

- e. An Order modifying the parenting time exchange location from the Tim Hortons situated at 1494 Innes Road, Ottawa, Ontario to the St-Albert Community Centre situated at 2021 Principale Street, St-Albert, Ontario; and
- f. Costs

[3] The question of the parenting time exchange location was temporarily resolved by order of Justice Doyle, dated September 1, 2023. The exchange location was changed from Ottawa to St. Albert.

[4] A temporary, without prejudice, Order was made for child and spousal support. The motion was adjourned to allow sufficient financial information to be produced before the court to allow an interim determination to be made.

[5] The Respondent brings a motion for the following relief:

- a. An Order dismissing the Applicant's Motion for spousal support and arrears;
- b. A Temporary Order modifying the parenting regime to a one-week/one-week schedule with the exchange of the children being on the Monday after school. If the Monday is a special occasion or a statutory holiday, the parties shall exchange the children at the St-Albert Community Centre at 5:00 p.m.; and
- c. Costs.

Background

[6] There is an acrimonious history to this relationship. The procedural history of this matter is lengthy.

[7] In support of her motion, the Applicant states the following:

- a. She met the Respondent in 2001 in high school in Ottawa. Their relationship started in 2002. She was 15 years old, and the Respondent was 17 years old at the time.
- b. In 2004, the Applicant moved into the home of the Respondent's father.
- c. Following their graduation from high school, the Respondent began to work as a truck driver for a trucking company, Cascades Transport Inc.
- d. Having found stable employment, the parties agreed that she would stay home and handle household duties.
- e. They had two children together: B. K.-B. (D.O.B. December 25, 2013) and B. K.-B. (D.O.B. October 24, 2016).

- f. The parties purchased a home in 2014. It is located at 1285 W Casselman, ON, K0A 1M0.
- g. The second child of the relationship, B. K.-B. (October 24, 2016), was diagnosed with a severe medical disability at birth. This was a difficult situation and very stressful for their relationship. The parties decided that B. K.-B. (October 24, 2016) would be homeschooled, given the COVID-19 pandemic and the health issues. This was based on the recommendations of health care professionals.
- h. B. K.-B. (October 24, 2016) is medically fragile and has numerous complex health issues. She came home on medical equipment (bi-pap and NG feeding tube). Both parties were trained to care for her needs and assess her properly. B. K.-B. (October 24, 2016) was initially on 24-hour supervision due to the medical equipment and health issues. She could not go to a daycare nor have a babysitter as they needed to be fully trained. As the parties could not afford a nurse, the Applicant became the child's primary caregiver since her birth. A physiotherapist, occupational therapist, and nutritionist also participated in B. K.-B. (October 24, 2016)'s care every week.
- i. While the Respondent also took a leave from work to care for B. K.-B. (October 24, 2016), when he returned to work after the birth of B. K.-B. (October 24, 2016), she remained on medical equipment. B. K.-B. (October 24, 2016) continued to require 24-hour supervision as well as multiple weekly therapies.
- j. While not determinative of any issues, for the purpose of narrative, the Applicant alleges the Respondent was unfaithful on more than one occasion. The Respondent also started to consume drugs again. The Respondent began to stay out late after work. The Applicant was the children's primary caretaker, and the Respondent was neglecting the children.
- k. The parties mutually agreed to end their relationship. They separated on November 17, 2021.
- l. The Applicant left the home on July 14, 2022, after being charged with criminal allegations towards the Respondent.
- m. Since the Temporary Order dated August 25, 2022:
 - i. The parties have joint decision-making of the children.
 - ii. The parenting schedule provided that the children are in the care of their father from Wednesday at 4:30 p.m. until Saturday at 7:00 p.m., with exchanges taking place at the Tim Hortons located at 1494 Innes Road, Ottawa.

- n. The current parenting schedule was mutually agreed upon in court on August 24, 2022.
- o. The Applicant has had difficulty locating a third party to perform the transportation for the exchange. As noted above, the exchange location was temporarily modified by the Order of Justice Doyle.
- p. The Respondent always discouraged the Applicant from working or going to college/university as our original plan was for her to go to college after he got his DZ licence. The Applicant was extremely nervous about getting her license due to a serious car accident that she had experienced where the vehicle flipped. The Applicant is working on getting her license.
- q. Currently, all the money the Applicant receives goes towards rent, bills, and household expenses. The Applicant's income is minimal. It consists of social assistance and the child tax benefit.
- r. The Respondent has paid no child or spousal support before the Temporary Order of September 1, 2023.
- s. The financial struggles that the parties experienced were mainly due to the unnecessary amount of time the Respondent took off work to "help" with the children. He willingly took the Applicant's maternity leave as paternity leave as he stated, "If I can take the time off work, then I will".
- t. In terms of unequal standards of living, the Applicant submits that since the separation, the Respondent has purchased a Seadoo, a Skidoo, a new pool, a PlayStation 5, bikes for the children, a generator, new beds for the children, renovated the floor supporting the hot tub and built the children a treehouse amongst many things.
- u. The Applicant strongly opposes changing the parenting schedule to week on/week off. She strongly submits that spending extended amounts of time with the Respondent is not in the children's best interest for numerous reasons. Although he does love the children, she submits that he is incapable of taking the proper measures to ensure they receive the proper care:
 - i. When the Applicant receives the children back, they often have gone without showering the entire visit at their dads, rarely brush their teeth and are unkempt with knotty and greasy hair.
 - ii. A proper diet is not followed while at the Respondent's residence, resulting in abdominal discomfort and distension. Frequently, upon returning from the Respondent, B. K.-B. (October 24, 2016) has bowel issues such that the Applicant needs to feed her prunes to get her back on a proper schedule.

