



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2006 No: 114

BETWEEN:

M.A.C.

Petitioner

and

T.D.C.

Respondent

JUDGMENT

Cessation and/or variation of child maintenance; Change in financial circumstances; Children with special needs; Definition of tertiary education; Consideration of requirement for children being enrolled in tertiary education on a full-time basis

Date of Hearing: 20 March 2019

Date of Filing of Written Submissions: 3 April 2019

Date of Ruling: 12 August 2019

Adam Richards of Marshall Diel & Myers Limited for the Petitioner
The Respondent In Person

JUDGMENT of Registrar, Ms Alexandra Wheatley

Introductory

1. There are three children of the marriage aged 23, 22 and 22 respectively. In the Orders on Making the Decree Nisi on 29 September 2006, the parties were granted joint custody and shared care and control of the children. All three children have special needs to

varying degrees which may require them to have ongoing care and/or supervision for the remainder of their lives. The parties have different views as to how independent the children can be for the remainder of their lives.

2. On 17 April 2009, the parties entered into a Consent Order (“the Consent Order”) as result of the Respondent relocating to Canada with the three children. However, the Petitioner made an application shortly thereafter, in 2010, (“the 2010 Application”) due to the Petitioner’s allegations the Respondent had not disclosed her co-habitation with another man who subsequently she married. The cohabitation was the key point of contention in the 2010 Application as it would have the effect of reducing the Petitioner’s sum of monthly child maintenance.
3. The then Learned Justice Wade Miller made an order on 16 November 2010 (“the Order”), in relation to the 2010 Application which varied the terms of the Consent Order. Paragraph 3 of the Order is as follows:

“3. *Paragraph 2, 3 and 4 of the Order of this Court dated 17 April 2009 is hereby varied and shall be replaced with the following paragraph:*

“2. *The Petitioner shall pay, or shall cause to be paid, maintenance for the children namely [omitted for anonymity] in the sum of CAN\$5,750 (CAN\$1,916.66 per month, per child), which shall be paid with effect from 1 November 2010 and on the first day of each month thereafter, the said payments continuing for each child until he shall have reached the age of 18 years or completed his tertiary education or suitable equivalent education relevant to his special needs, whichever is the latter. Thereafter, should the circumstances of the child, or any of them, dictate that they require assisted living either independently or with a parent, then there shall be liberty for either party to apply...” [Emphasis added]*

4. The Respondent is now divorced from the man which was the subject of the 2010 Application, but she has subsequently commenced another relationship in which the Petitioner states she has been cohabiting with for “*several years*”.
5. After the making of the Order, the Respondent filed it with the Family Responsibility Office (“FRO”) for the province of Ontario. The role of the FRO is the equivalent to that of the Collecting Office of the Magistrates’ Court in Bermuda, wherein the Petitioner makes payments to the FRO who then makes the payment to the Respondent. The FRO also has the ability to enforce any arrears of child maintenance payments.
6. On 6 December 2018, the Petitioner made an application (“the First Application”) seeking the Court’s declaration that the child maintenance in respect of the two younger children of the family ceased with effect from June 2018 in accordance with the Order. It was made on the basis the Petitioner believed the younger children being both over the age of eighteen had completed their “*tertiary education or suitable equivalent education relevant to their special needs*” as of June 2018.

7. At the first directions hearing held on 11 December 2018, the Respondent disputed the children had completed their tertiary education. Thereafter, the Petitioner filed a second application on 15 January 2019 (“the Consolidated Application”), which altered the relief being sought to the following:
- “1. *That the orders for child maintenance dated 16 November 2010 made in respect [of the three children of family], shall be revoked and or varied on the basis that there has been a material change of circumstances;*
 2. *The Respondent shall pay the Petitioner’s costs.*”
8. The issues I therefore must determine in respect of the Consolidated Application can be summarized as follows: (1) whether the child maintenance payments for the children of the family have come to an end in accordance with the Order; (2) if it is not determined that the child maintenance payments have come to an end, should the current level of child maintenance payments be varied; and (3) in the event of either a confirmation child maintenance payments ceased in accordance with the Order or a variation of child maintenance is made, whether the declaration/variation shall be back dated to June 2018.

The facts

Petitioner’s position

9. Counsel for the Petitioner from the outset of the First Application, made it clear to the Court, the Petitioner had attempted to resolve this matter with the Respondent prior to making an application to the Court. The need for the Consolidated Application to be determined was stressed as the FRO had been in continual contact with the Petitioner since he ceased child maintenance payments in June 2018. The Petitioner justified his non-payment due to the children’s tertiary education coming to an end at this time. As an agreement was unable to be reached between the parties, the Petitioner’s account with the FRO continued to accumulate arrears. Consequently, as of 17 January 2019, the FRO issued a letter to the Petitioner confirmed if he did not pay the arrears at that time which amounted to \$43,233.98, his passport and his other federal licenses would be suspended. I was not satisfied to grant a stay of the Order during the course of the directions hearings held from when the First Application was made by the Petitioner; however, after hearing the evidence of the parties, I made an Order for the child maintenance to be suspended pending the final determination of this matter.
10. The Petitioner filed two affidavits in support of the Consolidated Application, one sworn on 23 October 2018 (“Petitioner’s First Affidavit”) and the second sworn on 11 January 2019 (“Petitioner’s Second Affidavit”). In addition to the Petitioner’s affidavits, he also gave *viva voce* evidence in his examination in chief updating his position as it related to his income, assets and expenses. The Petitioner also presented his stance as it related to the children’s current expenses produced by the Respondent as well as provided the court with an analysis of the Respondent’s income based on the bank statements she produced as part of her financial disclosure.

