
CANADA / JUDGMENT

N.D.S. v. D.J.L.

2017 BCSC 1690

COURT

Supreme Court of British Columbia

DECIDED

22 September 2017

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2017 BCSC 1690 N.D.S. v. D.J.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

N.D.S. v. D.J.L.,

2017 BCSC 1690

Date: 20170922

Docket: E24019

Registry: New Westminster

Between:

N.D.S.

Claimant

And

D.J.L.

Respondent

Corrected Judgment: The text of the judgment was corrected

at paragraphs 88 and 90 on September 27, 2017

Before: The Honourable Mr. Justice N. Brown

Reasons for Judgment

In Chambers

Counsel for the Claimant:

F.A. Nudel

The Respondent, appearing on his own behalf:

D.J.L.

Place and Date of Hearing:

Chilliwack, B.C.

August 31, 2017

Place and Date of Judgment:

Chilliwack, B.C.

September 22, 2017

Overview

- [1] The parties are the parents of three children: K.L., born [DOB] 1999, now 18 years old; R.L., born [DOB] 2001, now 16 years old; and S.L., born [DOB] 2003, now 14 years old.
- [2] The claimant mother, Ms. N.D.S., seeks the following orders against the respondent father, Mr. D.J.L.:
 - 1. That the Order of Justice Brine pronounced November 21, 2006 be varied in that the Respondent pay child support in accordance with the his actual gross annual income retroactive to his commencement of employment with [a utility company].
 - 2. An Order that the Respondent provide his Income Tax Returns for the past ten (10) years.
 - 3. An Order that the Order of Madam Justice Arnold-Bailey pronounced November 22, 2005, be cancelled with respect to the Claimant's non-removal of the children from the Province of British Columbia.
 - 4. An Order [for] costs of this application.
- [3] The parties married in December 1998 and divorced in December 2006.
- [4] On November 1, 2006, Mr. Justice Brine ordered the respondent to pay child support of \$400 per month based on an imputed income of \$19,000, without prejudice to the claimant's right to seek an increase.
- [5] The respondent has unsuccessfully applied twice - on February 13, 2008 and October 19, 2010 - to reduce his child support obligations.

- [6] The claimant's counsel could not communicate with the respondent and had to apply for an order for substitutional service. On January 9, 2017, Master Keighley ordered that the respondent be substitutionally served with a copy of the claimant's Without Notice of Application, which dealt with the respondent's failure to update his financial information. Master Keighley also ordered payment of costs of \$350 payable to the claimant forthwith.
- [7] As for formal notification, the respondent has had it since at least January 9, 2017, when Master Keighley granted an order for substitutional service of materials seeking relief of the same kind now before the court. He was also notified in a letter sent to him by claimant's counsel in December 2016. I will quote from it further on in these reasons.
- [8] On January 23, 2017, Harvey J. ordered the respondent to provide a Financial Statement in Form 8 with all attachments within 30 days of the order and costs of \$500, to be paid within 90 days.
- [9] The respondent has not paid any of the costs awards totalling \$850 to date.
- [10] On her application, the claimant calculated arrears based on Brine J.'s initial order now retroactive to 2013, totalling \$41,984. The claimant sought prospective support based on annual income imputed to the respondent of \$75,102 with monthly payments of \$1,193 commencing September 1, 2017. The claimant amended these figures during the hearing.
- [11] Custody and the respondent's parenting contact have been intensely disputed since the parties' divorce.
- [12] On September 22, 2005, Arnold-Bailey J. ordered that the claimant could not remove the children from the Province of British Columbia without the written consent of the other party or order of the Court. The claimant sought to have that order varied. During the hearing, I varied it to provide that the claimant could take the children out of the Province of British Columbia without the written consent of the respondent provided that if the time out of the province were to exceed two weeks, the claimant would provide the respondent with a written itinerary, contact information, and an expected date of return.
- [13] That aside, custody and parenting time matters were not in issue during the hearing.

