

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

C.L.C.

Plaintiff

AND:

J.C.W.

Defendant

BEFORE: Gerow J.

Heard: September 13, 2005

Judgment: October 24, 2005

Counsel: T.T. Luchies for Plaintiff
No one for Defendant

- 1 Ms. C and Mr. W have two children, A. age 18 and S. age 15. A consent order regarding custody, guardianship and child support was entered into by the parties in April 2000. At the time of the consent order both parties were represented by counsel. Mr. W has not been paying child support in accordance with the order. He has moved from the jurisdiction, and since June 2004 has paid no child support.
- 2 On this summary trial, Ms. C seeks an order that Mr. W make a lump sum payment for the arrears and ongoing child support and expenses. In the alternative, Ms. C seeks an order that Mr. W provide security in lieu of a lump sum payment. As well, she seeks an order that Mr. W produce annual income information, including information regarding his investment accounts. Finally Ms. C seeks legal costs of this application in the amount of \$1,200 and legal costs in the amount of \$9,184.22 which she incurred preparing a response to a motion which Mr. W subsequently abandoned when he left the jurisdiction.
- 3 The issues are:
 1. What is the amount of the arrears of child support and extraordinary or special expenses?
 2. Should a lump sum order be made for ongoing child support and special or extraordinary expenses?
 3. If a lump sum order is appropriate, in what amount?
 4. Should Mr. W be ordered to provide annual financial information?
 5. Is Ms. C entitled to legal costs for this motion and for preparing a response to the motion Mr. W abandoned?

What is the amount of the arrears of child support and extraordinary and post secondary education expenses?

4 The consent order entered into between the parties provides that Mr. W and Ms. C share joint custody and joint guardianship of the children. The children are to live with Ms. C and Mr. W is to have liberal and generous access. Mr. W agreed to pay \$775 a month child support for the two children commencing on January 1, 2000, pursuant to the *Federal Child Support Guidelines*, S.O.R./97-175 (the '*Guidelines*') based on an annual income of \$56,200. The amount of child support was to be reviewed on May 1, 2001 and yearly thereafter based on Mr. W's guideline income. Any agreed upon extraordinary or special expenses are to be shared equally by Mr. W and Ms. C, taking into account any financial contribution of the children. Ms. C's income is \$65,000.

Arrears in child support payments

5 Ms. C asserts that Mr. W has not paid child support in accordance with the order. She says that from April 2001 to June 2004 he paid \$555 per month. Since June 2004 Mr. W has refused to pay any child support because Ms. C has refused to let the children visit him. Mr. W is no longer living in Canada and will not tell Ms. C where he is living or give her any contact information other than an email address. As a result, Ms. C will not send the children to visit him.

6 The emails between the parties indicate a good deal of acrimony in dealing with the issues of support and access.

7 In April 2004 Ms. C requested that Mr. W pay the arrears in child support which she calculated as \$7,920, and extraordinary expenses in the amount of \$10,248.71. Her evidence is that despite her request, Mr. W has refused to pay either the arrears or any of the extraordinary expenses. Since June 2004 she has received no monies from him, either for child support or extraordinary expenses.

8 Mr. W paid \$775 per month for one year following the entering into of the consent order. He paid \$555 per month for the next three years resulting in a short fall of \$7,920. The evidence is that Mr. W last paid monies in June 2004 and since then has made no payments of child support for 16 months, including October 2005. The total amount of arrears owing is \$7,920 plus \$12,400 (16 months x \$775) for a total of \$20,320.

9 Before an order for a change to child support or a cancellation of arrears will be granted there must be evidence of a material change in circumstances since the original order was made, which must be significant and long lasting. There is a substantial onus on the person seeking the variation to show that there has been a significant and long lasting change in circumstances: *Earle v. Earle*, [\[1999\] B.C.J. No. 383](#) (B.C. S.C.) at ¶ 19.

