

CANADA / JUDGMENT

Duquesne v. Hill

2018 BCSC 1720

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 1720 Duquesne v. Hill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Duquesne v. Hill,

2018 BCSC 1720

Date: 20180530

Docket: E54826

Registry: Kamloops

Between:

Christina Marie Louise Duquesne

Claimant

And

Jared Kenneth Hill

Respondent

Before: Master McDiarmid

in Chambers

Oral Reasons for Judgment

Counsel for the Claimant:

D. Komori

Counsel for the Respondent appearing by teleconference:

W.J. Rempel

Place and Date of Trial/Hearing:

Kamloops, B.C.

May 16, 2018

Place and Date of Judgment:

Kamloops, B.C.

May 30, 2018

- [1] THE COURT: There are two applications before me. The claimant's application filed April 13, 2018 is for spousal support and child support. It also sought payment by the respondent to the claimant of a proportionate share of daycare costs retroactive to January 1, 2018. It sought disclosure orders, retroactive orders, and it sought a penalty/fine.
- [2] The response filed May 10, 2018 agreed to pay spousal support in the amount of \$400 a month, child support in the amount of \$1,504 a month, and to provide certain documents. It opposed the payment of daycare costs, the fine and retroactivity.
- [3] The respondent's application filed May 4, 2018 sought parenting time, a specific exchange point, an order that the respondent spouse be permitted to exchange the children, and costs. The claimant's response filed May 10 consented to increased parenting time, but not to the extent sought, with an initial four-month period of two days, including an overnight, for one day increasing during the respondent's days off to two two-day periods after four months. The claimant agreed to the respondent's common law spouse being permitted to be present at the exchange points, conditional on her parents also being permitted.
- [4] In giving these reasons, I am giving them orally and reasonably shortly after the parties made extensive submissions, because I think it is important to deal with the claimant's application for support, both child and spousal, and also to deal with the respondent's application for parenting time. I reserve the right to amend them extensively in the event that a transcript is ordered, by making a more specific reference to the facts and to the applicable law.
- [5] The background facts are not much in issue. The claimant is 27, the respondent is 32. They began an akin to spousal relationship in early February 2014 and married October 1, 2014. They have two children, Autumn born May 8, 2014, so four years old now, and Axle, born November 5, 2016, so one and a half.
- [6] There was a separation in 2015. The parties reconciled. The evidence as to the dates of reconciliation and circumstances about that, including work history, childcare and visitation, is somewhat disputed. I have, however, considered and read all of that.

- [7] The parties separated in early 2017. The respondent is a heavy duty mechanic. At the end of 2016, he worked for his own business. He then worked as an employee. In 2017, he had net T4 employment income of \$98,189.66. There were some union dues and some other small employment insurance amount. Both parties have used \$97,568 as his Federal Child Support Guidelines [Guidelines] income for the purposes of the support calculations.
- [8] The respondent worked for Gibraltar Mines as an employee until April of this year. At that point, he went back to contracting for others. Using his 2017 income for 2018 support calculations is reasonable, and so I will use that amount of \$97,568.
- [9] Child support is thus \$1,490 per month on a go-forward basis, payable in equal amounts of \$745 on the 1st and 15th of each month, so payable twice a month commencing June 1, 2018.
- [10] Dealing with spousal support, the applicable law is set out in *Robles v. Kuhn*, 2009 BCSC 1163. It is important that I go over those criteria. In para. 12, the principles cited by Master Keighley are as follows:
- [12] On interim support applications, the application of these provisions must be qualified by certain established considerations:
1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
 - 2 An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
 3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
 4. The courts should not unduly emphasise any one of the statutory considerations above others;
 5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
 - 6 Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
 7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);

8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: L.G.B.
- [11] With regard to point #1 above, respondent's counsel dealt with both of those; the applicant's needs and the respondent's ability to pay. He dealt with them thoroughly, and I am aware of the relevant facts.
- [12] With regard to point #2, simply put, it does not apply in this case. The parties have substantial debts. There is evidence from the respondent in his third affidavit where he deposes:
14. In response to paragraph 30 of the Claimant's affidavit, I earned this income on the back of failing to pay taxes and incurred significant family debt. The lifestyle that Christina and I had was unsustainable.

I find that to be borne out by the evidence.

