between L.M.D. and J-M.P. bear this statement out. In discussions about changes to child support in 2022, J-M.P. wrote, in one of his messages to L.M.D.:

> - stop trying to milk me for all I got
> - I can't believe I've been stuck with you for such a long time. You are truly a fucking leech!
> - Can't believe how stupid I've been to even consider you'd act reasonably after all this time. Haha! Jokes [as written] on me!
> - Such a fucking witch you are! All about money money money... [as written]
> - I pity you. Really. I do. How fucking miserable you have to be to behave in such a way. Wow.
>
> (J-M.P., "Child support Fall 2022" (March 2, 2022) via e-mail [communicated to L.M.D.])

He also threatens to involve G.M.D.P in the issues between the parties, stating "You can then explain to [G.M.D.P.] (or I will happily do so) that [you] simply wanted theoney [as written] for you." Other emails J-M.P. sent to L.M.D. contain similar language.

[28] In his affidavits and submissions, J-M.P. recognized that he does not always respond as he should to L.M.D. He states, however, that he does this in reaction to L.M.D.'s abuse of him, and because she shuts down his attempts to discuss child support. In the emails filed, however, when L.M.D. disagrees with J-M.P., she does not simply reject his proposal but provides counterproposals. Her tone throughout is measured and calm. The pattern apparent in the filed evidence is that J-M.P. is abusive and offensive, while L.M.D. seeks a way forward in a measured manner.

[29] I conclude that L.M.D.'s delay in seeking information from J-M.P. is at least partially because his inflammatory and offensive manner of engagement dissuaded her from doing so. This is a legitimate reason for delay *(DBS* at para. 101).

[30] J-M.P. also engaged in blameworthy conduct. In both 2011 and 2017 J-M.P. had counsel to deal with the issues of child support. He thus knows that the level of child support is tied to income, yet he failed to inform L.M.D. of his increase in income. He failed to provide his income information as required by the Consent Order. He also failed to disclose it when requested by L.M.D.

[31] J-M.P. points out that L.M.D. also did not provide J-M.P. with her income information as required by the Consent Order. Parties should follow orders. In this case, however, L.M.D.'s failure to provide her income information to J-M.P. had no tangible effect on the calculation of child support. J-M.P.'s failure, on the other hand, prevented L.M.D. from knowing the amount of child support payable.

[32] Additionally, J-M.P. states he withheld his financial information from L.M.D. because he "hoped that withholding the documents would encourage open discussion" (Affidavit #4 of J-M.P. at para. 3). This approach was misguided. Because child support is based on income, productive negotiations about child support could only occur if L.M.D. had J-M.P.'s full financial information. By withholding his financial information, J-M.P. was not encouraging open discussion; instead, he was shutting it down.

[33] Moreover, rather than treating the disclosure of financial information as a legal obligation, J-M.P. used it as a tactic to try to force L.M.D. to engage with him on his terms.

[34] L.M.D. also submits that J-M.P. has not provided all the financial documents he was required to produce. As J-M.P. had a corporation, he was ordered to provide the corporation's financial statements. He has produced only a portion of the documents about his corporation, however. He states that the corporation was dissolved in 2019; and he has produced all he could find. The financial statements date back seven years or more. I accept J-M.P.'s statement that he could not find any others.

[35] He was also ordered to produce statements of the RESPs held for the Children. L.M.D. submits that J-M.P. did not meet his obligation to produce these statements. On this point, I agree. J-M.P. produced a page from a summary of the RESP held for G.M.D.P. for September 30, 2024, which is marked page 3 of 6. L.M.D.'s counsel asked for the full document, as well as updated statements, but J-M.P. did not provide them. J-M.P. stated that the documents he filed were all his parents, who hold the RESP, gave to him. J-M.P. did not explain whether he sought more documentation from his parents and if so, why they did not provide him complete, current documentation. He has not shown that he has put in the effort required to provide all the documentation ordered.

[36] Blameworthy conduct encompasses anything from "... mere passivity and 'taking the path of least resistance'" (*Colucci*, at para. 40) to deception. In this case, I conclude that J-M.P.'s blameworthy conduct was motivated by bad faith.

[37] Regarding the Children's circumstances, there is no evidence that the Children have any needs that have gone unmet, or that L.M.D. has herself gone without to fulfill the Children's needs. Need or hardship is not necessary to make an award for retroactive child support, however. A parent's obligations do not disappear because a

child does not “need” their financial support (*Michel v Graydon*, 2020 SCC 24 at para. 122).