Late service

- [14] I turn now to issues related to the respondent's late service of his response, his failure to pay costs and incomplete financial disclosure. The respondent did not give the claimant his responsive materials until just before the hearing, well out of time, creating a troublesome procedural problem. Counsel for the claimant advised the court that as he had just received the respondent's materials, he had no time to review them with his client and prepare a response. He advised an adjournment was untenable for his client as her only income consisted of disability benefits; she could not afford the cost of an adjournment, further preparation and further attendance. Counsel also said he likely would not be able to continue to represent the claimant at that time.

- [15] Also noteworthy is the litigation history that I have discussed. As just mentioned, the claimant had to incur the costs of a substitutional service order and of applying for production of current financial information. Those costs, twice ordered, remain unpaid. Further, as mentioned, the respondent applied twice, unsuccessfully, to reduce his child support obligations.
- [16] Having considered the limited tenable options before the court, I declined to admit the plaintiff's out-of-time materials. I noted that the respondent could refer to previously filed affidavits. He appeared to be aware of *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.] and some of its principles.
- [17] I widened the margins of what the respondent could usually legitimately address in oral submissions while seeking at the same time to minimize prejudice to the claimant. I was able at least to extract fundamentals of the respondent's position without prejudice to the claimant. I did consider an adjournment to allow the respondent to submit some written materials to which the claimant could respond in writing. But, on further reflection, I was persuaded by the claimant's submission that proceeding in this way would only occasion further delay and further costs, with little benefit. Considering the litigation history, including the history of non-disclosure or incomplete disclosure, I ruled out that option. The respondent filed a Financial Statement on February 28, 2017 but it is obviously incomplete. It left out important parts of the F8 form, information the claimant was entitled to have, as will be seen further on in these reasons.
- [18] In the circumstances, I declined to admit the late documents or grant an adjournment. The children would be returning to school in September, with the usual costs that come at that time of year. They have been deprived for many years of the proper support to which they were entitled. The respondent still has not made full open and transparent disclosure.
- [19] As it is, the respondent spoke to the essentials of his position during the hearing and was able to articulate it.

Discussion of authorities

- [20] The following addresses circumstances in which the court has discretion to decline hearing a submission or to limit a party's rights to submit evidence where they are in violation of a court order or obligation.
- [21] The Court of Appeal has addressed the situation where an appellant is in violation of a court order. It has consistently maintained that it has discretion to refuse to hear an appeal or to dismiss an appeal where the appellant is in violation of a court order, whether it is the order under appeal or a closely related order: *R.A. v. W.A.*, 2017 BCCA 126 at para. 4.

- [22] In *Larkin v. Glase*, 2009 BCCA 321, Mr. Justice Chiasson stated that the court's authority to refuse to hear or to dismiss an appeal was not limited to disobedience of the order directly under appeal but could extend to related orders (para. 31). Chiasson J.A. said, "More recently, courts have considered the issue more in context: the decision to hear or refuse to hear a party is treated as a matter of the court's discretion." [Para. 34.]
- [23] In *Hokhold v. Gerbrandt*, 2015 BCCA 268, the court refused to hear the appeal of a husband who had failed to meet his child support obligations as ordered and had been found in contempt. [See also *Berry v. Berry*, 2002 BCCA 129; *Bullock v. Bullock*, 2008 BCCA 162.]
- [24] I turn now to the question of the court's discretion to limit a party's rights at a hearing where that party has failed to comply with court orders and has not properly filed a response.
- [25] A trial judge has discretion to limit a party's participation in a proceeding where there has been no response properly filed or the response has been struck and the party has failed to comply with court orders or fully participate in the proceedings.
- [26] In *Rai v. Rai*, 2016 BCCA 261, the Court of Appeal upheld a trial judge's exercise of discretion to limit Mrs. Rai's participation in divorce proceedings to making submissions. Mrs. Rai had failed to comply with court orders and had failed to provide financial records. As a result, the Response to the Family Claim was struck by a master. The trial judge refused Mrs. Rai's request for an adjournment, limited her participation in the trial and did not allow her to adduce evidence or cross-examine witnesses (paras. 3-5). [Ed. Note: In *Rai*, the Court of Appeal decided to hear the appeal because the order in question was unclear such that the party could not clearly be said to be in breach of his obligations.]
- [27] This followed the approach adopted by Mr. Justice Pearlman in *E.D.A. v. M.A.A.*, 2014 BCSC 1084, where he stated at para. 20:
- [20] On the first day of trial, after hearing submissions from the parties, I ruled that because his response had been struck and his counterclaim dismissed for non-compliance with the Supreme Court Family Rules relating to document discovery and his breach of orders of this Court, Mr. A. would not have the right to call evidence or cross-examine the claimant or her witnesses. However, in the interests of determining what orders for custody, guardianship and parenting time would serve the best interests of S., I permitted Mr. A. to make submissions on those matters.
- [28] In a case where no Response to Family Claim has been filed or the response has been struck for non-compliance (see Supreme Court Family Rules 21-5(1)(b)), a trial judge has discretion to limit the responding party's participation in the subsequent proceedings.
- [29] I find the foregoing authorities support the aforesaid discretion I exercised in this case.

