

SUPREME COURT OF YUKON

Citation: *SCP v LWHZL*, 2025 YKSC 83

Date: 20251215
S.C. No. 25-B0055
Registry: Whitehorse

BETWEEN

S.C.P.

PLAINTIFF

AND

L.W.H.Z.L.

DEFENDANT

Before Chief Justice S.M. Duncan

Appearing on her own behalf S.C.P.
Appearing on his own behalf L.W.H.Z.L.

**This decision was delivered in the form of Oral Reasons on December 15, 2025.
The Reasons have since been edited for publication without changing the substance.**

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): S.C.P. has brought an application to court for orders for child support from L.W.H.Z.L. retroactive to November 2024 and for a 50/50 sharing of s. 7 expenses. She also, in her application, seeks primary residence for the children but at the hearing she confirmed that she was content with the current residential arrangements, which is one week on/one week off between September-October and

April-May, and then split during the summer so that the father has the children for four days every second weekend due to his work schedule out of town. The parties agree that the split of time is approximately 60% the mother, and 40% the father.

[2] This application stems from the mother's frustration with the father's delay in making payments as agreed between them, as well as from his lack of recognition of her choice to make a career change which has resulted in a lower income for her for 2025. As well, it comes from her perception that she is the primary caregiver and shoulders more of the caregiving load than the father does. The father disputes this.

The Facts

[3] The parties were together from June 2011 to August 2020, although they lived in the same residence until February 2, 2021. They have two children: F.A.C.L., born [redacted], and J.M.W.L., born [redacted].

[4] The parties have had an informal arrangement of sharing expenses up to now. Because the residential time of the children was more or less shared on a 60/40 basis and, at least since 2022, the parties have earned approximately the same annual income, no support payments were made by either party.

[5] L.W.H.Z.L. contributed to s. 7 expenses for the children mainly consisting of hockey, gymnastics, baseball, and camp expenses, as well as dental and counselling expenses. I also acknowledge that L.W.H.Z.L. paid \$1,000 per month for three months to cover grocery, gas, and sports in recognition of the additional residential time of the children with the mother over the summer.

[6] The parties agree that between early 2024 and October 3, 2025, the father paid the mother \$10,137.

[7] In November 2024, the mother resigned from her employment at Absolute Mechanical after six and one-half years for personal reasons, including her wish to have more flexible work hours to provide child care more easily. She took online courses to become a realtor and took her exam in May 2025. She began working as a realtor in June 2025. To date, she has earned \$6,700 from one deal that is about to be closed. This represents her income for 2025.

Issues

[8] The issue is: Is the mother entitled to child support from the father retroactive to November 2024 as a result of the mother's career change?

[9] The issue of whether the s. 7 expenses, which include extra curricular activities and healthcare expenses, be divided 50/50 has been consented to by the father, so there is no need for me to rule on it here, but I will include it in the court order.

Child Support

[10] The *Federal Child Support Guidelines*, SOR/97-175 (the *Guidelines*) and the corresponding child support table amounts were introduced:

- to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- to reduce conflict and tension between spouses by making the calculation of support orders more objective;
- to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support and encouraging settlement; and

- to ensure consistent treatment of spouses and children in similar circumstances.

(see s. 1 of the *Guidelines*)

[11] Where spouses' incomes are virtually equal, as it has been in this case, and residential time is 60/40, as it is in this case, a child support order is determined by taking into account:

- the amounts in the child support table;
- any increased costs of shared parenting time arrangements; and
- the condition, means, needs, and other circumstances of each spouse and of any child for whom support is sought.

(see s. 9 of the *Guidelines*)

[12] In this case, the significant reduction in income of the mother for 2025, due to her decision to change her career, on its face entitles her to child support from the father, given the continuation of the shared residential time. However, there are several considerations.

[13] First, does the fact that the mother chose to give up her job and income knowing she would have less earnings, at least in the beginning of her new career, affect the father's child support obligations?

[14] The Court, under the *Guidelines*, s. 1(1), may impute income to a parent if the Court considers the parent is intentionally underemployed or unemployed. The mother said that the father told Justice Campbell at an earlier court appearance that he did not plan to make an argument about her decision to leave her employment. I listened to that recording and I agree that the father said, "No", when asked this question by

Justice Campbell. But then when Justice Campbell asked the next question, which was, "You're not going to argue underemployment or anything like that?", the father said, "I don't know what you mean." In this case, both parties are unrepresented by counsel and I am not convinced the father understood fully what he was being asked by Justice Campbell.