[38] Finally, based on his submissions, I take J-M.P.’s position to be that he would suffer hardship if the date of retroactivity were extended back further than the presumptive date. Hardship, however, can only be established through evidence. It requires the payor to provide a complete picture of their financial situation. They must give evidence about their income, assets and debts *(Colucci* at para. 107). In the case at bar, I have only impressionistic evidence of J-M.P.’s debts and assets. J-M.P. has not, therefore, satisfied this evidentiary hurdle.

[39] Additionally, even if J-M.P. could prove hardship, this factor is given far less weight where there has been blameworthy conduct (at para. 108). Given J-M.P.’s conduct, I do not put much weight on the potential of undue hardship.

[40] I conclude that it would be unfair to fix the date of retroactivity to December 31, 2021. The date of retroactivity should be January 1, 2018.

B. Should J-M.P. pay less child support than the table amount?

[41] Once the date of retroactivity is determined, child support is calculated in accordance with the *Guidelines*. Generally, this means the payor pays the table amount, although the Court has a narrow discretion to order child support other than as set out in the tables. In this case, J-M.P. argues that he would suffer undue hardship if he were required to pay the table amount of child support. He also submits he should not pay child support for the Children after they finished high school.

[42] I conclude that J-M.P. should pay the full table amount of child support, including until the Children turned 19.

Section 10 - Undue Hardship

[43] Section 10 of the *Guidelines* provides that the court may order a payor to pay child support in an amount other than set out in the tables in cases of undue hardship.

[44] A claim for undue hardship involves a two-step analysis:

- First, the payor must demonstrate that they would suffer undue hardship if they are required to pay the *Guidelines* amount (s. 10(1)).
- Second, if the payor proves undue hardship, the court will then compare the standard of living in each parent's household. A reduction in the amount of child support payable can only be ordered if the payor has a lower standard of living than the recipient (s. 10(3)).

[45] Under the first step, the payor has a high threshold to meet. They must establish that the hardship they would suffer would be "...severe, extreme, improper, unreasonable or unjustified" (*Kelly v Kelly*, 2011 BCCA 173 at para. 33 quoting *Van Gool v. Van Gool* (1998), 59 BCLR (3d) 395)).

[46] Additionally, s. 10(2) describes the circumstances that can establish undue hardship. Section 10(2) states:

> (2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:
>
> (a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;
>
> (b) the spouse has unusually high expenses in relation to exercising parenting time with a child;
>
> (c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;

> (d) the spouse has a legal duty to support a child, other than a child of the marriage, who is
>
> (i) under the age of majority, or
>
> (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessaries of life; and
>
> (e) the spouse has a legal duty to support any person who is unable to obtain the necessaries of life due to an illness or disability.

[47] Section 10(2) provides a non-exhaustive list of circumstances that may constitute undue hardship. This means that the circumstances that may constitute undue hardship are not limited to the situations set out in ss. 10(2)(a)-(e). Although the list is non-exhaustive, however, the circumstances that may give rise to undue hardship are not completely open-ended. The *Guidelines* were put in place to make the calculation of child support more objective, consistent and efficient (s. 1). Permitting broad discretion to the court to determine what circumstances constitute undue hardship would undermine the objectives of the *Guidelines.*

[48] Moreover, the examples set out in ss. 10(2) are specific. This suggests Parliament intended that circumstances that may amount to undue hardship would be circumscribed, and of a similar kind of circumstance as those delineated in ss. 10(2).

[49] The factors in ss. 10(2)(a)-(e) have shared qualities. They are situations in which individuals are financially dependent on the payor, and, as a result, the payor has additional financial obligations. I conclude, therefore, that the court may only consider the undue hardship exception if the circumstances causing the alleged undue hardship arise from an individual's or individuals' financial dependence on the payor.

[50] Once the payor has established that their circumstances fall within one of the categories contemplated under s. 10(2) of the *Guidelines*, the payor must then provide cogent evidence of undue hardship. It is not enough for the payor to state they have a high debt load or other obligations. Rather, the payor must demonstrate that they cannot reasonably manage their debts, expenses or other obligations to allow them to pay the table amount of child support. The payor must furthermore show how and why they will suffer undue hardship if required to pay the table amount (*Locke v Goulding*, 2012 NLCA 6 at para. 36).