Notice and incomplete disclosure

- [30] At para. 6 of her eighth affidavit dated July 11, 2017, the claimant stated that "[f]or some time [she had] suspected that the respondent was making a higher income than he let on." But she had found getting financial information from him very difficult. She noted he was currently employed by [a utility company], a fact she had been unaware of until further disclosure and production of a financial statement was ordered.
- [31] The claimant compiled a Financial Statement in February 23, 2017 that disclosed little, leaving Parts 2 and 3 uncompleted. She noted he attached a copy of a 2017 Property Assessment Notice but did not disclose the residential address. [Para. 6.]
- [32] At para. 8 of her eighth affidavit, the claimant deposed that she is unable to work due to health problems and for six years has been in receipt of Persons With Multiple Barriers Benefits. She states she and the children have survived on the disability coverage she receives from the Ministry: \$1,123.58 monthly, plus Child Tax Benefits, currently in the amount of \$1,577.50 monthly, and \$400 monthly child support payments. She further stated:
8. The Children have suffered greatly due to our financial situation. Once the rent and utilities are paid and the cost of food for three growing boys, there is nothing left for extras. The Children have not been able to participate in extracurricular activities like other children do. They have missed out on camps during the summer as I am unable to pay for the costs.
- [33] The claimant pointed out at para. 9 of her affidavit that the respondent's February 23, 2017 Financial Statement indicates a line 150 income for 2016 of \$50,209.58, translating into a child support obligation of \$1,002 monthly. She further deposed that all the while the respondent has been paying \$400 monthly, he has underpaid his support obligation in 2016 by \$602 monthly, producing a \$7,224 underpayment. The same patterns can be seen in 2014, 2015, 2016, and 2017.
- [34] At para. 10 of her affidavit, the claimant deposed she had knowledge of the respondent's travels to Guatemala in 2016 where he remained for four to six months. She further deposed he has travelled to other locales, including Europe.

Respondent's February 23, 2017 Financial Statement

- [35] The respondent did not state his residential address in his February 22, 2017 financial statement. On p. 4, he reported employment income of \$50,209.58. After subtracting claimed union and professional dues of \$515.61, he would be left with a Guidelines income of \$49,693.97. His employer's income summary did not itemize either of those expenses and he did not otherwise substantiate the union and professional dues he said he had to pay.

[36] Attached to the respondent's Financial Statement is a BC Assessment 2017 Property Assessment Notice. It states the present assessed value of the residential property in the New Westminster land District is \$343,000; an increase of 27% since 2013, when the value was \$285,000. The respondent blacked out the residential address for the property. The legal description is as follows:

[Content Redacted]

[37] The 2017 Property Assessment valuation of a residential property is typically 15% or more less than the market value.