10 Mr. W has presented no evidence of a change in circumstances which would warrant an order to vary maintenance or cancel arrears of support. Therefore, Ms. C is entitled to an order that Mr. W pay her arrears in child support in the amount of \$20,320.

Arrears in special and extraordinary expenses

11 Ms. C is seeking one half of the special or extraordinary expenses for the children. She calculates that the expenses from 2000 to the date of the hearing are \$40,426.48 for A. and \$18,609.75 for Savannah. She is seeking an order that Mr. W pay one-half the total amount of \$59,036.23 or \$29,518.12.

12 In the consent order, the parties agreed to share equally the special or extraordinary expenses they agreed to. There is no evidence that Mr. W agreed to the special or extraordinary expenses Ms. C is claiming.

13 Section 88 of the *Family Relations Act*, R.S.B.C. 1996, c. 128 provides:

(1) Each parent of a child is responsible and liable for the reasonable and necessary support and maintenance of the child.

(2) The making of an order against one parent for the maintenance and support of a child does not affect the liability of another parent for the maintenance and support of the child or bar the making of an order against the other parent.

14 Section 93 provides:

(1) Subject to the *Divorce Act* (Canada), a court may make an order on application, or if the court makes or refuses an order for judicial separation or dissolution of marriage or a declaration that a marriage is null and void, requiring a party to the proceeding to discharge his or her liability

(a) under section 88 by paying to the person designated in the order the amount the court ascertains, using the child support guidelines, and

(2) Despite subsection (1)(a), a court may make an order to discharge a liability under section 88 by paying to the person designated in the order an amount that differs from the amount the court ascertains, using the child support guidelines, if the court is satisfied that

(a) provisions in an order, a judgment or a written agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit the child, or that special provisions have otherwise been made for the benefit of the child, and

(b) the application of the child support guidelines would be inequitable in the circumstances of the provisions to which paragraph (a) refers.

(3) If the court makes an order under subsection (2), it must record its reasons for having done so.

15 The relevant provisions in Section 7 of the *Guidelines* are:

(1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

...

(c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;

(e) expenses for post-secondary education; and

(f) extraordinary expenses for extracurricular activities.

Sharing of expense

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

16 The special and extraordinary expenses claimed for A. are:

2000

Summer camps		\$ 750.00
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2001

Summer camp for \$768 and a biology school trip for \$265		1,033.00
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2002

UVic engineer training conference	190.00	
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UVic rowing camp	165.00	
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Recreational leadership	105.00	
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Winter rowing program	260.00	
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Total		720.00
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2003

UVic engineer training conference	190.00	
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Summer rowing program	246.10	
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Recreation leadership	105.00	
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Competitive rowing	525.00	
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Fall rowing program	260.00	
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Tri-certification training	190.00	
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Swim instructor courses	860.00	
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Rowing program	181.90	
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Winter rowing program	101.65	
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Medical expenses	197.85	
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Total		2,857.50
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2004

Young Drivers of Canada	919.13	
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Driver's test	105.00	
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Spring rowing	577.80	
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S.A.T. prep course	400.00	
S.A.T.	100.00	
National Rowing Championships	3,025.00	
Brentwood College	10,754.61	
S.A.T.	365.68	
Princeton application	88.32	
Total		16,335.54

2005

Spring rowing	2,476.75	
Brentwood College	308.00	
Placement exams	224.00	
SAT	40.00	
Princeton University	15,641.69	
Physiotherapy	40.00	
Total		<u>\$18,730.44</u>

GRAND TOTAL \$40,426.48

17 The special and extraordinary expenses claimed for S. are:

2000

Oak Bay camps	\$ 103.00	
YWCA camp	291.30	
Kidco Dance camp	97.75	
Oak Stables Horseback camp	250.00	
Gymnastics	650.00	
Total		1,392.05

