SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Bray v. Bray*, 2015 NSSC 7

Date: 2015 - 01 - 13
Docket: 1201- 053658; SFH-D 013087
Registry: Halifax

Between:

Catherine Anne Bray

Petitioner

v.

Frank James Bray

Respondent

Judge:	The Honourable Justice Elizabeth Jollimore
Heard:	December 19, 2014
Counsel:	Judith A. Schoen for Catherine Ward

By the Court:

Introduction

[1] This is a provisional application pursuant to section 18 of the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3. In it, Catherine Ward (formerly Catherine Bray) seeks to vary child support prospectively and retroactively.

Background

[2] In 2000, Catherine Ward and Frank Bray were divorced. Their Corollary Relief Judgment has been varied twice: once in 2002 and once in 2003. Both variations were by consent.

[3] The Corollary Relief Judgment provided that their son, George, would have his primary residence with his mother, and he would have specified access with his father. At the time, George was not yet four. The Judgment stated Ms. Ward's annual income was $31,395.00, and Mr. Bray's was $28,604.00. In addition to the table amount of child support, Mr. Bray contributed to George's daycare, paying one-half of its cost. The parents were ordered to exchange tax returns annually.

[4] In 2002, the Consent Variation Order noted that Mr. Bray's annual income was $49,200.00, and Ms. Ward's was $17,264.00, though it was anticipated that she'd be returning to work in the immediate future and would earn an annual income of $32,219.00. The parents agreed that George would be in a shared custody arrangement, spending at least forty percent of the time with each of them. In these circumstances, Mr. Bray paid monthly child support to Ms. Ward. They agreed to equally share any special or extraordinary expenses. Again, they were ordered to exchange tax returns annually.

[5] The 2003 Consent Variation Order provided that George would have his primary home with his father, and it terminated Mr. Bray's obligation to pay Ms. Ward child support. The parents agreed to continue to share George's expenses "50/50 as they relate to such things as daycare, medical, dental, education and extracurricular activities." The order did not require the parties to make an annual exchange of tax returns.

[6] In 2008, Ms. Ward began a variation application. She testified that a "mediator" was assigned to her application. The process Ms. Ward described was that of conciliation, provided for by *Civil Procedure Rule* 59.29 and the "mediator" was a court officer, often called a conciliator. The originally assigned conciliator was replaced when she left the court. Ms. Ward said that she met with the mediator, while Mr. Bray participated by conference call since he wasn't living in Nova Scotia. She said she and Mr. Bray agreed that Mr. Bray would pay a certain amount of child support and that he would submit his income tax forms. According to Ms. Ward, at the time Mr. Bray said "times are hard" and he "wasn't making a lot of money". Ms. Ward said that she "never did receive Frank's income tax information" and she "let the matter just die". She testified that she was "reluctant to contact Frank, to pester him to submit

child support payments. He's a very intimidating man and he would, on occasion, threaten me. So [she] didn't want to deal with that." The 2008 application was not concluded or dismissed.

[7] In August 2014, Ms. Ward began this variation application.

The claims

[8] Ms. Ward asked that I vary child support both prospectively and retroactively. Both claims include a determination of child support pursuant to section 3 and section 7 of the *Federal Child Support Guidelines*, SOR-97/175. This variation application did not claim custody, though the most recent order, from 2003, provided that George would have his primary residence with Mr. Bray. Implicit in her claim for child support is her claim that George had his primary residence with her. Ms. Ward did not claim costs in her application, though she requested costs at the hearing.

The hearing and evidence

[9] This is a provisional application. I heard testimony from Ms. Ward and various documents were introduced into evidence. Of the documentary evidence, most is self-explanatory, and only one document bears particular mention. Exhibit 1 is a bound volume of receipts and invoices relating to Ms. Ward's requests for a contribution to George's special or extraordinary expenses. To spare the effort of the justice presiding over the section 19 hearing, I note that the documents at tabs 2 - 9 of Exhibit 1 have been duplicated multiple times.