Children's completion of tertiary education

11. In terms of the children's completion of their tertiary education, the Petitioner is firm in his view that his obligation in accordance with the Order has come to an end as the children have graduated from high-school and are not pursuing any further education. It was noted that the two younger children of the family, whilst they were 21 years-old in June 2018, Ontario allows for children to continue high school until this age. Given the children's challenges, the parties accepted the children would remain enrolled in high-school until this age. Therefore, the younger children did not complete high school until June 2018.
12. The Petitioner, both in his affidavit and in his *viva voce* evidence, accepts the children will need some ongoing financial support given their special needs; however, this would have to be dependent on what the parties agree are required for their continued care respectively.
13. The Respondent produced some documents to support her position the children have not completed their tertiary education as is defined in the Order. Despite presentation of these documents, the Petitioner was steadfast in his view the terms of the Order came to an end in June 2018. I will address the Respondent's evidence relating to this in greater detail at a later stage.

Income

14. Since the parties' divorce, the Petitioner had a substantive income which allowed him to pay large monthly child maintenance payments in addition to the children's schooling expenses, therapy expenses and the like. However, in late 2015, the Petitioner's employment ended due to the winding down of the company and at the end of his employment the Petitioner was earning in excess of \$400,000 per annum. The Petitioner was unemployed for over one year at which time he used his savings to pay his child maintenance obligations. He made no application to vary the maintenance payments despite his new financial circumstances.
15. The Petitioner subsequently gained employment with his current employer as a consultant in 2016, but evidence provided by the Petitioner in his Second Affidavit showed he did not obtain any income from his consultant role until April 2017. The Petitioner produced a listing of his income from his consulting position supported by a letter from his employer which detailed his earnings for 2017 and 2018. His average monthly income from this employment for 2018 amounts to \$17,166.92. At paragraph 21 of the Petitioner's Second Affidavit he avers to earn \$14,100 per month from this consultancy position. The Respondent challenged the Petitioner in cross-examination as to whether he was owed monies in relation to a large matter he was working on. The Petitioner declared the only outstanding payments he had owed to him is \$700.

16. In March 2018, the Petitioner suffered a catastrophic accident in which he was unconscious and unresponsive for several weeks. His outcome was bleak and as such, members of his family had to apply to the Supreme Court for receivership in order for them to meet his financial obligations. The receivership was finally obtained on 4 May 2019 which was ironically the same day the Petitioner regained consciousness. The Petitioner has confirmed at paragraph 20 of his Second Affidavit he has “*fully regained [his] mental faculties, although my physical recovery continues.*” However, as a direct result of his incapacity during this period he was unable to work, but he did confirm in his *viva voce* evidence he obtained a benefit payments from his life insurance policy in the amounts of \$11,143 and \$1,857 in June and July 2018 respectively, as a result of his accident.
17. Paragraph 21 of the Petitioner’s Second Affidavit further purported that due to his accident, his “*financial position has deteriorated significantly and [he] lost a number of consulting assignments.*”
18. In addition to the Petitioner’s income from his consultant position, he also owns a business from which he earned an average of \$3,091.95 per month for 2018. The Petitioner’s evidence is his income from this business was very lucrative in both 2017 and 2018 even despite his accident in March 2018; however, he averred it is likely this level of income would not continue moving forward.
19. The Petitioner previously obtained investment income in respect of stocks he held. Due to the Petitioner’s change in financial circumstances in 2015, he confirmed in his *viva voce* evidence he sold \$40,000 worth of these stocks in 2017 in order to meet his financial obligations. He further stated he now only owns one stock which has a value of approximately \$4,000. Documents presented during the hearing showed he has not received any investment and/or dividend income since July 2018.
20. In terms of any additional assets, the Petitioner disclosed he has a plane which has a current value of between \$15,000 to \$20,000 if it were to be sold as it is currently fitted to fulfill the business needs and would have to be refitted upon sale if it were to be used for other purposes; however, if it was used for the same purposes, its market value would be between \$30,000 to \$35,000. No documentation was provided to support this evidence.
21. In cross-examination, the Respondent put to the Petitioner that he is hiding funds and/or other sources of income which are not being disclosed. The Petitioner was firm in his response that neither he does not obtain any other source of income, nor does he have any assets which have not been disclosed.

Expenses

22. Since the Respondent relocated to Canada with the children, in order for the Petitioner to continue to exercise his shared care and control, he is he required to maintain two households; one in Bermuda where he is employed and one in Canada where the children reside and where he exercises his visits with them. He commutes regularly to Canada to

care for the children and accepts that there is a period of time in 2018 when he did not see the children which was a direct result of the injuries he suffered from his accident.

23. The Petitioner is firm in his position that since the children relocated to Canada with the Respondent, he has continued to spend approximately 50% of his time with them. The Petitioner accepts that since his accident his care for the children has decreased to approximately 33%, save for when he had his accident.

24. The Petitioner states his Bermuda Expenses are as follows:

Rent	\$5,500.00
Home insurance	\$26.96
Groceries	\$400.00
Flights	\$1,000.00
Cell phone	\$300.00
BELCO	\$350.00
Insurance	\$2,002.86 ¹
Cable/internet	\$180.45
Telephone	\$29.00
Social insurance	\$311.11
Pro-rata car/motorcycle	\$317.08
Total:	\$10,417.65

25. The Petitioner states his Canada Expenses (CDN\$) are as follows:

Rent	\$2,770.00
Groceries	\$300.00
Car	\$800.00 ²
Gas	\$200.00
Cable/internet	\$167.17
Lawn/snow service	\$423.75
Speech therapy	\$600.00 ³
Home insurance	\$17.72
Life insurance	\$921.57 ⁴
Total:	CDN\$6,200.21 BMD\$4,689.04⁵

¹ The Petitioner confirmed this insurance relates to the following: health insurance; disability insurance; and life insurance.