[51] J-M.P. submits he would suffer undue hardship if he were required to pay the table amount of child support because: he has significant costs of access with the Children; he has excessive debt, which has led to bankruptcy and a consumer proposal; he has a legal duty to support his children with his current common-law spouse; and he is helping to pay for the costs of his common-law spouse's legal proceedings.

Costs of Access with the Children

[52] J-M.P. states that he incurred substantial costs in exercising access with the Children. In one affidavit he estimates he paid $30,000 or more between 2010-2019 and in another he calculates that the figure was $40,000 between 2010-2020. L.M.D. states that, since 2019, the Children have not gone to visit J-M.P. as regularly as they did previously. They did not go in 2019 or in 2020 (because of Covid-19), for instance. Additionally, L.M.D. attests the parties shared the costs of the flights, as she paid for the Children to fly to Alberta to visit their grandparents on their way to visit J-M.P. She also paid for some of their costs while they visited J-M.P., to attend camp for instance.

[53] An unusually high level of expense for access is a circumstance that may constitute undue hardship (s.10(2)(a)). However, J-M.P.'s argument that these expenses cause undue hardship is unconvincing. First, J-M.P. has not provided adequate evidence to establish his costs for exercising access. He provides only estimates. He is also not consistent in the estimates he gives. Furthermore, he does not clearly remember when the Children's regular visits stopped. He also makes no mention of L.M.D.'s contributions to the Children's flights, making it difficult to know if he took that into account in estimating the costs.

[54] Moreover, his estimated costs are for the period between 2010-2018 (as the Children did not visit in 2019 or 2020). L.M.D., however, is seeking child support from 2018 onwards. J-M.P. has not provided evidence about the money spent for exercising access from 2019 until 2025. The information is, therefore, insufficient to determine if J-M.P. would suffer undue hardship if the table amount of child support were ordered from 2018-2025.

[55] Finally, even if the estimate of $30,000 paid over eight years can be applied to calculate the costs of access since 2018, that amount is not so significant that it constitutes undue hardship to J-M.P. $30,000 over eight years equals payment of $3,750 per year. J-M.P.'s income has varied since 2018, ranging from $39,716 to $108,831, with the amounts earned leaning to the higher end rather than the lower end of the range. Paying $3,750 per year on J-M.P.'s income is not "severe, extreme, improper, unreasonable or unjustified".

[56] This conclusion is supported by the case law. I have reviewed three cases with comparable costs of access. In *Bowman v Ward*, 2005 SKQB 400, the payor earned

$68,993 and had access costs of $3,500; in *Byrne v Byrne* (1999), 88 ACWS (3d) 120, the payor earned between $46,000-$55,000 per year, with access costs of $3,500 per year; and in *Kempkes v Kempkes*, 2000 BCSC 769, the payor earned $48,145 per year and paid access costs of $4,000. The court did not find undue hardship in any of these cases.

J-M.P.'s Debts

[57] J-M.P. states that he has excessive debts. He states he entered into bankruptcy in 2019 and into a consumer proposal in 2024. He states that his bankruptcy arose, in part, due to his access costs.

[58] Given that on his estimate, he was paying $3,750 or a little more on access costs and earned between about $58,000 and $69,000 between 2014 and 2018, it is hard to see how the access costs led to J-M.P.'s bankruptcy. He has filed very little documentation about either the bankruptcy or consumer proposal. Thus, there is no credible evidence that the excessive debts are the type of debt which are meant to be covered by s. 10; nor is there evidence that, because of his debts, J-M.P. would suffer undue hardship if he were required to pay the table amount of child support.

J-M.P.'s Obligations to his other Children

[59] J-M.P. argues that his children with his current common-law spouse have suffered because of the requirement that he pay the table amount of child support but provides very little evidence about the reasons why he cannot meet his legal commitments to all his children. Having an obligation to support other children is, by itself, not a sufficient basis upon which to find undue hardship.

J-M.P.'s Common-Law Spouse's Legal Debts

[60] J-M.P. states he is helping to pay his common-law spouse's legal bills for a court case about a building she owns. As noted above, however, under the *Guidelines*, the circumstances of undue hardship may only arise where the payor has expenses in relation to an individual that is dependent on the payor. In this case, J-M.P.'s common-law partner is not in a position of dependency on him. I therefore conclude that helping to pay one's spouse's legal bills is not the kind of circumstance that can be considered an undue hardship.

