

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CHARMAINE BURKE

Applicant

- and -

JONATHON TOURANGEAU

Respondent

MEMORANDUM OF JUDGMENT

A) INTRODUCTION

[1] In these proceedings, the Applicant seeks spousal support and division of the matrimonial property.

[2] Both parties have filed affidavits. Many of the allegations relied upon by the Applicant are disputed by the Respondent. It appears that the matter will have to go to trial.

[3] The Applicant seeks interim spousal support until the matter is dealt with. The Respondent opposes this. I heard submissions on that point on July 9, 2015, in regular Family Chambers. This Memorandum of Judgment sets out my decision on the issue of interim spousal support.

## B) ANALYSIS

### 1. General principles

[4] An order for spousal support is discretionary. The exercise of that discretion is guided by various provisions of the *Family Law Act*, SNWT 1998, c.17 (the *Act*).

[5] Subsection 15(2) addresses the support obligations that exist when a relationship breaks down:

15. (...)

(2) On the breakdown of a spousal relationship, the economic advantages and disadvantages arising from the spousal relationship should be equitably shared between the spouses and a spouse has an obligation to provide support for himself or herself and for the other spouse in accordance with this principle, to the extent that he or she is capable of doing so.

[6] The Court must also take into account subsection 16(4) of the *Act*, which provides that the goals of an order for spousal support include, among other things, the equitable sharing of the advantages and disadvantages to the spouses arising from the spousal relationship and the recognition of each spouse's contribution to the spousal relationship.

[7] In addition, subsection 16(5) of the *Act* identifies a number of factors to be considered in determining the amount and duration of support:

16.(...)

(5) In determining the amount and duration of support in relation to the objectives set out in subsection (4), the court shall consider all the circumstances of the parties, including

- (a) the effect of the responsibilities assumed during cohabitation by each spouse on his or her earning capacity;
- (b) any contribution made by a spouse to the earning capacity or the realization of the career potential of the other spouse, including any housekeeping, child care, or other domestic function performed by the spouse for the family;
- (c) the effect on a spouse's earning capacity and career development of custody of a child of the spouses;
- (d) the current assets and means of each spouse;

- (e) the assets and means that each spouse is likely to have in the future;
- (f) the age and physical and mental health of each spouse; and
- (g) the desirability of a spouse remaining at home to care for a child of the spouses.

[8] The law recognizes three bases for entitlement to spousal support: a contractual basis, a compensatory basis, and a non-compensatory basis, which is sometimes also referred to as a "needs" basis.

[9] The principles that govern applications for spousal support are important to consider when dealing with applications for interim spousal support. But there are factors specific to the nature of an interim application that must be considered as well.

[10] On an interim application for spousal support, the Court does not have the benefit of a complete evidentiary record, nor can it engage in an in-depth analysis of the applicable factors and considerations. The scope of the inquiry, as a result, is necessarily limited:

The scope of the inquiry on an interim application for spousal support is limited and is meant as a temporary solution until trial when the evidence and issues can be explored more fully. The main focus on an interim application should be to alleviate the economic disparities by addressing needs and means. The Court has to determine whether there would at least be a triable issue on entitlement to support: *McLean v. McLean*, 2001 NWTSC 38; *Muchekeni v. Muchekeni*, 2008 NWTSC 23.

*Arrowmaker v. Arrowmaker*, 2010 NWTSC 63, Paragraph 26.

2. Application of principles to the present case
  - a) Existence of a triable issue on spousal support

[11] At the time of the hearing, the evidence before the Court consisted of the Applicant's affidavit and supplementary affidavit, the Respondent's affidavit, and the Applicant's Financial Statement. The Respondent had not yet filed a Financial Statement. At the last Court appearance on May 21 2015, the Respondent had appeared on his own, having just retained counsel, and had asked for the adjournment to July 9. His adjournment application was granted but he was

ordered to file his Financial Statement no later than June 22, 2015. At the July 9 hearing the Respondent's counsel advised that the Respondent had taken the necessary steps to provide her the information she needed to prepare this document, but that she had not received all the information yet.

[12] Both counsel indicated they were ready to proceed with the interim spousal support application on July 9. No one sought an adjournment of that hearing until the Respondent's financial information was filed. As a result, the hearing proceeded and submissions were made on the basis of the evidence that had been filed at that point.

