

Family

Court rules on obligations of child support in shared parenting case

By **Maria K. Powell**

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(December 11, 2020, 4:25 PM EST) -- Setting aside the family law issues that arose as a result of the global COVID-19 pandemic, 2020 saw the courts take a fresh look at child support obligations and the resulting impacts on families. The Supreme Court of Canada provided new guidance on recalculation of support arrears in *Michel v. Graydon* 2019 S.C.J. No. 102 and the pending decision in *Colucci v. Colucci* [2019] S.C.C.A. No. 374 promises to add further instruction to the analysis of *D.B.S. v. S.R.G.* [2006] 2 S.C.R. 231 — or to outright turn the analysis on its head.

In New Brunswick, the Court of Appeal reaffirmed the high standard on judges determining child support obligations for parents with equal amounts of parenting time. While the need for full and frank financial disclosure was a central focus of all of these cases, *A.S.L. v. L.S.L.* [2020] N.B.J. No. 63 looks past parenting time to the needs of the children in

each household.

The parties in *A.S.L.* had a separation agreement, signed shortly after their separation, which provided the parents with roughly equal parenting time (also known as “shared parenting”). As the parents had similar incomes, they agreed that neither one of them would pay child support to the other.

The parents agreed on the children’s special expenses and shared the financial costs of these equally. There was a provision requiring the parties to exchange their income tax returns annually for the purpose of re-evaluating the support obligations. Such agreements are commonplace and there was nothing to suggest either party was less than forthcoming about their circumstances.

In 2019, the mother filed a petition for divorce and asked that the terms of the separation agreement form the basis for the order for corollary relief in granting the divorce. While the divorce proceeded on an uncontested basis, the father appealed the divorce order and the corollary relief on the basis that the trial judge should have requested and analyzed the full financial details of both parties to determine if the child support arrangements were appropriate considering s. 9 of the *Federal Child Support Guidelines*.

The Court of Appeal agreed. It was a timely reminder that the set-off amount determined by the difference in the amount each parent would be required to pay the other is only the first step of the inquiry.

The Supreme Court of Canada’s decision in *Contino v. Leonelli-Contino* [2005] 3 S.C.R. 217 has always allowed for adjustments to child support to provide children with a more consistent standard of living in each parent’s household, but it seldom resulted in judicial scrutiny in matters where the parties were in agreement that the set-off support amount is appropriate.

A.S.L. means the court is required to ensure — in every case of shared parenting — that the children are not subject to a significant disparity in resources in either home. The requirement for parents to provide detailed financial disclosure is much higher even when the divorce is uncontested.

The effect of the decision in *A.S.L.* means that parties can be required to submit details of their

household budgets, the income information of new partners and a breakdown of special expenses for the children and payment details to allow the court to determine if the straight set-off amount is appropriate or if further fine tuning is required to account for advantages the children may have in one household over the other.

While it is not the first time appeal courts have discussed the issue (*Dyck v. Bell* [2015] B.C.J. No. 2831; *G.F. v. J.A.C.F.*, [2016] N.B.J. No. 82), it was not until *A.S.L.* that judicial inquiries into uncontested matters became the norm.

A.S.L. provides that agreement on Guideline-compliant child support is not enough. Family law lawyers need to ensure that their clients understand the importance of provisions in agreements and orders to exchange financial information on an annual basis. The failure to re-evaluate child support obligations could result in unwanted judicial intervention, particularly since there is also new jurisprudence on arrears of support.

When it comes to child support, details matter. Ensuring full financial details are before the court limits the need for appearances to answer further questions on financial arrangements for children.

With the potential to increase both legal costs and court time, *ASL's* impact could be to act as a further impediment to access to justice. Family law lawyers will be tasked to request, process and present more detailed financial projections for their clients so that the courts can ascertain whether appropriate child support arrangements have been made.

The introduction of standardized forms for submitting the required household budgets would streamline the procedure and limit the number of appearances for the parties wherein the main goal is judicial fact-finding. It would also greatly assist self-represented parties who are often those who are most in need of support.

Every child has the right to receive the level of support that the parents are able to provide them. *A.S.L.* solidifies the court's role in ensuring adequate support is provided to all children.

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