- iii. B. K.-B. (December 25, 2013) is often not fed a proper diet to help with his high cholesterol. B. K.-B. (October 24, 2016)'s psoriasis is left untreated, leaving her in pain and discomfort.
- iv. B. K.-B. (December 25, 2013)'s eye condition is not being treated with her eye patch; therefore, she is at risk for a 3rd eye surgery. The doctors have expressed the need for an eye patch.
- v. A judge suggested a counsellor in March per B. K.-B. (December 25, 2013)'s request, but the Respondent withheld his consent and stated he would look for one himself. After numerous attempts and reminders to the Respondent that B. K.-B. (December 25, 2013) still wanted counselling, the Applicant arranged a counsellor through Valoris. It was not until after arrangements had been made that the Respondent provided the Applicant with papers from his work.
- vi. The children's schoolwork was often incomplete or not submitted during the Respondent's parenting time. The Respondent has pulled the kids from school to partake in activities such as visiting Parc Omega.
- vii. In the fall, during the Respondent's parenting time, the children missed numerous school days while in his care, resulting in a police wellness check that was done per the school's request. The children often tell me the Respondent falls asleep on the couch during the day, leaving them unsupervised. My daughter states he claims he is "resting his eyes." The children have also said they are not allowed to call her while in the Respondent's care, and their daughter has snuck away to call me while hiding in her room under blankets.
- viii. The Respondent refuses to let them bring back specific items and toys she purchased for the children, resulting in the Applicant having to replace them.
- ix. In response to the Respondent's position that he cannot afford after-school care for the children as his work will not accommodate their school hours, the Applicant submits that she is more than capable of accommodating their school schedule.
- x. The Applicant maintains that she cannot currently seek out-of-home employment as the children are often sick and missing weeks of school due to B. K.-B. (October 24, 2016)'s medical fragilities and the children being introduced to germs in a school setting for the first time since 2020. The Applicant submits that she could not take the required time off work to care for them and would be terminated from any position she might receive. She

is currently meeting with Employment Ontario and seeking at-home employment. She is in the process of registering for college in the new year. She indicates that the college will help pay for her first year of college tuition.

- xi. The Applicant submits that the Respondent's proposal of having the children week on/week off would also require another party to participate on his behalf in caring for the children during his time. The Applicant submits that it is in the children's and the Respondent's best interest for the Applicant to have the children during the weeks, and the Respondent to have them bi-weekly with agreed-upon days throughout. This would allow the Respondent to work full hours all week and extra hours as needed. He would be able to work to his full potential and it would eliminate the costs of the daycare program at school and provide ample opportunity for the Respondent to pay off his substantial family debt and the support payments owed.

v. On the issue of spousal support, the Applicant submits that:

- i. She has been a dependant of the Respondent for the entirety of their relationship aside from the odd job during my teenage/early adult years. The parties had a mutual agreement that he would be the breadwinner and she would be the homemaker.
- ii. She has not been able to work since having the children. When B. K.-B. (December 25, 2013) was born, it was more logical and costed less to have her stay home and take care of him as this was a mutual agreement. Their daughter was born with severe medical complications and required 24-hour care for the first few years of her life. A babysitter was not sufficient as both the Respondent and the Applicant had to be trained medically to care for her while on bi-pap and a nasogastric feeding tube as well as the problems that could arise while being on such medical equipment. B. K.-B. (October 24, 2016) continued at home therapies until 2020.
- iii. COVID-19 required her son to stay home from school as well and the Applicant began schooling the children asynchronously due to our daughter's severe medical fragilities. It was not until September 2023 that B. K.-B. (October 24, 2016) was able to try and attend in-person school. Since enrollment, she has been sick very often and spends almost as much time home sick from school as she attends school.