- [13] With regard to point #3, that ties in to point #6. I considered carefully the respondent's submissions and the evidence that he marshalled to support those submissions. I do not find that exceptional circumstances exist here.
- [14] Point #4 does not affect the result.
- [15] I have considered point #5. There is no issue about entitlement. The respondent properly conceded entitlement, and so the threshold issues do not arise, so point #8 does not arise either.
- [16] The means and needs are important but, as noted, support absent exceptional circumstances is to be ordered within the range of the Guidelines.
- [17] Both parties are assisted by their parents or step-parents. Both seem to have lived beyond their means at times when they were together.
- [18] I find, using the Spousal Support Advisory Guidelines [SSAG] provided by counsel for the claimant, that the employment income is slightly higher, but I order the respondent to pay spousal support of \$1,226 per month, \$613 on the 1st, commencing June 1, and \$613 on the 15th, commencing June 15th, for the months of June, July, and August.
- [19] The evidence is that the respondent finishes her schooling in the first half of August. She should be able to work thereafter. I impute income of \$22,300 to the claimant effective September 1, 2018. At that point, spousal support reduces to \$510 a month, so \$255 on the 1st of September, \$255 on the 15th of September, and then on the 1st and 15th of each month thereafter.
- [20] The Supreme Court of Canada set out the law with respect to retroactive support in *Kerr v. Baranow*, 2011 SCC 10 at para. 200, and with respect to arrears in *D.B.S. v. S.R.G.*, 2006 SCC 37. I agree with the submission of respondent's counsel that arrears and retroactive support

ought to be left to trial. There are disputed issues of fact here. I do take into account ability to pay. It seems to me that on the facts of this case, the issue of arrears should be left to trial. I had already referred to the evidence of Mr. Hill that relates to an unsustainable standard of living.

- [21] With respect to daycare costs, again I make no order with respect to arrears. That is an issue for trial and I so order.
- [22] On a go-forward basis, daycare costs should be divided according to income, in accordance with the SSAG, using what I have determined as income. For the next three months, no imputed income to the claimant and then starting September 1, imputing \$22,300 income to her. If there are issues with daycare costs, either party has liberty to apply.
- [23] I was advised that the disclosure sought in paragraph 4 ought to be adjourned and I think the penalty also adjourned. I appreciate that there may have been an agreement and it was an agreement that those be adjourned, then that can go in the order. They were not dealt with. My recollection is there was a discussion about adjourning them both.
- [24] That deals with the claimant's Notice of Application.
- [25] Dealing with parenting, the evidence establishes that the claimant has been primarily responsible for the care of these two young children. The evidence also establishes the respondent has been seeking additional parenting time and the claimant consistently insisted on compliance with existing Provincial Court orders which are now in effect here. The Provincial Court proceedings have now been consensually consolidated with this proceeding.
- [26] This is a divorce proceeding. The respondent's application is brought pursuant to both s. 37 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] and s. 16(2) and (10) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) [DA]. Those sections are as follows:
- 37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;

- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

16 (2) Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).

...

- (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[27] Section 37(1) of the FLA requires me to consider the best interests of the children only. Subsection (2)(d) refers to history of children's care: (e) the need for stability, (f) the ability of a person who is a guardian to exercise his responsibilities. I comment on that because there were issues raised with respect to the respondent's anxiety.

[28] Section 16(10) of the DA states:

Maximum contact

[10] In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[29] The claimant has concerns about the respondent's anxiety issues. She also has concerns about his reliability and there is some evidence to validate those concerns.

[30] However, much of what the respondent deposes to with respect to the parenting issue strikes a chord with me. I am going to go to some of the evidence.

[31] In his fourth affidavit, on August 26, 2017, he sends from his iPhone to the respondent:

. . . happy to hear the day's work for you. In order to have more parenting time can I please have Autumn from 5pm on the 28th till 8am the next morning and then exchange and get axel? From 8-12 August 29th? She has her own bunk bed and everything she would need here, just so she can slowly get use to being here more and slowly get adjusted to having over night stays.

I'm just trying to work something out with you so the children can get use to a set schedule for a more lengthy time frame. 2 four hour visits doesn't allow that for me or the children to have time to bond, not for either one of them.

[32] The claimant replies:

We will see you tomorrow at Tim Hortons for the 8-12 visit. Aug 29 2017 8-12. Like we have already agreed upon and that states in the consent order.

[33] The claimant's response is both unhelpful and, in my view, not in the children's best interest. She refuses what I consider to be a reasonable request.

