

SUPREME COURT OF YUKON

Citation: *SLH v AWH*,
2026 YKSC 44

Date: 20260610
S.C. No. 18-D5076
Registry: Whitehorse

BETWEEN

S.L.H.

PLAINTIFF

AND

A.W.H.

DEFENDANT

Before Justice K. Wenckebach

Counsel for the Plaintiff

Shaunagh Stikeman

Appearing on his own behalf

A.W.H.

REASONS FOR DECISION

Overview

[1] The parties in this divorce proceeding are S.L.H. (now “S.L.S.”) and A.W.H.

They have three children of the marriage. S.L.S. has filed an application to vary a child support order I made on May 1, 2025. As a preliminary matter, she is seeking that two banks produce A.W.H.’s bank records, and those of a friend of A.W.H.’s, K.K., for the period between May 1, 2024, to September 1, 2025.

[2] The parties have a long history of litigation. In 2019, at the end of the divorce trial A.W.H. was imputed income for the purposes of child support. In 2023, he filed an application to vary the amount of child support he pays. As well as disclosing his income

tax information, A.W.H was required to file several years' banking records. In the end, I granted his application and made the May 1, 2025 Order.

[3] The evidence on this application is that K.K. paid \$20,000 of A.W.H.'s legal fees for him. A.W.H. later signed a cheque over to K.K. for \$24,000. S.L.S. seeks records to determine if K.K. is holding some of A.W.H.s funds in her own bank account. A.W.H. opposes the application.

[4] The issues are:

- I. Should K.K. be required to produce her bank records?
- II. Should A.W.H. be required to produce bank records?
- III. Should costs be awarded in this matter?

[5] I conclude that neither K.K. nor A.W.H. should be required to produce their bank records. No costs will be awarded.

Analysis

- I. Should K.K. be required to produce her bank records?

[6] I conclude that K.K. should not be required to produce her bank records because they are not relevant to S.L.S.' application.

Legal Principles

[7] S.L.S.' counsel relies on R. 25(25) of the Supreme Court of Yukon *Rules of Court* the ("*Rules*"), and a common law test for production of third-party documents, commonly called the "*Norwich* test". She submits that the tests for disclosure under R. 25(25) and the *Norwich* test are the same.

[8] This submission is incorrect. A plaintiff may seek a *Norwich* order when they need information to bring a claim. In contrast, a party may seek an order under R. 25(25) when they need evidence to support a claim they have already asserted

(*Prandi v Salisbury*, 2023 BCCA 293 at para. 4). In this case, the statement of claim has been filed. The *Norwich* test does not, therefore, apply.

[9] I am also not certain that R. 25(25) applies to applications. R. 25(25) provides that the court may order production only where it would be “unfair to require the applicant to proceed to trial” without the document. Because the rule uses the word “trial” rather than a word encompassing other types of proceedings, it is possible that the rule may only be used for the purposes of a trial. I need not decide this question, however, as I conclude that S.L.S.’ request does not meet the other requirements of R. 25(25).

[10] Some of the legal principles on R. 25(25) are:

- the court must decide whether “the documents is relevant to a material issue in the action.” (R. 25(25));
- the burden on the applicant is not simply to show that the document is *possibly* relevant; they must show it *is* relevant (*Chance Oil and Gas Limited v Yukon (Energy, Mines and Resources)*, 2021 YKSC 44 at para. 26, citing *McCabe v Wawanesa Mutual Insurance Co*, 2017 PECA 12.);
- it is also not enough to show that the document is generally relevant to the action; it must be relevant to a material issue in the action (at para. 26);
- the court must weigh the third-party’s privacy interests against the probative value of the document (*Starrs v Troczynski*, 2024 BCSC 2267 at para. 36); and
- in family law matters, the best interests of the child is also a factor.

Analysis

[11] In this case, the material issue in the child support application is how much A.W.H. earns. The question then is whether K.K.'s bank records are relevant for the purposes of determining A.W.H.'s income.

[12] S.L.S. submits that production should be ordered because, in the past, A.W.H. had failed to provide complete information about his income. A.W.H.'s transactions with K.K. raise a live issue about the source of funds, the flow of funds and whether they are being held or re-directed to a third-party.

[13] These arguments are not persuasive, because S.L.S. fails to explain how these transactions, and the bank documents she seeks, are linked to A.W.H.'s income. It is not enough to point out that A.W.H. has extra cash: to seek production from a third-party, S.L.S. must show that this extra cash provides a basis to conclude that A.W.H. is earning extra income.

[14] In my last decision on child support, I found that A.W.H. cannot work and he was not earning investment income he had previously received. Given these findings, and in the face of A.W.H.'s evidence that he got the money from selling an asset, S.L.S. must provide a credible basis upon which to conclude that A.W.H. is generating extra income. She has not done so.

[15] I also note that S.L.S. has not taken other steps to determine whether there is any basis to conclude A.W.H.'s extra money is from income. She states that the photos of the cheque A.W.H. signed over to K.K. that are attached to his affidavit are of poor quality. If this is a concern, her first step should be to ask for a better copy of the exhibit from A.W.H..

[16] S.L.S.' request for K.K.'s bank records is therefore denied.

II. Should A.W.H. be required to produce bank records?

[17] S.L.S. request for A.W.H.'s bank records from two specific banks are linked to her grounds for seeking K.K.'s bank records. She otherwise provided few arguments in support of this part of her application.

[18] A.W.H. provided, in his affidavit, confirmation letters from the two banks stating that A.W.H. does not have accounts with them. This is sufficient to respond to S.L.S.' request.

III. Should costs be awarded in this matter?

[19] Costs are discretionary and not common in family law applications. I will make no order for costs. However, the grounds for bringing the application were very weak. In the future, I may be more inclined to order costs if similar applications are brought.

WENCKEBACH J.