[8] In support of his motion, the Respondent states the following in relation to parenting time:

- a. There is a history of violence from the Applicant towards the Respondent. The parties have great difficulty communicating together due to their history. The Applicant mother is constantly trying to put the Respondent in harm's way, financially, criminally, and physically. A toxic environment has been created by Respondent over the past ten years.
- b. The mother does not have any means to travel, which is very concerning in case of emergency. There is no public transport in St-Albert, Ontario. There have been multiple conflicts relating to the exchange of the children.
- c. The Applicant is not able to make doctor appointments and neglects the medical needs of the children due to her lack of support and ability to travel, leaving the Respondent with the responsibility of travel or out-of-pocket expenses. B. K.-B. (October 24, 2016) was left untreated with a UTI for a week that was not disclosed to the Respondent by the Applicant. B. K.-B. (October 24, 2016) complained of the discomfort and informed the Respondent that the Applicant was not able to take her to a doctor. The Respondent immediately had to take his child to the doctor to get her a prescription. The Applicant denies this assertion in paragraph 19 of her affidavit dated December 11, 2023.
- d. Due to the conflicts, changing the parenting schedule to a week about parenting schedule would facilitate the exchange and minimize the exchanges. The exchange would be on a Monday. During the school year, the children would be dropped off with the school transportation, avoiding any exchange between the Applicant and the Respondent. If the Monday is a special occasion or a statutory holiday, the exchange as per ordered by Justice Doyle at the St-Albert, Community Centre at 5:00 p.m.
- e. A week about parenting schedule would be in the best interest of the children for the following reasons:
 - i. It would limit the in-person exchanges between the parties. The parties' relationship was and is still very toxic. The Respondent submits that the children should not continue to be put in these circumstances. As a continuing example, the Applicant made a request for the parties' child to have counselling. Consent forms were provided to be filled out so that counselling would be covered under the Respondent's benefit. The Applicant has still not signed the forms. The Applicant describes a different version in paragraph 21 of her affidavit dated December 11, 2023.
 - ii. The children would benefit from equal time with both parents. The Respondent submits that nothing prevents that from happening. The Applicant resides in St-Albert and the Respondent resides in Casselman.

- iii. It would permit the Applicant to take her personal responsibilities seriously, get employment and make proper arrangements for her to obtain her driver's licence, being one week out of two without caring for the children.
- iv. It would permit the Respondent to put in full hours at work during the weeks he does not have the children, to work at his full potential and even be able to put in overtime if needed. This would ultimately benefit the children and permit the Respondent to pay off significant family debts. His employer can accommodate limited work hours during his week with the children allowing him to cancel the after-school daycare program, which would help him save money and he would continue paying for daycare in the mornings.
- v. The children have been alternating getting sick quite often. They have had multiple appointments, causing the Respondent to not be able to attend work during his parenting time, diminishing his potential income. If he would be able to see his children more frequently, alternative arrangements could be made while under his care and custody.
- vi. For the past year, the children did not enjoy any extra time with their father during long weekends. The Respondent has all statutory holidays off from work. Despite this, the children have never benefited from being with their father on holidays/long weekends to spend quality time together. The Applicant only permitted the Respondent to spend 2 hours with the children on Father's Day.

[9] The Respondent makes the following submissions relating to spousal support:

- a. The Respondent submits that while the Applicant may have a need for spousal support, he does not have the means to pay it to the Applicant. Despite the Temporary Order dated September 1, 2023, ordering spousal support of \$500.00 on a temporary and without prejudice basis, no payment has been made. The Respondent maintains that he did not have the means to comply.
- b. The Respondent submits that his annual income was \$53,929.75 in 2022 but his monthly expenses exceed \$5,400.89. Moreover, he submits that these expenses do not include B. K.-B. (December 25, 2013)'s glasses, lawyer fees and any other out of pocket expenses. More importantly, these expenses don't include any outstanding balances that are still due (house taxes, property taxes, mortgage etc.)
- c. The Applicant had various jobs over the years such as telemarketing, worked at a daycare center and was employed as an office administrator from November 2008 to December 2013. The Applicant decided not to return to her employment after the birth of her children.

- d. The Applicant has always been capable of finding employment and getting her driver's licence. She has decided to ignore the Respondent's encouragement to find employment throughout the years. The Applicant kept using the "victim card" and used B. K.-B. (October 24, 2016)'s medical condition as an excuse for not working. The Applicant has not started the process of getting her driver's licence. During the relationship and after the children were born, the Applicant started an online business from home selling nail polish with her sister to try and earn an at-home income.
- e. The parties were in a relationship for eleven years before the children were born. The Applicant had many opportunities to obtain employment. She supported herself through various jobs while also receiving social assistance. On or about April 1, 2004, the paternal grandmother purchased a home in Casselman, whereby the Respondent and the Applicant resided in a second dwelling on the property from the date of purchase. All utilities were connected to the paternal grandmother's home and were paid by the paternal grandmother. No rent was paid to the paternal grandmother. When the Respondent bought the property, 1285 Route 500 West, the paternal grandmother provided the down payment and paid for the furniture. The Applicant was, therefore, not supported financially by the Respondent.
- f. The Respondent took a paternity leave for one year and a half when their son, B. K.-B. (December 25, 2013), was born as well as a leave for parents with critically ill children for two years in order to take care of the parties' daughter who was born with serious medical issues. The Respondent learned several medical techniques to be able to care for her.
- g. The Respondent financially supports himself on a paycheque-to-paycheque basis and would be at risk of losing the family home if he had to pay the amount of spousal support requested by the Applicant.
- h. The Respondent is unable to work to his full potential as a result of the Applicant denying a 50/50 parenting schedule. The Applicant was not agreeable with a parenting schedule that would accommodate the Respondent's work schedule resulting in a loss of hours, after using up all his vacation time and sick days to spend time with the children. The Respondent works a total of four days a week from Monday to Thursday and is home on Fridays with the children. His mother watches the children on Thursdays.
- i. The Respondent was not approved for a subsidized spot for the before and after school program located at the Cambridge public school. He has to pay full costs for the care of both children to help accommodate his work hours.
- j. The parties were struggling financially even before the separation. The Applicant was encouraged to find employment because the Respondent was struggling