Approaching the issues

[10] George lives with his mother. He did not at the time of the 2003 Consent Variation Order. From the evidence I have that George began to participate in local sports in 2008, I conclude that George moved to his mother's home in 2008 and has remained there since. Mr. Bray lives in Alberta. This is a sufficient foundation for a variation of child support pursuant to section 14 of the *Federal Child Support Guidelines*.

[11] An award of retroactive child support is a discretionary award, while prospective child support is not. So, I will first consider the prospective claim. Knowing the obligations it creates, I will be better able to address the retroactive claim.

[12] Mr. Bray's income is an issue not only because of the retroactive claim and my need to determine whether a retroactive award would cause him undue hardship, but also because there is no documentary evidence of his income. Ms. Ward asked that I impute income to him.

[13] Mr. Bray's income was stated to be $28,604.00 in the 2000 Corollary Relief Judgment. According to Ms. Ward, while they were married, he worked for Investors Group, selling investments and "making a lot of money". She said he made $60,000.00 to $70,000.00. She said that while they were divorcing, Mr. Bray's father died and Mr. Bray's mental health suffered. He was subsequently diagnosed with bipolar disorder. Health problems could explain

the difference between the income Ms. Ward said Mr. Bray earned, and the amount stated in the Corollary Relief Judgment.

[14] Ms. Ward believed that Mr. Bray uses medication to treat his mental health condition. She said he was unemployed for a period of time, possibly in 2011.

Prospective child support

[15] An initial issue in ordering support is determining Mr. Bray's income. Because this variation application is advanced on a provisional basis, I have only the evidence of Ms. Ward. Mr. Bray's evidence will be heard at the section 19 hearing.

Imputing income

[16] Pursuant to subsection 19(1) of the *Federal Child Support Guidelines*, I am able to impute such an amount of income to Mr. Bray as I consider appropriate in the circumstances. Here I am imputing income in the absence of disclosure from Mr. Bray. The circumstances listed in subsection 19(1) are not exhaustive, and the circumstances before me are not among those listed. (While Mr. Bray has not provided financial disclosure, he is not yet under a legal obligation to do so in a provisional hearing, so clause 19(1)(f) isn't applicable.) Here, I impute income to him to fill an evidentiary gap, knowing that the amount I impute may be supplanted by Mr. Bray's evidence.

[17] Ms. Ward said that Mr. Bray earned between $60,000.00 and $70,000.00 selling investments while they were married. She said he was "making a lot of money".

[18] Ms. Ward believed that Mr. Bray is currently employed at a car dealership, and she estimated his income, earned from commissions, as between $50,000.00 and $60,000.00. She said that Mr. Bray supports a common-law wife and two children, and that his common-law wife isn't employed. Mr. Bray is in touch with George, and Ms. Ward has the impression, from the text messages Mr. Bray sends to George, that he is busy. She believed Mr. Bray was also capable of returning to the work he'd done while they were married selling investments because he is "a very smart man".

[19] At paragraph 21 in *Staples v. Callendar*, 2010 NSCA 49, Justice Bateman said where there isn't proper disclosure, the purpose of imputing income is to "arrive at a fair estimate of income". The purpose isn't to "arbitrarily punish the payor for lack of disclosure." She acknowledged a judge may determine that non-disclosure "speaks of a payor attempting to avoid his or her obligations by hiding the true income information." In a provisional proceeding, disclosure isn't available at this stage.

[20] I impute an annual income of $60,000.00 to Mr. Bray based on the evidence that he is working in Alberta and supporting a family there. This amount is consistent with his earnings during their marriage, according to Ms. Ward.

Section 3

[21] Based on an annual income of $60,000.00, I order Mr. Bray to pay monthly child support of $500.00 to Ms. Ward for George. This amount is based on the current Alberta tables.