Respondent's earnings

[38] In 2015, the respondent earned, as per line 150 of his assessment, a total of \$59,021.93. In 2014, his line 150 income was \$59,186.08.

[39] At p. 3 of his 2017 Financial Statement, the respondent checked a box confirming he was employed by [a utility company]. I note a pay stub attached to his employee earning statement did not show any deductions for union dues or professional dues. Based on the bi-weekly earnings of \$2,888.57 as shown on the respondent's 2017 pay stub, his pro-rated annual income for 2017 should be \$75,102.

[40] The claimant did not state in his Financial Statement when he started to work at the utility company or the nature of his position. He told the court he undertook training to secure a position there. He told the court his typical actual annual earnings are less than \$75,000, saying this figure is skewed by atypical overtime he earned that year. The employee earnings statement attached to the respondent's Financial Statement itemized overtime of only \$376. I note he was also able to bank overtime hours he could later withdraw.

[41] Overtime hours, whether paid or earned, have to be included in the calculations determining the payor parent's Guidelines income.

[42] As I mentioned, the respondent did not complete Part 2, 'Monthly Expenses' or Part 3 'Assets'. The Property Assessment Valuation he attached was not accompanied by information he was supposed to give in Part 3.1, which requires the following information:

- Attach a copy of the most recent assessment notice for any property that you own or in which you have an interest.
- Provide details, including address or legal description and nature of interest, of any interest you have in land, including leasehold interests and mortgages, whether or not you are registered as owner.
- Record the estimated market value of your interest without deducting encumbrances or costs of disposition.

- [43] The foregoing is important information. It would assist the court in determining the respondent's financial means to pay child support which is not solely based on employment income.
- [44] The respondent also failed to complete Part 3.2, which asked for a list of the respondent's "cars, trucks, motorcycles, trailers, motor homes, boats, etc."
- [45] Neither did the respondent complete Part 3.3 of the Financial Statement, which requires a listing of financial assets including:
- savings, checking accounts, term deposits, GICs, stocks, bonds, Canada Savings Bonds, mutual funds, insurance policies [indicate beneficiaries], accounts receivable, etc.
- [46] The respondent was also required in Part 3.4 to "[r]ecord [the] name of [the financial] institution where accounts are held, [the] name and address of pension plan and pension details." He failed to do so.
- [47] The respondent also failed to complete the debt portion of Part 3, which calls for a listing of secured debts, such as mortgages, and unsecured debts such as bank loans, personal loans, credit cards [which must be listed] and other debts.
- [48] The respondent did not complete Part 4, either. It deals with Special or Extraordinary Expenses. He did not list any extraordinary expenses for primary or secondary school, or extraordinary extracurricular expenses that he had incurred.
- [49] He did not complete Part 5, 'Undue Hardship'. There are six subject areas in that part, none of which he completed. He did not complete Part 5.3 applicable when there is a claim to be made of a "[l]egal duty under a court order or separation agreement to support another person". He did not complete Part 5.4, which required him to give particulars of a claimed "[l]egal duty to support a child, other than a child for whom support is claimed, who is (a) under age 19, or (b) 19 or older but unable to support himself or herself because of illness, disability or other cause." Part 6.6, which provides for 'Other undue hardship circumstances', was also not completed.
- [50] The respondent advised the court that he has three other children that he provides for. He did not provide any sworn or solemnly affirmed information on that in his Financial Statement. It was sworn February 22, 2017, before Michael Blatchford, a Commissioner for taking affidavits in British Columbia. It was evident from some of the respondent's comments during the hearing that he had sought some legal advice.
- [51] By any measure, the respondent failed to fulfill his obligations to provide full, transparent, clear and honest financial information. He offered no reasonable explanation for failing to complete it in full. His failure to do so undermines the credibility of his Financial Statement.

Claimant's Financial Security

[52] I will turn now to the harms caused to the security, emotional development, educational opportunities, and well-being of the children by the respondent's failure to meet his moral and legal responsibilities to his children.