financially. In September 2019, the Respondent consolidated a loan to pay off all the family debts including but not limited to, arrears of the property taxes owed to the Municipality, the Visa, the Bell account and Hydro One account. The notices of suspension and/or notice of pre-cancellation and tax arrears notices were sent to the parties starting during the year 2018 until the Respondent consolidated the debts via a loan for which he is paying. Furthermore, the Applicant upgraded her credit card limit causing more debts to the parties.

- k. The Respondent is currently paying for the Applicant's benefits through his employment, which is deducted from his paycheck. This is saved money for the Applicant on a yearly basis that she can use for her own benefit.
- l. The Applicant received the Child Tax Benefit (CTB) and never offered any of the funds to help with any of the costs pertaining to both children while both parties were residing together. The Applicant used the CTB for her own needs such as take out food, hair dye, marijuana, alcohol, and cigarettes. The Applicant is currently receiving all benefits from the federal and provincial government, including GST and the Canada Child's Benefits, as well as any additional tops-ups the government has given out to help support families during the COVID-19 pandemic.
- m. On or about February 5, 2023, the Respondent was charged by the Ontario Provincial Police for animal cruelty to the family dog. The charge was based on allegations brought to the police by the Applicant. The Respondent asserts that the allegations were based on an opinion connected to the Applicant and contradicted by the long-standing family veterinarian. The Applicant denies these assertions. The Applicant had the dog euthanized.
- n. The Respondent submits that as of May 3, 2023, the charges were dropped by the OPP. The Respondent submits that this was a malicious attempt by the Applicant to gain evidence to portray the Respondent in a negative manner. The Respondent had to pay significant legal costs to defend himself resulting in more financial hardship.
- o. Despite the written submission stating that the charges were dropped by the OPP, in oral argument, the Respondent clarified that he pleaded guilty to an offence under the *Provincial Offences Act* in relation to the foregoing allegations.
- p. The Respondent takes issue with the integrity of the Applicant's financial reporting:
 - i. The Applicant has declared to CRA an income of \$1,730.00 for the year 2022.
 - ii. The Respondent alleges fraud by the Applicant on the government. The Applicant claimed in income tax returns that she was living at her father's address in Ottawa. In paragraph 21 of the Applicant's affidavit dated

November 28, 2022, she admits to residing in the province of Quebec. She was living at her mother's following the date she had to leave the residence. The Applicant was not working, not paying any bills and the Respondent paid her cell phone. The Applicant was fully supported. The Applicant has received social assistance from Ontario while residing in the province of Quebec. The Respondent submits that this constitutes on the government as she was not living in the province of Ontario until the end of June 2023 when she moved to St. Albert. Similarly, the Applicant claimed rent to the CRA on her taxes back in 2006 and had her father write a supporting letter to the CRA claiming that she lived with him, when in fact, she was living with the Respondent.

Child Support

[10] Federal and provincial *Child Support Guidelines* (“Guidelines”) are the regulations that prescribe the quantum of child support based on the number of children and the payor’s income. The stated objectives of the Guidelines are to

- a. set a fair standard of support so that children benefit from the parents’ financial means after separation;
- b. reduce conflict between parents by making the calculation of child support more objective;
- c. improve efficiency and encourage settlement by giving courts and parents guidance in establishing child support; and
- d. ensure consistency in the treatment of parents and children in similar circumstances (Ontario Guidelines, s. 1).

[11] As the parties were not married, section 33 of the *Family Law Act* (“*F.L.A.*”) applies.

[12] The care of the children is shared between the parties.

[13] The 2022 income of the Respondent was \$53,929.75. The 2022 income of the Applicant was \$1,730.00.

[14] Based on the income of the parties and the shared parenting, the Guidelines provide that monthly child support payable by the Respondent should be \$822.00 monthly.

[15] The Respondent submits that the Applicant should continue to receive the Child Tax Benefit (CTB) and that his monthly child support payments be set at \$250.00 per month. The Applicant’s Form 13 Financial Statement states that the CTB (or other tax rebates) is \$1660.67 monthly.

[16] The Applicant supported this submission in the limited context that she continued to seek spousal support in the amount of \$1,039.00 monthly. In juxtaposition, the Respondent submits that he does not have the means to pay any spousal support at all.

