SUPREME COURT OF NOVA SCOTIA

Citation: *Mastin v. Mastin*, 2019 NSSC 248

Date: 2019-08-02
Docket: 1213-000720
Registry: Kentville

Between:

Mark Mastin

Applicant

v.

Lorna Mastin

Respondent

Judge:	The Honourable Justice John A. Keith
Heard:	June 6, 2019, in Kentville, Nova Scotia
Final Written Submissions:	July 11, 2019
Decision:	August 2, 2019
Counsel:	Jennifer Young, counsel for the Applicant Lorna Mastin, self-represented Respondent

BY THE COURT:

INTRODUCTION

[1] On July 2, 2019, I rendered an interim oral decision reducing Mr. Mastin's prospective monthly child support payments. This allowed for timely communication with Nova Scotia's Maintenance Enforcement Program (the "**MEP**") and allowed new, interim child support arrangements to be implemented without unnecessary complications around enforcement. The details are below.

[2] Also, on July 2, 2019, I provided the parties the opportunity to file additional information required to finalize a comprehensive determination on a myriad of issues relating to retroactive support claims brought forward by both parties. The additional information focused specifically on Mr. Mastin's request for retroactive relief regarding support paid in the past for his son James Mark Mastin.

[3] This is my written decision encompassing all the claims (prospective and retroactive); and accounting for any additional information received in compliance with my prior directions.

[4] Mark Robert Mastin (“**Mr. Mastin**”) and Lorna Leigh Mastin (“**Ms. Mastin**”) were married on October 4, 1986 and separated in September 2011. They were formally divorced by order granted on June 23, 2015, effective July 24, 2015.

[5] Mr. Mastin and Ms. Mastin have four children:

1. James born in 1996 (“**James**”, currently 22 years old);
2. Ashleigh born in 1998 (“**Ashleigh**”, currently 21 years old);
3. Victoria born in 2000 (“**Victoria**”, currently 19 years old);
4. Olivia born in 2002 (“**Olivia**”, currently 17 years old).

[6] Mr. Mastin and Ms. Mastin have joint custody of all four children although Ms. Mastin retained primary care at her home in Middleton, N.S. Mr. Mastin maintained access to, and a parental relationship with, all the children.

[7] James left for university in September 2014. He excels in school. During the course of his post-secondary education, James transferred between several universities – including one year of medical school in Prague, Czech Republic. He is currently expected to graduate from a Nova Scotia university in May 2020 with two separate undergraduate degrees in Chemistry and Biology. For a time, James

would return to Ms. Mastin's home for the summers between semesters. He now lives away from Ms. Mastin's home on a fulltime basis.

[8] Victoria left for her first year at an Ontario university in September 2018. She begins her second year this fall although she will attend another affiliated university in Ontario as a visiting student.

[9] Ashleigh left Ms. Mastin's home in September 2018 and moved in with Mr. Mastin. She has now completed her first year of post-secondary studies in Halifax, N.S. and will enroll at a Nova Scotia university this fall. She continues to live with Mr. Mastin.

[10] Olivia attends high school and still lives full-time with Ms. Mastin.

[11] This proceeding involves questions of child support and section 7 extraordinary expenses during this transitional period as the children leave for university.

RELIEF

[12] The facts and issues in this case are relatively complicated. In the interests of simplicity, I begin by confirming in a summary fashion the major components of the relief granted. I emphasize that it is summary only and does not provide details of the analytical steps, decisions and calculations required to reach these conclusions. That detail is provided later.

In summary:

1. Mr. Mastin shall pay to Ms. Mastin child support totalling $77.86 per month payable July 1, 2019 and August 1, 2019;
2. Mr. Mastin shall not pay child support to Ms. Mastin from September, 2019 – April, 2020 in respect of Olivia under the *Federal Child Support Guidelines* (the "***Guidelines***") on the understanding that any such support payments will be entirely offset by the reduced support payments payable by Ms. Mastin to Mr. Mastin for Ashleigh. If Ashleigh ceases to live with Mr. Mastin on a fulltime basis and Olivia is still living with Ms. Mastin on a fulltime basis, the actual table amounts owing by Mr. Mastin for Olivia ($704 per month) shall resume and be payable to Ms. Mastin;
3. A Corollary Relief Order (the "**CRO**") dated June 23, 2015 is varied such that Mr. Mastin and Ms. Mastin shall each

contribute their proportionate share of James', Ashleigh's and Victoria's university (section 7) expenses as follows:

a. James: Mr. Mastin shall pay James $315.00 per month and Ms. Mastin shall pay James $471.50 per month. These payments shall begin on September 1, 2019 and cease on September 1, 2020. At that point, James shall not be entitled to any further child support.

b. Ashleigh: Ms. Mastin shall pay Ashleigh $180.00 per month and Mr. Mastin shall pay Ashleigh $270.00 per month. These payments shall begin on September 1, 2019 and continue to September 1, 2020.

c. Victoria: Mr. Mastin shall pay Victoria $450.00 per month and Ms. Mastin shall pay Victoria $675.00 per month. These payments shall begin on September 1, 2019 and continue to September 1, 2020.

4. The monthly payments due to Ashleigh and Victoria shall continue until April 30, 2023 or successful completion of an undergraduate degree or complete withdrawal from a post-secondary program, whichever comes first. This is also subject

to, of course, Victoria and Ashleigh annually providing Mr. Mastin and Ms. Mastin with proof of enrolment and proof of reasonable expenses for the upcoming school year;

5. Mr. Mastin and Ms. Mastin have a relatively small RESP account. Any amounts paid to these children through the RESP shall be offset using the same pro rata formula as is applied to the section 7 university expenses described above (i.e. 60% shall be credited against Ms. Mastin's obligations and 40% shall be credited against Mr. Mastin's obligations);
6. The CRO is further varied such that, on a prospective basis, equestrian-related expenses shall not be considered a section 7 extraordinary expense.
7. Ms. Mastin shall pay Mr. Mastin the reduced amount of $11,000 to Mr. Mastin in respect of his retroactive child support claims against Ms. Mastin. This figure takes into account Ms. Mastin's retroactive claims for section 7 arrears.

[13] All of the payments described above shall be made through Nova Scotia's Maintenance Enforcement Program ("**MEP**").

[14] I have not attempted to forecast or predict what material changes might occur in the future. Nor have I attempted to predict how any such changes might impact the decisions herein. This includes the changes which will arise when the Mastin's youngest child either begins university or reaches the age of majority. However, I have provided principles and detailed reasons which will hopefully assist the parties to address these changes and avoid future litigation.

BACKGROUND

[15] On June 23, 2015, the Court issued two related Orders: a Corollary Relief Order (the "**CRO**") and a related Recalculation Authorization Order. For the purposes of this proceeding, the relevant provisions of the CRO are:

1. Joint custody of the Mastin children was granted to Ms. Mastin and Mr. Mastin although Ms. Mastin was to have primary care and the children would reside primarily with her. Mr. Mastin was granted reasonable access to the children upon reasonable notice to the Respondent in accordance with the children's wishes due to the children's mature ages (paras. 1 – 2)
2. Mr. Mastin was to pay Ms. Mastin $1,674.00 per month commencing June 1, 2015. That amount was based upon the *Federal Child Support*

Guidelines (the "*Guidelines*"), Nova Scotia Table, based on the Applicant's annual income of $77,832.57. (para. 3(a))

3 Effective June 1, 2015, Mr. Mastin was to pay 25% of all s. 7 extraordinary expenses, which were defined as the children's horseback riding expenses, music lessons, eye glasses, orthodontics, and other uninsured medical expenses, and "such other extraordinary expenses mutually agreed to in writing and in advance" (para. 3(b));

4 Mr. Mastin was ordered to pay Ms. Mastin total arrears in the amount of $35,000.00 for child support - $20,000.00 was payable forthwith with the balance ($15,000.00) payable in monthly instalments of $300.00 (para. 3(c)); and

5 The calculation of Mr. Mastin's income for child support purposes was subject to the consent Recalculation Authorization Order upon confirmation of Mr. Mastin's income but expressly excluded RRSP income claimed by Mr. Mastin in any year (para. 3(d)).

[16] At the time of the June 23, 2015 CRO, none of the children had yet reached the age of majority, although James had just finished his first year of university and would turn 19 in 2015.

[17] When this application was heard (June 2019), three of the four Mastin children had reached the age of majority: James was 22, Ashleigh was 20; and Victoria recently turned 19. Olivia remains at home with Ms. Mastin and had not yet reached the age of majority. The following chart roughly summarizes the movement of the children as they begin to leave for university:

Date	**Children Living with Ms. Mastin**	**Children Living with Mr. Mastin**	**Children Residing Outside the Mastin Homes (University)**
September 2014 – April 2015 (8 months)	Ashleigh, Victoria, Olivia		James enrols in 1st year university in Nova Scotia
May 2015 – August 2015 (4 months)	James, Ashleigh, Victoria, Olivia		0
September 2015 – April 2016 (8 months)	Ashleigh, Victoria, Olivia		James in 2nd year university
May 2016 – August 2016 (4 months)	James, Ashleigh, Victoria, Olivia		
September 2016 – April 2017 (8 months)	Ashleigh, Victoria, Olivia		James transfers to university in Ontario for his 3rd year
May 2017 – August 2017 (4 months)	James, Ashleigh, Victoria, Olivia		
September 2017 – June 2018 (9 months)	Ashleigh, Victoria, Olivia		James attends 1st year of medical school in Prague, Czech Republic (medical school). James accidentally injured his knee and returned to N.S. in June 2018 to recover
June 2018 – August 2018 (3 months)	James, Ashleigh, Victoria, Olivia		
September 2018 – April 2019 (8 months)	Olivia	Ashleigh began 1st year at	James returns to university in Nova Scotia to complete

		NSCC and was living with Mr. Mastin	undergraduate studies. Victoria began first year at Ontario university
May 2019 – June 2019 (1 month)	Victoria, Olivia	Ashleigh	James leasing an apartment and planning to move apartments when university begins. Does not live Ms. Mastin.