2001

Summer camps	476.00	
Gymnastics	891.00	
Total		1,367.00

2002

Summer camps	195.00	
College of Art Summer School	250.00	
Gymnastics	585.00	
Afterschool art program	471.75	

Guitar	150.00	
Music/Band	850.00	
School ski trip	80.00	
Total		2,581.75
2003		
Gorge rowing camp	176.55	
Saanich camps	260.00	
Pottery	150.00	
Gymnastics	585.00	
Art program	490.00	
Marine biology school trip	265.00	
Guitar/band	1,265.00	
Fall rowing program	181.90	
Winter rowing program	101.65	
Total		3,475.10
2004		
Spring rowing	577.80	
Softball	90.00	
Summer rowing	280.00	
Acupuncture	330.00	
Watercolour classes	290.00	
Power of Hope	350.00	
Outdoor recreation camp	130.00	
Fall rowing	1,072.00	
Art school	542.00	
Swim lessons	54.00	
Piano	900.00	
Total		4,615.80
2005		
Youth climate change conference	350.00	
Bamfield Marine Station	260.00	
Power of Hope camp	425.00	
Wild Hope camp	425.00	

Swim lessons	216.00
Fall rowing	1,072.05
Art school	580.00
Piano	900.00
Young Drivers of Canada	950.00
Total	<u>\$5,178.05</u>
GRAND TOTAL	\$18,609.75

- 18 Ms. C says that these are not all of the expenses incurred for the children. Other expenses which are not being claimed include baseball, various outdoor programs, tennis and yoga.
- 19 Section 7 of the *Guidelines* is permissive. The factors to be considered in determining whether it is appropriate to provide an amount to cover special or extraordinary expenses are:
- the necessity of the expense in relation to the child's best interests;
 - the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to separation.

Extraordinary expenses

- 20 In the present case, it is difficult for me to evaluate whether the requested extraordinary expenses are justified. There is no evidence of the family's spending pattern prior to separation.
- 21 One of the extraordinary expenses Ms. C is claiming is the cost of one year of private school for A.. Ms. C must show the private school expense is reasonable. There is no evidence that it was necessary to send A. to an expensive private school for his last year of high school. However, there is an email from Mr. W in which he indicates a willingness to contribute money towards private school. In the email, Mr. W indicated that he would be willing to contribute one-third of the cost of private school. Accordingly, I am ordering that Mr. W contribute \$3,500 towards the cost of Brentwood College.
- 22 The camps and programs that Ms. C has enrolled the children have become increasingly expensive, particularly in the last two years. It is likely the first two years, 2000 and 2001 are more indicative of the spending pattern of the family pre-separation, than 2003 onwards, given that the family's gross income was \$121,200.
- 23 The financial ability of Mr. W to contribute to the extraordinary expenses is limited. The only information I have been provided regarding his income is the amount that was agreed upon for guideline purposes in 2000 of \$56,200. Ms. C submits that the amount of \$56,200 should continue to be imputed to him in the absence of evidence regarding his current income.
- 24 In my view, Ms. C has not satisfied the onus on her to establish that all of the programs and camps the children were involved in were necessary expenses for the best interests of the children, or the reasonableness of the expenses in relation to the means of the parents and the family's spending habits prior to the separation. I am however, satisfied that some of the expense for the extracurricular programs and camps should be recoverable from Mr. W as reasonable in relation to the means of the parents and the family's spending habits prior to separation. Ms. C is entitled to an order that Mr. W pay \$1,250 per year, 50% of \$2,500, for extraordinary expenses from 2000 to 2005 for the programs and camps the children were enrolled in. In my view, that is

a reasonable amount for extracurricular activities given the combined income of the two parents, and in keeping with the amounts spent on extraordinary expenses for the first two years following the entering into of the consent order.