[17] The Court cannot appropriately base the determination of the amount of child support on the Respondent's submission, supported by the Applicant, that child support payments should be reduced in light of the Applicant receiving the entirety of the Child Tax Benefit. The receipt of the Child Tax Benefit by one or both of the parties is beyond the control of the court. Based on the shared parenting situation and the respective incomes, I find that it is appropriate, on an interim basis, to award child support to the Applicant in the amount of \$822.00 per month, commencing January 1, 2024.

The Law Relating to Spousal Support

[18] Section 33 *F.L.A.* sets out the purposes for support and how to determine the amount:
33 (1) A court may, on application, order a person to provide support for his or her dependants and determine the amount of support.

...

(8) An order for the support of a spouse should,

- (a) recognize the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
- (b) share the economic burden of child support equitably;
- (c) make fair provision to assist the spouse to become able to contribute to his or her own support; and
- (d) relieve financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home).

(9) In determining the amount and duration, if any, of support for a spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the dependant's and respondent's current assets and means;
- (b) the assets and means that the dependant and respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to his or her own support;
- (d) the respondent's capacity to provide support;

- (e) the dependant's and respondent's age and physical and mental health;
- (f) the dependant's needs, in determining which the court shall have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;
- (h) any legal obligation of the respondent or dependant to provide support for another person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;
- (j) a contribution by the dependant to the realization of the respondent's career potential;
- (k) Repealed: 1997, c. 20, s. 3 (3).
- (l) if the dependant is a spouse,
 - (i) the length of time the dependant and respondent cohabited,
 - (ii) the effect on the spouse's earning capacity of the responsibilities assumed during cohabitation,
 - (iii) whether the spouse has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents,
 - (iv) whether the spouse has undertaken to assist in the continuation of a program of education for a child eighteen years of age or over who is unable for that reason to withdraw from the charge of his or her parents,
 - (v) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support,
 - (v.1) Repealed: 2005, c. 5, s. 27 (12).
 - (vi) the effect on the spouse's earnings and career development of the responsibility of caring for a child; and

(m) any other legal right of the dependant to support, other than out of public money.

(10) The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

[19] As set out by the Supreme Court of Canada in *Bracklow v. Bracklow*, [1999] S.C.J. No. 14 (S.C.C.), there are three bases for entitlement to spousal support being compensatory, contractual or non-compensatory support: *Lamb v. Watt*, 2017 ONSC 5838, at paragraph 19.

[20] In *Samis (Guardian of) v. Samis*, [2011] O.J. No. 2381, Justice Sherr analyzes the legal principles in dealing with temporary spousal support. At paragraph 43, Justice Sherr refers to *Kowalski v. Grant*, 2007 MBQB 235, 219 Man. R. (2d) 260, 43 R.F.L. (6th) 344, [2007] M.J. No. 386, 2007 CarswellMan 422 (Man. Q.B.), where the court sets out the following principles in dealing with temporary spousal support motions:

1. Interim support is to provide income for dependent spouses from the time the proceedings are instituted until trial.
2. The court need not conduct a complete inquiry into all aspects and details to determine what extent either party suffered economic advantage or disadvantage as a result of the relationship. That is to be left to the trial judge.
3. Interim support is a holding order to maintain the accustomed lifestyle if possible pending final disposition as long as the claimant is able to present a triable case for economic disadvantage.
4. Interim support is to be based on the parties' means and needs, assuming that a triable case exists. The merits of the case in its entirety must await a final hearing.

[21] Justice Sherr goes on, at paragraph 44, to review *Robles v. Kuhn*, 2009 BCSC 1163, [2010] B.C.W.L.D. 1935, [2010] W.D.F.L. 1330, [2009] B.C.J. No. 1699, 2009 CarswellBC 2239 (B.C. Master), where the court added the following considerations:

[22]

1. On interim support motions, needs and ability take on greater significance.
2. On interim motions, the need to achieve self-sufficiency is of less importance.
3. Interim support should be ordered within the range of the Spousal Support Advisory Guidelines, (Ottawa: Minister of Justice and Attorney General of Canada, July 2008), unless exceptional circumstances dictate otherwise.

4. Interim support should only be ordered where a *prima facie* case for entitlement has been set out.

[23] *Prima facie* is defined in *Black's Law Dictionary* (9th ed.) as being "at first sight; on first appearance but subject to further evidence or information" or "sufficient to establish a fact or raise a presumption unless disproved or rebutted": *Lamb v. Watt, supra*, at paragraph 22.

[24] An order for temporary spousal support is not a final decision but a temporary order intended to address short term hardship which has arisen from the breakdown of the marriage: *Lamb v. Watt, supra*, at paragraph 25.