[18] I have not included reading weeks or weekend breaks at home or Christmas vacation in this calculation.

[19] At the same time and until November 1, 2018, Mr. Mastin met his monthly child support obligations for all four children in accordance with the terms of the CRO ($1,674.00 per month plus an additional $300.00 in arrears) – as if they were residing fulltime with Ms. Mastin.

[20] On November 1, 2018, Mr. Mastin unilaterally paid a reduced monthly sum of $1,076.07 in child support. He also paid it directly to Ms. Mastin and Victoria instead of Nova Scotia's Maintenance Enforcement Program (the "**MEP**"). More precisely, Mr. Mastin paid $538.00 directly to Ms. Mastin for Olivia who lived at home and $538.00 directly to Victoria who was attending the University of Toronto.

[21] Mr. Mastin paid no support on November 1, 2018 for either James or Ashleigh. Mr. Mastin says that he had been overpaying for James since September 2016 - after James finished two years in Nova Scotia and moved to Ontario to continue his studies. As for Ashleigh, Mr. Mastin took the position that Ashleigh was enrolled in a post-secondary program in Nova Scotia and living full-time with Mr. Mastin – not Ms. Mastin. In fact, Mr. Mastin claimed that Ms. Mastin now owes him $908.36 per month in child support payments for Ashleigh since September 2018 when Ashleigh moved in.

[22] Mr. Mastin's decision to reduce child support payments and to alter the way in which support payments were made (i.e. paying Victoria and Ms. Mastin directly) attracted the attention of MEP. Ms. Mastin was also in contact with MEP. She testified that she was obliged to report any direct payments and provided a letter from MEP confirming this belief. She said that a representative from MEP told her that the existing CRO would be enforced until it was replaced.

[23] The details of the parties' communication with MEP were not before me. However, MEP engaged with Mr. Mastin to enforce the CRO. By April 1, 2019, Mr. Mastin was again paying the full monthly amount owing under the CRO ($1,674.00) to MEP and he repaid any arrears accruing between November 2018

and April 2019 when he unilaterally reduced monthly support payments without an Order formally varying his child support obligations. The long and short of it is that Mr. Mastin has paid (and, up to July 2, 2019, continued to pay) the full monthly child support amounts under the CRO for all four children.

[24] Mr. Mastin filed this Application in Chambers for an order varying child support from the CRO and, more specifically, seeking:

1 Retroactive child support and arrears for Ashleigh Mastin from September 2018 going forward;

2 Repayment of an overpayment of child support for James Mastin since September 2016 forward;

3 Repayment of an overpayment for Ashleigh Mastin, Victoria Mastin and Olivia Mastin since September 1, 2018 forward; and

4 Costs.

[25] Ms. Mastin responded by contesting Mr. Mastin's application. She also filed her own Application in Chambers contending that Mr. Mastin owes her $5,054.51 for section 7 arrears. Ms. Mastin also seeks clarification and greater certainty on a go-forward basis regarding section 7 expenses. She is self-represented in this proceeding.

[26] Both proceedings were converted, on consent, to Applications in Court.

[27] In the end, the questions are:

1 What child support is due, retroactively and prospectively; and

2 What section 7 expenses are due, retrospectively and prospectively.

[28] The answers are somewhat more complicated.

ANALYSIS

I. VARIATION OF CRO

[29] All parties agree that there has been a material change of circumstances which, under s.17(4) of the *Divorce Act,* R.S.C. 1985, as amended, is sufficient to vary the CRO. Their agreement reflects the obvious. Since the CRO was issued, three of the four Mastin children (James, Ashleigh and Victoria) matured past the age of majority. It is the nature and scope of the required variance that remains in dispute.

[30] At the risk of repetition, James remains in an undergraduate program where he excels academically. Along the way, he has also moved between three different universities and achieved a level of independence such that he now lives away

from home effectively on a fulltime basis. However, he has only been able to do all of this by accumulating significant student debt but more on that later.

[31] Ashleigh moved in with her father in September 2018 to begin her post-secondary education. She still lives with Mr. Mastin and is advancing to her second year at a Nova Scotia university.

[32] Victoria enrolled at an Ontario university in September 2018 and is about to begin her second year. She returned home to live with Ms. Mastin during the summer of 2019 and at school breaks.

[33] Olivia is the only child who still lives full-time with Ms. Mastin. She has not yet reached the age of majority and is finishing high school in Middleton, Nova Scotia.

II. Income for the Purposes of Determining Child Support and Section 7 Expenses

[34] Income is an important factor for determining both the "table amount" of monthly child support payable under the *Federal Child Support Guidelines* (the

"***Guidelines***") and for calculating a parent's contribution to s. 7 expenses. There are other factors which may affect the result, but income is a critical variable.

[35] The calculation of income for child support purposes is not simply a matter of mechanically transposing whatever figures appear on an income tax return. Adjustments may be required. For example, Section 19 of the *Guidelines* permits income to be imputed in appropriate circumstances. The Court may also draw an adverse inference where there has been a failure to make full financial disclosure. (section 23 of the *Guidelines* and *MacGillivray* v. *Ross*, 2008 NSSC 339).

[36] In this case, both Mr. Mastin and Ms. Mastin dispute the amount of income which should be attributed to them for the purposes of determining child support.

(a) Mr. Mastin's Income

[37] The dispute in respect of Mr. Mastin is basically whether the amounts he declared as "Other Income" should be included in the calculation of income for child support purposes. For calendar years 2016 – 2018, Mr. Mastin declared "Other Income" at line 130 of his income tax returns as follows:

2016 - $56,234.00

2017 - $51,035.68

2018 - $7,778.64

[38] The information filed with the Court confirms that the source of this "Other Income" was Mr. Mastin cashing out a significant amount of his RRSPs. There is a dispute as to precisely when Mr. Mastin revealed (or Ms. Mastin understood) that the source of his "Other Income" was his RRSP. For present purposes, the parties knew by the date of the hearing that the "Other Income" was, in fact, related to Mr. Mastin collapsing a significant portion of the money invested in his RRSP. Thus, the question became: how much of this income should be attributed to Mr. Mastin for child support purposes, including section 7 contributions?

[39] Paragraph 3(d) of the CRO specifically confirmed that, for child support purposes, RRSP income claimed by Mr. Mastin would be specifically excluded. Paragraph 3(d) concluded with the words "such not being an income consideration". There is virtually identical language in the related Recalculation Authorization Order, which was issued on the same day as the CRO.

[40] Nevertheless, Ms. Mastin understood that the CRO only entitled Mr. Mastin to exclude from the calculation of income for child support purposes those RRSP amounts withdrawn specifically to assist with paying the child support arrears

owing as of June 23, 2015 (i.e. the date of the CRO). In addition, she states that certain monies withdrawn from the RRSP were re-invested in a RRIF which, in turn, creates an income stream that should be included in the calculation of income for child support payments. Finally, she argues that Mr. Mastin's income for the purposes of determining their contributions to s. 7 extraordinary expenses (as opposed to child support obligations) should be based on the full amount of Mr. Mastin's taxable income, including RRSPs. In other words, there would be one income calculation for child support and another for determining contribution to s. 7 expenses.

[41] Mr. Mastin states that the terms of the CRO are clear and that, in any event, paragraph 10 of his affidavit sworn March 5, 2019 states that in 2017 he had to cash out his RRSPs to meet his retroactive child support obligations under the CRO. Paragraph 10 concludes with the broad statement that he has withdrawn "more than two thirds of [his] retirement savings so [he] could pay for child support". At paragraphs 12 to 13 of his Rebuttal Affidavit, sworn May 29, 2019, he repeats that his RRSPs were withdrawn to pay child support obligations and, as well, the tax owing for having made these withdrawals.

[42] In my view, whether RRSP income is to be included as part of Mr. Mastin's income for the purposes of determining child support obligations and proportionate contribution section 7 expenses involves an interpretation of the terms of the CRO.

[43] The interpretation of an order is contextual. The words used are "read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the [order], the object of the … [order] and the intention of the … [court]". In the end, "A judicious meaning consistent with the text (read in context) is preferred over an unreasonable result." (See: *Djuric* v. *Dellorusso*, 2019 NSSC 95, ("*Djuric*") para 39 quoting from *Royal Bank* v. *Robertson*, 2016 NSSC 176, ("*RBC*") paras 20 – 21)

[44] Having considered all of the evidence and testimony, I conclude that the CRO confirms (and should be interpreted as meaning) that RRSPs withdrawn by Mr. Mastin should not be included in the calculation of income for either child support purposes or section 7 expenses. I arrive at this conclusion for the following reasons:

1 The language of CRO is clear and unambiguous when confirming that the recalculation of Mr. Mastin's income "shall exclude RRSP income claimed by Mark in any year". That sentence continues with the

statement that this amount shall be deducted from his income. It finally concludes with broader language that states "such [i.e. RRSP withdrawals] not being an income consideration". The Recalculation Authorization Order contains virtually identical language;

2 While Ms. Mastin is self-represented in this proceeding, all parties were represented by legal counsel when the CRO was issued and all counsel consented as to form. Had the parties intended to qualify the terms of the CRO in the manner suggested by Ms. Mastin, they could have done so;

3 Withdrawing RRSPs is not indicative of an individual's earning capacity – and it is not a reliable measure for assessing that capacity. They are singular transactions which do not occur according to a predictable schedule. Where the withdrawals occur (as here) at the height of an individual's income earning years, RRSP withdrawals trigger tax liabilities greater than that which would occur if the monies were withdrawn as part of an orderly retirement plan. It defies common sense that Mr. Mastin would withdraw RRSP money for some selfish, ulterior purpose – particularly where, as here, he actually did comply with the order requiring payment of significant arrears;

4 Mr. Mastin's evidence on this point, which I accept, is that the RRSPs were not withdrawn to fund personal lifestyle choices. Indeed, his affidavit confirms that vacations, for example, were out of the question given his child support obligations. In any event, Mr. Mastin further testified that RRSP funds were withdrawn to comply with the terms of the CRO and fund both his child support obligations combined with the associated tax liability triggered by the withdrawals; and

5 The fact that Mr. Mastin re-invested the RRSP funds into a RRIF does not undermine the wording of the CRO. It also does not alter the fact that the RRIF is comprised of monies originally withdrawn from the RRSP.