Post secondary education

- 25 A.'s education has been very expensive, first with private school in grade 12 and now Princeton University. The cost of attending Princeton University is substantial. Although A. contributes to the expense through work and scholarships, the proposed parental contribution is \$16,500 per year, with Mr. W's proposed share being \$8,250.
- 26 The courts have acknowledged that although post secondary education is a privilege, some post secondary education may be necessary in order to equip children with the skills to earn a living. There is an obligation on both parents to assist their children with the reasonable and necessary expense of post secondary expenses to the extent they are able: *Daicar-Gendron v. Gendron*, [2004 BCSC 1239](#), [\[2004\] B.C.J. No. 2005](#) (B.C. S.C.) ; *Kembi v. Kembi*, [\[1999\] B.C.J. No. 165](#) (B.C. S.C.).
- 27 The cost of the university program A. is registered in is high by Canadian standards.
- 28 When children embark on a program of education which is remarkably higher than that which would be the case in most other career paths at either university or college, there is a positive obligation on them or the custodial parent to enter into meaningful discussions with the parent who is expected to contribute. In the absence of doing so, the parent should not be expected simply to provide a blank cheque: *Daicar-Grendon* at paragraph 27.
- 29 Although Ms. C suggests in one document that the post secondary expenses were discussed with Mr. W prior to incurring them, there is no evidence of any agreement. In fact, Ms. C deposes that when she suggested to Mr. W that they equally share the costs of supplementing the scholarship for private school he described the sum as ludicrous. There is no evidence of any discussion with Mr. W regarding A. attending Princeton University. In the circumstances, Mr. W should not be expected to contribute to A.'s education simply on the basis of a proportionate share with Ms. C.
- 30 Section 7 of the *Guidelines* requires the court to consider the means of the parties, not just their income, in determining their ability to contribute to expenses. The word 'means' should be interpreted broadly to include not just the income of the party, but other sources of revenue available to that party. The court can look at the economic well-being of the parties, which includes a consideration of family income: *Baum v. Baum*, [2000 BCSC 1835](#) (B.C. S.C.) at paragraph 9.
- 31 Mr. W has not filed a financial statement in response to this application. However, there is some financial information about Mr. W, including that he has purchased a house and has \$300,000 in liquid assets. As well, in 2000 he agreed to a guideline income of \$56,200.
- 32 Ms. C has filed a financial statement which indicates she has financial means beyond her income of \$65,000. Her financial statement discloses annual expenses of \$145,000. She has a half interest in a house valued at \$417,000 as well as a vehicle, RRSPs and other monies totalling approximately \$50,000. There is also a registered education plan for the children of \$39,434.87. Ms. C's disclosed debts are approximately \$143,000.
- 33 Although Ms. C has not disclosed her husband's income, I have concluded that additional means are available to Ms. C through her family income on the basis of her financial statement.

34 Based on the financial information, Ms. C appears to be in a better position to assist A. with his post secondary education expenses than Mr. W. However, Mr. W indicated in an email that he was able and willing to contribute an amount of up to \$6,000 for private school on a one-third shared basis. In my view Mr. W should contribute to A.'s education at Princeton University on that basis. Mr. W will contribute one-third of \$16,500, or \$5,500.

Is Ms. C entitled to a lump sum payment for future child support and special and extraordinary expenses?

35 Ms. C submits that an order for a lump sum amount for future child support and expenses is appropriate because Mr. W has fled the jurisdiction and has expressed an intention to avoid payment of any amount for the children. She does not know where Mr. W resides, but given that he wishes the children to visit him in Cuba or in Mexico, says one of these countries is likely his residence.

36 Section 93(5) of the *Family Relations Act* provides:

(5) An order under this section may also provide for one or more of the following:

(a) payment periodically, annually or otherwise, and either for an indefinite or limited period or until the happening of a specified event;

(b) payment of a lump sum directly or in trust on terms provided;

(c) charging of property with payment under the order;

(d) payment of support in respect of any period before the order is made;

37 In *Ahenkora v. Ahenkora*, [\[1999\] B.C.J. No. 1770](#) (B.C. S.C.) the court found that where there was a reasonable apprehension that the payor-parent could depart from Canada and fail to pay maintenance, lump sum maintenance could be appropriate.