[34] Two weeks later the claimant tries again. It is an email where he asks -- I will not read it all, it is exhibit page 6 of the fourth affidavit, and he asks for increased time, and a very polite and respectful email, and asks for some information. There is no substantive reply. He asks for extra days. She replies on December 29:

I will be sticking to the consent order. Thank you.

[35] I understand the claimant's concerns for her children, but I find her refusal to consider these overtures frankly not in the children's best interest.

[36] There are other examples. She failed to properly notify the respondent where she took the children when they were away on July 9, 2017. The respondent writes, this is exhibit page 42, Exhibit M to the May 9, 2018, affidavit:

Did you guys take off outa town? Hope you guys are safe

This is when there are wildfires causing evacuation orders.

[37] The claimant responds:

We are still safe and good but can't come back to town. So when this all calms down and everyone is ok we can make a new schedule. Hope your all doing good.

[38] The respondent says:

Just wondering how Autumn and axel are doing? And how they have been? Where are they staying?

[39] The claimant's response is:

Autumn and Axle are good. Getting tired of being away from home. We are up north.

[40] The claimant would have been horrified and appalled to have received that sort of communication from the respondent if he had taken the children away, basically not saying where they were. I appreciate that the claimant has reasons for what she has done. Her counsel requested medical information to resolve the respondent's anxiety issues; those records were not forthcoming. Production would probably have been helpful.

[41] However, all of this has regrettably delayed the respondent having what I view as proper access. What the respondent deposes to in paragraphs 30-32 of his third affidavit also resonates with me. He deposes as follows:

30. I believe that limiting my parenting time has hurt Autumn and Axle not just because it has limited their ability to spend time with me. The children's ability to maintain bonds with my extended family has also been harmed
31. Not having overnight visits limits just about everything I can do with the children. About the only thing I can do is have them at my house or go to a local park. I would like to take the children to Edmonton once a year to my sister Angie and their cousins. I want to take the children to Vancouver and go to the aquarium. Most people in Williams Lake go to Kamloops for shopping once in a while
32. I currently have to return the children at 5:30 pm. I can't even have a proper family dinner with Autumn and Axle.

[42] Then in paragraph 33, he has to have the exchanges happen at Marshall Store in 150 Mile House, where he says:

I have been driving 40 minutes each way to the current exchange location

[43] I have also read the affidavit of Samantha Brandt. She and the respondent are expecting a child in July. She has a daughter, age four, so two months older than Autumn. There have been inappropriate discussions and interactions by Ms. Brandt with the claimant. To the claimant's credit, she feels she can communicate with Ms. Brandt. Both parties, as well as Ms. Brandt, appear to have extended families in the Williams Lake/150 Mile area.

- [44] Despite the evidence, in submissions the respondent is now on a schedule where he works 14 days on and seven days off. I was advised that his next days off commence June 2, 2018, and end June 8, 2018.
- [45] Accordingly, I make the following order and it is a bit complicated. I will go over it again if there are any issues.
- [46] The respondent is to have access, commencing 8:30 a.m. June 3 to 7:00 p.m. June 4, and then 8:30 a.m. June 6 to 5:30 p.m. June 8, so one day and an overnight and another day, but not overnight, and then one day and two overnights.
- [47] That then repeats June 24, so 8:30 a.m. June 24 to 7:00 p.m. June 25, and then 8:30 a.m. June 27 to 5:30 p.m. June 29.
- [48] MR. KOMORI: Sorry, just 8:30 a.m., June?
- [49] THE COURT: 27 and if you grab that calendar, Mr. Komori, or a calendar, and you will see that what I am doing here is every third week, because I think he gets every third week off.
- [50] So 8:30 June 24 to 7:00 p.m. June 25; 8:30 June 27 to 5:30 June 29. Then it repeats again; 8:30 July 15 to 7:00 p.m. July 16; 8:30 July 18 to 5:30 July 20.
- [51] Then 8:30 a.m. August 13 to 7:00 p.m. August 19. If that does not completely dovetail with his vacations, it is to be varied so that it does, but he is to have a week with the children, one week.
- [52] Once summer is over, so commencing in August, from 8:30 a.m. -- my understanding is that the claimant returns back to the Williams Lake area on a Saturday. So from 8:30 a.m. on the Sunday after he returns to 5:30 p.m. on the following Friday, and it is a term of the order that on those weeks, there must be telephone or Skype contact between the children and the claimant on the Wednesday after dinner and before they go to bed, if the respondent and the children are in range of a telephone. They maybe cannot be.
- [53] The exchange points -- and the reason that I am making the next order is because I want some stability for the children. They need to gradually work into this. The exchange points will be at the Tim Hortons in Williams Lake, as they are now, until the end of July 2018, so for June and July.
- [54] Starting in August and thereafter, the exchange when the respondent is picking up will be at the Tim Hortons, and when the respondent is returning the children, that will be at the Marshall Store in 150 Mile House.
- [55] I am looking at the application response of the claimant filed May 10, and the order set out in 1(b) is granted, so the respondent has Christmas 2018 and even years thereafter from December 24, 8:30 a.m., to December 25, 5:30 p.m., and she has the children December 25, 5:30 to December 26, 5:30, and then flips around for 2019 and odd years thereafter. So 1(b) of the application response is ordered.