² Upon cross examination, the Petitioner declared the monthly sum for leasing this vehicle would amount to the same if he were to rent a vehicle each time he travelled to Canada.

³ This covers one session per week for the older child of the family.

⁴ This is a separate life insurance policy with Canada life with a payout value of CDN\$1.5 million.

⁵ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

26. Therefore, the Petitioner averred his total monthly expenses even prior to paying child maintenance to the Respondent is **\$15,106.69** which leaves him a deficit of \$1,006.69 each month based on his assertion his monthly income is \$14,100.00.
27. Under cross-examination, the Respondent challenged the Petitioner's need to rent accommodation in Canada with that level of rent. The Petitioner's response was the cost of renting a hotel room would have been the equivalent of his rental, but also added a hotel room would not come with amenities such as a garden. Additionally, he submitted a four bedroom accommodation is suitable and not unreasonable to have for a family of four.
28. The monthly cost of \$200 for gas was also contested by the Respondent under cross-examination. She questioned the Petitioner on why this was so high and suggested the Petitioner does not take the children anywhere to accumulate the need for this quantity of gas. The Petitioner confirmed he takes the children out regularly and referred to some of the following places where he takes the children: dentist appointments; bowling; piano lessons; swimming in the summer; visiting Wonderland (a theme park in Canada); visiting his place of business. The Petitioner maintained "*we get out and about*" and as such this is not an unreasonable sum.

Respondent's position

29. The Respondent also filed two affidavits, one sworn on 10 December 2018 ("Petitioner's First Affidavit") and the second sworn on 29 January 2019 ("Respondent's Second Affidavit"). The Respondent provided further clarification of her financial position as it related to her household income, assets and expenses in her examination in chief.

Children's completion of tertiary education

30. During the Respondent's examination in chief, she confirmed her intent for the farm she owns to be taken over by an agency who would provide full-time care for children with disabilities. The children of the family would all reside there under this agency ("the Agency"). The Respondent confirmed that within the next year, she and her common law husband would move out of the property and the children will reside there as a supported residency under the Agency. She informed the Court there would be full-time staff that the Agency would provide and there would be other residents who reside there in addition to the children.
31. I queried whether the Respondent had communicated any of her intentions to the Petitioner and she admitted she had not. Her justification for not informing the Petitioner is that whilst she had been in discussions with the Agency for approximately six months, she had only just been contacted recently in terms of a business plan. The aim is for the Agency to commence the residency program at the farm in 2020, at which time the Respondent and her partner will move into a trailer and relocate. The Respondent also confirmed the children would still be entitled to receive disability payments from the Government which would cover the full cost of their residency. In fact, she confirmed

they would be entitled to larger monthly sums than what she currently receives from them as they would be enrolled in a full-time residential program.

32. At one point in the Respondent's cross-examination she accepted that one of the children had completed his tertiary education as per the terms of the Order. In order to maintain anonymity, I will refer to this child as "M". However, after answering just two more of Mr Richards' questions in respect of M, she was quick to her position that M is still actually receiving "*suitable equivalent education relevant to his special needs*" as he participates in the day program provided by the Agency, which means the Petitioner is still liable for payment under the terms of the Order.
33. The Respondent did not provide any documentation in relation to M's entry into this day program other than providing what appears to be a report from the Agency at the last 8 pages of the exhibit to of the Respondent's Second Affidavit (at pages 183 to 190 of the Trial Bundle). The Respondent also confirmed that she had not informed the Petitioner of the child's enrollment in this course. The said report shows M commencing his enrollment in this day program as of September 2018.
34. Upon my own investigation from this day program's website, the description of the services offered are as follows:

"[The business] was co-founded by [two persons]...The two humbly started the company with one adult client with limited verbal skills with the intention to demonstrate his value in the workplace. The two ambitiously dreamed of facilitating more inclusive workforces...

*[The business] partnered with [the Respondent's farm], with the intention of pursuing a shared vision of creating a **special needs safe space** that includes caring and supportive programming for adults with developmental disabilities, which fosters growth and improves quality of life. Part of that vision includes developing pre-employment skills, identifying neurological differences, while leveraging strengths and abilities.*

Already a DARTS destination, the hobby farm provides a therapeutic environment in a rural setting to develop vocational and/or employment skills. The rural setting allows people to be themselves, with acres of forgiving space and lower stimuli than urban settings.

Participating in the Farm Crew pre-employment program does not mean you're being trained to work on a farm. You could, if you wanted to. But the goal is to create a foundation of understanding the ins and outs of an employment setting, and gaining transferable skills to pursue your future-focused goals."

"[The business] has partnered with [the Respondent's farm], a special needs friendly animal sanctuary, to offer the first on-site program for adults with developmental disabilities which offers the predictability and stability that is often

offered by structured day programs and provides future-focused training and support for real employment roles.