38 As well, s. 11 of the *Guidelines* allows the court to order lump sum payments of both child support and s. 7 expenses in the appropriate circumstances: *Greenwood v. Greenwood*, [\[1998\] B.C.J. No. 729](#) (B.C. S.C. [In Chambers]).

39 Lump sum support payments are appropriate when the payor-parent has not complied with court orders and lives in a non-reciprocating jurisdiction: *Van de Perre v. Edwards*, [\[2004\] B.C.J. No. 792, 2004 BCSC 537](#) (B.C. S.C.).

40 Mr. W has left the country and removed his assets. He has indicated he will not pay any amount for child support or expenses, even if that means living in a jurisdiction where it will be either impossible, or very difficult to enforce any order.

41 Given the degree of animosity between the parties, and the difficulty in enforcing any orders, it is appropriate to order a lump sum payment for future support and expenses.

What is the appropriate lump sum amount for future child support and special or extraordinary expenses?

42 Ms. C is seeking a lump sum amount which would include guideline maintenance for A. for four years and S. for six years, and projected expenses. She submits the appropriate award for expenses for A. is four years at the same level as his 2005 expenses. Ms. C submits the appropriate award for expenses for S. should be two years based on Savannah's 2005 expenses, and four years based on A.'s 2005 expenses. Mr. W would have the right to apply to change the

order once it is determined which university S. will attend and the cost of the program.

43 Ms. C asserts that I should impute the same income to Mr. W that he agreed to at the time of the consent order. Under s. 19 of the *Guidelines* the court may impute income in an amount that is appropriate in the circumstances. It sets out a number of circumstances which are applicable including the failure to provide income information when under a legal obligation to do so. In this case, Mr. W is under an ongoing legal obligation to provide income information under the order and has failed to do so. It is therefore appropriate to impute income to him. The financial information available is that he agreed to an income of \$56,200 in 2000 and has \$300,000 in liquid assets and a house. In the circumstances, I am of the view it is appropriate to impute a guideline income to Mr. W of \$56,200.

44 To be entitled to child support, a child must come within the definition of child under s. 87 of the *Family Relations Act*. A child is defined as a person who is under 19, or who is 19 years of age or older and, in relation to the parents of the person, is unable, because of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life.

45 A. is 18 years old and has moved to the United States to attend university. A. will turn 19 on May 24, 2006. S. will turn 19 on October 1, 2008. Therefore, for four years of the proposed order, A. will be over the age of 19 and for three years of the proposed order, S. will be over the age of 19.

46 While the children are under the age of 19, s. 3(1) of the *Guidelines* applies and after the age of 19, s. 3(2) applies. Ms. C is asking for an order which deals with the children under both sections.

47 There is inconsistency in the case law as to whether an order should be made in the cases where the child is approaching the majority which differs for the period of time before and after the child reaches the age of majority. In *Merritt v. Merritt*, [1999] O.J. No. 1732 (Ont. S.C.J.) the court took the position that there was no authority to make an order under s. 3(2) of the *Guidelines* while the child was under the age of majority. In contrast, in *MacDonald v. Rasmussen*, 2000 SKQB 494 (Sask. Q.B.) the court held that once the child was over the age of majority it would no longer be appropriate for the father to pay table support for the child.

48 I do not agree with the limited reading given to s. 3 of the *Guidelines* in *Merritt*. I am of the view that s. 3 does not preclude the court making an order regarding a child approaching the age of majority taking into consideration the circumstances as they apply to both ss. 3(1) and 3(2) of the *Guidelines*. Requiring Ms. C to reapply after May 24, 2006 is unreasonable in the circumstances of this case.

