

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

IN THE MATTER of the *Children's Law Act*,  
S.N.W.T. 1997, c.14, as amended

**BETWEEN:**

BONNIE CHARLOTTE KAKFWI

Applicant

- and -

LAWRENCE JOHN JACKSON

Respondent

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**REASONS FOR DECISION  
of the  
HONOURABLE JUDGE B. E. SCHMALTZ**

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Heard at: Fort Good Hope, Northwest Territories  
June 2, 2010

Reasons Filed: June 30, 2010

Counsel for the Applicant: Candace Seddon

Counsel for the Respondent: Appearing on his own behalf

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

IN THE MATTER of the *Children's Law Act*,  
S.N.W.T. 1997, c. 14, as amended

Between:

**BONNIE CHARLOTTE KAKFWI**

**Applicant**

- and -

**LAWRENCE JOHN JACKSON**

**Respondent**

**I. INTRODUCTION**

[1] Bonnie Charlotte Kakfwi (the Applicant) seeks a declaration that Lawrence John Jackson (the Respondent) is the father of JMK, born September 3/04, YMJ born June 17/05, and YGK, born July 6/08 (the Children); that she (the Applicant) be granted permanent sole custody of the Children; and that the Respondent be ordered to pay child support for the Children in accordance with the applicable *Guidelines*. The Applicant also asks that the Respondent be ordered to pay costs of the Application.

[2] The Respondent does not contest that he is the father of the Children, and the Respondent and the Applicant agree that the Applicant should have permanent sole custody of the Children, with the Respondent entitled to reasonable access to the Children. The Applicant agrees with the Respondent having reasonable access to the Children, as long as it is pre-arranged and the access visits occur in a place other than the Applicant's home.

[3] The only issue on this Application is what amount of child support should the Respondent be required to pay for the Children. The Applicant submits that an annual income of \$63,872 should be imputed to the Respondent, and he should be required to pay child support based on that amount pursuant to the *Child Support Guidelines*.

**II. BACKGROUND**

[4] The Applicant and Respondent were in an "on and off" relationship for 24 years. They had five children, three who are still minors and live with the Applicant in Fort Good Hope; one of the couple's children is an adult and living independently, and one child is deceased. According the Applicant's Affidavit, sworn April 7/09, the relationship between the Applicant and Respondent ended in the spring of 2008. In her testimony on this Application the Applicant was less sure of the date of separation. On April 23/09, the Applicant filed this application for child support pursuant to the *Children's Law Act*, S.N.W.T. 1997, c.14, as amended (the *Act*).

[5] On January 27/10, the Respondent filed two documents in Court: a *Statement of Revenue and Expenditures, December 31, 2008*, and *Balance Sheet, December 31, 2007*. On June 2/10, the Respondent filed two further documents in Court: *Statement of Revenue and Expenditures, December 31, 2009*, and *Balance Sheet, December 31, 2009*. All of the Documents filed by the Respondent appear to be for LJ Contracting, the Respondent's company; there is no indication who prepared the documents, nor any explanatory notes within the documents. Despite being ordered by the Court to file further material, the Respondent has not filed any further material or information.

### III. HISTORY OF PROCEEDINGS

[6] This matter was first in Court on June 17/09, that being the return date in the *Originating Notice*. The Respondent was not served before June 17/09, and the matter was adjourned to August 26/09 to allow for proper service. The Respondent was served with the *Originating Notice and Notice to Respondent*, the *Affidavit* of the Applicant, and the *Order* adjourning the matter to August 26/09, on August 11/09.

[7] On August 26/09, the Respondent did not appear in Court, or have anyone appear on his behalf. The Respondent had also not filed any financial information as required by the *Originating Notice and Notice to Respondent*. The matter was adjourned to October 28/09. The Court ordered that a copy of the adjournment order be served on the Respondent at least 30 days before the next court appearance. An interim support order was also made at that time requiring the Respondent to pay child support in the amount of \$1,264 per month beginning on September 15/09. The interim order was sent by fax to the Respondent on October 29/09; the interim order was also sent via registered mail to the Respondent, delivered to the Respondent on October 29/09.

[8] On October 28/09 the Respondent, not having been duly served, was not present, and the matter was adjourned to January 27/10. The Interim Order for child support made on August 26/09 was to continue.

[9] On January 27/10, the Respondent was present in Court. The Respondent indicated he opposed the Application and filed the *Statement of Revenue and Expenditures, December 31, 2008*, and *Balance Sheet, December 31, 2007*, referred to above. At that time the Respondent was informed of how to contact the Legal Services Board, and further informed of the material he was required to file. The matter was adjourned to March 24/10, to allow the Respondent to retain counsel and file the required material.