Some employment skills taught on this team are:

- *teamwork*
- *following direction*
- *lawn maintenance*
- *general maintenance*
- *minor repairs*
- *health & safety awareness*
- *animal care*
- *cleaning”⁶*

35. There is no information as to the length of the program, so it appears to me it would purely be a matter of each individual’s choice (the individual’s parent and/or guardian) as to how long they participate. As stated previously, in the Respondent’s examination in chief she confirmed her intent for all the children to be enrolled in this day program which would be run by the Agency. At this time she and her partner will vacate the farm. There was no indication given by the Respondent that the children would remain there for a certain period of time, the implication being it is indefinite.
36. The Petitioner disputes M should be considered as being pursuing his tertiary education or “*suitable equivalent education relevant to his special needs*” by participating in the Agency’s day program. Firstly, the Petitioner reiterated his lack of knowledge and consultation for M to commence participating in this program. Secondly, the Petitioner noted there is no end date for this program so it would be wholly unreasonable for the terms of the Order to be interpreted in such a way which would essentially bind him to pay child maintenance indefinitely. Again, the Petitioner accepts he should be paying some contribution towards the children’s care for expenses such as continuing speech therapy and the like, but that this does not fall into that category.
37. Unlike the day program provided by the Agency M is enrolled in, the Respondent also confirmed one of the other children who I will refer to as “R”, is enrolled in a college program. The program is called Community Integration through Co-operative Education and the end of which you will obtain an Ontario College Certificate. Again, this was something the Respondent admitted in her cross-examination that she had not informed the Petitioner of R’s enrollment in this program. The Respondent provided a document during the hearing which I accepted as Exhibit “R2”, confirming R’s enrollment in the program. However, I noted the document had been amended. The amendment scratched out in handwriting the electronic “tick” next to the box labelled “Part-time”, and ticked the box next to “Full-time”. I informed the Respondent I could not accept this document with the amendment in relation to whether the program was full-time or part-time as I had no way to confirm who made this amendment. I requested another form to be

⁶ I have amended the exact content of the website in order to retain anonymity of the parties as well as not provided the website link for this same reason. I am confident the parties will not dispute the content of the website.

submitted, but this was not provided. It should be noted that R does not live with the Respondent as he is in a group care home where he has been for over one year.

38. Further information from the website confirmed the length of the program R is enrolled in is two years, despite the Exhibit “R2” stating it is a one year program. The Respondent’s affidavit evidence confirmed it is a two year program.
39. As it relates to the program R is enrolled in, I was able to pull from the website more detail about its goals for those who participate:

“Provides students who have intellectual disabilities and other significant learning challenges the opportunity to pursue a postsecondary education, develop skills to help prepare for employment and experience college life.”

“Program Highlights

- *Individualized academic supported program that allows you to experience college, encouraging you to utilize all aspects of the college and the many social opportunities for learning.*
- *Learning is integrated with several other program areas as partnerships. You will build a comprehensive transition plan upon leaving the program as a capstone project.*

What you'll learn

- *Enhance academic and vocational skills through modified programming to meet your individual needs.*
- *Strengthen basic numeracy, communications and computer skills.*
- *Build communication skills.*
- *Increase technology skills.*
- *Build independence and advocacy.*
- *Build on professional and work ready skills.*

Program Length

2 academic years (periods of 8 months)

Fast Track - *allows students to complete a two-year Diploma program in 16 months. Students will start in January or May and be in school for four continuous semesters: Winter, Spring/Summer, Fall, Winter or Spring/Summer, Fall, Winter, Spring/Summer. Students will not be off during the summer.”⁷*

40. The Petitioner also disputed R should be considered as pursuing “*tertiary education or suitable equivalent education relevant to his special needs*”. His position being that anyone enrolled in this program will receive a certificate; i.e. no one who is enrolled fails.

⁷ <https://www.mohawkcollege.ca/programs/preparatory-studies/community-integration-through-co-operative-education-cice-284>

As R would not be obtaining a diploma or similar and appears to be focused on life skills, this would not fall into either category referred to in the Order. Furthermore, Counsel for the Petitioner raises in the cross-examination of the Respondent that given the upcoming academic year would involve all work placements, whether this would still be considered education. The Respondent's view is he is still obtaining support through the program so it would still be considered education.

41. The Petitioner also stressed his lack of knowledge of R's enrolment in this program and expressed his frustration with the Respondent in continuing to make unilateral decisions in relation to the children despite the parties having joint custody and care and control.
42. There was no dispute that the third child of the family is enrolled in "*tertiary education or suitable equivalent education relevant to his special needs, whichever is the latter*".

Income

43. The Respondent's income was a great source of contention in these proceedings. Particularly as it related to the income and expenses related to her hobby farm business as well as in relation to disability payments she receives from the Ontario Ministry of Community and Social Services ("ODSP") for the children.
44. During the Respondent's examination in chief, she confirmed ODSP provided payments of CDN\$1,021, CDN\$896 and CND\$1,250 per month respectively. This is a total of CDN\$3,167 which is income the Respondent confirmed she has received since the children obtained the age of eighteen. It was also confirmed this source of income was not disclosed during the course of the Petitioner's 2010 Application. As such, this additional source of income was not considered when the varied sum of child maintenance was determined.
45. When the Respondent filed her submissions on 3 April 2019, she attached 3 statements from ODSP which evidenced the payments being CDN\$1,241 (\$1,021 of which is paid directly to the residential facility where this child resides), CDN\$896 and CDN\$896. This is a total of CDN\$3,033 per month. It was accepted the when the Order was made, the ODSP payments received by the Respondent were not considered. The sole issue which was determined was whether the Respondent was at that time co-habiting which would have the effect of reducing the monthly child maintenance payments.
46. The Respondent confirmed she purchased the farm where she currently resides with her common law husband and the children in 2013 for approximately CDN\$700,000. The property is a 9.75 acre lot with the main house consisting of 4 bedrooms and is approximately 2,500 square feet. There are two main barns which require new siding and the Respondent has built three new "mini-barns" to house goats, cows and alpacas. The main barns are used for the boarding of horses. The Petitioner's evidence was that when he visited the farm in 2018, there were 24 horses boarding and nearly 30 goats which he asserts creates a significant income for the Respondent. In cross-examination the Respondent confirmed she no longer has that many horses boarding as that was in January 2018; she only has 14 horses boarding now. She stated the boarding income was

very minimal and has declined over the last year due to people no longer boarding their horses at the farm.