[45] This leaves the issue of pension splitting. In 2017, Mr. Mastin accepted for tax purposes $1,999.98 of pension income originally paid to his spouse, Peggy Carmichael-Mastin. This is not income for the purposes of determining Mr. Mastin's support obligations (Section 14 of Schedule III to the *Guidelines*).

[46] Overall, for the purposes of this proceeding, I deem Mr. Mastin's income to be:

2016			
	Employment Income		$74,816.00
Minus	Union Dues		$1,527.55
Total			**$73,288.45**
2017			
	Employment Income		$75,865.48
Minus	Union Dues		$1,423.38
Total			**$74,442.10**
2018			
	Employment Income		$83,214.85
Minus	Union Dues		$1,210.22
Total			**$82,004.64**

[47] I have no evidence of any further income sources for Mr. Mastin and deem his current annual income as of the day of this hearing to be $82,004.64.

[48] At this point, I wish to briefly address an argument raised by Ms. Mastin during submissions. For the purposes of apportioning section 7 expenses, Ms. Mastin argues that the combined income of Mr. Mastin and his new spouse, Peggy Carmichael-Mastin should be used. She relies on the following three decisions of the Honourable John D. Comeau then Chief Justice of the Nova Scotia Family

Court in *H.B.C. v. C.E.M.*, 2001 NSFC 11 ("***H.B.C.***"); *J.W.F. and J.A.T.*, 2003 NSFC 12; and *H.B.C.-D and C.E.M*, 2002 NSFC 14. The latter two decisions simply adopt with approval Judge Comeau's reasoning in the original decision, *H.B.C.* In turn, the conclusions in *H.B.C.* are based upon an earlier decision from Alberta's Queen's Bench: *Nelson* v. *Nelson* [1999] A.J. No. 242, 1999 Carswell Alta 190 (Alta Q.B.) ("***Nelson***").

[49] I do not accept the submissions of Ms. Mastin on this issue for the following reasons:

1 As a general rule, the income of a new partner or spouse (in this case, Ms. Carmichael-Mastin) is not included as part of the payor-parent's income for the purposes of determining child support. A new partner or spouse has no legal support obligations for their payor-spouse's (Mr. Mastin's) children (*Edwards (Pereira)* v. *Edwards* (1995), 5 R.F.L. (4th) 321 (N.S. C.A.); *Levesque v. Levesque* (1994), 4 R.F.L. (4th) 375 (Alta. C.A.); and *Coutts v. Coutts* (1995), 14 R.F.L. (4th) 234 (Sask. Q.B.)). The Guidelines do not contain the authority necessary to compel financial disclosure from anyone other than the former spouses themselves – in this case, Mr. Mastin and Ms. Mastin. Including Ms. Carmichael-Mastin's income when apportioning

section 7 expenses would contradict this general rule and force Ms. Carmichael-Mastin to support the Mastin children;

2 There are exceptions to this general rule. For example, where a new spouse assumes the role of stepparent (or voluntarily stands in *loco parentis)* to the children, support obligations may arise. In that case, the new spouse's income becomes a relevant consideration. Notably, Justice Boudreau adopted this interpretation of the *Nelson* decision in *P. (G.N.)* v. *G. (L.A.),* 2001 NSSC 165 at paragraph 32. Justice Boudreau's interpretation of the *Nelson* decision is significant given that the decisions of Chief Judge Comeau in paragraph 48 above were all ultimately based on *Nelson*. See also, *Dovicin* v. *Dovicin*, 2002 Carswell Ont 1745, [2002] O.J. No. 5339, 29 R.F.L. (5th) 281 (Ont. S.C.J.) at paragraphs 26 -27. Applied to this case, it is very clear that Ms. Carmichael-Mastin neither agreed to nor could be reasonably found to have assumed the role of parent of the Mastin children;

3 Another exception to the general rule may arise where a party who has a new spouse or partner seeks to reduce or avoid child support based on alleged hardship. In that case, the income of the new spouse/partner becomes relevant as more of the payor-parent's income should be available to honour their support obligations. In other

> words, it would undercut any protestation of hardship. A parent should not be entitled to diminish their support obligations to their children due to hardship if excess income is available as a result of a new marriage or partnership. (see, for example, *O'Regan* v. *O'Regan*, 2001 NSSC 77 at paragraphs 20 - 21). This exception does not apply here. Ms. Mastin does not make this argument and, in any event, I do not find that Mr. Mastin would be entitled to avoid the remedies I have found on the basis of hardship or means.

[50] In sum, I do not interpret Chief Judge Comeau's decision in *H.B.C.* or the decision in *Nelson* as having the broad, general effect suggested by Ms. Mastin and I do not find that the cases cited by Ms. Mastin apply here.

(b) MS. MASTIN'S INCOME

[51] Mr. Mastin asks significant amounts of additional income be imputed to Ms. Mastin. He argues that Ms. Mastin has undisclosed overtime income together with rental income and a stipend paid to her for boarding international students, the financial details of which were not disclosed until the day of the hearing (June 6, 2019).

[52] Ms. Mastin testified during cross-examination that the income disclosed for tax purposes (and confirmed in the documents issued by her employer for tax purposes) does include any overtime. I have no reason to question either Ms. Mastin or her employment records on this issue. I am not prepared to impute any additional income to Ms. Mastin for overtime.

[53] As to rental income, Ms. Mastin acknowledged during cross-examination that there is an apartment located in a separate building on her property beside her home. She said that tenants occupied the apartment until April 1, 2017 when she decided to leave the space open for James or other family members. The apartment remained unleased until April 1, 2019 when a new tenant moved in on a month-to-month basis. As such, rental income would not appear on her tax returns for calendar year end 2017 and 2018. Finally, Ms. Mastin testified that she did not previously declare any income because a local accountant advised her that there was no point. He allegedly said that she was not truly gaining an income given the costs associated with renovating and maintaining the apartment. Pausing here, I note that the accountant did not testify and so any comments he may have made were hearsay and perhaps opinion. I was also given no supporting financial information which would enable me to properly assess this information. In the end, I give no weight to Ms. Mastin's explanation.

[54] Based on the evidence, I conclude that Ms. Mastin earned rental income since April 1, 2019 and prior to April 1, 2017. I do not have sufficient disclosure to assess that income. Lack of disclosure is, again, a concern. I do not have rental agreements, for instance, or proof of actual expenses paid to maintain the rental premises.

[55] That said, I am not prepared to impute all of Ms. Mastin's rental income as requested by Mr. Mastin as if it were 100% profit. Having regard to section 19 of the *Guidelines*, I conservatively impute to Ms. Mastin an additional $1,200.00 given that the current lease only began in April 2019 and is month-to-month.

[56] As to boarding international students, Ms. Mastin testified that she has boarded international students since January 2018. She is paid a stipend of $1,400.00 per month for two students, with $200.00 of that amount being an additional stipend paid because one of the two students is a vegetarian. From this stipend, Ms. Mastin pays for such things as the students' meals and transportation.

[57] Ms. Mastin testified that she did not declare this as income on her tax returns because it was a stipend. Whether monies paid as a stipend constitute taxable

income according to the Canada Revenue Agency is not in issue. However, whether this stipend should be included as income for child support purposes is germane. The fact that Ms. Mastin only disclosed the full financial details of this stipend during cross-examination is also germane. See, for example, section 19(f) of the *Guidelines.*

[58] This is a source of money that should have been more readily disclosed; and I do not accept that the stipend paid merely covers costs. The stipend is not, as Mr. Mastin suggests, pure profit. However, there would be some profit or financial benefit. Unfortunately, the lack of disclosure makes it difficult to fully assess the extent of these financial benefits. I do not have, for instance, the documents confirming the terms under which the boarding of students occurs. Nor do I have a breakdown of the actual costs associated with boarding these students.

[59] Ms. Mastin's lack of disclosure obviously cannot serve to shelter income or the imputation of income. Relying on section 19 of the *Guidelines*, I impute to Ms. Mastin additional income related to boarding international students in the amount of $200.00 per month ($2,400.00 per year) for each of 2018 and 2019. Given the lack of disclosure, I also consider this a conservative figure.

[60] In summary, I deem Ms. Mastin's income to be:

2016			
	Employment Income		$106,277.00
Plus	Universal Child Care Benefit		$1,020.00
Minus	Union Dues		$1,040.00
Total			**$106,257.00**
2017			
	Employment Income		$107,048.00
Plus	Imputed Income (Boarding International Students)		$2,400.00
Minus	Union Dues		$1,525.00
Total			**$107,923.00**
2018			
	Employment Income		$126,283.37
Plus	Imputed Income (Boarding International Students)		$2,400
Minus	Union Dues		$1,593.31
Total			**$127,090.06**

(c) SUMMARY OF FINDINGS ON INCOME

[61] I deem the respective incomes of Mr. Mastin and Ms. Mastin to be:

YEAR	**MR. MASTIN**	**MS. MASTIN**	**PERCENTAGE OF TOTAL INCOME**

			(ROUNDED TO THE CLOSEST 0.5)
2016	$73,288.45	$106,257.00	Mr. Mastin: 41% Ms. Mastin: 59%
2017	$74,442.10	$107,923.00	Mr. Mastin: 41% Ms. Mastin: 59%
2018	$82,004.64	$127,090.06	Mr. Mastin: 39.5% Ms. Mastin: 60.5%
Current	$82,004.64	$128,290.06 (including rent)	Mr. Mastin: 39.5% Ms. Mastin: 65.5%

[62] The contributions of Mr. Mastin and Ms. Mastin to their total combined income is relatively consistent. For the purposes of prospective child support obligations, I deem Ms. Mastin to earn 60% of their combined incomes with Mr. Mastin earning the remaining 40%.