[13] On July 10, the day following the hearing, the Respondent filed his Financial Statement. As this document was not before the Court when the hearing proceeded and when I took the matter under reserve, I have not considered it at all in making my decision. I have considered only the three affidavits and the Applicant's Financial Statement.

[14] The Applicant deposes that she and the Respondent started dating in 1999 and cohabitated from when she moved to Fort Smith in 2006 up until the separation in early 2015. The Respondent deposes that the Applicant moved to Fort Smith to assist her grandmother, and that it was many months after her move that the cohabitation started. He also deposes that there were several periods of separation afterwards, and that as a result, the total period of cohabitation was much less than 9 years.

[15] Even on the Respondent's version, though, it seems clear that the parties were in a spousal relationship that spanned many years, and included a period of cohabitation of some significance.

[16] The Respondent specifically disputes several of the Applicant's assertions. There are, however, a number of things that he does not contradict in his affidavit. For example, he does not dispute the Applicant's assertion that when he got an opportunity to take underground training, she offered to help him financially and arranged for him to continue to live with her at her mother's house. He also does not dispute that after he completed his training, the Applicant began pursuing her own education and that he supported her financially while she did this.

[17] The Applicant's evidence is that she was in school for some time: she had a grade 6 education when she began upgrading in 2008. She completed her high school diploma in 2011 and later enrolled in a Business Administration course at Aurora College. She was still in this program when the parties separated. The Respondent's evidence does not contradict this.

[18] There is evidence of a significant disparity between the parties' incomes over the last few years. At the time of the hearing, the Respondent had provided very little financial disclosure but the Applicant had adduced evidence showing that between the years 2010 and 2013, the Respondent's annual income ranged roughly between \$100,000 and \$150,000, while her annual income ranged roughly between \$1,000 and \$15,000.

[19] It is undisputed that there was a time during the relationship when both parties were employed as janitors with BHP. As noted above, the Respondent eventually got an opportunity to take further training, which he took advantage of, with some support from the Applicant. As a result, he secured employment with a better income. Then, the Applicant, with his financial support, engaged in her own educational pursuits and was financially dependent on him for the last several years of the relationship. The relationship broke down before she completed the Business Administration course and she no longer benefits from the Respondent's financial support.

[20] In light of this evidence, and without prejudging what the outcome of the Applicant's claim for ongoing support might be, it appears that her claim could engage both the compensatory and non-compensatory models referred to above at Paragraph 8. These matters will be explored more fully at trial, but at this stage, in my view, the Applicant has established that there is at least a triable issue on her entitlement to spousal support.

b) Quantum

[21] Once the determination has been made that there is a triable case, the Court must apply a means and needs analysis to determine the level of support that should be ordered on an interim basis. *Chambers v. Chambers*, [1998] N.W.T.J. No.54, Paragraph 25; *Muchekeni v. Muchekeni*, [2008] NWTSC 23, Paragraph 2.

[22] The Respondent alleges that the Applicant is a habitual gambler and that this is one of the main reasons why she is having financial difficulties. He also alleges that the Applicant's gambling losses have resulted in serious financial hardship for him during the relationship. He claims that because of those losses, he had to liquidate his RRSPs to make ends meet, and as a result, has accumulated significant income tax debts.

[23] The Respondent disputes some of the debts that the Applicant claims to be servicing. He alleges that one of the loans she refers to relates to a snowmobile that actually belongs to the Applicant's mother, and for which the Applicant is not liable. He denies that the credit card debt is the result of matrimonial expenses: he claims that this debt was contracted by the Applicant on a trip, several years ago. He also alleges that one of the debts listed relates to a truck that has since been repossessed.

[24] In addition, the Respondent disputes the reasonableness of many of the amounts that are listed as part of the Applicant's monthly expenses.

[25] As far as his own means, the Respondent deposes that he is in a new relationship and that he and his spouse are expecting a child in November. His rent in Yellowknife is almost \$2000.00 per month. He claims that when he left the relationship the Applicant would not let him take anything from the matrimonial home except his clothing and a few personal items. He also claims, as already mentioned, that he has income tax debts now as a result of having had to cash in RRSPs because of the Applicant's gambling losses.