47. The Respondent confirmed that subsequent to the purchase of the farm, a new indoor riding arena was built in order to attract more business for the boarding of horses. The cost of this construction was approximately CDN\$120,000 and the mortgage was refinanced to obtain these funds which increased the monthly mortgage payments to CDN\$2,931.40 per month. It should be noted the mortgage documentation provided to support this also confirms it is a 5 year term mortgage which has a maturity date of 1 October 2023.
48. A further CDN\$60,000 was also needed to complete this construction and the Respondent, for which she obtained a loan; the monthly payments are CDN\$1,347. The Respondent's evidence is the farm has only been considered a "business" since 2017 as it was not until then that it produced over CDN\$30,000 in income which made the business become taxable. Her evidence is that prior to 2017, the business just breaks even and continues to do so. In terms of the income from the farm, the Respondent confirmed she has an accountant who deals with the finances. The only evidence submitted in relation to the farm's income was a 2016 and a 2017 Tax Return submitted in the exhibits of the Respondent's Second Affidavit (page 154 of the Trial Bundle). The 2017 Tax Return evidences a gross income of CDN\$85,588 and a net income of negative CDN\$19,317 as the Respondent stated the expenses for the farm were approximately CDN\$105,000.
49. There is another source of income which also must be taken into consideration which is from the Respondent's common law⁸ partner. He receives monthly payments of \$4,112.00 and \$4,281.95 for disability/pension payments which amounts to CDN\$8,393.95. The Respondent confirmed her partner's income covers her own personal expenses as well as the expenses for the farm due to the lack of receipt of child maintenance. In addition to this monthly income, the Respondent confirmed her common law partner also receives a benefit of CDN\$1,914.46 twice per annum to cover household cleaning costs. This amounts to CDN\$3,828.92 per annum, which is CDN\$319.08 per month. Therefore, her common law partner's monthly income is CDN\$8,713.03.
50. The Respondent also purported her partner has depleted his savings in order to assist with the expenses of the farm. There was no evidence presented to support this.
51. In terms of the Respondent's overall income, the Petitioner produced an analysis of the Respondent's bank accounts which were provided through disclosure in respect of the years 2017 and 2018. For the year 2017, the Petitioner's analysis showed that without child support her annual income (inclusive of her common law husband's income and ODSP payments) exclusive of child maintenance as CDN\$237,653.52. This is a monthly average of CDN\$19,804.38 per month prior to child maintenance payments being paid to the Respondent by the Petitioner. In 2018, the Petitioner's analysis showed the Respondent's annual income (inclusive of her common law husband's income and ODSP payments) exclusive of child maintenance as CDN\$290,580.23. Therefore, the average

⁸ This is reflective of law in Ontario.

monthly income for the Respondent in 2018 was CDN\$24,215.02 excluding child maintenance. Had the Respondent been continuing to pay child maintenance throughout 2018, the Respondent's average, monthly income would total CDN\$29,965.02.

52. The Respondent also received a lump sum payment of CDN\$180,000 in 2013 in relation to a car accident she was involved in. This money was used to purchase the farm.

Expenses

53. The Respondent during the hearing confirmed the expenses she set out in her Second Affidavit were apportioned in 5ths as there are 5 people who reside in the household, so each listing she provided represented 1/5th of the actual expense. Rather than setting out each list of monthly expenses, I will combine the household expenses. Individual expenses set out in relation to each child I will address afterwards.
54. The purported monthly household expenses for the Respondent are as follows:

	CDN\$
Mortgage	\$2,931.40
Loan to complete construction	\$1,347.00 ⁹
Property taxes	\$482.40
Electricity	\$600.00
Oil (heating)	\$250.00
Insurance for truck	\$750.00
Truck maintenance	\$250.00
Gas for truck	\$700.00
Telephone (landline)	\$25.00
Cable/Internet	\$204.75
Cleaning services	\$562.90 ¹⁰
Total:	\$8,103.45
Total BMD\$:	\$6,128.74¹¹

55. It should be noted the Respondent accepted the mortgage payment, property taxes, electricity and oil (heating), that one-third of these can be attributed to the farm rather than for the house. During cross-examination the Respondent also accepted the farm was not a necessity for the children. It is clear from the Respondent's evidence, the loan would be an expense related directly to the farm as it was obtained to complete the construction of an outdoor riding arena. Therefore, if one-third of these expenses are

⁹ There was no evidence produced confirming the amount of the loan, the term of the loan and verifying the monthly payments.

¹⁰ The Respondent in her cross-examination confirmed she obtains cleaning services at the expense of \$130 per week.

¹¹ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

removed as well as the loan (specifically obtained to complete construction at the farm), the expenses attributed to the household (excluding the farm business) would be as follows:

	CDN\$
Mortgage (two-thirds)	\$1,954.27
Property taxes (two-thirds)	\$321.60
Electricity (two-thirds)	\$200.00
Oil (heating) (two-thirds)	\$166.67
Insurance for truck	\$750.00
Truck maintenance	\$250.00
Gas for truck	\$700.00
Telephone (landline)	\$25.00
Cable/Internet	\$204.75
Cleaning services	\$562.90
Total:	\$5,135.19
Total BMD\$:	\$3,883.81¹²

56. As referred to previously, the Respondent's evidence is the annual expenses for the farm in 2017 were approximately CDN\$105,000, which meant the net income was a deficit of CDN\$19,371 for 2017. On cross-examination, the Respondent confirms she provides her accountant an excel spreadsheet in order to submit her tax returns. No income or expense spreadsheets or the like were provided in her disclosure. When questioned by Counsel, the Respondent confirmed the total expenses for the farm of CDN\$105,000 would include the following: hay; straw; shavings; feed for chickens, horses and goats; gas for truck (1/3rd); one-half of the electricity bills; purchasing new farm vehicles such as tractors; maintenance of farm equipment; farm supplies, such as buckets, etc.; maintenance for the horse trailers. The Respondent was unable to confirm if the expense of the mortgage and the loan were included in the farms expenses totaling CDN\$105,000 for the year. There was no evidence presented to support any of the items referred to by the Respondent are those included in the farm's expenses. Moreover, there was no evidence to support any quantum for these purported expenses.