[61] Even if I am wrong and this circumstance may constitute undue hardship, J-M.P. has not proved he would suffer undue hardship. As it is J-M.P.'s common-law spouse's debts that are the issue, evidence should have been provided about J-M.P.'s common-law spouse's ability to pay for the debt. J-M.P. mentions her mortgage, credit and the problems relating to the building she owns, but that is not enough. The details of her earnings, assets, debts, her ability to pay the debts and other information would need to be provided for me to be able to draw conclusions about undue hardship.

[62] In short, J-M.P. has provided only some information about his debts and obligations. He has not demonstrated that he cannot reasonably manage his debts, expenses or other obligations and also pay child support. Furthermore, he has not shown how he will suffer undue hardship if required to pay the table amount.

Child Support after Completion of Highschool

[63] J-M.P. also argues that he should not have to pay child support for G.M.D.P. once she started university, because she moved away to attend school.

[64] G.M.D.P. was under 19 when she first went away to university. Under the *Guidelines*, the full table amount is paid for a child that is under the age of majority who attends school, even if they live away from home to attend school (*Beissner v Matheusik*, 2015 BCCA 308, at para. 50, citing *Bockhold v. Bockhold,* 2006 BCCA 472 at para. 18; *JC v SAW*, 2013 YKSC 1 at para. 31).

[65] As for B.E.D.P., J-M.P. states that after finishing high school, he travelled and then started working. He submits, therefore, that he should no longer pay child support for B.E.D.P. A child who is under the age of majority will no longer qualify for child support if they have withdrawn from the charge of their parents (s. 2(1)(a) *Divorce Act*, RSC, 1985, c 3 (2nd Supp.)). I would, however, need more information, such as when B.E.D.P. started working, how much he earned and where he was living, for instance, before I could conclude that B.E.D.P. had withdrawn from L.M.D.'s charge before he reached the age of majority.

[66] J-M.P. is required, therefore, to pay the table amount of child support.

C. Should the money J-M.P. paid for the Children's extracurricular activities be considered part of his child support payments?

[67] In addition to child support, J-M.P. paid for part of the expenses for the Children's extracurricular activities. He now seeks that those payments be counted as child support, instead. The implicit result would be that J-M.P. would also be retroactively relieved from having to pay for the extracurricular activities.

[68] I conclude that J-M.P.'s payments for the Children's extracurricular activities should not be considered part of his child support payments.

[69] The Consent Order stated that, in 2011, upon being provided with receipts by L.M.D., J-M.P. would pay half of the cost of the Children's extracurricular activities, up to

a total of $950. In subsequent years, J-M.P. paid $1,000 per year towards the Children's extracurricular activities.

[70] He submits that the payments of $1,000 per year should now be considered child support payments rather than payments for extracurricular activities because L.M.D. never provided him with receipts of payment as required.

[71] L.M.D. agrees she did not provide J-M.P. with receipts, but states that J-M.P. knew the activities the Children were involved in. G.M.D.P. was involved in dance and took piano lessons. She also participated in the competitive squad program in cross-country skiing and took recreational soccer and swimming lessons. B.E.D.P. also took dance when he was young and was on the competitive squad for cross-country skiing. He was on the Whitehorse Minor Soccer and traveling soccer teams. He traveled outside the territory to take part in the Arctic Winter Games, practiced in jujitsu and took guitar lessons.

[72] L.M.D. furthermore states that J-M.P.'s contributions were well below half the cost of the Children's extracurricular activities. She also states that J-M.P. never asked for invoices.

[73] The evidence is uncontroverted that the $1,000 J-M.P. paid every year went towards the Children's extracurricular activities. Throughout the years he paid this money, J-M.P. did not ask for invoices but was content to provide the money without them. Having implicitly agreed to provide $1,000 per year without requiring invoices, it is now not open to him to argue that L.M.D. should be penalized for failing to provide the receipts to him.