[53] Beginning at para. 18, the claimant itemized some of the negative financial consequences of the respondent's failure to carry out his legal obligation to properly support the children in accordance with the Federal Child Support Guidelines. The claimant deposes at para. 18 of her eighth affidavit that as result of the respondent not having paid the proper amount of child support, she and the children have suffered financially, gone without, and had to seek subsidies and borrow money to provide basics for the children. For example:

- a) the children have not been able to attend a special youth camp put on by the claimant's church because they cannot afford the cost;
- b) in 2017, a friend obtained some funding of \$250 US towards the cost of the camp, leaving the sum of \$368 Canadian funds to be paid [para. 19] by the claimant. The claimant had to use her credit card to pay the \$368 so that the three children could attend the camp; and
- c) in February 2017, all three boys wanted to participate in a three-day course called "Landmark Team Form" in Vancouver. The claimant explained, "This course teaches teens how to transform their lives and to be the best they can be and not allow past situations or experiences to hold them back."

[54] The claimant deposes at para. 21 that "The Respondent was again asked by [the] bishop at church to contribute to the cost but refused." Accordingly, she states, "I again was forced to use my credit card to pay for all three Children to attend the course which cost \$1,500 but ended up costing in excess of \$2,000.00 as we were forced to stay in [a] hotel in downtown Vancouver due to being snowed in."

[55] At para. 22, the claimant deposed generally as follows:

22. I have been forced to incur debt that I cannot afford due to the Respondent's refusal to assist the boys unless they go to visit with him. The Respondent has a history of offering the Children vacations, cell phones, etc. but only if they will spend time with him.

[56] At para. 23, the claimant deposes to her having incurred the following debts as a result of the respondent's failure to make adequate child support payments:

1. Visa - \$7,075.00
2. Master Card - \$7,300.00
3. Car Loan - \$4,389.84.

[57] This is obviously a heavy financial burden for her to carry considering her financial means and circumstances.

- [58] Explaining the car loan, the claimant deposed she had to spend \$2,000 to replace the transmission; an amount she did not have. Therefore, she had to finance \$8,700 to purchase a used vehicle.
- [59] The claimant rents a three bedroom basement suite for her and the three children for \$800 monthly.
- [60] As for the children's extracurricular and extraordinary expenses, all the children have learning disabilities. The claimant deposed at para. 25 to having to obtain subsidies and bursaries to cover the children's activities at the special school they need to attend because of their learning disabilities.
- [61] K.L., the oldest child, attends school full-time and will be continuing in grade 12 next year because he requires more credits. [Para. 26, eighth affidavit.]
- [62] The respondent submitted the claimant had kept the children from him and had estranged them from him. Questions relating to parenting contact pre-occupied previous hearings. The children are now mature enough to express their wishes and see them respected.
- [63] On the respondent's contact with the children, the claimant deposed at para. 28:
28. Our son [K.L.] has not seen the Respondent in eight years. The two younger children have not seen him for approximately four years. I am not opposed to visitation happening but given the Children's ages, it should be as they wish. In the past the Respondent has emailed me to request visits with the two younger children. I have always relayed the messages to the boys but they are insistent that they do not wish to have contact with the Respondent or his family. In future, if the Respondent wishes to visit with the Children, I will continue to pass on his email requests to the Children.

Legal Principles

- [64] The leading case in Canada on the subject of child support and payment of arrears is D.B.S.
- [65] Parents have an obligation to pay child support commensurate with their income. This obligation, like the child's corresponding right to support, "exists independent of any statute or court order. [A] payor parent who does not increase his/her child support payments to correspond with his/her income will not have fulfilled [the parent's] obligation to his/her children." [Para. 54.]
- [66] If the payor's income increases and the amount of child support paid does not, there remains an unfulfilled obligation that could later merit court enforcement. [Para. 59.]
- [67] A payor parent "always has the obligation to - pay - and the dependent child always has the right to - receive - child support in an amount that is commensurate to [the payor's] income. Thus, the support obligation of a payor parent, while presumed to be the amount ordered by a court, will not necessarily be frozen to the amount ordered by a court." [Para. 68.]