III. CHILD SUPPORT AND SECTION 7 EXPENSES

[63] The first question in assessing child support obligations is whether all or only some of the Mastin children remain “children of the marriage”. Olivia is obviously a child of the marriage as she is under the age of majority and under the care of Ms. Mastin. The parties agree that Ashleigh and Victoria remain children

of the marriage even though they are beyond the age of majority. This is because they have both just begun their undergraduate degrees. In addition, I have evidence that Ashleigh requires additional care due to a visual impairment which is sufficiently serious to qualify Ashleigh for a Disability Tax Credit.

[64] The parties disagree on whether James remains a “child of the marriage”. Mr. Mastin says that James is no longer a “child of the marriage”. Ms. Mastin says that he is.

[65] James is 22 years old and has spent the past number of years in university. It is true, as Mr. Mastin says, that James demonstrated a degree of uncertainty along the way. For example, he spent a year in medical school in Prague only to return to Nova Scotia to complete two separate undergraduate degrees in Chemistry and Biology with an expected graduation date in May 2020.

[66] In my view, James has pursued his own professional aspirations in a reasonable manner. His uncertainty is reflective of a young person possessed of significant academic abilities and a number of career options. He does not take his educational opportunities for granted, and he readily accepts his responsibility to contribute. It is difficult to fault James for giving medical school a chance. And in

any event, James is well-placed to simultaneously complete two separate undergraduate degrees in six years.

[67] As mentioned, James demonstrates a degree of independence and a willingness to accept responsibility for his expenses. He acknowledges his parents' financial assistance, but does not wish to be seen as, in his words, a "charity case". He worked at the Virgin Mobile kiosk in 2017 while living in Ontario. He currently works for Bell Mobility as a sales associate in New Minas. He plans on being engaged both as a teacher's assistant this fall as well as, hopefully, a tutor.

[68] Still, whatever money might be earned through part-time employment will obviously not pay for a university education. James has accumulated significant student debt and, as well, depends on financial assistance from his parents.

[69] As to debt, he has already received five years worth of student loans which, rightly or wrongly, he understood was the maximum available. He now lives off a $75,000.00 line of credit with the Bank of Montreal. He is obliged to pay interest only while in school but will be subject to a repayment program when he graduates.

[70] As to financial assistance from his parents, Ms. Mastin testified in her original affidavit that she contributes to James' vehicle costs and bought him a laptop computer. She estimated that she contributes $525.00 per month to James' expenses. The documentation supporting that estimate was sparse. In a supplementary affidavit filed after the hearing (with the Court's leave), Ms. Mastin provided documentation indicating that she transferred $5,365.00 to James in 2016; $6,709.50 to James in 2017; $3,500.00 to James in 2018; and, $3,015.00 in 2019. She also provided documentation confirming a damage deposit in Ontario of $625.00; a laptop computer purchase of $2,777.29 and various costs associated with a 2007 Toyota Corolla (insurance and maintenance) totalling $10,540.48 for the three years commencing June 2016.

[71] In an Affidavit filed July 12, 2019, James:

1 Verified the laptop computer purchase;

2 Verified that Ms. Mastin paid four months rent (totalling $2,500) for James while he was at the Ontario university. Ms. Mastin also paid a $625.00 damage deposit to a landlord in Ontario. That deposit was returned to James, who kept the money;

3 Confirmed that Ms. Mastin paid for a "pre-med prep" costing approximately $2,300.00 although some portion of that money was reimbursed to Ms. Mastin (it is not clear how much); and

4 Testified that he does not own the 2007 Toyota Corolla and that it is used by other family members. James noted that the car is owned by Ms. Mastin and regularly used by other family members. That said, James did drive it to Ontario and appears to have used the car almost exclusively for the year he attended the Ontario university.

[72] James could not recall the details around the other cash transfers received from Ms. Mastin.

[73] Portions of Ms. Mastin's evidence regarding her financial support for James' university education are problematic. For example, many cash transfers occurred when James was at home, and not in university. In addition, some of the details of the cash transfers attached to Ms. Mastin's supplementary affidavit are duplicates. Furthermore, it is unreasonable to characterize the expenses associated with the Toyota Corolla as a contribution to James' education. Among other things, Ms. Mastin continues to own the car and it is used by several other family members.

Nevertheless, it is clear that Ms. Mastin provides (and James accepts) ongoing financial assistance.

[74] For his part, Mr. Mastin has been paying child support for James throughout. He also acknowledges meeting James on a weekly basis for lunch but otherwise has not financially assisted James beyond, of course, the monthly support payments made to Ms. Mastin. Mr. Mastin believes that James "has sufficient income from his student loans, student lines of credit, and his work at the university from tutoring and doing research to pay for all of his expenses." In written legal submissions, Mr. Mastin repeats that James is financially independent.

[75] Mr. Mastin's contention that James is now "independent" and has sufficient "income" to support himself is not reasonable based on the evidence before me. James does not have (and has not had) income which comes close to paying for a university education. Rather, he is dependent mainly on debt – or, more accurately, access to debt. And, respectfully, Mr. Mastin's arguments around James' alleged independence focus mainly on James transferring between universities – as opposed to a broader view of James' financial needs and best interests.

[76] Section 15(1) of the *Divorce Act* confers upon this Court the jurisdiction to order a spouse to "pay for the support of any or all children of the marriage". Counsel for Mr. Mastin properly references s. 2(b) of the *Divorce Act* which defines a "child of the marriage" as including a child who "is the age of majority or over and under their [i.e. Mr. and Ms. Mastin, in this case] charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life."

[77] Counsel for Mr. Mastin also correctly notes that the evidentiary burden of proving a child over the age of majority remains a "child of the marriage" is on the person who contends that the child remains under the parents' charge (*Rebenchuk* v. *Rebenchuk*, 2007 MBCA 22 ("*Rebenchuk*") and *MacLennan* v. *MacLennan*, 2003 NSCA 9) (*"MacLellan*"). In this case, the onus is on Ms. Mastin.

[78] Children enrolled in post-secondary studies are typically considered "children of the marriage" beyond the age of majority (see: *H. (A.W.)* v. *S. (C.G.)*, 2007 NSSC 181 ("*H(AW)*)), at para. 10). The equation becomes more difficult when a child moves on to post-graduate studies (see: *Rebenchuk*, at para 26). That

is not the case here. James has yet to receive an undergraduate degree but is now expected to simultaneously receive two undergraduate degrees in the spring of 2020.

[79] In the circumstances, I am satisfied that Ms. Mastin has met the burden of proving that James remains a "child of the marriage" until April 30, 2020 – contingent upon James remaining enrolled full time at university to complete his final year. James is not yet independent. He relies heavily on access to loans and accumulating debt. This is not income. He neither has nor had the resources to complete his undergraduate education. He still relies financially upon his parents. The financial realities associated with James' undergraduate degree (e.g. ongoing assistance from his parents and accumulating significant debt) does not align with Mr. Mastin's statement that James has achieved financial independence.

[80] In addition, James should not be made to completely exhaust available sources of crippling debt in pursuit of a university education, particularly given that his parents' combined incomes now exceed $200,000.00.

[81] Finally, Mr. Mastin argues that, at some point, children must make their own way and that James history of changing universities is indicative of either

independence or a degree of instability that should not be funded by parents. Many students transfer between universities and academic programs on their way towards independence and financial separation from their parents. I do not see this as a determinative factor. Victoria is in the process of moving to another university in Ontario as a visiting student. Ashleigh is currently in the process of transferring to a university in Nova Scotia for her second year and has expressed an interest in moving again to a different institution which offers a degree in education, without having to prequalify with an initial undergraduate degree.

[82] As to the amount of child support, there has been a material change sufficient to vary child support under the CRO. No party challenges that fact. Instead, the parties dispute the nature and scope of the variation required in the circumstances.

[83] Section 3 of the *Guidelines* states:

> 3(1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is
> (a) the amount set out in the applicable table, according to the number of children under the age of majority to which the order relates and the income of the spouse against whom the order is sought; and
> (b) the amount, if any, determined under section 7.
> (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support is
> (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or

> (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[84] The default method for calculating child support is found in s. 3(1)(a) of the *Guidelines.* However, where a child is over the age of majority, s. 3(2) allows the Court to make necessary adjustments if the default approach results in support payments which are "inappropriate" or unsuitable. The same basic methodology is applied to both prospective and retrospective awards when assessing whether a parent has overpaid or underpaid in the past (see: *Gillis v. Gillis*, 2013 NSSC 251).

(a) Prospective Monthly Support Commencing July 1, 2019

[85] I begin with the monthly amounts prospectively payable under the *Guidelines.* There are two components to the *Guidelines*: monthly support beginning with the tables and any apportionment of special or extraordinary expenses.

[86] Absent any variance or adjustments, Mr. Mastin would be liable to prospectively pay Ms. Mastin for four children plus an additional amount for section 7 expenses. That approach is clearly inappropriate in circumstances where there are three children all over the age of majority, all attending university (James,

Ashleigh and Victoria). In reaching this conclusion, I am guided by the following passage from the often-quoted decision of the Manitoba Court of Appeal in *Rebenchuk* at para. 30:

> The best approach, it seems to me, and one now widely used is summarized by James C. MacDonald, Q.C. and Ann C. Wilton, *Child Support Guidelines: Law and Practice*, 2nd ed., vol. 1 (Toronto: Carswell, 2004) (at pp. 3-11, 3-12):
> ... The usual *Guidelines* approach is based on factors that normally apply to a child under the age of majority; that is the child resides with one or both parents, is not earning an income and is dependent on his or her parents. It is also based on the understanding that, though only the income of the person paying is used to calculate the amount payable, the other parent makes a significant contribution to the costs of that child's care because the child is residing with him or her. The closer the circumstances of the child are to those upon which the usual *Guidelines* approach is based, the less likely it is that the usual *Guidelines* calculation will be inappropriate. The opposite is also true. Children over the age of majority may reside away from home and earn a significant income. If a child is not residing at home, the nature of the contribution towards the child's expenses may be quite different. ...
>
> [emphasis added]

[87] Having made that determination, I must now consider what amounts are appropriately paid for James, Ashleigh and Victoria "having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child" (s. 2(b)).