Section 7: contribution to special or extraordinary expenses

[22] Section 7 of the *Federal Child Support Guidelines* empowers me to order a former spouse to contribute to certain enumerated expenses. These particular expenses are itemized in subsection 7(1). According to subsection 7(1), the amount of a claimed expense may be estimated.

[23] Before I can order that Mr. Bray contribute, I must be satisfied that the cost is necessary in relation to George's best interests and reasonable in relation to the parents' means, George's means and the family's pre-separation spending pattern. According to Justice Roscoe (with whom Justices Saunders and Oland concurred), at paragraph 27 in *L.K.S. v. D.M.C.T.*, 2008 NSCA 61, it's "preferable to deal first with subsection 7(1) to determine whether the expenses are necessary in relation to the child's best interests and reasonable in relation to the means of the parents before dealing with the definition of extraordinary expenses in subsection 7(1A)." (Leave to appeal this decision to the Supreme Court of Canada was denied at *D.M.C.T. v. L.K.S.*, 2009 CanLII 1998 (SCC).) In that decision, the Court of Appeal was dealing with Nova Scotia's equivalent to the *Federal Child Support Guidelines*. Their language and analytic framework parallels the federal *Guidelines*, so I adopt their approach.

[24] Of the six categories of expenses listed in section 7, expenses for extracurricular activities (clause 7(1)(e)) must be "extraordinary" in order to be the subject of an order for contribution. So, if I consider George's extracurricular activity costs to be necessary and reasonable pursuant to subsection 7(1), I must then determine they are also extraordinary before I can order that Mr. Bray share in their cost.

[25] Ms. Ward filed a Statement of Special and Extraordinary Expenses as required by *Civil Procedure Rule* 59.22(1) and provided Exhibit 1, which contained invoices, receipts and summaries relating to George's expenses for health and dental insurance, hockey and sailing. Exhibit 1 also contained a credit card statement and emails relating to George's trip to visit his father in August 2011 and documents relating to his driver education course in 2013. There were insurance records and an accounting statement for George's braces in 2011, as well.

Medical and dental insurance premiums

[26] Clause 7(1)(b) refers to the portion of medical and dental insurance premiums attributable to the child. Ms. Ward's monthly health insurance premium for the entire family is $119.00. Single coverage would cost $51.60. The monthly dental insurance premium for the family is $44.60, while single dental coverage costs $19.40. The portion of the monthly premiums attributable to family coverage is $92.60.

[27] I am satisfied that the cost of medical and dental insurance premiums is necessary in relation to George's best interests. Ms. Ward earns approximately $44,200.00, and I've imputed earnings of $60,000.00 to Mr. Bray. The premiums are reasonable in relation to their means. The Corollary Relief Judgment required Ms. Ward to **continue** George's health insurance, so I have evidence of this as an expense that was a part of the parents' pre-separation spending pattern.

[28] Ms. Ward's health and dental insurance covers her family: herself, her husband, George, and one other child. This is the family's only health and dental insurance coverage. Where her insurance plans cover her husband and another child, I am not prepared to attribute the entirety of the amount by which the family premium exceeds a single person's premium to George. Rather, I will attribute one-third of that difference to him. This means that $30.86 is attributable to George: $22.46 for health insurance and $8.40 for dental insurance.

[29] Ms. Ward's annual income is $44,207.48, and Mr. Bray's is $60,000.00. Subsection 7(2) states that the guiding principle in sharing expenses is one of proportionality. Given the parents' incomes, Mr. Bray shall pay fifty-eight percent of this cost. He shall pay $13.03 toward George's monthly health insurance and $4.87 toward George's monthly dental insurance.

Hockey and sailing

[30] According to Ms. Ward, George had a real interest in hockey and asked to participate in it. He had a real interest in it. His step-brothers were involved in sailing which prompted his involvement in that sport. Ms. Ward testified that his involvement in these activities is important; they teach him life skills and keep him out of trouble.

[31] Ms. Ward asked for a contribution to the cost of George's hockey and sailing. I estimate the current cost of those activities to be the same as the cost in 2013, the last year for which Ms. Ward provided receipts. George's hockey registration was $580.00 and his sailing cost was $1,450.00.