[74] There will, therefore, be no deductions from the table amount of child support. The amount J-M.P. earned, the child support owing on his income, and the total amount owed is:

Year	NOA	Base Child Support (2)	Base Child Support (1)	Annual Amount Owing	
2018	$108,831.00	$1,499.00		$17,988.00	(12 x $1499)
2019	$39,716.00	$632.00		$7,584.00	(12 x $632)
2020	$74,131.00	$1,067.00		$12,804.00	(12 x $1067)
2021	$85,509.00	$1,226.00		$14,712.00	(12 x 1226)
2022	$96,503.00	$1,356.00		$16,272.00	(12 x $1356)
2023	$91,131.00	$1,293.00	$810.00	$12,618.00	(6 x $1293 + 6 x $810)
2024	$68,585.00		$616.00	$7,392.00	(12 x $616)
2025			$616.00	$610.00	(1 x $616)
Total				$89,980.00	

(Affidavit #4 of L.M.D. at 46).

[75] Between January 2018 and January 2025 J-M.P. paid $63,750. The total amount thus owing is $26,230. If J-M.P. has paid any child support to L.M.D. since February 2025, that amount is to be credited from the total.

D. Should J-M.P. pay a portion of the Children's dental work?

[76] L.M.D. is seeking that J-M.P. pay 50% of the costs for G.M.D.P.'s wisdom tooth removal surgery and dental work B.E.D.P. had done as a result of an injury. I conclude

that J-M.P. should pay for those expenses. Additionally, the parties both seek guidance from the Court on payment of G.M.D.P.'s costs for university.

Costs of Dental Work

[77] The Consent Order provided that the parties would equally split any health or dental costs that were not covered by insurance.

[78] The law on payment of expenses such as health and dental expenses is that both parents may be required to contribute to them if the expense is both necessary and reasonable (s. 7.1(b), *Guidelines*).

[79] Expenses are considered necessary if they are suitable for the child, in the context of their requirements and stage of life *(Delichte v Rogers*, 2013 MBCA 106 at para. 144). Reasonableness is assessed against a variety of factors, including the parties' means and income. Whether the payor was consulted before the expense was incurred is also a factor the court may consider in determining reasonableness but is not the determinative factor (at paras. 39 and 44).

[80] There is no real question that the dental work was necessary. J-M.P.'s argument, rather, is that the costs were not reasonable. He submits he should have been consulted about the costs, as he could have explored alternatives, such as bringing the Children to Quebec for the dental work and investigating payment through his insurance.

[81] L.M.D. did discuss the dental work, although I agree with J-M.P. that she provided notice to him of the work, rather than consulting with him about it. Some of B.E.D.P.'s dental work was urgent, so consultation was not possible, but it does not appear all of his work was urgent. G.M.D.P.'s surgery was not urgent. Nevertheless, in

the circumstances, this is not fatal to L.M.D.'s application. J-M.P.'s suggestion that the Children could have traveled to Quebec is not reasonable, given his complaints about the high costs of travel for access visits.

[82] Moreover, while J-M.P. seems to imply that he could not get the costs covered through insurance, he does not explain why. L.M.D. provided him with the invoices. There is no evidence J-M.P. sought insurance coverage or that it would have been denied.

[83] L.M.D. covered as much as she could through insurance. She paid $6,451 out of pocket for the dental work. J-M.P. shall pay to L.M.D. $3,225.50 to contribute the expenses.

Costs of Attendance at University

[84] Although G.M.D.P. is still in university, L.M.D. is not seeking in this application that J-M.P. pay for a portion of her university costs, in part because J-M.P. has not provided all the financial information requested about the RESPs his parents have for the Children. However, L.M.D. does seek that the Court provide guidance on the parents' financial obligations for the Children's attendance at post-secondary education.

[85] No evidence was led about whether G.M.D.P.'s university costs were necessary and reasonable, so I cannot make any determination about whether the parents are required to contribute to her schooling. Assuming for these purposes that her costs are necessary and reasonable, the plan L.M.D. provided to J-M.P. in an email dated March 2, 2022, was a good step for determining how much each parent should contribute to G.M.D.P.'s costs. Thus, the parties should calculate G.M.D.P.'s actual total costs, the amounts she herself could contribute, and the amounts which could be covered through

grants and scholarships. The rest would then by covered by payment from the RESP and the parties.

