SUPREME COURT OF YUKON

Citation: *ELV v RLV*, 2016 YKSC 9

Date: 20160222
S.C. No. 08-D4044
Registry: Whitehorse

Between:

E.L.V.

Plaintiff

And

R.L.V. aka R.L.M.

Defendant

Before Mr. Justice L.F. Gower

Appearances:

E.L.V.	Self-Represented
Debbie P. Hoffman and Rita Davie	Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the defendant mother for the payment of child support for two children, a son G., age 18, and a daughter M., age 14. Part of the application seeks a retroactive variation in the payment of the table amount of child support under the *Federal Child Support Guidelines* ("*Guidelines*") for each year from 2010 to 2014, inclusive, as well as from January to June 2015.[1] The other part of the application has

[1] On June 3, 2015, I made an order for the prospective payment of the table amount of child support for the two children, effective July 1, 2015, in the sum of $1,305 per month, based upon the father's gross annual income in 2014, of $91,495.

to do with special and extraordinary expenses under s. 7 of the *Guidelines*. The mother seeks an order that the plaintiff father pay his pro-rated share of retroactive s. 7 expenses after a reconciliation has been performed as to the amounts paid to date and the amounts that remain outstanding. She also seeks an order requiring the father to pay his proportionate share of s. 7 expenses prospectively or, alternatively, in a lump sum of $300 per month, subject to an ongoing annual adjustment based upon the respective incomes of the parties.

BACKGROUND

[2] The parties originally resided in Lethbridge, Alberta, where they were married and where the children were born. They separated in 2002. They obtained a divorce judgment and corollary relief order in Alberta in 2003. The mother obtained custody of the children and moved with them to the Yukon in 2003. The father continued to reside in Lethbridge, where he has since begun another relationship, in which he is responsible for two additional children. There has been very little contact between the father and G. and M. over the years, and they are for the most part estranged from him, although G. has recently made contact once again.

[3] The divorce proceedings begun in Alberta were continued in the Yukon to deal with such issues as access, travel with the children and child support.

[4] On September 9, 2008, the mother obtained an order requiring the father to pay child support in the table amount of $500 per month based upon his then gross annual income of $34,785, and $170.55 per month as a lump sum payment towards the children's general s. 7 expenses going forward. With respect to the children's orthodontic and post-secondary educational s. 7 expenses in particular, the father was

ordered to pay his proportionate share, in the amount of 34%. The total payment therefore going forward was $670.55 monthly. Also pursuant to this order, the father was required: (1) to pay arrears of child support in the amount of $3,574.64; (2) to provide his tax returns and notices of assessment to the mother by June 15th each year, commencing in 2008; and (3) to pay a total of $5,220.50 to the mother as special costs. The father was given notice of this application, but failed to appear at the hearing.

[5] The order of September 9, 2008 was sent to the Yukon Maintenance Enforcement Program ("Yukon MEP") for enforcement, which then forwarded the order to the Alberta Maintenance Enforcement Program ("Alberta MEP"), where it continues to be enforced today.

[6] The father failed to abide by the condition in the order of September 9, 2008 that he make financial disclosure annually to the mother. Accordingly, the mother obtained a further order on November 26, 2013, requiring the father to provide his income information for the previous three years. The father failed to comply with that order until May 27, 2014.

[7] The order of November 26, 2013 also required the father to pay 50% of various s. 7 expenses relating to the children, some of which were retroactive to January 2012 and some were prospective. The 50% proportion was ordered on a temporary basis until the father's actual income over the relevant time period could be determined. Following that determination, the parties would share these expenses in proportion to their respective gross incomes, and the father would be credited with any 50% payments already made by him. The total of the s. 7 expenses was $7,293.49, which

when added to an award of special costs of $1,648.97, came to a grand total of $8,942.46.[2]

[8] The order obtained by the mother on November 26, 2013, was without notice to the father. The mother then claimed that neither she nor the children had had any type of contact with the father since 2008, and that she was unsure of his whereabouts. As stated, the father had not complied with the financial disclosure requirement in the order of September 9, 2008. A copy of the order of November 26, 2013 was sent to the father's last known postal address by registered mail, and was returned unclaimed (as was earlier correspondence sent to him on November 6, 2013).