[32] Ms. Ward testified that there were "lots of other costs" for hockey, such as registration, travel, and accommodation associated with tournaments that George attended in the Maritime provinces. She was not seeking any contribution to these expenses. She testified that George helped with the cost of his equipment, using the money he received as Christmas or birthday gifts. As well, when he outgrew equipment it was sold and replaced with secondhand equipment.

[33] I'm to deduct from these costs any available tax credits according to subsection 7(3) of the *Guidelines*. The amounts spent on George's sports activities aren't eligible for the Children's Fitness Credit because George is over sixteen years old.

[34] Because George was not yet four when his parents divorced, there is no pre-separation history of spending on extracurricular activities. The Corollary Relief Judgment addressed the sharing of daycare costs and the 2002 Consent Variation Order required the parents to share any

special or extraordinary expenses equally. The 2003 consent variation order specifically provided that the parents "will share the child's expenses 50/50 as they relate to such items as daycare, medical, dental, education and extracurricular activities."

[35] I accept that George's hockey and sailing costs are necessary in relation to George's best interests and reasonable in relation to his parents' means and his own. Together the sports cost $2,030.00 and his parents' combined income is approximately $104,000.00. While there is nothing to speak of in terms of a pre-separation spending pattern, the parties' post-separation spending pattern evidences expense sharing.

[36] I may only order a contribution to "extraordinary expenses" for extracurricular activities. Whether an expense is extraordinary is determined having regard to subsection 7(1.1) of the *Guidelines*. Subsection 7(1.1) offers two alternatives for determining whether an expense is extraordinary. An expense is extraordinary according to clause 7(1.1)(a) if it exceeds those that Ms. Ward can reasonably cover, considering her income and the amount she'd receive under the *Guidelines* or otherwise, if I deviate from the *Guidelines* in calculating child support. If clause 7(1.1)(a) is not applicable, then I am to decide if the expense is extraordinary in the context of Ms. Ward's income and child support, George's programs and activities, his special needs and talents, the overall cost and other factors I feel are relevant.

[37] George's sports cost at least $2,030.00. This is more than four percent of Ms. Ward's total income and more than one-third of the table amount of child support. Considering these costs, and the fact that there are additional costs for equipment and tournament participation which Ms. Ward has not asked to share, I find that George's extracurricular activity expenses are extraordinary.

[38] Based on the proportional sharing calculated in paragraph 29, I order Mr. Bray to contribute to fifty-eight percent of these costs. Fifty-eight percent of his hockey registration of $580.00 is $336.40 ($28.03 per month) and an equivalent percentage of his sailing costs of $1,450.00 is $841.00 ($70.08 per month).

Summary of prospective child support order

[39] Subject to the events at the section 19 hearing, I order Mr. Bray to begin making payments of $616.01 per month on January 1, 2015. This amount is comprised of $500.00 pursuant to section 3 of the *Guidelines* and $116.01 pursuant to section 7. The section 7 amount is based on Mr. Bray paying fifty-eight percent of George's share of medical insurance premiums ($13.03), George's share of dental insurance premiums ($4.87), George's hockey registration ($28.03), and his sailing costs ($70.08).

Retroactive variation of child support

[40] The framework for analyzing Ms. Ward's claim for a retroactive variation of child support was laid out by the Supreme Court of Canada in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra*, 2006 SCC 37. In that case, Justice Bastarache, writing for the majority of the Court at paragraph 97, said that retroactive awards are neither exceptional

nor automatic. A retroactive variation is a discretionary award, and I am to vary support retroactively when this is consistent with the purposes of child support, according to Justice Bastarache at paragraph 95. My discretion must be exercised on a principled basis, considering the relevant evidence.