- [56] 1(c) deals with Father's Day and Mother's Day. That is ordered.
- [57] 1(d), the respondent may have the children on November 5 from 8:30 to 5:30 for Axle's birthday, and if this matter has not resulted in a final order, it should also -- it should be for both children, so for Autumn's birthday as well. I appreciate that has just happened, but (d) is granted.
- [58] What is set out in the response paragraph 3 is granted. The claimant agrees that Samantha Brandt be permitted to exchange the children on the respondent's behalf, provided the claimant's parents, Karen Duquesne and/or John Leftrook, can be permitted to exchange on behalf of the claimant.
- [59] There is already an order in place for polite communications with extended family. That order is granted, so that is part of the order.
- [60] A further order, if either party takes the children out of the Williams Lake/100 Mile House area for more than 24 hours, that party must advise the other as to whereabouts and return date.
- [61] Lastly, I appreciate that Mr. Komori averted to the financial difficulties of the claimant. However, there is only one way to finally resolve matters. Hopefully they can be resolved before trial, but I am going to direct Mr. Rempel on behalf of the respondent to set this for a four-day trial in Williams Lake. Any costs associated with so doing I am ordering waived. Hopefully that will give the parties something to work toward.
- [62] The claimant was largely successful in her application and the respondent was largely successful in his application. It seems to me that in the circumstances, each party should bear their own costs of both applications.
- [63] MR. KOMORI: Can I address you on that point?
- [64] THE COURT: Yes.

[SUBMISSIONS AT 2:58:06 P.M. TO 2:59:33 P.M.]

- [65] THE COURT: I thought about that issue, but the other thing I thought about was that the costs of the respondent in having counsel come from Quesnel are substantially greater, so the starting point would be each party gets their costs of their application and that, I think, would impose a greater hardship on your client than on the respondent. I did give that some consideration. There is no question about the disclosure should have happened in a more timely way. If there is a recurrence, there is a substantial risk of cost orders, and perhaps cost orders with costs payable forthwith. In the circumstances of this case, I considered the costs ramifications.

- [66] The other thing that concerned me -- so I will be very frank, Mr. Rempel, Mr. Komori's comments about this disclosure, and there might have been reasons for it, but it is concerning to me. The other factor that is concerning to me was the complete reticence of the claimant to consider overnight parenting, which would have been much in the children's best interest, and that impacted me.
- [67] I appreciate your submissions, but my order is that each party bear their own costs.
- [68] MR. KOMORI: Okay, I just -- I wished to address you on that point.
- [69] THE COURT: Thank you. There should be two orders. Each of you draft the order on your own application. Those orders can be submitted to me electronically using scanned counterpart signatures. The most important factors for the parties are, Mr. Rempel, your client needs to start making those payments, and Mr. Komori, your client needs to prepare for -- well, they both need to prepare for some overnight visitation.
- [70] Any comments from your side, Mr. Rempel?
- [71] MR. REMPEL: No, Your Honour.
- [72] THE COURT: Okay, and you have got the schedule down?
- [73] MR. REMPEL: I believe I do, and if I need to go back, I will ask for the assistance of the clerk and listen to the tape, but I believe I have those, thank you.
- [74] THE COURT: Okay.
- [75] MR. KOMORI: I would just like to go over them.
- [76] THE COURT: I think that is a good idea.
- [77] MR. KOMORI: Make sure that I have them.
- [78] THE COURT: Good idea.
- [79] MR. KOMORI: So what I have got is June 3rd, 7:00 p.m. to -- sorry, June 3rd at 8:30 a.m. to June 4th at 7:00 p.m.; June 6th at 8:30 a.m. to June 8th at 5:30 a.m.
- [80] THE COURT: Right.
- [81] MR. KOMORI: June 4th at 8:30 a.m. to June 25th at 7:00 p.m.; June 27th at 8:30 a.m. to June 29th at 5:30 p.m.; July 15th at 8:30 a.m. to July 16th at 7:00 p.m.; July 18th at 8:30 a.m. to July 20th at 5:30 p.m. Then this is the one that I am a little uncertain of, August 13th at 8:30 a.m. until 7:00 p.m. on August 19th, and that can be varied to accommodate his holiday schedule.
- [82] THE COURT: Right.
- [83] MR. KOMORI: After August 2018, from 8:30 on the Sunday after he returns from work till 5:30 the following Friday, so the week.
- [84] THE COURT: Right, and that is every third week.