49 I have concluded that it is appropriate to make an order which deals with support for A., both before and after he reaches the age of 19. However, I am of the view that making such an order for S. is premature.

50 Section 3(2) of the *Guidelines* provides:

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 order 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.

51 The pursuit of post secondary education has been held to constitute an 'other cause'. However, mere attendance at an educational institution may not be sufficient. The factors courts have looked at when determining whether a child's educational plans justify him or her remaining a child for the purposes of support include:

- whether the child is studying on a part time or full time basis;
- whether the child has applied for, or is eligible for, student loans or other financial assistance;
- whether the child's career plans are reasonable and appropriate;
- the child's ability to contribute to his or her own support through part time employment;
- the child's age;
- the child's past academic performance and whether the child is demonstrating success in the chosen course of studies;
- the parents' plans for the education of their children, particularly when those plans were made during cohabitation; and
- whether the child has unilaterally terminated the relationship with parent from whom support is sought: *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C. Master); *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406 (B.C. C.A.).

52 A. is enrolled in a full time program at Princeton University. The letter from Princeton indicates that A. has been approaching school with diligence and success. A. received financial aid in the amount of \$29,925 USD, which includes an expectation that he will work well at Princeton. He also contributed his summer savings of \$1,635 USD towards his education.

53 Although A. has not seen his father for some time, the nature of the child-parent relationship is only one factor to be taken into account and is not determinative: *Kembi* at ¶ 31. As I indicated earlier, the cost of the university program A. is enrolled in is high by Canadian standards. It would be difficult for him to pursue this program without parental assistance.

54 However, there is no evidence of what, if any, plans the parents had for A.'s education prior to separation or why A. chose Princeton as opposed to University of Victoria, where presumably, he could have lived at home.

55 Ms. C is entitled to the payment of a lump sum for child support for both A. and S. up to May 1, 2006, or the amount of \$5,425 discounted for present value. I have already dealt with the s. 7 expenses for A. up to May 2006, i.e. a portion of the tuition for Princeton which has already been claimed.

56 Having reviewed the relevant factors, I am satisfied that A. will continue to be a child as defined under s. 87 of the *Family Relations Act* after May 24th, 2006 if he continues with his present studies.

57 However, although he will continue to be a child for support purposes, A. is no longer residing with his mother and is incurring significant costs attending university. Where a child attends university away from home, courts do not normally resort to the table amount, but to the means and needs approach set out in s. 3(2)(b): *Whitley v. Whitley*, [1997] B.C.J. No. 3116 (B.C. S.C.

[In Chambers]); *N. (W.P.) v. N. (B.J.)*, [2005 BCCA 7](#) (B.C. C.A.) . If a child is not residing at home, the nature of the contribution towards the child's expenses may be quite different: *Wesemann v. Wesemann*, [\[1999\] B.C.J. No. 1387](#) (B.C. S.C.) at ¶ 18.