[41] At paragraphs 99 to 116, His Lordship discussed the factors I should consider before awarding support retroactively. The analysis requires the parent making a retroactive claim to offer evidence of the reason for any delay in advancing the claim, any blameworthy conduct on the other parent's part, the child's past and current circumstances and whether a retroactive award would cause the paying parent undue hardship. I am to balance these factors in the context of certainty and fairness. As Justice Bastarache wrote at paragraph 96 in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra*, 2006 SCC 37, "As situations evolve, fairness demands that obligations change to meet them. Yet, when obligations appear to be settled, fairness also demands that they not be gratuitously disrupted."

[42] Ms. Ward initially applied to vary child support in 2008. She and Mr. Bray participated in the court's conciliation process. Ultimately Ms. Ward let her application "die". She didn't take up the matter again until August 2014, when she filed a second application, asking that child support be varied retroactively from 2007. Her retroactive claim includes a contribution to special or extraordinary expenses.

Ms. Ward's delay

[43] Ms. Ward said that despite the Corollary Relief Judgment's requirement that Mr. Bray provide her with a copy of his tax return, he hasn't provided her with any income tax documents. The Corollary Relief Judgment and the first Consent Variation Order from 2002 required the parties to exchange tax documents. The most recent order does not contain such a requirement.

[44] Ms. Ward began a variation application in 2008, but did not pursue it. She thought they had reached an agreement but it was not finalized. Mr. Bray did not provide the needed financial information. Mr. Bray said his financial circumstances weren't good. Ms. Ward said that Mr. Bray was occasionally threatening. Her current application was filed in August 2014.

[45] According to the majority reasons at paragraph 103 in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra*, 2006 SCC 37, recipient parents must act promptly and responsibly in monitoring the amount of support paid. Ms. Ward has offered a reasonable explanation of her delay in seeking to adjust child support payments.

Mr. Bray's conduct

[46] Mr. Bray hasn't paid any child support since 2007. Previously, when George's parenting circumstances changed (from Ms. Ward's primary care to shared parenting, and then from shared parenting to Mr. Bray's primary care) the parents were prompt in adjusting child support to address the new circumstances. Mr. Bray would have known that he was obliged to pay support when George returned to his mother's home.

[47] I have no evidence that Mr. Bray has made any other financial arrangements for George, such as sending money to assist with expenses on request or spending extended periods with George to reduce Ms. Ward's costs. According to Ms. Ward, Mr. Bray discouraged her from applying by describing his financial circumstances as poor. In 2011, Mr. Bray asked Ms. Ward to arrange for George to visit him in Alberta. He asked Ms. Ward to pay the cost of the ticket up front, saying "I don't have a credit card and I am short on the total amount." He said he would pay her back before the end of August 2011. In August, he said he would pay her in September. According to Ms. Ward, he has not paid her at all.

[48] By failing to make any payment of child support payment since 2007, Mr. Bray put his own interests ahead of his son's and engaged in blameworthy conduct.

George's circumstances

[49] George has been active in hockey and sailing since 2008 and 2009, respectively. He has taken driver education training. I've been told of no other activities. It appears he's had little in person contact with his father. His circumstances have been modest. For example, he uses money received as gifts to pay for his hockey equipment.

Whether a retroactive award would cause Mr. Bray undue hardship

[50] Lastly, there is the question of whether there would be any hardship caused to Mr. Bray if a retroactive award was made. This aspect of the analysis will be more fully canvassed in Alberta. The evidence before me indicates that Mr. Bray supports a partner and two children and that his partner is not employed outside the home.

[51] Both during conciliation and in arranging for George's visit to Alberta in August 2011, Mr. Bray has raised the issue of his limited means. Disclosure of his tax returns and income information will allow the judge presiding at the section 19 hearing to assess these comments. For my purposes, I conclude there will be no undue hardship occasioned by a retroactive award.

Conclusion with regard to Ms. Ward's retroactive claim

[52] I'm to balance the principles of certainty (reflected by relying on the existing order) and fairness (reflected in varying the order), having regard to the fundamental principles of child support in deciding if I should make a retroactive child support award. The fundamental principles of child support recognize that child support is the child's right, it survives the breakdown of the parents' relationship; it should, as much as possible, perpetuate the standard of living the child had before the parents' relationship ended; and the amount of support varies, based upon the parent's income.