[9] On May 27, 2014, the father made an application to stay or set aside enforcement of the order of November 26, 2013, on the basis that he ought to have received notice of the application. He claimed that the mother ought to have known that the email address which had been used to contact him during the proceedings in 2008 was the same address he was using in November 2013.

[10] On June 17, 2014, I dismissed the application for a stay of enforcement of the order of November 26, 2013. The balance of the father's application was adjourned. It was brought back by him for a hearing on June 3, 2015, but was effectively adjourned again by the father's then-counsel.

[11] On June 17, 2014, the mother also obtained a further order requiring the father's 2013 income information to be produced within 30 days. The father failed to comply with this order. Indeed, he did not provide his 2013 or 2014 income information to the mother's counsel until on or about June 2, 2015, just prior to a hearing the following

[2] This total was double-checked by the mother and reduced to $8,860.74 in her affidavit #5, para. 18.

day. The father also failed to file his sworn financial statement, required by the Yukon *Rules of Court*, until September 4, 2015.

[12] On June 3, 2015, I ordered the father to pay prospective child support in the table amount of $1,305 per month, based upon his 2014 annual gross income of $91,495. I also approved G.'s heavy equipment training course as a legitimate s. 7 expense. The effect of that ruling required the father to pay 50% of the total cost of the course, $20,365, or $10,182.50.

[13] I understand from the mother's counsel that Alberta MEP is presently not enforcing the payment of outstanding arrears for s. 7 expenses, except to the extent of having made an agreement with the father that he pay down the balance at $50 per month.

[14] In para. 3 of her notice of the present application, filed August 21, 2015, the mother also originally sought an order confirming that certain specific s. 7 expenses would be paid by the father retroactively, for such things as dance lessons, summer camps, guitar lessons and so on. I understand the mother originally thought this to be necessary because Alberta MEP has been taking the position that certain specific types of s. 7 expenses submitted by the mother have been denied. These denied items include such things as school fees, graduation fees, guitar lessons, and a safety vest for G.

[15] Alberta MEP has also taken the position that G., who turned 18 on July 22, 2015, is no longer eligible for child support because 18 is the age of majority in Alberta. Since the age of majority in the Yukon is 19, the mother's counsel seeks an order confirming this fact, which she then expects will allow Alberta to continue to enforce the

payment of child support for G. until he turns 19. Why Alberta MEP would require an order declaring the obvious (all one need do is look at the Yukon's *Age of Majority Act*, R.S.Y. 2002, c. 2) is puzzling to say the least. Nevertheless, to hopefully put an end to this issue, I will make such an order now.

RETROACTIVE TABLE AMOUNTS

Mother's Position

[16] For the purposes of the present application, the mother now has financial information about the father's gross annual income for each of the years from 2010 through to and including 2014. Her position is simple - the father should pay the table amount based upon his income for each of those years and, after crediting him for the amounts he actually did pay, the father should be required to pay the difference owed as arrears. The mother's calculations are as follows:

YEAR	FATHER'S INCOME	AMOUNT SHOULD HAVE BEEN PAID (PER MTH)	AMOUNT ACTUALLY PAID (PER MTH)	DIFFERENCE OWED (PER MTH)
2010	$57,310	$810.59	$500.00	$310.59 x 12 = **$3,727.08**
2011	$76,038	$1,086.00	$500.00	$586.00 x 12 = **$7,032.00**
2012	$75,472	$1,078.00	$500.00	$578.00 x 12 = **$6,936.00**
2013	$84,780	$1,212.00	$500.00	$712.00 x 12 = **$8,544.00**
2014	$91,495	$1,305.00	$500.00	$805.00 x 12 = **$9,660.00**
2015	$91,495	$1,305.00	$500.00 (January to August)	$805.00 x 8 = **$6,440.00**
			Total:	**$42,339.08**