[25] On a temporary motion the support claimant is required to establish a *prima facie* case for entitlement: See: *Politis v. Politis*, 2015 ONSC 5997 at para 15. *Politis* also reviews the principles applicable to an interim motion for spousal support at paragraph 14:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance;
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it;
3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best;
4. The courts should not unduly emphasize any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise;
7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out;
8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support

[26] *Politis* was followed in *Robson v. Pellerin*, 2019 ONSC 6729.

[27] In *Liddell-MacInnis v. MacInnis*, 2021 ONSC 1787, at paragraphs. 65, 67 & 68, Justice Kraft summarized the following additional principles that apply on a motion for interim spousal support

- a. The party claiming temporary spousal support has the onus of establishing that there is a triable (*prima facie*) case, both with respect to entitlement and quantum. The merits of the case in its entirety are to be dealt with at trial.
- b. In the event that a spousal support claimant cannot establish an arguable case for entitlement to spousal support, the motion for temporary relief should be dismissed, even if the claimant has need and the other party has the ability to pay.
- c. The court is not required to carry out a complete and detailed inquiry into all aspects and details of the case, or to determine the extent to which either party suffered economic advantage or disadvantage as a result of the relationship or its breakdown. That task is for the trial judge;
- d. The primary goal of interim spousal support is to provide income for dependent spouse from the time the proceedings are commenced until the trial. Interim support is meant to be in the nature of a “holding order” to, insofar as possible, maintain the accustomed lifestyle pending trial.
- e. Assuming that a triable case exists, interim support is to be based primarily on the motion judge’s assessment of the parties’ means and needs. The objective of encouraging self-sufficiency is of less importance; and
- f. The Spousal Support Advisory Guidelines (“SSAGs”) is a non-binding guideline that provides a “valuable litmus test” for assessing both the range within which spousal support, whether interim or final, should be ordered and the duration of such support.

[28] It must be kept in mind that an interim support award is a temporary order only and inevitably imperfect. *Cardoso v. Cardoso*, 2013 ONSC 5092 Canlii. It is meant to provide “a reasonably acceptable solution to a difficult problem until trial”: See: *Chaitas v. Christopoulos*, [2004] O.J. No. 907 (S.C.J.) per Justice Sachs.

[29] It is clear that income discrepancy alone does not create a non-compensatory claim: see *Fisher v. Fisher*, 2009 ABQB 85 (Alta. Q.B.) and *Calvert v. Stewart*, 2009 CarswellOnt 671 (Ont. S.C.J.). There must be some evidence that the disadvantage to the recipient spouse must arise from the breakdown of the marriage: *Lamb v. Watt*, supra, at paragraph 27.

[30] The Supreme Court of Canada stated in *Bracklow*, supra, that non-compensatory support may arise from the “mere fact that a person who formally enjoyed inter-spousal entitlement to support now finds herself or himself without it.” [para. 41]: *Lamb v. Watt*, supra, at paragraph 28.

[31] In assessing the appropriateness of an interim spousal support award, consideration should be given to the payment by one party of joint debts. Where the payor makes such payments, these will reduce the respondent's means and also the applicant's needs: see *Joyce v. Joyce* 2015 ONSC 4311 (CanLII).

[32] At the end of the day, courts have an overriding discretion, and the exercise of such discretion will depend on the particular facts of each case, having regard to the factors and objectives designated in the Act: *Moge v. Moge, supra*, (p. 866); *Bracklow v. Bracklow, supra*, at paragraph 53.

Analysis of Interim Spousal Support

[33] I have considered the objectives of a support order, as set out the *F.L.A.*

[34] I have also considered the Spousal Support Advisory Guidelines, and the relevant jurisprudence. They state at page 15;

The Advisory Guidelines **are intended to apply to interim orders** as well as final orders. The interim support setting is an ideal situation for the use of guidelines. There is a need for a quick, easily calculated amount, knowing that more precise adjustments can be made at trial. Traditionally, interim spousal support was based upon a needs-and-means analysis, assessed through budgets, current and proposed expenses, etc. All of that can be avoided with the SSAG formulas, apart from exceptional cases.

In *D.R.M. v. R.B.M.*, 2006 BCSC 1921, Justice Martinson set out in detail the rationale for the application of the Advisory Guidelines to interim spousal support orders, concluding:

[19] They are a useful tool to have when determining interim spousal support. By focusing on income differences they provide a helpful measure of needs and means. Their use is consistent with the purposes of interim orders: to bridge the gap between the start of the litigation and the time when a resolution is reached at trial or by agreement; to avoid lengthy and costly interim litigation; to move the litigation to a timely resolution; and to reduce conflict

[35] I note that no single objective set out in the *F.L.A.* is paramount.

[36] As set out in *Knowles v. Lindstrom*, [2015] O.J. No. 1059, the accustomed standard of living during a relationship is an appropriate part of context upon which need should be assessed.

[37] The Respondent does not dispute the issue that the Applicant is in a situation of financial need. Instead, the argument of the Respondent is focused on his inability to make both child and spousal support payments.