[10] On March 24/09, the Respondent was present in Court, and stated that he intended to get counsel, but had not done so yet. The Respondent had not filed any further financial material. The

matter was adjourned to June 2/10, to allow the Respondent to retain counsel. The Respondent was ordered to file required materials by May 14/10, in order that the hearing could proceed on June 2/10.

[11] On June 2/10, the Applicant was present with counsel. The Respondent was present and had retained counsel on May 31/10; understandably, having only been retained 2 days earlier, the Respondent's counsel was not present in Fort Good Hope on June 2/10. The Clerk received correspondence on June 1/10 from the Respondent's counsel indicating that he had been appointed the day before and had not been able to reach his client. On June 2/10, the Respondent applied for an adjournment of the hearing. The Applicant was present with counsel, who had travelled from Inuvik to Fort Good Hope for the hearing. The Applicant strenuously opposed the adjournment application. The adjournment application was denied, and the hearing proceeded.

#### **IV. EVIDENCE**

[12] The Respondent filed two further documents with the Court on June 2/10: *Statement of Revenue and Expenditures, December 31, 2009*, and *Balance Sheet, December 31, 2009*. All of the documents filed by the Respondent are very unhelpful in and of themselves, and the Respondent was either unwilling or unable to explain them or offer any insight into his income.

[13] The Respondent was evasive and vague in his testimony. It was apparent that the Respondent had no desire to have this matter dealt with and concluded. From the actions of the Respondent in waiting until the last minute to retain counsel, in not taking the necessary, if any, steps to get the proper financial information before the court, the only reasonable inference that I can draw is that the Respondent has no interest in having the matter concluded. The actions of the Respondent are clearly detrimental to the Applicant's position. The Applicant has been diligent in bringing her Application for child support, she has been in Court or had someone appear on her behalf six times, she continues to care for and support the children of the relationship.

[14] The evidence on this hearing comes primarily from the Applicant through her Affidavit, and the Affidavits of Sheila Caines and Flora Abraham. The Affidavit of the Applicant sets out the history of the couple's relationship and establishes that she is entitled to receive assistance from the Respondent to support their children. The Affidavits of Sheila Caines and Flora Abraham both provide the same relevant information, that being that the median annual earnings for adult males in Fort Good Hope in 2005 is \$63,872. That figure is the median annual earnings from statistics from 2005; I am confident that that figure would be higher if figures were available for 2010.

[15] As there is no other credible or specific information before me as to what the Respondent's income is, and the Respondent has not filed the material required of him, which he was ordered to do, I will impute an annual income to the Respondent of \$63,872.

## V. THE LAW

[16] Section 59 of the *Children's Law Act* states:

59. (1) A court may, on application, order a parent to provide support for his or her child and determine the amount and duration of such support.

...

(4) A court making an order under subsection (1) ... shall do so in accordance with the applicable guidelines.

[17] Section 1 of the *Act* defines "applicable guidelines" as:

(a) the guidelines established under subsection 85(1), or

...

[18] Pursuant to section 85 of the *Act*, the *Child Support Guidelines*, R-138-98, as amended (the *Guidelines*), are the applicable guidelines under which the amount of child support to be paid for the Children must be determined. Sections 15 to 20 of the *Guidelines* set out how the court is to determine a parent's annual income. The parts of those sections that are relevant to this Application are:

15. (1) Subject to subsection (2), a parent's annual income must be determined by the court in accordance with sections 16 to 20. ...

16. Subject to sections 17 to 20, a parent's annual income is determined using the sources of income set out under the heading "Total Income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule C.

17. (1) If the court is of the opinion that the determination of a parent's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the parent's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

...

19. (1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:

...

(f) the parent has failed to provide income information when under a legal obligation to do so;

[19] In light of the lack of candidness on the part of the Respondent in providing accurate and current information about his income, and his failure to provide the required documentation to determine his income, I have imputed an income to the Respondent of \$63,872 per annum. As per the *Guidelines* a parent with an income of \$63,900 is to pay support \$1,264 per month for three children.

## VI. RETROACTIVE SUPPORT

[20] I am not clear having considered both the Affidavit of the Applicant and the testimony of the Applicant given at the hearing of this matter exactly when the relationship of the Applicant and the Respondent ended. The Affidavit of the Applicant states that the couple's relationship continued through to the spring of 2008; the couple's youngest child was born on July 6/08. For the purposes of this Application, I am satisfied that the couple had separated on or before September 1/08. The Applicant filed this Application on April 23/09. I also find that after the couple had separated, and prior to April 23/09, the Respondent had paid the Applicant \$1,000 for the support of their children.