[17] The mother claims that the father has not complied with the order of June 3, 2015, which required him to pay $1,305 per month as the table amount of child support for the two children, commencing July 1, 2015. However, the mother does acknowledge that the father made voluntary payments of $500.00/month for the table amount from January through August, 2015, inclusive.[3]

Father's Position

[18] The father made a number of points in opposition to the mother's application in his three affidavits, his written argument filed November 19, 2015, and his oral submissions at the hearing on December 9, 2015. The main points are as follows:

1) The father stated at the hearing of this application on December 9, 2015 that he started paying $1,305 per month as the ongoing table amount of child support for the two children on July 1, 2015. However, that information is contradicted by the most recent Statement of Account by Alberta MEP, which shows that charges of $1,305 were <u>not</u> added to the father's account until November 1 and December 1, 2015. Further, the payout by the father as of September 6, 2015 continued to be $670.55, which is what he was paying pursuant to the order of September 9, 2008. As well, there appears to be approximately a double payment of that same amount on November 26, 2015. There is no record of the father having commenced payments of $1,305 as of July 1, 2015.

2) The father also made the oral submission at the outset of the hearing on December 9, 2015 that his payments with Alberta MEP are "up-to-date". That is

[3] Actually, the mother's counsel referred to variable amounts paid by the father over this period, which presumably were intended to include the $170.55/month due under the order of September 9, 2008 for s. 7 expenses. However, in my view, what is relevant here is that the father receive credit for the table amounts that he paid.

simply not true. On the contrary, the most recent Statement of Account from Alberta MEP shows that he is in arrears in the amount of $22,449.40 as of December 1, 2015.

3) The father was most recently represented by counsel on this file from February 2014 until July 2015. He filed his notice of self-representation on August 27, 2015. Presumably, to make the point that he was unhappy about having to represent himself on the application, the father deposed under oath at para. 2 of his affidavit #3:

> There are over 100 lawyers listed in the Yukon who have been telephoned. There isn't another lawyer in the Yukon who is willing to represent 'anyone who doesn't have day-to-day care of the child'. I have recorded this effort, if required within the Yukon Court.

This statement is simply not credible.

4) The father stated in his written argument that he has "… consistently paid support as Court ordered … AND complied with ALL requests for financial information …". Again, that is not true. The father breached the order of September 9, 2008, by failing to provide his income information to the mother by no later than June 15th each year, commencing in 2008. He further breached the order of November 26, 2013 by failing to provide his income information within 30 days of the date of that order (indeed, he failed to pick up a copy of the order which was mailed to him by registered mail to his home address two days after the order was made). In fact, the father did not provide the mother with that income information until May 2014. He also breached that order by failing to voluntarily pay the arrears of s. 7 expenses. And most recently, the father has

breached the order of June 3, 2015, by failing to pay $1,305 per month as the ongoing table amount of child support for the two children commencing July 1, 2015.

5) The father made submissions regarding the hearings before this Court on August 26 and September 9, 2008:

(a) The former hearing resulted in an order which permitted the mother to travel outside of the Yukon and Canada with the two children. The order also required the father to provide his income information for 2005, 2006 and 2007. The balance of the mother's application was then adjourned to September 9, 2008. The preamble to the order, which was approved both by Debbie Hoffman, as the mother's counsel, and Christina Brobby, as the child advocate, states "no one appearing on behalf of the [father] although duly served". The father initially submitted to me at the hearing in the case at bar, on December 9, 2015, that "the hearing did not go through that day", i.e. on August 26, 2008. It is obvious from the court record that the father is clearly mistaken here.

(b) As per the order of August 26, 2008, the hearing did indeed continue on September 9, 2008. The order arising from that hearing is the one that required the father to pay a total of $670.55 per month in ongoing child support, as well as requiring him to make annual financial disclosure. The preamble to the order, again approved by both Ms. Hoffman and Ms. Brobby, once again stated that there was "no one appearing on behalf of the [father] although duly served". Presumably, this is because the father was clearly aware of the August 26 hearing date, as discussed below.