[88] I emphasize that I am not conducting a similar analysis for Olivia. She is under the age of majority and remains at home with Ms. Mastin. Mr. Mastin's obligation to pay child support for Olivia is not subject to the sort of adjustments available under section 2 of *Guidelines* for children over the age of majority.

[89] Returning to James, Ashleigh and Victoria, many decisions of this Court conclude that a parent should only be entitled to receive child support for those months when the child is actually resident at home (see, for example: *Gandy v. Gandy*, 2015 NSSC 300 ("*Gandy"*) with clarifying reasons in 2016 NSSC 44; *Strecko v. Strecko*, 2013 NSSC 49, upheld 2014 NSCA 66, ("*Strecko*"); *Provost v. Marsden*, 2009 NSSC 365 ("*Provost*") (See also: *B. (D.M.) v. B. (D.B.)*, 2012 SKQB 400 ("*B(DM)*"), which stands for the proposition that the usual *Guidelines* approach will be inappropriate where a child lives away from the home for most of the year.) In those circumstances, a reduced amount of support plus a percentage of section 7 expenses *pro rata* is justified.

[90] In the circumstances before me, I am persuaded by the reasoning contained in those earlier cases. Subject to a comprehensive analysis taking hardship and means into account, I determine that:

1 Beginning July 1, 2019, Mr. Mastin would pay Ms. Mastin $1,152.06 per month for Ashleigh and Victoria, but only in respect of those months where Victoria spends at least two weeks at home with Ms. Mastin. These monthly payments would cease on April 30, 2023 or

successful completion of an undergraduate degree or complete withdrawal from a post-secondary program, whichever comes first;

2 Beginning July 1, 2019, Ms. Mastin would pay Mr. Mastin $1,074.20 per month for Ashleigh but only in respect of those months where Ashleigh spends at least 2 weeks with Mr. Mastin. These monthly payments would cease on April 30, 2023 or successful completion of an undergraduate degree or complete withdrawal from a post-secondary program, whichever comes first;

3 Beginning September 1, 2019, Mr. Mastin would pay Ms. Mastin the full amounts due under the *Guidelines* for Olivia: $704.04 per month. Again, Olivia is under the age of majority and still living full time with Ms. Mastin in Middleton, N.S. Olivia is now 17 years old and will reach the age of majority on March 6, 2021. It would be unsafe to predict whether the current support arrangements for Olivia will be inappropriate or require variance at that time. However, hopefully the basic principles established in this decision will avoid further litigation;

4 Neither Mr. Mastin nor Ms. Mastin would be required to pay monthly child support in respect of James but they each would be required to

contribute to his undergraduate expenses as section 7 extraordinary expenses as discussed below.

[91] By way of summary and again subject to a comprehensive review for purposes of hardship and means:

1 July 1, 2019 – August 31, 2019: Mr. Mastin would pay $77.86 to Ms. Mastin through MEP – representing the monthly support payments due to Ms. Mastin in respect of Olivia and Victoria offset by the monthly support payment due to Mr. Mastin in respect of Ashleigh;

2 September 1, 2019 – April 30, 2020: Ms. Mastin would pay $370.16 to Mr. Mastin through MEP - representing the monthly support payments due to Mr. Mastin in respect of Ashleigh offset by the monthly support payment due to Ms. Mastin in respect of Olivia;

3 May 1, 2020 forward: the same offsetting monthly support obligations would continue in accordance with the criteria described above and, as indicated, subject to any change of circumstance such as complete withdrawal from a post-secondary program.

[92] I turn now to section 7 extraordinary expenses for the three Mastin children attending university (James, Ashleigh and Victoria). It is not at all uncommon to

classify the costs of completing an undergraduate degree as an extraordinary expense. Section 7(e) of the *Guidelines* specifically identifies "expenses for post-secondary education" as included among the categories of recognized special expenses which may be awarded by the Court.

[93] In assessing the actual amounts payable, I have considered both the child's condition, means, need and other circumstances together with each parent's ability to contribute. (*Francis* v. *Baker*, [1999] 3 S.C.R. 250). I undertake this analysis for each individual child but will ultimately return to test the global result as it obviously has a bearing on each parent's ability to contribute.

[94] In the circumstances, I deem university costs to be an extraordinary expense but the amounts payable for each child will vary.

[95] I have carefully considered James' Statement of Expense and his evidence in Court. I find the claimed expenses for his final year to be high and in excess of $31,000.00 per year. I note that clothing and entertainment costs seem high in the circumstances, as do the costs associated with his vehicle – particularly given that no supporting documents have been provided. He also provides no calculations or deductions for tax credits including, for example, the tuition tax credit. In all the

circumstances, I deem the costs of his final undergraduate year to be $18,900.00. Because the information provided was incomplete, I began with an initial figure of $21,000.00 and deducted $2,100.00 for tax credit.

[96] James is also to be commended for finding employment and making the necessary arrangements for his educational expenses – although he does not actually estimate or project any income in his Statement of Expenses. In all the circumstances, I find that James has expressed a willingness to achieve independence. I take that express desire and willingness to contribute into account.

[97] Considering the time taken to complete his undergraduate degree, I direct that James be responsible for contributing 50% towards the costs of his final year. As to the remaining 50%, Mr. Mastin shall pay 40% and Ms. Mastin shall pay 60%.

[98] The amounts due from Mr. Mastin and Ms. Mastin shall be paid directly to James in 12 monthly installments beginning September 1, 2019 and terminating September 1, 2020. Specifically, Mr. Mastin shall pay $315.00 per month and Ms. Mastin shall pay $471.50 per month.

[99] Victoria should also be given credit for her attempts to find employment and secure loans to fund her undergraduate degree. Like James, Victoria does not project or estimate any income in her Statement of Expenses.

[100] I have scrutinized her Statement of Expenses and, setting aside my concerns regarding income, I find the projected expenses to be high – almost $36,000.00 per year. No supporting documentation is provided. She also provides no calculation for tax credits.

[101] In all the circumstances, and for the purposes of determining section 7 expenses, I deem Victoria's costs to be $22,500.00 having regard to the fact that she is attending school in Ontario. Because the information provided was incomplete, I began with $25,000.00 and deducted $2,500.00 for tax credit.

[102] Victoria shall contribute 40% of that amount. Of the remaining amount (60%), Mr. Mastin shall pay 40% and Ms. Mastin shall pay 60%.

[103] The amounts due from Mr. Mastin and Ms. Mastin shall be paid directly to Victoria in monthly installments beginning September 1, 2019. Specifically, Mr.

Mastin shall pay $450.00 per month and Ms. Mastin shall pay $675.00 per month from September 1, 2019 to August 1, 2020 (12 months).

[104] As for Ashleigh, her Statement of Expenses seems somewhat more reasonable although, again, no supporting documentation was provided and there was no calculation of applicable tax credits. Ashleigh's Statement of Expenses also has the additional benefit of including a monthly income projection although I understand from the evidence that she is no longer employed.

[105] I also accept that while Ashleigh's disability is not completely debilitating, it would impact on her income earning capacity. Overall and having regard to all the evidence and for the purposes of determining section 7 university expenses, I deem Ashleigh's costs to be $9,000. Although the information was, again, incomplete, but having regard to the fact that Ashleigh is living full-time with Mr. Mastin, I began with a reduced figure of $10,000.00 and deducted $1,000.00 for tax credits.

[106] Ashleigh shall contribute 40% of that amount. Of the balance (60%), Mr. Mastin shall pay 40% and Ms. Mastin shall pay 60%.

[107] The amounts due from Mr. Mastin and Ms. Mastin shall be paid directly to Ashleigh in monthly installments beginning September 1, 2019. Specifically, Ms. Mastin shall pay $180.00 per month and Mr. Mastin shall pay $270.00 per month.

[108] Subject to any material change of circumstances and presuming Victoria and Ashleigh remain enrolled in a post-secondary program, I would expect this basic formula (60% of reasonable expenses to be paid by Mr. Mastin and Ms. Mastin with Mr. Mastin contributing 40% of this amount and Ms. Mastin paying 60%) to continue until April 30, 2023 or successful completion of an undergraduate degree or complete withdrawal from a post-secondary program, whichever comes first. This is also subject to, of course, Victoria and Ashleigh annually providing Mr. Mastin and Ms. Mastin with proof of enrolment and proof of reasonable expenses for the upcoming school year.

[109] Any amounts paid to these children through the RESP shall be offset against these obligations using the same pro rata formula (i.e. 60% shall be credited against Ms. Mastin's obligations and 40% shall be credited against Mr. Mastin's obligations).

[110] As mentioned, I have not considered the issue of Olivia's post-secondary education following her high school graduation. This issue was not before me and may well be premature. However, the findings and formulas above in terms of both income and university expenses will hopefully guide the parties when the time comes and avoid further litigation.

[111] Ms. Mastin also requested clarity in her Notice of Application regarding other section 7 expenses identified in the CRO. On that issue, Mr. Mastin has expressed concern regarding horseback riding as an ongoing section 7 expense.

[112] Section 7 expenses are, as their name implies, extraordinary expenses. They are neither run-of-the-mill nor ordinary. They must also be proven to be necessary in relation to both the child's best interests and the parents' means (see: *T. (D.M.C.)* v. *S. (L.K.)*, 2008 NSCA 61. Moreover, it is presumed that any amounts paid in respect of monthly child support will be sufficient to cover the typical needs of the child – including reasonable costs for ordinary recreational activities.