[86] J-M.P. objected to this plan because it meant he might have to contribute to G.M.D.P.'s expenses in addition to using the RESP. The RESP is held by J-M.P.'s parents. J-M.P.'s position is that because the RESP comes from his family, his portion of the costs are met through the RESPs. This position, however, has been rejected by some courts, on the reasoning that a grandparent's generosity to their child and grandchild does not absolve the parent of their financial responsibility to the child (*Squires v Crouch*, 2016 ONCA 774 at para. 12). Case law from the Court of Appeal of Ontario is not binding on me, but I accept it as persuasive. J-M.P. cannot meet his obligations through the RESPs. If G.M.D.P's costs cannot be covered through her contributions, grants and the RESP, then, and if she is entitled to parental support, both parents would be obligated to contribute to her post-secondary expenses.

E. Should costs be awarded to L.M.D.?

[87] L.M.D. seeks to be fully compensated for her legal fees for her application for financial disclosure, pursuant to s. 22(2) of the *Guidelines,* and for costs of the current application.

[88] I conclude that L.M.D. should receive full compensation for the application for financial information and party and party costs for this application.

[89] Section 21(2) of the *Guidelines* provides that, when a party is served with an application for child support and their income is necessary to determine the amount payable, they must produce their last three years of income tax returns and Notices of

Assessment, and a Statement of Earnings showing the total earnings for the year within 30 days (s. 21(1)(a)-(c)).

[90] If the party fails to comply with the requirement to provide financial disclosure, a court may order them to produce the documents. If such an order is made, the court may also make a costs order in favour of the other party, up to fully compensating them for the costs they incurred in the proceedings (ss. 22(2)).

[91] In this case, L.M.D. did not apply for child support immediately but first applied for an order that J-M.P. disclose his financial information for the past seven years. This means that ss. 22(2) of the *Guidelines,* which applies to applications for child support, is not strictly applicable to L.M.D.'s request.

[92] Subsection 22(2) is, nevertheless, helpful in determining whether costs should be awarded here. Subsection 22(2) helps to highlight the importance of providing complete and timely financial disclosure where child support is at issue. A core objective of the *Guidelines* is to provide children with a "...fair standard of support commensurate with income" (*Colucci* at para. 46). This core objective can only be met when parties provide timely, proactive and full financial disclosure when necessary. Without proper disclosure, the system cannot function (at para. 50). By permitting costs consequences on parties who fail to comply with this essential obligation, ss. 22(2) reinforces the court's ability to ensure financial information is disclosed.

[93] The same principles apply when a party comes to court seeking financial disclosure to determine if a child support application is necessary. A party should not have to seek assistance from the court to obtain the other party's financial information. Under s. 25(1) of the *Guidelines*, a party must provide their financial information to the

other party, such as income tax returns and proof of current income, upon written request, once per year, if the parties have a child that is entitled to child support. A party who does not provide their financial information as requested has failed to comply with a legal requirement and puts obstacles in the way of making sure their children receive fair financial support. I therefore conclude that the court may impose an order of costs, including by fully compensating the applicant, for an application for financial disclosure.

[94] In this case, J-M.P. states that he should not have to pay costs because he wanted to deal with these matters out of court. Moreover, after being served with L.M.D.'s application, he spoke with L.M.D.'s counsel and told him he would provide the financial information requested. A court order was not required.

[95] However, J-M.P. wilfully withheld his financial information from L.M.D., thus making an application for financial disclosure necessary. Although no affidavit of service was filed, he stated that he received the documents on December 31, 2024. The order requiring J-M.P. to provide his financial disclosure was made February 18, 2025. He completed his affidavit, attaching the financial information on March 16, 2025, almost three months after he was served. In these circumstances, I conclude that J-M.P. should fully compensate L.M.D. for her costs for the application that he provide his financial disclosure.

[96] Similar considerations apply to L.M.D.'s request for costs in the application for child support. J-M.P. argues that he wanted to settle these matters out of court, but his actions belie his stated intention. Not only did J-M.P. fail to provide his financial information to L.M.D., but he berated and belittled her when she did not concede to his proposals about the payment of child support. Furthermore, when L.M.D. provided a

counterproposal, J-M.P. refused to engage any further on the issue. A contested application may have been avoided if J-M.P. had responded differently, with a view to compromise and conciliation. L.M.D. has also been fully successful in her application. Although costs are not always awarded in child support applications, in this case, I conclude they are appropriate.

Conclusion

[97] L.M.D.'s application is granted.

[98] Costs may be spoke to in case management if the parties are unable to agree on the amount payable. Should a case management conference be necessary, L.M.D.'s counsel should provide documentation on costs.

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WENCKEBACH J.