(c) On the issue of notice of these hearings, the father pointed to an email he sent to Court Services on January 12, 2009 at 2:05 AM stating:

> I have reason to believe an application or applications may have gone through the Court system in the Yukon pertaining to myself and my children without notice being given to me or without my knowledge. (father's affidavit #1, p. 27) (my emphasis)

However, I brought the father's attention to earlier emails which clearly show that he was aware of the August 26, 2008 hearing. The first is from Ms. Hoffman to him on July 30, 2008, specifically informing him of the upcoming appearance on August 26 at 10 AM (father's affidavit #1, p. 11). The second is from the father to Ms. Hoffman, dated August 20, 2008, stating "I have received the email with the change of court date to August 26." When I confronted the father about the obvious inconsistency, he explained that "it says application, but I should have typed the word order". This answer makes no sense to me and does not explain why the father claimed that the Yukon proceedings had taken place "without notice" to him. Furthermore, Ms. Hoffman emailed the father on August 29, 2008 and again on September 8, 2008 to remind him of the upcoming hearing on September 9 at 10 a.m. (affidavit of R. Davie, pp.1 and 2). Therefore, the father's statement (in his email of January 12, 2009) that an application was made without notice to him is patently false.

(d) Further, the father's email of January 12, 2009 to Court Services also requested that "all documentation pertaining to myself and my children" be forwarded to him by email. The reply email from Court Services explained that his request had been forwarded to the Supreme Court desk and that they would

respond when it had been looked into further. The court record indicates that Barb Laughton, of Court Services, received the request to look into the matter. There is a further handwritten note from Ms. Laughton on the file indicating:

> I spoke with Mr. [V.] and advised him that he could get legal advice or get a local lawyer to come in & review file or he could fax me I.D. & I could fax him docs. He never called back.

The point is important because the father deposed under oath in his affidavit #3, at para. 29, in relation to the September 9, 2008 Order:

> … I asked the Court house in the Yukon for a copy. This request was declined, as verified in my Affidavit....

Once again, the court record indicates that this sworn statement by the father cannot be true.

(e) The father claimed that he did not receive a copy of the September 9, 2008 order until 2010, and then only after requesting the assistance of his MLA in Lethbridge. However, there is evidence that the father (or someone in his family) retained a Lethbridge lawyer, Brad Hembroff, in February 2009 to act on his behalf to review the order of September 9, 2008 and the related material on the court record. This material, including a copy of the order, was sent to Mr. Hembroff's office by Ms. Hoffman (affidavit of R. Davie, pp. 4-8) at Mr. Hembroff's request. Therefore, the father (or the member of his family who retained Mr. Hembroff) had to have known of the existence of the order as of that time. And yet, incredibly, at the hearing on December 9, 2015, the father claimed he never met Mr. Hembroff and received no materials from him. Indeed, he was even reluctant to admit that Mr. Hembroff was his lawyer for that purpose. In any

event, if the father did not in fact receive a copy of the order of September 9, 2008 from Mr. Hembroff, which I highly doubt, that is a matter between him and his lawyer.

6) (a) The father complains that there has been a “long history” of orders made without notice to him. In fact, that long history consists of a total of only three orders. The first was made in March 2011, allowing the mother to move with the children to Australia (by which time there had already been several years of no contact between the father and the children), and two orders made in November 2013, the second of which (made on November 26, 2013) was essentially an amendment of an earlier order of November 4, 2013, as it corrected some omissions from the earlier version.

   (b) In any event, to the extent that matters have proceeded without notice to the father, that is not an issue which is before me at the present time. That issue was argued by the father’s counsel on June 17, 2014, when I denied the father’s application for a stay of the order of November 26, 2013. The issue was argued again before me on June 3, 2015, but by the end of the hearing the father’s counsel effectively adjourned his application to set aside the order of November 26, 2013. Furthermore, the issue has never been brought back for a continuation of the hearing.