[21] Every parent has an obligation to support his or her children; the obligation exists independently of any court action. It arises when a child is born. Non- payment of child support equals deprivation to the child, and requires the parent who has not met his or her financial obligation to his or her children to make up amounts not previously paid. This is necessary to compensate the deprived party, the Applicant in this case, who has born the financial responsibility to support the children to this point.

[22] It is not necessary that the Respondent have notice of an intention to pursue child support. Requiring notice as a prerequisite to a court's ordering a retroactive award does not support, but, indeed, undermines several of the objectives of the *Guidelines*, overlooks the nature of the financial obligations imposed under them, shifts responsibility to the custodial parent who has little or no information, and delays fulfillment of a parent's obligation to the intended beneficiary, the child. The Respondent has an obligation to support his children – that obligation exists regardless of notice.

[23] There are important policy reasons for concluding that retroactive support should be paid for the period pre-dating the filing of a court application or claim for support. An award which pre-dates the court application encourages settlement. Awarding support only from the notice date, or the application date, and not when the obligation is incurred, discourages settlement and promotes unnecessary notices, applications, and litigation. Awarding support only from the date an application is filed, and not from the date the obligation arises, would be punitive for children and the custodial parent. Awards dated only from the date of the application or notice fail to reflect the ongoing obligations for support or give a remedy for that right.

[24] Denying the retroactive order, while beneficial to the payor, in essence, penalizes the payee and the children and denies the validity of the payee's contribution. A parent should expect to pay what he or she is and was obliged to pay.

[25] As soon as a child is born, or as soon as the parents separate as in this case, a non-custodial parent should immediately realize that he or she has an obligation to pay child support.

[26] A non-custodial parent is required to pay child support retroactive to the date the obligation arose, unless he or she has satisfied his or her financial obligation in some other manner, or has taken all reasonable steps to fulfill the obligation, or the parties have made mutually satisfactory arrangements for child support which take the *Guidelines* and their effect into account<sup>1</sup>.

[27] The Respondent has not paid regular child support since his obligation arose, i.e. when the Applicant and Respondent ended their relationship. The Respondent has not fulfilled his financial obligations in any other manner. The Respondent has not taken any reasonable steps to fulfill his obligations. There have been no mutually satisfactory arrangements made for child support.

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<sup>1</sup> See *D.B.S. v. S.R.G.*; *L.J.W. v. T.A.R.*; *Henry v. Henry*; *Hiemstra v. Hiemstra*, [2006] 2 S.C.R. 231

[28] The Respondent has an obligation to pay child support at least from September 2008, when the Applicant and the Respondent were no longer in a relationship, and the Applicant assumed the full financial responsibility for supporting the Children.

**Arrears**

[29] The Respondent is responsible for child support payable to the Applicant in the following amounts:

23 months (Sep./08 to Jul./10, inclusive) @ \$1,264/mon.	\$29,072
Less: Credit for \$1,000 paid	<u>(1,000)</u>
TOTAL ARREARS up to and including July 31/10	\$28,072

[30] I do not know what support payments, if any, have been made by the Respondent since the interim order of August 26/09. If the Respondent has made payments in compliance with that interim order any such payments will be credited towards the above amount of arrears.

**VII. COSTS**

[31] In consideration of all the circumstances, each party will bear their own costs on this Application.

**VIII. CONCLUSION:**

[32] The Respondent is the father of the Children, JMK, born September 3/04, YMJ born June 17/05, and YGK, born July 6/08; the Applicant is granted permanent sole custody of the Children; the Respondent shall have reasonable access to the Children

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as arranged through the Applicant; unless the Respondent has the express permission of the Applicant, all access between the Respondent and the Children is to be at a place other than the Applicant's home.

[33] An annual income is imputed to the Respondent in the amount of \$63,872; the Respondent is ordered to pay child support for the Children in the amount of \$1,264 per month, effective September 1/08. The Respondent shall commence payments of \$1,264 per month on August 1/10, and on or before the first day of every month thereafter.

[34] Arrears of support for the Children for the period from September 1/08 to July 31/10 are hereby set at \$28,072. The Respondent shall pay an additional \$400 per month towards the arrears, commencing August 1/10, and continuing to be paid monthly on or before the first day of each month thereafter for the next six years (until July 1/16) or until the total amount of arrears (\$28,072) is completely paid.

[35] Counsel for the Applicant shall prepare and submit the formal order on this matter. The Applicant shall serve the Respondent with a copy of the formal order; service may be by registered mail.

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Bernadette E. Schmaltz  
Territorial Court Judge

Dated this 29 day of June, 2010  
at Yellowknife, Northwest Territories

**Bonnie Charlotte KAKFWI v. Lawrence John Jackson**  
**T3-FM-2009-000 004**  
**2010 NWTTC 06**

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