[113] I am not prepared to continue characterizing equestrian-related expenses as an extraordinary, section 7 expense for the following reasons:

1. There is virtually no evidence before me with respect to the needs of any child and why, for example, the costs of equestrian-related activities might still be considered an extraordinary expense under section 7;
2. I am required under the *Guidelines* to consider "the necessity of the expense in relation to the child's best interest". In so far as equestrian-related activities are concerned; I have no information regarding necessity;
3. The bulk of these expenses flow mainly to the benefit of one child (Victoria);
4. The current post-secondary expenses of the children are high, and they are arising at the same time. Three of the children will be in university this year. In these circumstances where the children of the marriage are in the process of pursuing post-secondary studies, and the parents are already expressing concern over their ability to support their children's needs and best interests, I find any continuing focus on equestrian-related activities cannot reasonably constitute an extraordinary expense. The priorities identified in the CRO need to be re-aligned to fit current financial realities.

[114] By contrast, I have no difficulty deeming section 7 expenses for eyeglasses, orthodontics and other uninsured medical expenses not covered by the parties' medical and dental insurance coverage plans although greater clarity around the documentation is required to confirm these expenses.

[115] I conclude that the parties need to provide both an invoice for the medical service, proof of payment and proof of the portion not covered by any existing medical plan, as well as proof that the medical services in question are necessary. Upon receipt of that documentation, any such amount owing would be payable.

[116] Beyond that and without better evidence, I would vary the CRO to eliminate any other section 7 expenses on a prospective basis but reserving the right of the parties to either agree in writing or re-attend in Court to claim additional section 7 in the child's best interest and having regard to the parents means.

(b) Ms. Mastin's Claim for Retroactive Payment of Section 7 Expenses

[117] Ms. Mastin seeks payment for section 7 arrears in the total amount of $5,054.51. The invoices or receipts supporting this claim date back approximately three years and are attached to her original affidavit.

[118] While more than half of the expenses claimed by Ms. Mastin relate to the sort of equestrian activities permitted under the CRO, the evidence which she filed in support of the claim also extends beyond the categories of expenses specifically identified in the CRO. Ms. Mastin's claims include, for example, certain university related expenses for James, Ashleigh and Victoria. University expenses are not mentioned in the CRO. Her claims include certain expenses for recreational activities such as badminton and basketball, which are similarly not included in the CRO.

[119] As an initial comment, I am reducing Ms. Mastin's claim by $400.00 because:

1 Certain expenses (and certain payments) extend back beyond three years;

2 Certain expenses such as badminton and basketball fees are neither extraordinary nor contemplated under the CRO; and

3 Certain receipts are not sufficiently clear to properly assess the underlying expense.

[120] This leaves a balance of $4,654.51. That amount can be further divided into equestrian and medical expenses on the one hand and post-secondary expenses for

Victoria and Ashleigh, on the other. Of this $4,654.51, the equestrian and medical expenses total $2,584.05. The remaining $2,070.47 represents Mr. Mastin's 25% contribution to the post-secondary expenses for Victoria and Ashleigh as claimed by Ms. Mastin.

[121] Mr. Mastin's contribution to these post-secondary expenses ($2,070.47) is not explicitly covered under the CRO and will be addressed separately below. For present purposes, the remaining $2,584.05 is properly owing to Ms. Mastin under the terms of the CRO and also under the multi-factorial approach developed by the Supreme Court of Canada in *D.B.S. v. S.R.G.,* 2006 SCC 37, ("***DBS***"). In this case, as indicated, a material change of circumstance has occurred. Thus, the focus shifts to the following four factors identified in *DBS*:

1 the applicant's delay in applying for retroactive support;

2 blameworthy conduct of the payor parent;

3 the circumstances of the children; and

4 hardship that the retroactive award might cause.

[122] All four factors are to be considered in a holistic fashion, although it is not necessary that every single factor tilt in favour of the person claiming a retroactive award. Moreover, this is not an exhaustive list of all potentially relevant factors.

[123] In this decision, the Supreme Court of Canada also confirmed that a retroactive award should not be viewed as an exceptional remedy requiring exceptional circumstances. Obviously, an order for retroactive relief should not be common but neither is it rare.

[124] I am further guided by the caselaw which provides that the party seeking reimbursement for section 7 expenses must prove that entitlement and that simply providing a Statement of Expenses is insufficient (*Conohan* v. *Cholock*, 2017 NSSC 7 ("*Conohan*")).

[125] As indicated, a material change has occurred. This change was not due to any inappropriate choices or manoeuvring on the part of either Ms. Mastin or Mr. Mastin. The material changes justifying a variation are primarily a function of the children leaving for university. This basic factual finding need not be repeated again.

[126] The section 7 expenses claimed by Ms. Mastin against Mr. Mastin under the express terms of the CRO total $2,584.05. This figure represents 25% of the total

expenses in question – with Ms. Mastin stating that she paid the other 75%. This percentage contribution also accords with the terms of the CRO.

[127] As mentioned, these expenses are predominantly expenses associated with equestrian-related activities (e.g. trailering and stable fees, horse shows and the like). As indicated above, I am not prepared to continue classifying these equestrian-related activities as extraordinary, section 7 expenses on a go-forward basis. However, for the purposes of Ms. Mastin's request for retroactive relief, I am equally not prepared to retroactively alter the terms of agreements reached by the parties and recorded in the CRO. The parties previously agreed that these expenses constituted section 7 expenses and, as at the date of this proceeding, should be prepared to honour mutual commitments recorded in the CRO. While it is necessary to <u>prospectively</u> reassess section 7 expenses considering the growing financial demands associated with their children's university education, I accept that the CRO was made in good faith and should be enforced.

[128] To the extent it is necessary, I further find that Ms. Mastin has proven these specific claims ($2,584.05) under the *DBS* framework. In particular:

1 I do not find that Ms. Mastin unduly delayed. It is true that Ms. Mastin took no formal steps to seek relief until forced to respond to

Mr. Mastin's application. However, Ms. Mastin testifies in her affidavit that the invoices were provided to Mr. Mastin "as soon as possible". While Mr. Mastin says that the invoices were simply being hoarded, he did pay certain section 7 expenses over the past three years. The evidence confirms that Mr. Mastin contributed over $2,000.00 towards section 7 expenses over the last 3 years. This suggests that he was receiving, assessing and voluntarily paying for some of the section 7 expenses being claimed; and that he made a conscious decision not to pay other expenses. Moreover, the issue regarding the alleged hoarding was incomplete. Finally, on the issue of delay, I should note that I make the same finding with respect to Mr. Mastin's own claims for retroactive relief below. That is, I do not find Mr. Mastin has unduly delayed in bringing claims that date back approximately three years;

2 I do not find that Ms. Mastin engaged in blameworthy conduct with respect to advancing this particular claim. Mr. Mastin's main concerns were delay and a suspicion that certain invoices were manufactured and illegitimate. He has not provided sufficient evidence which would allow me to safely draw the proposed inference that the invoices or receipts provided by Ms. Mastin are fictitious.

Much of Mr. Mastin's concerns is based upon a blanket assertion and personal opinion. That said, I do have concerns regarding Ms. Mastin's conduct particularly in connection with a lack of full, candid disclosure. While problematic, in exercising my discretion and considering the underlying principles in *DBS* as a whole, I do not find that this conduct created a degree of prejudice as would preclude Ms. Mastin from relying upon the CRO;

3 The parties originally accepted that these expenses are extraordinary and in the children's best interests;

[129] I will consider the issue of hardship in a more comprehensive fashion below, and in the context of the decision as a whole.

[130] This brings me to the additional section 7 expenses claimed by Ms. Mastin but not specifically covered under the CRO. In particular, Ms. Mastin asks that Mr. Mastin pay 25% of certain university expenses which Ms. Mastin paid on behalf of Victoria and Ashleigh. These expenses totalled $8,281.86. Applying the same 25% under the CRO, Ms. Mastin claims that Mr. Mastin's share is 25%, or $2,070.47.

[131] I have already determined that university expenses do constitute extraordinary expenses in the circumstances. Applying the *DBS* factors, I am satisfied that Mr. Mastin should contribute to the extraordinary expenses associated with his children's post-secondary education. I am also satisfied that Ms. Mastin did not unduly delay in bringing this claim forward. While I have concerns regarding her financial disclosure, and other related matters, I do not find that this would relieve Mr. Mastin from contributing to his children's university expenses. I also conclude that the circumstances of the children are improved by a mutual commitment from the parents to their education.

[132] As to hardship, I reiterate that Mr. Mastin would not suffer any hardship by paying these expenses particularly in the context of a more comprehensive review of all retroactive claims being made and relief being granted.

(c) MR. MASTIN'S CLAIM FOR RETROACTIVE REDUCTION OF CHILD SUPPORT AND REIMBURSEMENT FOR OVER OVERPAYMENT

[133] As indicated, Mr. Mastin has been paying $1,674.00 per month for the three years prior to the June 2019 hearing. For significant portions of that time, at least three of the Mastin children were living at university. The question becomes whether Mr. Mastin is entitled to both a retroactive decrease in the amount of child

support and credit for any corresponding overpayment. Put slightly differently, is Mr. Mastin entitled to vary the CRO for those periods of time when the children actually did not live with Ms. Mastin? If Mr. Mastin is entitled to a retroactive reduction in child support, should Mr. Mastin also receive credit for (or reimbursement of) any retroactive reduction in child support?

[134] As to James and Victoria, Mr. Mastin seeks a retroactive reduction of child support while they were at university. As to Ashleigh, Mr. Mastin effectively says that he has been paying double: first, while Ashleigh was actually living with him from September, 2018 forward, without support from Ms. Mastin; and second, when continuing to pay monthly child support to Ms. Mastin for Ashleigh even though Ashleigh did not live with Ms. Mastin.