57. In terms of the direct expenses for the children, the Respondent presented the following (after extracting the household expenses):

<u>For the oldest child</u>	CDN\$
Cell phone	\$50.00
Food	\$400.00
Speech therapy	(\$600.00) ¹³
Recreational expenses (movies, dinner, etc.)	(\$200.00) ¹⁴

¹² I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

¹³ This expense has been not been included in the total as this is paid by the Petitioner and not the Respondent.

Clothing	\$200.00
Toiletries/extra items	\$50.00
Incidentals/damages/replacement costs	\$50.00
Total:	\$750.00
Total BMD\$:	\$567.32¹⁵

58. The Petitioner challenged the high level of expenses in relation to the food, recreational expenses and clothing in respect of all the children. The Respondent confirmed in respect of the ODSP payments she receives for the oldest child, it was agreed with him that “\$500 per month was a nice amount to pay mom each month for room and board”. Therefore, not taking into account the ODSP payments paid directly for his program expenses, he retains approximately CDN\$396 each month for his spending money. The Respondent confirmed she believes this is a reasonable amount for him to retain and states he uses this money to pay for expenses such as, lunches, Amazon purchases, Google purchases, games, etc. The Respondent confirms she monitors his spending as on one previous occasion he purchased a life insurance policy. In addition to the CDN\$396 per month the oldest child retains, the Respondent informed the Court she also provides him with an allowance of CDN\$50 per week which amounts is CDN\$216.50 per month. Counsel for the Petitioner queried why it was necessary for the Respondent in addition to the monies he retains from the ODSP payments she also provides him with this allowance and the Respondent’s response was “because I’m his mom”.

59. However, the Respondent does accept the purpose of the ODSP payments are to pay for the children’s housing and support. Mr Richards queried why the Respondent continued to expect the Petitioner to pay such a high level of maintenance, particularly now she has been in receipt of the ODSP payments for the children. The Respondent’s response is that the total ODSP payments only just cover the mortgage for the home/farm and as such do not cover any of their food or other necessary expenses.

60. The monthly expenses presented for M (after extracting the household expenses) are as follows:

<u>M</u>	CDN\$
Speech therapy	\$640.00
Food	\$400.00
Recreational expenses (movies, dinner, etc)	\$200.00
Clothing	\$250.00
Toiletries/extra items	\$50.00
Incidentals/damages/replacement costs	\$100.00
Darts (transportation)	\$32.00
Programming costs (Paragraph 10 of Respondent’s Second Affidavit)	(\$500.00) ¹⁶

¹⁴ The Respondent agreed this should be removed during her cross-examination.

¹⁵ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

Total: \$1,672.00
Total BMD\$: \$1,264.05¹⁷

61. The Petitioner disputed the necessity for both M and R to receive speech therapy as this is something he does not accept have assisted them. His belief is M and R require behavioural therapy rather than this. When the Respondent filed her submissions on 3 April 2019, she included a copy of each of the children’s speech therapy reports. I will not take into account this evidence as it was not presented during the hearing.
62. The Petitioner also disputed the high cost of clothing for the children as his evidence is that the children’s clothes are generally purchased from Walmart (where he purchases their clothes from) and there is no way the expense should be this high. The Respondent believes is it a reasonable estimate of the expense as M tends to destroy his clothing frequently.
63. It was also disputed that the level of the “recreational expenses” seemed to be extremely high for all of the children.
64. The monthly expenses presented for R (after extracting the household expenses) are as follows:

<u>R</u>	CDN\$
Speech therapy	\$800.00
Food	\$200.00
Recreational expenses (movies, dinner, etc)	\$250.00
Clothing	\$250.00
Toiletries/extra items	\$50.00
Incidentals/damages/replacement costs	\$100.00
Darts (transportation)	\$40.00
Cell phone	\$72.00
Total:	\$1,762.00
Total BMD\$:	\$1,331.98¹⁸

65. In relation to R’s expenses, the Petitioner disputed the expenses as previously noted above.

The law

¹⁶ The Respondent admitted in cross-examination that this is not a current expense and payments for this program are paid by the “Passport” program in any event. M receives approximately \$38,000 per annum through the “Passport” program.

¹⁷ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

¹⁸ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

66. Section 35 of the Matrimonial Causes Act 1974 (“the Act”) provides the Court with the statutory jurisdiction to vary an order in relation to ancillary relief applications. Section 35 sets out the following:

“Variation discharge, etc., of certain orders for financial relief

35 (1) *Where the court has made an order to which this section applies, then subject to this section, the court shall have the power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.*

(2) *This section applies to the following orders:*

...

(b) any periodical payments order;

....

(7) *In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.* [Emphasis added]

67. If accepted there has been significant change in circumstances which would cause me to consider varying the Order, I have a statutory obligation to have regard to all the components set out in Section 29 of Act. In terms, of the apportionment of expenses when one must determine a reasonable level of maintenance, the Court has a wide discretion in accordance with the Act and must take into account all of the factors set out in Section 29.