[53] Justice Bastarache summarized the proper approach to retroactive claims at paragraph 125 in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra*, 2006 SCC 37,:

> . . . payor parents will have their interest in certainty protected only up to the point when that interest becomes unreasonable. In

> the majority of circumstances, that interest will be reasonable up to the point when the recipient parent broaches the subject, up to three years in the past. However, in order **to avoid having the presumptive date of retroactivity set prior to the date of effective notice, the payor parent must act responsibly: (s)he must disclose the material change in circumstances to the recipient parent. Where the payor parent does not do so, and thus engages in blameworthy behaviour, I see no reason to continue to protect his/her interest in certainty beyond the date when circumstances changed materially**. A payor parent should not be permitted to profit from his/her wrongdoing. [emphasis added]

[54] Ms. Ward initiated a claim for child support once George returned to her home. Difficulties in the court's process and in dealing with Mr. Bray caused her to let the application die. Mr. Bray would have known, once George moved from his home, that he was obliged to support him. Regardless, he did not. In this, he has favoured his own interests over paying the proper amount of child support. George would benefit from additional support, in light of his age and activities. In these circumstances, it is appropriate to vary child support retroactively.

Calculating the retroactive award

[55] There are two elements to fixing the amount of the retroactive award. I must decide the date to which the award should be retroactive, and I must decide the amount that would adequately quantify Mr. Bray's deficient obligations.

Date of retroactivity

[56] Ms. Ward sought an award retroactive to 2007.

[57] At paragraph 121 in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v. Hiemstra*, 2006 SCC 37, Justice Bastarache identified the date of effective notice as the "default option" date for a retroactive award. He went further to say, at paragraph 123, that "a prolonged period of inactivity after effective notice may indicate that a payor parent's reasonable interest in certainty has returned." If initial discussions aren't fruitful, then "legal action should be contemplated." Here, Ms. Ward took legal action, beginning a variation application in 2008, and giving Mr. Bray formal notice by doing so. She "let the matter die" in 2009. She started a new variation application in 2014. She said that Mr. Bray received notice when she filed her first variation application in 2008.

[58] I understand Ms. Ward's reluctance to engage in discussions with Mr. Bray. However, she started a variation application in 2008. At the time, the two did not live in the same province. The court process was engaged and available to assist her. She stopped pursuing that application in 2009 and waited until 2014 to begin a new application. According to Justice Bastarache at paragraph 123 in *D.B.S. v. S.R.G.; L.J.W. v. T.A.R.; Henry v. Henry; Hiemstra v.*

Hiemstra, 2006 SCC 37, "it will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given to the payor parent."

[59] I find that the appropriate date from which a retroactive award should be made is three years before Ms. Ward filed her new variation application in August 2014. Accepting Ms. Ward's testimony that Mr. Bray was unemployed in 2011, I date the award from January 2012.

[60] In 2011, Ms. Ward paid for George to travel to Alberta to visit his father in August. She provided copies of email exchanges with Mr. Bray in which he agreed to repay her for the cost of this travel if she paid the cost up front. According to her credit card statement, she paid $904.49 for his airline ticket. Mr. Bray made various comments about paying her, but never did so. This expense predates the retroactive period so I am not making any award with regard to it.

Quantum of the retroactive award

[61] I'm to determine the award's quantum by applying the *Guidelines*. The *Guidelines* have two elements: the table amount (section 3) and the contribution, if any, to special or extraordinary expenses (section 7).

Section 3

[62] According to Ms. Ward, Mr. Bray was unemployed for a period of time, possibly in 2011. To account for his unemployment in 2011, I calculate the retroactive award from January 2012. Based on an imputed income of $60,000.00 from January 2012 to date, Mr. Bray should have paid child support of $18,000.00 for 2012 through to the end of 2014. This is calculated based on monthly child support payments of $500.00. Mr. Bray hasn't paid any child support since 2007.