[135] These are unusual circumstances because, among other things, most cases involving a retroactive reduction in child support include a corresponding request to <u>forgive</u> any accrued <u>arrears</u>. In this case, Mr. Mastin has fulfilled his child support obligations and so he seeks a <u>credit</u> for (or reimbursement of) any <u>overpayment</u> caused by a retroactive reduction in child support – not forgiveness for accrued arrears. What is the test which applies in these somewhat unusual circumstances?

[136] In *Smith v. Helppi* 2011 NSCA 65 ("*Smith*"), the Nova Scotia Court of Appeal recognized the difference between a retroactive increase in child support combined with a request for payment of arrears, on the one hand, and a retroactive reduction of child support with a request for forgiveness of any existing arrears, on the other (para 20).

[137] Writing for the majority, Oland, J.A. wrote at paragraph 21 that "an order to retroactively vary downwards could be based on many factors". Justice Oland then adopted the following conclusions from the New Brunswick Court of Appeal in *Brown* v. *Brown*, 2010 NBCA 5 ("*Brown*"):

> In summary, the jurisdiction to order a partial or full remission of support arrears is dependent on the answer to two discrete questions: Was there a material change in circumstances during the period of retroactivity and, having regard to all other relevant circumstances during this period, would the applicant have been granted a reduction in his or her support obligation but for his or her untimely application? As a general proposition, the court will be asking whether the change was significant and long lasting; whether it was real and not one of choice.

[138] The same reasoning was recently accepted by the Newfoundland Supreme Court in a case also involving a request for retroactive forgiveness of arrears. (*M.W.* v. *K.T.*, 2019 NLSC 14)

[139] In *Brown*, the New Brunswick Court of Appeal explained the differences between cases involving a reduction in support and relief from arrears versus cases involving retroactive increase in support and payment of arrears:

> Specifically, the court need not address why the applicant failed to make a timely application for retroactive variation. Correlatively, the court need not be concerned with the reasons underscoring the support recipient's failure to pursue timely enforcement measures thereby thwarting the accumulation of arrears. In short, the notion of "fault" plays no role in the decision to grant retroactive variation orders involving support arrears.
> (at para 3)

The New Brunswick Court of Appeal continued:

> It is one thing to demand immediate payment of monies with respect to a past obligation that only recently matured and quite another to seek an order that recalculates and reduces the amount owing with respect to a debt never paid.
> (at para 3)

[140] At paragraph 28 of the same decision, the New Brunswick Court of Appeal described the underlying policy considerations:

> From a policy perspective, it is not difficult to justify the differential treatment accorded to variation orders that seek a retroactive increase in arrears from those that seek a decrease in either child or spousal support. Orders falling within the latter group require the court to confirm that a lower amount of support was payable <u>despite the failure to pay the higher amount</u>. Neither the applicant payer nor the support recipient is prejudiced by the granting of the retroactive variation order. Thus, the policy objectives of certainty and <u>in the sense that neither is being asked to pay or repay monies which they may or may not have at the time of the application for variation</u> predictability in the law are fully respected. This is not necessarily so in cases where the retroactive variation seeks an increase in support. The payer is being asked to pay money that he or she may not presently have or may have difficulty in paying. Hence, a plea of hardship or unfairness cannot be ignored and that is why it is necessary to look at a number of factors before ruling on a retroactive variation order that seeks an increase in support.
>
> [Emphasis added]

[141] However, once again in the somewhat uncommon circumstances of this case, there has been no "failure to pay the higher amount". And, obviously, because there has been no such failure to pay, there is no request for forgiveness. So, the question remains: what test applies if the child support payments were actually made and the retroactive request is coupled with a request for credit or reimbursement of any overpayment?

[142] In *Newell* v. *Upshaw-Oickle*, 2017 NSSC 226 ("*Newell*"), O'Neill, A.C.J. considered a request for a retroactive reduction in child support together with a credit for any overpayment.

[143] O'Neill, A.C.J. applied the reasoning in *Smith.* He concluded that the payor parent had overpaid based on his income declared in line 150 of his income tax return. However, O'Neill, A.C.J. also declined to grant a credit for the overpayment as it would visit undue hardship upon the spouse who had been receiving the support. (at para 27). Importing the concept of hardship or prejudice back into the *Smith* analysis understandably arises when a recipient parent is asked to either repay monies or accept a future reduction in child support – as opposed to simply wiping the slate clean in respect of past arrears that were not paid in the first place.

[144] In *Osterlund-Lenahan* v. *Lenahan*, 2014 ONSC 7074 ("*Osterlund-Lenahan*"), Justice Lococo appears to apply the *DBS* test in connection with a payor parent's request to retroactively reduce child support payments and grant a credit for overpayment (para 54). Notably, the facts in *Osterlund-Lenahan* are somewhat similar to facts in the case at bar.

[145] In my view, the non-exhaustive factors in *DBS* better address the underlying policy concerns which arise when retroactive relief in the form of reduced child support has the potential to materially affect ongoing future child support obligations (i.e. it is not simply a case of forgiving past arrears). I reach this conclusion for the following reasons:

1 The test in *DBS* emphasizes the concept of hardship and prejudice. This becomes important when a payor parent is seeking reimbursement or credit for any alleged overpayment caused by a retroactive reduction in child support – as O'Neill, J. recognized in *Newell*. Moreover, I note that in more complicated circumstances surrounding a retroactive assessment of child support based on income and giving rise to both underpayment (arrears) and

overpayment (credit), the *DBS* analysis has been applied (*Strecko* v. *Strecko*, 2013 NSSC 49).

2 While *Smith* (adopting *Brown*) diminished any concern around the failure to make a timely application in circumstances where past arrears are being reduced or eliminated, the failure to make a timely application becomes more significant when a payor parent is not only seeking to retroactively reduce child support payments but also seeks credit for any such reduction. If that parent has unduly delayed in bringing the claims forward, that is a relevant consideration, in my view. This also engages the underlying policy considerations of certainty and predictability;

3 When viewed through the lens of the child's best interests, the notion of decreasing support retroactively and granting a credit for overpayment creates conflicting pressures that the test in *DBS* is better able to address. For example, where it is determined that a receiving parent has been overpaid for child support, should that parent be entitled to simply retain these excess funds? If not, what impact will a credit or order for reimbursement have on the children and their interest in ongoing, stable support arrangements? While the children's best interest must remain the paramount consideration,

there is an increased need to balance the interests of a payor parent who has overpaid against the interest of a recipient parent who has been paid and benefitted from the overpayment, on the other.

[146] With that, I turn to Mr. Mastin's specific claims for overpayment. Applying *DBS*:

1. I do not find Mr. Mastin has delayed unreasonably. He first raised the issue through legal counsel in September 2016 with Ms. Mastin. Ms. Mastin would have had effective notice by that time. (see the comments of Justice Bastarache on "effective notice" at *DBS*, para 121) While negotiations did not result in a resolution, Mr. Mastin cannot be faulted for acting in the way he did. Among other things, there is a concern that any delay in advancing those concerns was at least partly the fault of Mr. Mastin's former legal counsel. No similar concerns are expressed in respect of Mr. Mastin's current counsel.
2. As to blameworthy conduct, Ms. Mastin did not make timely and complete financial disclosure, as indicated. In the context of Mr. Mastin's claims, this conduct tilts more in favour of relief, particularly in light of the prejudice caused to Mr. Mastin as an applicant attempting to advance legitimate claims.

3 The notion of insisting upon monthly support payments when one child is living with the other parent and two others have left the home for most of the year is a concern. I do not find it reasonable that Ms. Mastin should be paid full child support during those months when the children are enrolled full-time in university and living away from her home. This is particularly the case with respect to Ashleigh. Since September 1, 2018, Ms. Mastin has insisted on payment of monthly support under the CRO, despite the facts that:

a. There were significant times that three of the children were not living with Ms. Mastin at all; and

b. From September 2018 forward, Ashleigh was living with Mr. Mastin and not Ms. Mastin.

4 The children's interests are protected, subject to more comprehensive findings on hardship below to preserve the underlying policy objectives of predictability and consistency when establishing support arrangements.

[147] I will address the issue of hardship in a more comprehensive fashion below in the context of all the circumstances surrounding the relief granted.

[148] For present purposes and based on my findings regarding income above, I find Mr. Mastin has overpaid between June 2016 and June 2019 in the amount of $14,678.30. This figure is calculated as follows:

Time and Number of Children with Ms. Mastin	**Number of months**	**Monthly Support due under Guidelines**	**Subtotal**	**Amount Actually Paid by Mr. Mastin**	**Difference**
Jun2016-Aug2016 (4 children)	3	$ 1,583.80	$ 4,751.40	$ 5,022.00	$270.60
Sept2016-Dec2016 (3 children)	4	$ 1,326.89	$ 5,307.56	$ 6,696.00	$ 1,388.44
Jan2017-Apr2017 (3 children)	4	$1,346.61	$ 5,386.44	$ 6,696.00	$ 1,309.56
May2017-Aug2017 (4 children)	4	$1,606.94	$ 6,427.76	$ 6,696.00	$ 268.24
Sept2017-Dec2017 (3 children)	4	$1,346.61	$ 5,386.44	$ 6,696.00	$ 1,309.56
Jan2018-May2018 (3 children)	5	$1,510.08	$ 7,550.40	$ 8,370.00	$ 819.60
Jun2018-Aug2018 (4 children)	3	$1,803.10	$ 5,409.30	$ 5,022.00	-$ 387.30
Sept2018 - Jun2019 (1 child)	10	$704.04	$ 7,040.40	$ 16,740.00	$ 9,699.60
TOTAL OVERPAYMENT BY MR. MASTIN					**$ 14,678.30**

[149] The analysis does not end there. First, as indicated, it is subject to a more comprehensive review of the hardship claims in relation to section 7 expenses, below. However, a more immediate consideration is that the above calculation merely recognizes an overpayment for those times when the children were in university and not living with Ms. Mastin. It includes contributions which Mr.