[38] I am cognizant that at this interim stage, it is not necessary for me to determine if there is entitlement. I also need not conduct a full inquiry to determine to what extent either party suffered an economic advantage or disadvantage as a result of the relationship. The Trial Judge will conduct that inquiry.

[39] In determining the quantum of spousal support payable, I have considered the following:

- a. The Applicant has virtually no income. Ontario Social Assistance is not income for the purposes of determining support. The parties propose that the Applicant continue to receive the entire CTB although in cases of shared parenting, both parents usually receive a share directly at source;
- b. The length of the relationship (approximately 20 years);
- c. The Applicant's financial statement, her budget, and her current circumstances which include:
 - i. Her current monthly income is approximately virtually non-existent (she receives social assistance (\$504.15 monthly) and the CTB (\$1660.67 monthly));
 - ii. Monthly expenses of \$3,847.19 including:
 1. Housing (Rent and renter's insurance): \$1,885.00
 2. Utilities (Heat, electricity, telephone, internet) : \$226.56
 3. Household (Groceries, household supplies, restaurants, pet care, laundry): \$1,000.00
 4. Transportation: \$100.00
 5. Health care: \$95.00
 6. Personal (clothing, beauty, alcohol, tobacco entertainment, and gifts): \$220.00
 7. Other (school fees, clothing for children, debt payment): \$320.00.
 - iii. According to the evidence provided, after payment of her expenses, Ms. Kinross is in a deficit situation. Her budget of annual expenses is \$46,166.28.
 - iv. She has no assets.
- d. Mr. Bleau's ability to pay. In addressing his ability to pay, I have reviewed Mr. Bleau's financial statement and his current circumstances which include:
 - i. The Respondent's annual income in 2022 was \$53,929.75.

ii. His monthly expenses (\$6, 459.60) include:

1. Automatic deductions: \$952.17
2. Housing (mortgages, property taxes, insurance): \$1,571.22
3. Utilities: (Heat, electricity, cellphone, cable, internet) \$660.00
4. Household (Groceries, household supplies, restaurants, pet care, laundry, gifts): \$695.00
5. Transportation (Gas, car insurance, repairs and maintenance): \$1,453.00
6. Child care: \$0
7. Health care: \$183.87
8. Personal (Clothing, alcohol, tobacco, entertainment, gifts): \$300.00
9. Other (Life insurance, RRSP/RESP, clothing, medical, pool wayer (*sic*)): \$643.90

iii. I note that the Respondent's affidavit indicates monthly amounts of \$200.00 per month for "pool wayer" which I believe to be pool water. Additionally, \$275.00 monthly is listed for "4 years medical". I also note that the cell phone is listed at \$224.00 monthly. Of note, the Respondent lists monthly expenses of \$1,000.00 for gas and oil under transportation.

iv. In terms of debt, the Respondent lists \$974.00 monthly for a mortgage, which is also covered under housing above. Additionally, he indicates that he makes monthly payments of \$343.92 towards a loan of \$11,163.02 that consolidated the Respondent's debt including debts of the previous relationship.

v. The Respondent lists the following unpaid support amounts: property taxation \$4,382.00 and \$700.00, Hydro \$3,400.00 and Bell \$200.00. These amounts are listed in the consolidated loan from RBC, above.

vi. The Respondent has a net worth of \$96,820.05 most of which is attributable to equity in the house in Casselman.

e. Ms. Kinross being accustomed to the standard of living during the relationship; and

f. Ms. Kinross' current ability to become economically self-sufficient. This will not be immediate. She is in the course of upgrading her skills by engaging in a college program. She can, however, make greater efforts to obtain current employment.

g. Mr. Bleau's effort to consolidate the debt from the relationship noted above as amounts owing of property tax, as well as amounts owing to Hydro and Bell. In assessing the appropriateness of an interim spousal support award, consideration should be given to the payment by one party of joint debts. Where the payor makes

such payments, these will reduce the Respondent's means and also the Applicant's needs: see *Joyce v. Joyce* 2015 ONSC 4311.

- h. Both parties are living beyond their means. The Respondent makes this point in oral argument and it is reflected in their financial.
- i. The allegations of violence in the relationship prior to separation.

[40] Based on all of the above, I find that it is appropriate, on an interim basis, to award spousal support to the Applicant in the amount of \$1,077.00 per month, commencing February 1, 2024. This is in accordance with the mid-range of the Spousal Support Guidelines.

Arrears

[41] The question of arrears was not argued before the court. Given the financial circumstances of the parties, the question of arrears for both child and spousal support is deferred to the Trial Judge.

[42] Motions for interim support typically deal with prospective matters: *Mohamed v. Mohamed*, 2020 ONSC 6567 (Ont. S.C.J.). The courts tend to favour leaving issues respecting retroactive support to the Trial Judge. He or she will be in a better position to determine the matter on a more fulsome record: *Abdur-Rashid v. Abdur-Rashid*, 2021 ONSC 1117 (Ont. S.C.J.), additional reasons 2020 CarswellOnt 19705 (Ont. S.C.J.).