Section 7

[62] Throughout the retroactive period, there were expenses for health and dental insurance, and for hockey and sailing. In 2012, there were expenses for braces. In 2013, there were expenses for driver training. George began to play hockey in 2008 and started to sail in 2009.

[63] I'll review the various section 7 claims on an annual basis, from 2012 to 2014. Ms. Ward filed her application in August 2014. She provided figures for George's sports for 2013 but not for 2014. I assume that George's 2014 hockey and sailing expenses were the same as those incurred for 2013. I have confirmation that his 2013 and 2014 health and dental costs are the same.

2012

[64] Expenses are to be shared in proportion to the former spouses' incomes. I've imputed an annual income of $60,000.00 to Mr. Bray. Ms. Ward's income in 2012 was $42,799.00. I've reduced the amount shown at line 150 by $46.00 to consider her carrying charge or interest

expense, as required by section 8 of Schedule III to the *Guidelines*. Mr. Bray's income is fifty-eight percent of the parents' total income.

Health and dental insurance

[65] Following the same reasoning I used at paragraphs 26 to 29, Ms. Ward paid health insurance premiums for the entire family in 2012 of $1,451.40. Single coverage would have cost $668.58. The family portion of the premium was $782.82. The annual dental insurance premium for the family was $560.37, while single dental coverage would have cost $256.80. The family differential was $303.57.

[66] The portion of the premiums attributable to family coverage is $1,086.39. I attribute one-third of this cost to George: $362.13 ($260.94 for health insurance and $101.19 for dental coverage). Shared proportionately, Mr. Bray would owe $210.03: $151.34 for health insurance and $58.69 for dental insurance.

Health expenses

[67] Health expenses do not need to be extraordinary. According to clause 7(1)(c), I may order a parent to contribute to "health-related expenses that exceed insurance reimbursement by at least $100 annually" where I've concluded that the costs are necessary in relation to the child's best interests and reasonable in relation to the parents' means, the child's means and the family's pre-separation spending pattern. The identified cost is for George's braces. I find that this care was necessary in relation to George's best interests.

[68] In 2011, Ms. Ward received a predetermination from her insurance company of the amount it would cover for this expense. Ultimately, they went ahead with the orthodontic work. According to her handwritten notes on page 3 of tab 2 (Exhibit 1), she paid $1,614.00 toward the total cost of the braces. The remainder was covered by George's dental insurance.

[69] I'm to consider any available tax deductions or credits, according to subsection 7(3). The costs were claimed on her 2012 tax return. According to her tax return, which is attached to Exhibit 4, her Statement of Income, she was able to claim the non-refundable medical expense tax credit. Following the math on that return, she could claim only the portion of the braces' cost which exceeded $1,181.97, so she claimed $432.03. The non-refundable credit was worth fifteen percent of that amount ($64.80). So, the cost of the orthodontic work for the purposes of the *Guidelines* is $1,549.20.

[70] Mr. Bray's proportionate share of this cost is $898.54.

Extracurricular activities

[71] According to Ms. Ward, George began playing hockey in 2008, and he began sailing in 2009. I have previously determined that the costs for these extracurricular activities are extraordinary expenses.

[72] George's hockey registration cost $655.00 in 2012, and his sailing cost $1,300.00.

[73] At the beginning of 2012, George was fifteen and eligible, under subsection 118.03(1) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, for the Children's Fitness Credit of $500.00. This eligibility had the effect of reducing the actual cost of his activities by $75.00 to $1,880.00.

[74] Proportionately sharing this cost between the parents means Mr. Bray pays $1,090.40.

2013 and 2014

[75] Ms. Ward's income in 2012 was $43,603.00. I have no evidence of any carrying charge or interest expense, so I'm using the amount shown on line 150 of her 2013 Notice of Assessment. Mr. Bray's income is fifty-eight percent of the parents' total income.