- [85] MR. KOMORI: Every third week.
- [86] THE COURT: Yes, I neglected to say that, thank you, because I am assuming that that is his work schedule.
- [87] MR. KOMORI: Yeah, and she is to receive during that week a telephone call or Skype call from the children on Wednesday at between 5:30 and when they go to bed.
- [88] THE COURT: Yes.
- [89] MR. KOMORI: If they are in range of a phone.
- [90] THE COURT: After dinner and before bed.
- [91] MR. KOMORI: So --
- [92] THE COURT: I do not know when they have dinner.
- [93] MR. KOMORI: After dinner.
- [94] THE COURT: Yes, most young children eat 5:30, 6:00, somewhere around there.
- [95] MR. KOMORI: Exchanges are to be at Tim Hortons in Williams Lake up until July, until the end of July 2018.
- [96] THE COURT: Right.
- [97] MR. KOMORI: From August following, he picks up at the Tim Hortons in Williams Lake and she delivers back -- sorry, he picks up at the Tim Hortons and she picks up at the Marshalls in 150 at the end.
- [98] THE COURT: Right.
- [99] MR. KOMORI: And then I have got -- the other parts are -- I think I have got the rest, 1(b), 1(c), and 3 of the response to take care of the other issues.
- [100] THE COURT: Right, the only thing is we add in Autumn's birthday as well as Axle's birthday.
- [101] MR. KOMORI: Yes, and then I missed this part and perhaps just I do not recall what are in the previous orders, but I am assuming you were referring to the --
- [102] THE COURT: I think we put in those picklist orders, did we not, at one point?
- [103] MR. KOMORI: You know, I am -- my memory is failing me on that point, so I just want to make clear about that.
- [104] THE COURT: If we did not, those three orders should go in the parenting order, not the support order. You know what I am talking about, Mr. Rempel?
- [105] MR. REMPEL: I believe so, but perhaps you could just go over that again?

- [106] THE COURT: There are three orders that are on the Supreme Court website. I thought I had made them in a previous order, but I might not have, and they are conduct orders.
- [107] MR. KOMORI: So what I have is -- I am actually looking at the Provincial Court picklist because -- but basically --
- [108] THE COURT: Same orders.
- [109] MR. KOMORI: -- what it is, is the children will put the best interests -- sorry, the parties will put the best interests of the children before their own interests, encourage the children to have a good relationship with the other and speak to the children about the other parent or the parent's partner in a positive, respectful manner, and make a real effort to maintain polite respect in communication with each other, refrain from any negative or hostile criticisms, communications, or arguments in front of the children.
- [110] The next one, the parties will not question the children about the other parent or time spent with the other parent beyond simple conversational questions, discuss with the children any inappropriate adult, court or legal matters, or blame, criticize, or disparage the other parent to the child/children.
- [111] And finally, the parents will encourage their respective families to refrain from negative comments about the other parent and his or her extended family, and from disclosure in front of the children concerning family issues or litigation.
- [112] Those are the three that you wish?
- [113] THE COURT: Right. Now, the middle one, I have seen no evidence from either party that they are offending the spirit of that. I do not think they are. On the other hand, I think it is useful to put it in, so you can put it in if you want or do not want. But I think the first and the third ones, Mr. Rempel, those should go in.
- [114] MR. REMPEL: Yes.
- [115] THE COURT: You can put the middle one in if the two of you agree. As I say, these parties have not offended that, in my view, but it does not hurt to put it in. The terms are:

Children's Interests Conduct

The parties will:

- (a) put the best interests of the child(ren) before their own interests;
- (b) encourage the child(ren) to have a good relationship with the other parent and speak to the child(ren) about the other parent and that parent's partner in a positive and respectful manner; and
- (c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the child(ren).