7) The father claims that there should be “tax credit and benefit sharing” split between the mother and himself before a determination as to the table amount of child support which should be paid, as well as the amount which he should pay

towards the s. 7 expenses. The father submitted that he relies upon s. 7(3) of the *Guidelines* for this proposition. That subsection provides:

> Subject to subsection (4), in determining the amount of <u>an expense referred to in subsection (1)</u>, the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense. (my emphasis)

The "expenses" referred to in ss. (1) are the special or extraordinary expenses claimable under s. 7 of the *Guidelines*, such as childcare, orthodontic treatment, postsecondary education, and so on. However, the point is that the requirement to take into account tax benefits or deductions applies to <u>the calculation of the amount of the expenses</u>, and **not** to <u>the amount of the child support payable</u> by the payor parent under s. 7 and **certainly not** to the table amount payable under s. 3. Indeed, ss. 5 and 6 of Schedule I of the *Guidelines* confirm the latter point, as follows:

> 5. <u>The amounts in the tables</u> are based on economic studies of average spending on children in families at different income levels in Canada. They are calculated on the basis that child support payments are no longer taxable in the hands of the receiving parent and no longer deductible by the paying parent. They <u>are calculated using a mathematical formula and generated by a computer program.</u>
>
> 6. The formula referred to in note 5 sets support amounts to reflect average expenditures on children by a spouse with a particular number of children and level of income. The calculation is based on the support payer's income. <u>The formula uses the basic personal amount for non-refundable tax credits to recognize personal expenses,</u> <u>**and takes other federal and provincial income taxes and credits into account.**</u> Federal Child Tax benefits and Goods and Services Tax credits for children are excluded from the calculation. At lower income levels, the formula sets the

> amounts to take into account the combined impact of taxes and child support payments on the support payer's limited disposable income. (my emphasis)

Thus, the father's submission on this point is simply misguided. Rather, the formula used by the *Guidelines* to determine the table amount of child support payable already takes into account income taxes and credits.

Finally, to the extent that the father has pointed to some tax benefits claimed by the mother in relation to the actual expenses of the children (father's affidavit #3, p. 62), such as "Children's fitness amount" and "Children's arts amount", I agree with the mother's counsel that the amount by which either of those might affect the value of any claimed s. 7 expenses would be negligible.

8) Related to point # 7 above, the father prepared a table in his written submission which purports to recalculate the amount of his gross annual income in the years from 2010 to 2015. For each of these years, the father has purported to deduct from his gross annual (line 150) income his Canada pension plan premiums and his employment insurance premiums. This is simply not permissible under the *Guidelines*.

[19] I found the remaining arguments from the father either conclusory (in the sense that he did not link them to any particular evidence) or confusing to the point of being incomprehensible.

[20] The father states that requiring him to pay tens of thousands of dollars in retroactive child support going back to 2010 would not be fair or reasonable with consideration to the other two children for whom he is responsible in Alberta. However, this plea ignores the fact that the father has consistently breached court orders by failing

to produce his annual financial disclosure regarding his income, or delaying such production for several years. Between the order of September 9, 2008, when his income was believed to be $34,785, and 2014, when it was $91,495, his income increased by more than 2 ½ times. And yet, full financial disclosure was not ultimately provided by the father until September 4, 2015. Had the father done what the court ordered him to do, gradual annual increases in the amount of child support payable would have been ordered and likely would have been relatively affordable. Thus, the father's present predicament is entirely of his own making. Furthermore, not disclosing an increase in income is "blameworthy conduct" which justifies a retroactive variation more than three (3) years prior to formal notice: *Lavergne v. Lavergne*, 2007 ABCA 169, at paras. 9 and 10.

SECTION 7 EXPENSES

Mother's Position

[21] The order of November 26, 2013 required the father to pay 50% of the children's s. 7 expenses (some of which were retroactive to January 2012 and some were prospective), until the father's income could be determined by the court. Following that determination, the order stated that the parties would share these expenses in proportion to their respective incomes and the father would be credited with any 50% payments made to that point in time.