[68] "[A] retroactive child support order will only be available so long as the child in question is a 'child of the marriage' [under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 2(1)] when the application is made." [Para. 88.]

[69] It remains unclear how this statement in D.B.S. applies to retroactive child support applications under the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA]: *Semancik v. Saunders*, 2011 BCCA 264, at paras. 60 to 70.

When may it be appropriate to order retroactive child support?

[70] As set out at paras. 61 to 84 of D.B.S., it is appropriate to order retroactive support when:

- a) a child support order exists but the amount ordered has been inadequate for some time;
- b) child support was previously set out in an agreement between the parents; and
- c) there has not already been a court order for child support to be paid.

Discretion and factors to consider in awarding retroactive child support

[71] The court exercises discretion in making a retroactive child support order and although "[i]t will not always be appropriate for a retroactive award to be ordered", such orders should not be seen as "exceptional". [D.B.S., at paras. 95 and 97.]

[72] At paras. 99 to 116, the Court identified factors the judge should consider when deciding whether to make a retroactive order:

1. reasonable excuse for why support was not sought earlier (i.e. reasons for delay);
2. conduct of the payor parent;
3. circumstances of the child; and
4. any hardship caused by the retroactive award.

[73] In *L.S. v. E.P.*, 1999 BCCA 393, beginning at para. 67, Rowles J.A., writing for the Court, considered factors which have militated against ordering retroactive maintenance. They include:

[67] (1) the order would cause an unreasonable or unfair burden to the non-custodial parent, especially to the extent that such a burden would interfere with ongoing support obligations; (2) the only purpose of the award would be to redistribute capital or award spousal support in the guise of child support; and (3) a significant, unexplained delay in bringing the application.

[74] At para. 72, the Court considered blameworthy conduct:

[72] One of the most frequently cited forms of blameworthy conduct is incomplete or misleading financial disclosure on the part of the non-custodial parent. The prevalence and influence of this form of blameworthy conduct justifies its being given separate consideration. Cases in

which retroactive maintenance has been ordered based, in part, on inadequate financial disclosure include: *Allen*, supra; *Dahl*, supra; *Williams v. Berridge* (1996), 21 R.F.L. (4th) 157 (Ont. Gen. Div.); *Hess*, supra; and *Celi*, supra. See also *Psaila v. Psaila* (1987), 10 B.C.L.R. (2d) 336 (C.A.) which holds that a court may award retroactive spousal maintenance where there has been misrepresentation or non-disclosure. [Emphasis added.]

Date for retroactive order

- [75] As a general rule, the date for the retroactive order should be the date on which the payor parent received effective notice. Effective notice "does not require the recipient parent to take any legal action; all that is required is that the topic be broached" [D.B.S., at para. 121.]
- [76] It will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given. [D.B.S., at para. 123.]
- [77] The respondent's responsibility to a second family does not relieve him of his support obligations to support the first family. [*R. v. Baker*, 1999 BCCA 433, para. 23; *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para. 58, citing *Earle v. Earle*, 1999 BCSC 283, at para. 32.]
- [78] The respondent's position that the respondent's relationship with his minor children should be considered in determining whether the child is a child of the marriage has no support in the jurisprudence. I find all the children in this case are under the age of majority and remain financially dependent. Any child under the age of majority who remains financially dependent remains a child of the marriage. [*Marsh v. Marsh*, 2006 BCCA 144, para. 52.]
- [79] A child over the age of majority who cannot live independently without the support of a parent may remain eligible for support. The respondent argued the children's estrangement, which as noted before, he alleged was orchestrated by the claimant, renders them no longer children of the marriage and that he is not obliged to support them. That is not correct.