68. In the case of *A v A* [2016] Bda LR 2, Hellman J confirmed the requirement of their being a significant change in financial circumstances at paragraph 26:

“26. ...*Where, as in the present case, the order is very recent, the Court is unlikely to exercise that jurisdiction unless there is a good reason to do so, e.g. because there has been a material change in circumstances or material non-disclosure by one of the parties. If the Court does decide to reopen the order, then it may do so in whole or in part, giving such weight to the existing order as it sees fit.*” [Emphasis added]

69. Consideration must be also be given to the timeframe in which to grant periodical payments for the benefit of a child(ren) of the family. This is statutorily defined in Section 33(1) of the Act:

“Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour

33 (1) *Subject to subsection (3), no financial provision order and no order for a transfer of property under section 28(1)(a) shall be made in favour of a child who has attained the age of eighteen.*

(2) *The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but—*

(a) *shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 40 of the Education Act 1996) unless the court thinks it right in the circumstances of the case to specify a later date; and*

(b) *and shall not in any event, subject to subsection (3), extend beyond the date of the child's eighteenth birthday.*

(3) *Subsection (1), and subsection (2)(b), shall not apply in the case of a child, if it appears to the court that—*

(a) *the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or*

(b) *there are special circumstances which justify the making of an order without complying with either or both of those provisions...*
[Emphasis added]

70. I must therefore be satisfied that a child is “*receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment*” (Section 33(3)(a) of the Act) or whether there are “*special circumstances*” (Section 33(3)(b) of the Act) to justify extending an order for child maintenance.

71. Interestingly, whilst historically the vast majority of child maintenance cases have required the child(ren) to be enrolled in full-time education, the wording of the statute is clear this is not a requirement and child maintenance can in fact be payable if the child(ren) are enrolled in a part-time program and are also in gainful employment. Evidently this intention is further validated by the requirement in Section 29(2)(b) for any income of the child(ren) to also be taken into account:

“(2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or

(4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

(a) *the financial needs of the child;*

(b) *the income, earning capacity (if any), property and other financial resources of the child;*

...” [Emphasis added]

72. The wording of the Order made by the then Learned Justice Wade Miller must also be considered. The Order provides for the child maintenance payments to continue as follows:

“2... the said payments continuing for each child until he shall have reached the age of 18 years or completed his tertiary education or suitable equivalent education relevant to his special needs, whichever is the latter. Thereafter, should the circumstances of the child, or any of them, dictate that they require assisted living either independently or with a parent, then there shall be liberty for either party to apply...”

73. There is no requirement in the Order for the children to be in “full-time” tertiary education and the Act also does not provide a requirement for the program for a child to be enrolled in subsequent to his or her completion of high school education for the program to be “full-time”. Neither is there a statutory definition of “tertiary” education; therefore, it should be given its ordinary meaning:

“(of education) taking place after secondary school, such as at university, college, etc”¹⁹

74. As it relates to the later part of the Order which states: “*or suitable equivalent education relevant to his special needs...*”; consideration must also be given to what is deemed to fall within this category. I was unable to find any statute or case law which was helpful in defining what education should fall within this category. Therefore, the wording should also be given its ordinary meaning.

Findings

Requirement for child maintenance to continue in accordance with the Order

75. It has been accepted by the parties that the oldest child of the family is enrolled in tertiary education and as such I need make no findings in relation to this child.

¹⁹ Definition from: <https://www.dictionary.com/>

76. As it relates to M, I do not accept in accordance with the ordinary meaning of “tertiary”, he is currently enrolled in a form of tertiary education. Whilst I accept it is likely all the children will require ongoing assistance for the remainder of their lives, the program in which M is in? has no “end date” and as stated by the Respondent in her *viva voce* evidence, it is her intention for the children to remain at the farm once it is fully taken over by the Agency. I therefore, fail to comprehend how M’s participation in this program can fall within the meaning of what was intended by the Order. In my view, this falls within the category of assisted living.
77. Therefore, the Respondent is free to make an application in accordance with the later part of paragraph 2 of the Order:
- “2...Thereafter, should the circumstances of the child, or any of them, dictate that they require assisted living either independently or with a parent, then there shall be liberty for either party to apply...”*
78. In terms of R, I do accept the program he is currently enrolled in falls within the definition of “*tertiary education or suitable equivalent education relevant to their special needs*”. There is no requirement for the program to be full time in accordance with the Order or with the Act. Furthermore, the program is provided by a college which falls within the definition of tertiary education. Even if I do not accept this program as being deemed as tertiary education, I find it does fall within being classified as “*suitable equivalent education relevant to their special needs*”.

Income

79. It is indisputable that the Petitioner’s income has greatly reduced since the Order. This was accepted by the Respondent in her cross-examination. However, I find the Petitioner’s monthly income to be BMD\$20,258.87 per month rather than the purported \$14,100. This figure has been calculated based on his average income from his consulting position in 2018 being \$17,166.92 plus his average income from his business for 2018 being \$3,091.95.
80. As it relates to my findings of the Respondent’s income, this is far more of a complicated task given the lack of evidential support provided by the Respondent as well as the fact that her income and expenses from the farm are intermingled with her other sources of income. I will therefore address each in turn as follows:
- a) ODSP payments totaling CDN\$3,033 per month; i.e. BMD\$2,292.44²⁰;
- I accept this is an accurate representation of the ODSP payments the Respondent receives each month for all of the children.
- b) Common law husband’s income of CDN\$8,713.03 per month; i.e. BMD\$6,585.68²¹; and

²⁰ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

I accept this is the accurate monthly income the Respondent's common law husband provides to the household.

- c) Income from the farm of CDN\$7,132.33 per month (based on annual income of CDN\$85,588 for the year 2017); i.e. BMD\$5,391.19. However, the Respondent's 2017 Tax Return showed a deficit of \$19,317 for that year. Therefore, the Respondent position is the farm does not receive any income.