[22] The mother's counsel explained that she and her co-counsel have conducted an extensive review of the voluminous records on this file. Based on that review, they have determined that when Alberta MEP received the order of November 26, 2013, they started collecting s. 7 expenses from the father at the 50% rate, but nevertheless

continued to collect the $170.55 per month which the father was ordered to pay under the Order of September 9, 2008. Thus, there was a period of time in which the father was being charged twice for s. 7 expenses. This is what the mother's counsel referred to as the "first duplication". The mother's counsel further explained that once Alberta MEP realized this problem, they credited the father with a certain number of payments of $170.55 per month, but failed to credit him for the period from January 2012 to November 2013, inclusive, a total of 23 months.

[23] Thus, the mother admits that the father should be credited with having paid a total of $3,922.65 ($170.55/month x 23 months) against the total arrears that are outstanding with Alberta MEP.

[24] The mother's counsel also referred to the "second duplication" by Alberta MEP. This has to do with $1,532.95 which was collected from the father for orthodontic expenses for M., pursuant to the order of September 9, 2008. This amount represented the 34% of that expense, which was collected from the father pursuant to para. 4 of that Order, over and above the $170.55 monthly for other unspecified s. 7 expenses. However, the order of November 26, 2013 overlapped these payments because it required the father to pay 50% of M.'s orthodontic expenses between 2012 and 2014. Therefore, Alberta MEP erred in collecting <u>both</u> the $1,532.95 (at the 34% rate) <u>and</u> the 50% amounts under the November 26, 2013 order.[4]

[25] The mother's counsel further acknowledged that Alberta MEP again double-charged the father for an amount of $1,350.00 on February 20, 2015. This was part of a larger amount ($2,594.96), which part was again for M.'s orthodontic expenses.

[4] Twelve (12) payments of $38.25 = $459.00 + $421.91 (November 13, 2013) + $100.54 (May 13, 2013) + $551.50 (April 16, 2013) = $1,532.95.

However, these expenses had previously been charged against the father in the lump sum of $8,942.46 assessed pursuant to the order of November 26, 2013 (see para. 7 above). Therefore, the father should be credited for the $1,350.00 which was collected from him twice.

[26] I agree that all three credits should be applied. The balance due from the father according to the Alberta MEP Statement of Account as of December 1, 2015 was $22,449.40. The mother's counsel therefore submitted, and I accept, that this amount should be reduced by the total of the three credits, i.e. $6,805.60 ($3,922.65 + $1,532.95 + $1,350.00). That brings the balance due down to $15,643.80 ($22,449.40 - $6,805.60).

[27] However, says the mother's counsel, and again I agree, there must be a further accounting for the monthly table amount of child support assessed against the father under the order of June 3, 2015 ($1,305/month) which was to begin July 1, 2015, but which charges were not added to the Alberta MEP account until November 1, 2015. Therefore, charges of $1,305/month are due for July through October, 2015, inclusive, totalling $5,220.00 ($1,305/month x 4 months). But, against that, the father is to be credited with: (a) $500/month that Alberta MEP charged against him on July 1, August 1, and September 1, 2015, totalling $1,500.00 ($500/month x 3 months); and (b) the $2,415.00 that Alberta MEP charged to the father on October 19, 2015 (for reasons unknown to me). The total of those two additional credits is $3,915.00 ($1,500.00 + $2,415.00).

[28] Thus, these additional credits and debits are summarized as follows:

$22,449.40 (Alberta MEP account balance due as of December 1, 2015)

-$ 6,805.60 (credits due father per para. 26 above)

$15,643.80

+ $5,220.00 ($1,305/month x 4 months, not yet in the account)

- $3,915.00 (already added to the account)

$ 16,948.80 (arrears due as of hearing date of December 9, 2015)

Father's Position

[29] The father has submitted repeatedly that the mother has provided numerous "duplicated receipts" for s. 7 expenses. Indeed, he has even gone so far as to suggest that the mother has triplicated and quadruplicated such receipts, both before and after the order of November 26, 2013. However, the father has provided little to nothing in the way of objective evidence to support these allegations. Also, for the reasons I gave above, I have serious reservations about the father's credibility in responding to this application.

[30] Rather, I accept the mother's explanation in her affidavit # 5, at paras. 3 and 4, that there has been no duplication of receipts, but rather a couple of relatively minor calculation errors. She further explained that the handwritten receipts and the debit slips for gymnastics expenses were both submitted for the purpose of clarity, but not for the purpose of double charging for those expenses.