Quantum

- [80] The amount of retroactive support ordered should consist with the statutory Guidelines but blind adherence to the Guidelines table amounts is not required since undue hardship is more easily established for retroactive awards. [See D.B.S., at paras. 126-130.]
- [81] The court may impute such an amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include failing to provide income information when under a legal obligation to do so.
- [82] Section 213 of the FLA provides:
- Enforcing orders respecting disclosure
- 213 (1) This section applies if a person
- (a) fails to comply with

- (i) an order for disclosure made under section 212 [orders respecting disclosure], or
 - (ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules,
- within the time or in the manner required by the order or Rules, or
- (b) provides information that is incomplete, false or misleading.
- (2) In the circumstances set out in subsection (1), the court may do one or more of the following:
- (a) make an order under section 212;
 - (b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference.

[Underline emphasis added.]

Calculation of arrears table

- [83] The claimant presented a table setting out her calculation of arrears. The following table contains the same elements the claimant provided but my calculations produced a slightly different total.
- [84] The respondent had effective formal notice that the claimant was seeking an adjustment by no later than October 18, 2016. It was then that counsel for the claimant wrote the respondent, stating, in part:

As you may be aware child support was imputed to you many years ago. Our understanding is that you recently returned from an extended trip out of the country four or five months ago. As such, we hereby request that you provide an updated Financial Statement which will include your last three (3) years Income Tax Returns as well as your pay information for the purpose of determining appropriate child support given your present income. My expectation is that you provide me with a Form 8 Financial Statement within thirty (30) days, short of which my client may instruct me to proceed to chambers to seek an order in this respect. In such case, the writer reserves the right to use this letter for the purpose of seeking costs.

- [85] The claimant was clearly seeking further disclosure. To that end, seen earlier, we saw she had to seek an order for substitutional service and further order for production of documents to obtain further disclosure from the respondent. The court also saw the respondent did not make full and transparent disclosure in his February 23, 2017 Financial Statement. I find the respondent was guilty of blameworthy conduct in his having failed to make full and transparent financial disclosure.

Discussion

- [86] An order for arrears in this case will not constitute a transfer of capital. For several years now the children have been deprived of proper support. The respondent twice unsuccessfully sought a reduction in child support, showing he was quite aware of the process of adjustments to Guidelines income. He saw clear to apply to decrease his obligation but never adjusted it to accord with an increase in his earnings.
- [87] I find the respondent's blameworthy conduct a serious abrogation of his parental obligation to his first family. The fact he has three children in his new relationship is a consideration but does not relieve him of his responsibility to his first family. The claimant has struggled hard to support three children on a disability income. The lack of support from the respondent has deprived them of financial security and educational and recreational opportunities to foster their development and well-being.
- [88] Arrears are calculable from 2013, three years before the date of counsel's October 2016 letter, to 2017. The calculated figure is \$41,608 but the claimant consented to an adjusted figure for arrears of \$38,500, which is more than fair and reasonable.
- [89] The respondent owns a residential property and has the means to pay arrears.
- [90] As for prospective child support, I set the respondent's present and prospective Guidelines income at \$60,000. The average of his income for 2015, 2016 and 2017 is \$61,444. The basic table amount for three children is \$1,193 monthly. To allow, on an interim basis, for union and professional dues, I set the amount payable, effective September 1, 2017 and the first of every successive month on that date thereafter until further order of the court at \$1,100 monthly.
- [91] The respondent owes the claimant \$850 for outstanding costs.
- [92] For preparation and costs of the hearing the respondent shall pay the claimant costs of \$750, payable at \$100 monthly until paid in full.
- [93] No later than the first of June 2018, and each June thereafter until there are no remaining children of the marriage, the claimant shall complete a Financial Statement in Form 8 with all current income tax assessments included. All sections of the Financial Statement shall be fully completed. Any expenses such as union dues and professional dues shall be documented. The claimant shall include his residential address in his Form 8 and shall attach the most recent property assessment.
- [94] If the claimant seeks extraordinary or special expenses, she shall file an updated Financial Statement no later than the first of June each year. Otherwise, she is not required to do so.

"N. Brown J."

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