- 58 As stated earlier, Mr. W's ability to contribute financially to the support is limited. Taking into account the guideline amount, Mr. W's income, the cost of the post secondary education and Mr. W's ability to pay, it is my conclusion that it is appropriate that Mr. W pay the equivalent of \$500 CDN per month for A.'s support from June 1, 2006 until May 1, 2009. In coming to this conclusion, I have also taken into account the RESP of \$39,434.87 which can be used in part for A.'s post secondary education.
- 59 That amount will be paid directly to A. in three instalments commencing September 1, 2006 at an address to be provided to Mr. W by A.. The second instalment will be paid September 1, 2007 and the third will be paid September 1, 2008. The payments are contingent upon A. continuing to attend Princeton University.
- 60 S. will not be 19 until October 1, 2008. From June 1, 2006 to October 1, 2008, Mr. W is to pay to Ms. C one-half of the guideline amount of \$775 or \$387.50 per month plus extraordinary expenses in the amount of \$625 per year, i.e. one-half of \$1,250 for three years -- 2006 to 2008.
- 61 In the circumstances, I am of the view that it is appropriate to make a lump sum award discounted for present day value, payable immediately. In order to determine the appropriate amount a reference will be made to the Registrar.
- 62 Ms. C is also seeking a lump sum amount equivalent to one-half of \$16,500 for a four year university education for Savannah. As S. is currently in grade 11, she will not have any university expenses for at least two years.
- 63 In *Myke v. Myke*, [\[2000\] O.J. No. 2056](#) (Ont. S.C.J.) the wife sought child support in the applicable table amount plus s. 7 expenses, including future post secondary education. At the time of the application the children were 12 and 9 years old. The mother argued that the children were doing extremely well in school and her expectation was that they would both pursue post secondary education. In order to avoid problems and disputes in the future and the necessity of returning to court, the mother sought an order for child support for future post secondary expenses. The court held that s. 7 of the *Guidelines* addresses expenses that were actually incurred or which are about to be incurred. Section 7 is not to be used by parents as a 'wish list'. There must be a reasonable expectation that the expense will soon be incurred. 'If and when' orders are not contemplated by s.7 and should be avoided; 'here and now' orders or 'here and almost now' orders are preferred. Consequently, the claim for post secondary education expenses was denied on the basis that it was premature.
- 64 Ms. C's financial statement indicates that there is an amount set aside for the children's post secondary education in a RESP. There is no evidence of Savannah's educational or career plans, or what she plans to do in the future. Further, there is no evidence regarding any discussions between Mr. W and Ms. C or S. regarding plans for post secondary education. In the circumstances, I am not prepared to deviate from the normal rule that child support is to cover current needs of the children. In my view, the application for post secondary expenses for S. is premature.

Is Ms. C entitled to updated financial information on an annual basis?

- 65 Mr. W agreed in the consent order to provide Ms. C with updated financial information on an

annual basis. As well, the *Guidelines* provide for provision of ongoing financial information in s. 21(2).

66 Given Mr. W's ongoing child support obligations, he is to provide financial information on May 1st of every year to Ms. C until the children are no longer children as defined by the *Family Relations Act*. This includes information regarding his income from investments.

Is Ms. C entitled to legal costs of an application brought by Mr. W to vary child support which was subsequently abandoned?

67 In 2003 Mr. W commenced an application to vary child support and then abandoned it. In preparing a response to the application, Ms. C incurred legal costs in the amount of \$9,184.22 which she seeks to recover. As well, Ms. C is seeking the costs of the present application in a fixed amount of \$1,200.

68 Ms. C is entitled to the costs of this application in the amount of \$1,200 and the abandoned application in the amount of \$1,200, payable forthwith.

Summary

69 Mr. W will pay the following amounts to Ms. C:

- arrears in child support \$20,320;
- arrears in extraordinary expenses (including Brentwood) \$9,750;
- arrears in post secondary education expenses \$5,500;
- a lump sum amount for child support for 7 months x \$775 (November 2005 to May 2006) or \$5,425 plus 28 months x \$387.50 (June 2006 to October 2008) or \$9,300 discounted for present day value;
- a lump sum amount for extraordinary expenses for S. for three years of \$625 per year (2006-2008) or \$1,875 discounted for present day value; and
- costs of the abandoned application in the amount of \$1,200.

70 A reference is made to the Registrar to determine the appropriate amount for the lump sum payments which are discounted for present day value.

71 Mr. W will pay A. the lump sum equivalent of \$500 per month or \$6,000 per year commencing in June 1, 2006 to May 1, 2009 in three annual instalments on September 1, 2006, September 1, 2007 and September 1, 2008.

72 As well, Mr. W will provide updated financial information to Ms. C on May 1st of every year commencing in 2006 until A. and S. are no longer defined as children under the *Family Relations Act*.

73 Ms. C is entitled to the costs of this application in the amount of \$1,200 payable forthwith.

Application granted.