[76] According to Ms. Ward, her income increases by one and one-half percent each year. This means her 2014 income was $44,257.00. This still leaves Mr. Bray to pay fifty-eight percent of expenses which are proportionately shared.

[77] As I noted in paragraph 63, my calculations regarding George's health and dental insurance are based on the evidence that these costs are unchanged from 2013 to 2014 and my calculations of his hockey and sailing costs assume these costs are unchanged. I am, I note, permitted to estimate costs pursuant to subsection 7(1) of the *Guidelines*.

Health and dental insurance

[78] Ms. Ward paid health insurance premiums for the entire family in 2013 of $1,433.85 while single coverage would have cost $613.41. The family portion of the premium was $820.44. The annual dental insurance premium for the family was $543.09, while single dental coverage would have cost $238.80. The family differential was $304.29.

[79] The portion of the premiums attributable to family coverage is $1,124.73. I attribute one-third of this cost to George: $374.91 ($273.48 for health insurance and $101.43 for dental coverage). Shared proportionately, Mr. Bray would owe $217.45: $158.62 for health insurance and $58.83 for dental insurance in each of 2013 and 2014.

Extracurricular activities

[80] George's hockey registration cost $580.00 in 2013, and his sailing cost $1,450.00. He was not eligible for the Children's Fitness Credit in 2013. Proportionately sharing this cost results in Mr. Bray paying $1,177.40 in each of 2013 and 2014.

Driver education

[81] Ms. Ward asked that I treat George's expense for driver training as a special or extraordinary expense. George took driver training during the school March Break in 2013. It

cost $684.25. Ms. Ward wanted him to participate in the course to reduce the cost of his insurance. According to Ms. Ward, she and Mr. Bray had three conversations about the program, and Mr. Bray agreed to pay one-half of the cost. He has never done so.

[82] Driver education was claimed as an extracurricular activity. Ms. Ward offered little evidence with regard to it. Based on the parents' discussions, as described to me, they agreed it was in George's best interests to take the course and that it was a reasonable expense.

[83] As an extracurricular activity, I'm still required to determine that the expense is extraordinary before requiring Mr. Bray to contribute. Combined with the other extracurricular costs for hockey and sailing, the cost for driver training consumes forty-five percent of the basic child support payment. I find it is an extraordinary expense within the meaning of clause 7(1.1)(a) of the *Guidelines* and I order that Mr. Bray contribute proportionately to its cost by paying $396.86.

Summary of retroactive child support order

[84] I find it is appropriate to make an award of retroactive child support from January 2012 to December 2014. This award is based on an imputed income of $60,000.00. Mr. Bray shall pay child support of $18,000.00, calculated pursuant to the tables and a further contribution of $3,224.60, equal to fifty-eight percent of special or extraordinary expenses for health and dental insurance premiums, health care, and extracurricular activities incurred in 2012, 2013 and 2014.

[85] Typically in dealing with a retroactive claim I would determine how a retroactive award should be paid. Here, the best I can do is to order it be paid forthwith and to leave this matter to a fuller consideration by the court which will conduct the section 19 hearing. I am mindful of clause 18(2)(b) of the *Divorce Act*, and its allowance that I may make a Provisional Variation Order where I am satisfied that the issues "can be adequately determined by proceeding" under sections 18 and 19. I believe I have reached the limit of what can be adequately achieved on the basis of proceeding without notice to and in the absence of Mr. Bray.

Conclusion

[86] This is a provisional proceeding, so the resulting order is subject to a further hearing in Alberta, where the presiding judge may confirm my decision, with or without variation. Alternately, that judge may refuse to confirm my decision or may remit it to me to receive further evidence.

[87] The result of my decision is to require Mr. Bray to pay prospective monthly child support of $616.01 and to pay retroactive child support of $21,224.60.

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Elizabeth Jollimore, J.S.C.(F.D.)

Halifax, Nova Scotia