[43] The Respondent has conceded that he has not complied with the order dated September 1, 2023, as he has not paid spousal support to the Applicant in the amount of \$500.00 monthly commencing September 1, 2023. At the time of the hearing of the motion, \$2,500.00 was owed pursuant to that order. The Court orders that arrears in relation to the order dated September 1, 2023, be fixed at \$2,500.00 to be paid by the Respondent in favour of the Applicant at a rate of \$50.00 per month until paid in full, commencing February 1, 2024.

Parenting

[44] The endorsement dated September 1, 2023, provides that the exchange of the children will take place at the St-Albert Community Center at 201 Principale Street, St. Albert, ON, K0A 3C0. This was not revisited in submissions by the parties.

[45] The submissions were focused on parenting time.

[46] The Applicant is strongly opposed to the one-week on/one-week off proposed by the Respondent. She points to various aspects of the Respondent's parenting of the children. Her submissions do not persuade me.

[47] Since the consent, temporary, and without prejudice order dated August 24, 2022, the parties have had shared decision-making. The children were under the care and custody of the father on Wednesdays from 4:30 p.m. until Saturdays at 7:00 p.m.

[48] Normally, the court would be hesitant to make an order that changes the existing parenting schedule (*status quo*) unless there were compelling circumstances that would justify the change as being in the best interests of the children.

[49] However, I conclude that it is in the best interests of the children that an Interim Order issue, modifying the parenting regime to a one-week/one-week schedule with the exchange of the children being on the Monday after school. If the Monday is a special occasion or a statutory holiday, the parties shall exchange the children at the St-Albert Community Centre at 5:00 p.m.

[50] The factors cited by the Respondent in support of this proposal are compelling. I conclude that it is in the best interests of the children that parenting time be on a one-week/one-week basis for the following:

- a. It would limit in-person exchanges between the parties. The parties' relationship was and is very conflictual. This is revealed in the affidavits before the court. A one-week/one-week schedule is more easily implemented and will limit contact between the parents.
- b. It will provide greater stability for the children at school with the exchange of parenting responsibilities at the beginning instead of in the middle of the week. While a Sunday handover would be preferable in this regard, a Monday parenting change will limit in-person exchanges.
- c. The children will benefit from equal time with both parents.
- d. It will permit the Applicant to better engage in her planned educational endeavours.
- e. It will permit the Applicant to work towards obtaining her driver's licence in a dedicated fashion in one week out of two.
- f. It will allow her to obtain employment and work one week out of two.
- g. It will permit the Respondent to work full hours during the weeks he does not have the children. It will allow him to increase his hours worked and, thus, work at his full potential and work overtime if needed. This would ultimately benefit the children and permit the Respondent to repay significant family debts. It will allow him to meet his spousal support payments as ordered by the court.

- h. It will allow the Respondent to accommodate better the medical appointments of the children given their medical situation and their recent frequent illnesses.
- i. It will allow the children to enjoy extra time with the Respondent during long weekends more equitably.

Enforcement by Family Responsibility Office

[51] The Family Responsibility Office shall enforce the order of the court concerning support payments. A Support Deduction Order shall be issued.

Disposition

[52] On an Interim Basis, an Order is to issue as follows:

- a. The Respondent, Mr. Bleau, shall pay child support to the Applicant, Ms. Kinross, on an interim basis, in the amount of \$822.00 per month, commencing February 1, 2024.
- b. The Respondent, Mr. Bleau, shall pay spousal support to the Applicant, Ms. Kinross, on an interim basis, without prejudice to either party to argue the issue of entitlement, quantum and duration at trial, for \$913.00 per month, commencing February 1, 2024;
- c. In relation to the non-payment of spousal support following the Order dated September 1, 2023, arrears from September 1, 2023 to January 31, 2024 shall be fixed at \$2,500.00. Commencing February 1, 2024, the Respondent shall pay arrears in relation to the order dated September 1, 2023, in favor of the Applicant at a rate of \$50.00 per month until paid in full.
- d. The parties shall alternate primary parenting responsibility for the children on a one-week/one-week schedule. Exchange of the children take place on Monday after school. If the Monday is a special occasion, statutory holiday, the parties shall exchange the children at the St-Albert Community Centre at 5:00 p.m.
- e. The Family Responsibility Office shall enforce the Order of the court concerning support payments.
- f. The question of arrears for both child support and spousal support, apart from those flowing from the Order of September 1, 2023, is deferred to trial.

[53] The success on this motion is mixed. There shall be no order for costs for the motion.

Released: February 5, 2024

A handwritten signature in blue ink, appearing to read "B. C. J. Holowka", written over a horizontal line.

The Honourable Justice Brian C. J. Holowka

FC 2022-131/2024 ONSC 766

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Ashley Kinross

Applicant

– and –

Curtis Edward Bleau

Defendant

REASONS FOR JUDGMENT

The Honourable Justice Brian C. J. Holowka

Released: February 5, 2024