[31] At the hearing, the father pointed to an Alberta MEP Expenses Report (mother's affidavit #8, pp. 20 and 21) which identified four (4) claims for M's orthodontic expenses of $675 each. The father said these are duplications because these items were already awarded as s.7 expenses in the order of November 26, 2013. I do not understand this

argument. The Expenses Report itself expressly states, just above the blanks where the orthodontic expenses were listed, the following:

> My court order … of November 26, 2013 … says the other party shall pay a share of certain expenses.

The Expenses Report then goes on to direct that the following information is to be recorded:

> Type and Description of Expense
> Date Expense was Paid
> Name of Child
> Total Amount I Paid

Thus, it would appear that the mother has simply listed on these two pages the orthodontic expenses she was entitled to be reimbursed for, according to the November 26, 2013 order, as the form requires her to do. This does not show that there has been duplication.

[32] I also note that Yukon MEP performed a comprehensive "financial audit" from May 2004 to April 28, 2015 (mother's affidavit #8, pp. 2 and 3) and failed to note any such duplication. In addition, Alberta MEP has obviously been doing their own scrutinizing of the receipts submitted by the mother (since some have been denied), and has similarly failed to note any such duplication. Therefore I reject this argument as well.

CONCLUSION

[33] In the result, the father has made no plausible arguments against either the retroactive variation of the table amount of child support payable for the two children or the variation to the amount due from him for past s. 7 expenses.

[34] As stated, the most recent Statement of Account from Alberta MEP indicates that the total balance owing by the father as of December 1, 2015, for both table amount and s. 7 expenses, is $22,449.40. Although the mother has some issues with Alberta MEP over particular s. 7 expenses that they have disallowed, her counsel at the hearing appeared to accept this as a reliable number for the purpose of calculating retroactive s. 7 expenses. Therefore, the total of the arrears for retroactive s. 7 expenses and arrears for the table amount of child support for the two children that ought to have been paid over the last five years, but was not, is $59,287.88 ($16,948.80 + $42,339.08) as of the date of the hearing on December 9, 2015.

[35] I further declare that the age of majority in the Yukon is the age of nineteen (19) years.

[36] As stated above, the mother's notice of application also sought an order essentially declaring that certain identified retroactive and prospective s. 7 expenses are "reasonable and necessary". Presumably, this is to avoid future arguments with Alberta MEP about what is or is not a legitimate s. 7 expense. However, there was no argument on this point, either orally or in writing. Therefore, I decline to make any such declaration.

[37] Lastly, the mother is awarded "full indemnity costs", as per her notice of application, pursuant to the authority under s. 22 of the *Guidelines*, which provides:

> 22 (1) <u>Where a spouse fails to comply with section 21</u>, the other spouse may apply
>
> (a) To have the application for a child support order set down for a hearing, or move for judgment; or
>
> (b) For an order requiring the spouse who failed to comply to provide the court, as well as the other

> spouse or order assignee, as the case may be, with the required documents.
>
> (2) Where a court makes an order under paragraph (1)(a) or (b), the court may award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings. (my emphasis)

Section 21(2), of course, is the sub-section which requires a party responding to a child support application to provide the other party, “within 30 days” of being served with the application, the financial disclosure documents identified in s. 21(1). The father failed to comply with this requirement after being served with the notice of application in 2008, which in turn led to a virtual cascade of similar non-compliance over the next several years. Specifically, the father failed to comply with the order of September 9, 2008, which led in turn to the mother obtaining a further order for financial disclosure on November 26, 2013. The father then failed to comply with that order. He also failed to comply with the financial disclosure order of June 17, 2014. Even after retaining counsel in February 2015, the father continued to delay making financial disclosure, which only came piecemeal in May, June, and ultimately, September, 2015, when he finally filed his mandatory sworn financial statement. In my view, the mother is entirely justified in seeking her full indemnity costs for this application, and I so order.

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GOWER J.