Mastin should properly make to past university expenses. Mr. Mastin is not entitled to reduce his child support payments on the basis that the children are away from home at university and, at the same time, avoid paying his fair share of the expenses associated with that university education. It is not simply Ms. Mastin who is required to help fund the children's university expenses. Mr. Mastin must help. In short and in fairness, these overpayments must be offset by a contribution to university expenses.

[150] Ms. Mastin's claim for retroactive relief included a retroactive claim against Mr. Mastin for 25% of the $8,281.86 in education-related expenses. I determined that Mr. Mastin was responsible to reimburse Ms. Mastin for 25% of this amount – or $2,070.47). However, these expenses related to Victoria and Ashleigh only. They did not take any of James' expenses into account. Again, Mr. Mastin is not entitled to avoid child support while James is away at university and also avoid contributing to his university expenses.

[151] Pausing here, I reiterate that I am only prepared to retroactively address university expenses that Ms. Mastin actually paid. On a prospective basis, I ordered both parents assume a pro rata share of anticipated university costs. On a retroactive basis, I will not second-guess what the parents should have paid in the

past. This is consistent with Ms. Mastin's request for a contribution towards actual expenses incurred in respect of Victoria and Ashleigh and better ensures that the children's prospective needs are met and given priority. Any hardship issues are addressed later in a more comprehensive fashion.

[152] Returning to James' university expenses and in order to ensure a just result, I provided Ms. Mastin (who was self-represented) with an opportunity to file additional evidence regarding expenses incurred with respect to James' educational expenses. Mr. Mastin was given the opportunity to respond. He filed an affidavit and also filed a supplementary affidavit sworn by James himself.

[153] By way of summary, Ms. Mastin claimed:

1 $10,540.48 related to the 2007 Toyota Corolla, which she owns, and James uses from time to time;

2 $18,589.50, which she provided to James by electronic cash transfers;

3 $2,777.29 for a laptop computer;

4 $625.00 damage deposit to a landlord in Ontario.

[154] It is extremely difficult to assess what portions of these expenses are properly attributable to James' university costs. The burden was on Ms. Mastin to

prove these costs and I have concern with respect to the numbers presented as well as their connection to James' university expenses. For example, some of the cash transfers contained in Ms. Mastin's materials are duplicative. Other cash transfers occurred when James was not at university.

[155] After considering all of the evidence, including James' supplementary affidavit, I conclude:

1. Ms. Mastin shall be given credit for car expenses totalling $4,000.00, including insurance. I note that almost all of this amount would address James' full-time use of the car at the Ontario university and would serve as a reasonable estimate of extra travel costs associated with his time in Ontario. The evidence with respect to the other car expenses is equivocal. For example, James testifies that he does not own the car; that other members of the family used the car; he did not have access to the car at all while in Prague even though Ms. Mastin claims those expenses; and, when attending university in Nova Scotia, he would have no ongoing need for a car.
2. With respect to the laptop purchase, I am prepared to credit Ms. Mastin the full amount $2,777.29, as a legitimate educational expense.

3 Ms. Mastin states, as confirmed by James, that she had provided $2,300.00 for a “medical school preparatory course” and $2,500.00 for rent in Ontario, totalling $4,800.00. These transfers occurred by way of the cash transfers and I deem them to be legitimate s. 7 expenses related to James’ post-secondary expenses.

4 As indicated, the total amount of e-transfers claimed by Ms. Mastin totals $18,589.50. This amount does not include the duplicate transfers identified by Ms. Young nor the $500.00 labelled “pay Grammy please”. I am also deducting a further $2,789.00 of cash transfers made in the summertime and for which there is no connection in the evidence to university expenses. Of the $15,800.50 which remains ($18,589.50 - $2,789.00), I already allowed $4,800.00 ($2,300 for the medical school preparatory course plus $2,500 for rent in Ontario). This leaves a balance of $11,000.50. The evidence is not clear as to how much of this related to James’ actual university education. The onus was on Ms. Mastin, and in the circumstances, I am only prepared to allow approximately 80% of this $11,000.50 balance, or $8,800.00.

5 I am not prepared to allow the $625.00 damage deposit, because that money was returned. James’ evidence was that he kept the money,

> even though it could have been returned to Ms. Mastin. In the circumstances, I am not prepared to allow that as an additional expense.

[156] In summary, I accept that over the past three years, Ms. Mastin has contributed $20,377.29 to James' university education.

[157] Consistent with the retroactive claims made by Ms. Mastin for Victoria and Ashleigh's post-secondary costs but subject to a comprehensive hardship and means analysis below, Mr. Mastin is responsible (and Ms. Mastin is entitled to credit) for 25% of these costs or $5,094.32.

(d) RETROACTIVE INCREASE CHILD SUPPORT RELATED TO ASHLEIGH

[158] The test in *DBS* applies to Mr. Mastin's claims for retroactive arrears for that period of time in which Ashleigh has lived with him full-time. This is because Mr. Mastin seeks a retroactive <u>increase</u> in the amount of child support payable.

[159] In this case, Ms. Mastin has never been required to pay any money to Mr. Mastin for child support because, obviously, none of the children lived with him. That was until last September 2018 when Ashleigh moved in with Mr. Mastin. Mr.

Mastin now claims a retroactive increase the amount of child support payable by Ms. Mastin for Ashleigh from September 2018 forward.

[160] The uncontested evidence is that Ashleigh moved in with Mr. Mastin on a fulltime basis beginning September 1, 2018. Yet, Ms. Mastin insisted that Mr. Mastin maintain his monthly support payments for Ashleigh and has further not paid Mr. Mastin any support for Ashleigh. Applying *DBS:*

1. Mr. Mastin clearly did not delay in bringing the claims involving Ashleigh forward;
2. Ms. Mastin's failure to make complete disclosure in a timely fashion is problematic and constitutes blameworthy conduct which must be taken into account;
3. There is a clear inequity associated with accepting support payments from Mr. Mastin for Ashleigh despite the fact that Ashleigh was actually living with Mr. Mastin;
4. The interests of the children are best achieved when the parents recognize the realities of the circumstances involving where their children live and the corresponding support obligations. Ms. Mastin has insisted upon Mr. Mastin paying child support for the children who resided with her. She is entitled to make

> those demands to the extent they conform with reality. However, Mr. Mastin is equally entitled to insist upon support when, in reality, one of the Mastin children actually resides with him.

[161] Subject to a more comprehensive consideration of hardship, I conclude that Ms. Mastin should have paid Mr. Mastin the sum of $1,065.67 per month for September 2018 to December 2018, and $1,074.20 per month from January 2018 to July, 2019 in respect of Ashleigh for a total of $10,707.88.

(e) HARDSHIP ANALYSIS

[162] I will now consider the parents' means and any appropriate considerations around hardship in the context of both all the findings made above (prospective and retrospective) and the overarching need to ensure the children's best interests in the circumstances.

[163] Absent issues around hardship and means, Ms. Mastin obligations would be:

1. $15,637.35 payable to Mr. Mastin in retroactive compensation;
2. $370 per month beginning September 1, 2019 payable to Mr. Mastin. I calculated this figure by offsetting Mr. Mastin's child

support obligations for Olivia while she lives with Ms. Mastin from the child support obligations of Ms. Mastin in respect of Ashleigh while she lives with Mr. Mastin;

3. A total of $1,362.50 per month for 12 consecutive months beginning September 1, 2019 and payable directly to James, Victoria and Ashleigh in respect of post-secondary expenses, as confirmed above. The monthly obligations would not continue for James past September 1, 2020 but would continue for Ashleigh and Victoria in accordance with the directions provided above. New section 7 expenses may also arise for Olivia if she enrols in a post-secondary program.

Mr. Mastin's obligations would be:

1. A total of $77.86 per month payable July 1, 2019 and August 1, 2019. This relates to the offsetting child support obligations for Olivia and Victoria who live with Ms. Mastin this summer, on the one hand, and Ashleigh who lives with Mr. Mastin, on the other; and
2. $945 per month for 12 consecutive months beginning September 1, 2019 and payable directly to James, Victoria and Ashleigh in respect of post-secondary expenses, as confirmed

above. Again, the monthly obligations would not continue for James past September 1, 2020 but would continue for Ashleigh and Victoria in accordance with the directions provided above. New section 7 expenses may also arise for Olivia is she enrols in a post-secondary program.

[164] I recognize that these next few years are expensive as the children move into post-secondary programs and ultimately towards independence. The financial obligations of the parents to their children increase during these critical years. That said and in addition to a full consideration of the financial responsibility each parent has for all four children, I reviewed the income information filed; taken into account the parents' means and concerns over hardship. Having regard to all these issues, I find that full compliance with the relief described above will create an undue hardship for Ms. Mastin. As such, I exercise my discretion as follows:

1. I do not reduce the amounts payable in respect of Olivia as she is under the age of majority. However, Ashleigh is above the age of majority. I exercise my discretion to reduce the monthly child support amount payable by Ms. Mastin to Mr. Mastin for Ashleigh such that it would equal the amounts payable by Mr. Mastin for Olivia. Thus, the offsetting support obligations

would cancel one another. If Ashleigh ceases to live with Mr. Mastin on a full-time basis, the actual table amounts owing by Mr. Mastin for Olivia ($704 per month) shall resume and be payable to Ms. Mastin;

2. I further reduce the amount of Ms. Mastin's total retroactive obligations to Mr. Mastin from $15,637.35 to $11,000. The bulk of these amounts represent monies which Ms. Mastin continued to collect as child support from Mr. Mastin for Ashleigh despite her knowledge that Ashleigh was actually living with Mr. Mastin.

[165] As indicated above, I do not find that the relief granted creates a hardship for Mr. Mastin or that it is otherwise beyond his means.

[166] If the parties are unable to agree on costs, I ask that written submissions be filed within 30 calendar days of receiving this Order and I direct that these submissions be no longer that 5 pages in length, double-spaced.

Keith, J.