Speech to Children Conduct

The parties will not:

- (a) question the child(ren) about the other parent or time spent with the other parent beyond simple conversational questions;
- (b) discuss with the child(ren) any inappropriate adult, court or legal matters; or
- (c) blame, criticize or disparage the other parent to the child(ren).

Family Speech Conduct

The parties will encourage their respective families to refrain from any negative comments about the other parent and his or her extended family, and from discussions in front of the child(ren) concerning family issues or litigation.

[116] MR. KOMORI: So -- and the final clarification I have is actually on my application. I understand that I have adjourned, and my friend can correct me right now, I have adjourned generally the application for the disclosure. Is my friend opposed to that?

[117] THE COURT: No, I think he has agreed to that. That was disclosure generally, yes.

[118] MR. KOMORI: Okay.

[119] THE COURT: I think you also adjourned generally the fine, and my recollection --

[120] MR. KOMORI: I -- to be fair on my friend, I do not think I addressed that in my -- when I was before you, but --

[121] THE COURT: I had a note that said 4 and 5 are adjourned, so you are agreeable with that, Mr. Rempel?

[122] MR. REMPEL: Yes, I am, Your Honour.

[123] THE COURT: Okay.

[124] MR. KOMORI: All right. I think I --

[125] THE COURT: Anything from your perspective, Mr. Rempel?

[126] MR. REMPEL: Actually, yes. As my friend was going through it, I realized I should seek clarification on the -- on the change to the parenting schedule. I was not clear whether that was supposed to start the beginning of August or at the end of August, i.e., when school starts in September?

[127] THE COURT: Well, I know there is going to school, but it was supposed to start after they get back from the one-week vacation.

[128] MR. REMPEL: Okay, okay. All right, if I could clarify that my client --

[129] THE COURT: Because my understanding is that he goes on -- he has two weeks' vacation, I think you gave me the dates, and I fit this into one week. Two weeks is too long, in my view, at this stage. And so he has his one-week vacation in August, and then once he is back on his 14 days of work, seven days off, he has access commencing at 8:30 a.m. on the Sunday after he returns until 5:30 p.m. the following Friday, so that is every third week, I am assuming, and starts after -- it starts the first time he is back on his regular seven days off after his summer holidays.

[130] MR. KOMORI: Could I -- you know, I appreciate you have made your order and all, but I perceive there may be difficulties as it relates to disclosure and timing, in terms of when he is going to be exercising his access. So I would request you make an order that he provide her at least one week's notice of when he is going to exercise his time. Is --

[131] THE COURT: Well, I got the impression that he was -- like I have set the times in accordance with his -- what I understand to be his schedule.

[132] MR. KOMORI: All the way up until August, but then you are saying after that --

[133] THE COURT: Oh, I see, yes.

[134] MR. KOMORI: Right.

[135] THE COURT: So that is fair, that there should be an additional term that after he returns from the week vacation I ordered from August 13 to August 19, he needs to advise the claimant of his work and vacation -- work and off-work schedule. Do you understand, Mr. Rempel?

[136] MR. REMPEL: Yes, I do.

[137] THE COURT: And that needs to go in the order you are drafting.

[138] MR. REMPEL: Yes.

[139] THE COURT: Okay.

[140] MR. KOMORI: So with -- with a week's notice?

[141] THE COURT: He should give as much notice as possible, but I would have thought that he should be able to give at least two weeks' notice, because he is going to be working two weeks and then exercising access the third week.

[142] MR. KOMORI: Yeah.

[143] THE COURT: So I think it should be -- I am going to say at least 10 days' notice, but as much as possible. I think that is reasonable, Mr. Rempel.

[144] MR. REMPEL: Yes, it is.

[145] THE COURT: You will explain that to him. Does that work for you, Mr. Komori? So it is at least 10 days, but as much as possible.

[146] MR. KOMORI: It is more than I asked for.

[147] THE COURT: Right. All right. Thank you both for your submissions and materials which were very helpful.

"Master R.W. McDiarmid"

MASTER MCDIARMID

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