[26] I have reviewed the Applicant's Financial Statement. The Applicant lists, among other things, expenses of \$600.00 per month in groceries; \$150.00 per month for meals outside the home; \$400.00 per month on alcohol and tobacco (beer); \$200.00 per month in entertainment; \$200.00 per month in toiletries.

[27] At first blush these appear excessive. The Applicant's counsel submitted at the hearing that these expenses were listed by the Applicant with a view of showing what her standard of living was before separation. I find that submission somewhat at odds with Paragraph 12 of the Applicant's affidavit sworn April 16,

2015, where she states:

I have prepared a Financial Statement to provide a comprehensive account of *my* total earnings and *my* total debts and outgoing costs.

(my emphasis)

[28] In any event, either the expenses listed refer to the situation as it existed prior to separation, in which case they are of limited assistance in determining the Applicant's true current needs, or they refer to her expenses now, in which case some of the amounts are excessive. Either way, the document is not as useful as it might otherwise be in assessing the Applicant's needs at this time. On the whole, I find it difficult to attach much weight to the shortfall of \$4,455.00 per month identified in her Financial Statement as an accurate representation of her financial needs.

[29] At the same time, the income disparity between the parties is unquestionable, as is the fact that at present, the Applicant's income is extremely limited and insufficient to meet her basic needs.

[30] In his affidavit the Respondent asks that the disparity in the parties' incomes be balanced against the disparity in their expenses. To do so would require an examination of the Respondent's expenses. But apart from the information provided about his rental costs in Yellowknife, the Respondent's affidavit contains no details about his expenses. For the reasons already given, I am unable, for the purposes of this Application, to take his Financial Statement into account.

[31] As for the financial impact of the Respondent's new relationship, without more, this is not something the Court can attach much weight to, in light of subsection 16(6) of the *Act*:

16. (...)

(6) In determining the amount and duration of support in relation to the objectives set out in subsection (4), the court shall not consider the economic consequences of any new spousal relationship entered into with a third person by either spouse after they ceased to cohabit, unless the court is of the opinion that it would be unconscionable not to do so.

[32] There are number of areas of factual dispute that could have a significant bearing on the ultimate outcome of the Applicant's claim for spousal support. These areas include, to name a few, the period for which the parties cohabited; the financial hardship that the Respondent claims he suffered as a result of the Applicant's gambling losses; which debts the Applicant is responsible for; how some of those debts were incurred. This, combined with some of the shortcomings in the evidence relating to the parties' financial situation, makes the determination of quantum of interim spousal support all the more difficult.

[33] The Applicant calculated, using the *Spousal Support Advisory Guidelines* (the *Guidelines*), what the amount of support should be, having regard the parties' respective incomes and assuming a relationship that lasted 9 years. According to those calculations, if the *Guidelines* were applied, the amount of spousal support payable would be in a range between \$1,581.00 and \$2,108.00 per month.

[34] The *Guidelines*, unlike the *Child Support Guidelines*, are not law and are not binding. This Court has applied them in some cases. *Simle v. Borchuk* 2014 NWTSC 80, Paragraph 48. In other cases, this Court has referred to them but not followed them, for various reasons. *Arrowmaker v. Arrowmaker*, *supra*, Paragraphs 46-47; *Muchekeni v. Muchekeni*, *supra*, Paragraph 25.

[35] I have given some consideration to the range of amounts produced by the *Guidelines*' calculations, but am not prepared to adhere to them, given the nature of some of the facts in dispute, particularly the dispute about the duration of the relationship and cohabitation, which are factors that have a direct bearing on the calculations.

[36] I conclude that while a spousal support order should be made, it should not be in an amount as high as what the Applicant seeks. In setting the amount, I have taken into account the overall circumstances as well as the fact that spousal support is taxable in the hands of the recipient and tax deductible for the payor. This means that the Respondent's after-tax cost of spousal support will be less than the amount ordered. *Arrowmaker v. Arrowmaker*, *supra*, Paragraph 43.



[37] For those reasons I set the amount of interim spousal support at \$550.00 per month, payable on the first of each month, commencing July 1, 2015.

L.A. Charbonneau  
J.S.C.

Dated at Yellowknife, NT, this  
20<sup>th</sup> day of July 2015

Counsel for Applicant: Trisha Paradis  
Counsel for the Respondent: Jane Olsen

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