[15] I note that he wrote in his Affidavit #1 at para. 21 that he disagreed with the mother's para. 14 in her Affidavit #1 that she left her salaried employment to allow for more flexibility to care for the children during the summer because the father is unreliable. Instead, he says at paras. 3 and 21 of his affidavit that the mother chose to leave employment to complete online schooling to become a real estate agent. In his Reply Affidavit #2 at para. 8, he repeats this, and adds that her choice to leave her job in November 2024 was "effectively underemploying herself". I find that he has raised the imputation of income argument.

[16] Courts have held that a party is intentionally underemployed if they earn less than they are capable of earning, having regard for all the circumstances. This includes whether the choice to earn less or change careers is reasonable considering the age, education, experience, skills, health, and past earning history of the party in question. The parents have a joint legal obligation to support their children to the best of their ability (see *Donovan v Donovan*, 2000 MBCA 80).

[17] I will therefore consider whether income should be imputed to the mother.

[18] It is not unreasonable for the mother to change her employment situation for something more flexible and potentially more lucrative. She provided evidence that she is the parent who most often takes the children to appointments and activities — and as

noted by the mother, she has the potential to earn much more than her annual salary to date as a realtor. She could also earn less. For now, I will not impute income to her, but this will need to be assessed on a yearly basis to determine if her earnings are reasonable, given all of the circumstances.

[19] For example, if her earnings next year continue to be significantly below what she was capable of earning at her salaried employment, there may need to be an imputation of income. The onus is on the father to establish the grounds for a request to impute income. So, L.W.H.Z.L., you will be required to show that the mother is intentionally underemployed, having regard to all of the circumstances.

[20] For now, I find that the father has not proved this to the level required for imputation of income to the mother, but I do find that these circumstances could change over time.

[21] The second consideration is whether the support payments should be retroactive.

[22] The person seeking retroactive support payments must show that there has been a material change in circumstances. That has been done here with the mother's evidence of resigning from her salaried employment and becoming a realtor. The presumption is that a variation to child support will be ordered retroactive to the date that the recipient gives the payor effective notice that they were requesting an increase — in this case, the date that the mother gives the father effective notice that she was requesting an increase. Effective notice is the date the recipient first raises this with the other party — the subject of a change in child support, that is.

[23] In this case, there is no evidence in the affidavits or the attached emails of when the request for child support was made by the mother until this Notice of Application was filed on October 6, 2025. In the absence of any evidence that this was raised before then, that date will be the date of effective notice.

[24] The father will be required to pay child support retroactive to October 1, 2025, based on the *Guidelines* table amount. The father did not provide any evidence that this would cause him undue hardship, that is, severe, extreme, improper, unreasonable, or unjustified hardship; or an unusually high level of debt to support his spouse or children before separation; unusually high expenses of parenting time; or a legal duty to financially support other people. All of those things would be evidence of undue hardship, and they are not here in this case.

[25] With respect to the s. 7 expenses, as I said at the outset, the father does not dispute this request, so I will order that s. 7 expenses be shared 50/50, payable within 30 days of proof of payment of those expenses by whichever party makes the payment. Section 7 expenses include all of what the mother has set out in para. 5 of her Notice of Application. These will commence as of November 1, 2025, less any payments that have already been made.

[26] Finally, I will just say that this conflict is continuing in part because of poor communication between the two parties and a build-up of resentment and frustration over past hurts. Perhaps this order will assist in allowing the two of you to move forward in a less combative or adversarial way. I would encourage you to limit your communications to the basics about the children — things like “Here are the expenses”, “Here’s what we need to decide”, “Here’s the schedule”. Personal attacks or disparaging

each other or bringing up old wounds, or past behaviours, do not help you and it hurts the children. They become aware of the conflict between you even if you think you are hiding it from them. They know more than you think and they will be affected by it. So I encourage you to try and improve your communication and limit it to discussions and communication about the children.

[27] Given that you do not have lawyers, either of you, I will draft the order to reflect what I have just said.

[28] I think what I also will add is that you will exchange notices of assessment and income tax returns every year in May — and I will add that to the order as well — so that each of you knows what the other's income is and so that you can make decisions about whether you need to make adjustments to support payments. Hopefully, you will be able to do that without coming back to court but if you do need to come back to court, the Court will have the financial information that it needs to make a decision.

DUNCAN C.J.