The difficulty I have with accepting the farm earned a negative net income is that the Respondent provided no documentary support whatsoever to prove the annual expenses for the farm being CDN\$105,000. I have little doubt, the mortgage, loan, property taxes, electricity and oil for heating are included within the expenses. The question then becomes if they are indeed included, to what extent they are included. For example, is the full mortgage payment being included rather than two-thirds which the Respondent accepted should be attributed to the farm?

- 81. Based on the Petitioner's analysis of the Respondent's monthly income for 2018, she receives CDN\$24,215.02 (BMD\$18,296.13). This is prior to receiving any child support payments which would increase her monthly income to CDN\$29,965.02 (BMD\$22,640.65). The Respondent's position is her income is only derived from the child maintenance payments (not currently paid), ODSP payments and her common law husband's income. This would only amount to CDN\$11,746 per month exclusive of child maintenance payments; i.e. BMD\$8,878.12.
- 82. Given the Respondent's lack of disclosure as it relates to the farm's income and expenses, I have the discretion to draw adverse inferences and in this instance I will do so. I therefore, accept the Petitioner's analysis of the Respondent's average monthly income being CDN\$24,215.02 (BMD\$18,296.13).

Expenses

- 83. I accept the expenses listed by the Respondent are reasonable given that he is required to maintain two households in separate jurisdictions in order to exercise his shared care and control with the children. However, I will note, given the Respondent's change in financial circumstances, it would be prudent of him to consider renting alternative accommodation in Bermuda which attracts a lesser monthly rental payment.
- 84. As stated previously, the Respondent provided little evidence to support her expenses for that of the household as well as in relation to the farm. She accepted one-third of the household expenses she provided are attributed to the farm, hence I reduced them as set out at paragraph 55 above. However, I do not accept a number of the household expenses the Respondent avers to pay each month given her lack of financial disclosure, particularly as it relates to the farm's expenses. I do not accept the Respondent should be

²¹ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

responsible to contribute to such an excessive monthly insurance premium for the Respondent's truck, which my understanding is so high due to her previous accident. I also do not accept the Respondent pays \$700 per month in gas or has maintenance expenses amounting to \$3,000 per annum for the truck. I also do not accept if the Respondent is having financial difficulties as she purports, that she should retain household cleaning services whether they are a benefit received by her common law husband or not. I list below what these reasonable expenses should be:

CDN\$

Mortgage (two-thirds)	\$1,954.27
Property taxes (two-thirds)	\$321.60
Electricity (two-thirds)	\$200.00
Oil (heating) (two-thirds)	\$166.67
Insurance for truck	\$250.00
Truck maintenance	\$50.00
Gas for truck	\$200.00
Telephone (landline)	\$25.00
Cable/Internet	\$204.75
Cleaning services	\$562.90
Total:	\$3,372.29
Total BMD\$:	\$2,548.19²²

85. Therefore, taking into consideration there are five members of the household, one-fifth of the household expenses would amount to CDN\$674.46.
86. I also do not accept the expenses as it relates to both the oldest child of the family and R. Neither do I accept the cost of food is as high as is claimed, nor do I accept the cost of clothing is as high. It must also be taken into consideration that the Petitioner has the children for a minimum of one-third of the time. Further, as it is not agreed between the parties that R should be obtaining speech therapy, this falls into the ambit of the later part of the Order which would require the Respondent to make an application to the Court. I therefore accept the expenses for these children are as follows:

<u>For the oldest child</u>	CDN\$
Cell phone	\$50.00
Food	\$300.00
Speech therapy	(\$600.00) ²³
Recreational expenses (movies, dinner, etc.)	(\$200.00) ²⁴
Clothing	\$100.00
Toiletries/extra items	\$50.00

²² I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

²³ This expense has been not been included in the total as this is paid by the Petitioner and not the Respondent.

²⁴ The Respondent agreed this should be removed during her cross-examination.

Incidentals/damages/replacement costs	\$50.00
Total:	\$550.00
Total BMD\$:	\$415.58²⁵

<u>R</u>	CDN\$
Speech therapy	\$800.00
Food	\$100.00
Recreational expenses (movies, dinner, etc)	\$50.00
Clothing	\$100.00
Toiletries/extra items	\$50.00
Incidentals/damages/replacement costs	\$100.00
Darts (transportation)	\$40.00
Cell phone	\$72.00
Total:	\$512.00
Total BMD\$:	\$386.83²⁶

87. It should be noted, I have not made any findings as it relates to M's expenses given I have found he no longer fits into the remit of paragraph 2 of the Order and as such no child maintenance would be payable.

Change in financial circumstances

88. Based on the above findings in respect of the income and expenses of the parties', I find there has been a material change in financial circumstances for both parties since the granting of the Order. The Petitioner's income has significantly decreased since 2010 and the Respondent's income has significantly increased since this time.

Conclusion

89. In light of the above findings, the child maintenance payments for M in the sum of CDN\$1,916.66 per month shall be discontinued. The cessation of these payments shall be backdated to commence with effect from 1 July 2018 which is the month following M's graduation from high school. The effect of this is the arrears currently accrued with the FRO shall be reduced by CDN\$26,833.24 (this represents fourteen months of payments in the sum of CDN\$1,916.66 per month).

90. In relation to R, there shall be a reduction of child maintenance to CDN\$800 per month. I have concluded this is a reasonable sum for the Respondent to pay based on the following:

²⁵ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

²⁶ I have used the exchange rate as of 12 August 2019 (1 CDN\$ = 0.756430 BMD).

- a) R is living in an assisted living/residential facility so does not live with the Respondent on a full-time basis.
 - b) R's accommodations are fully paid for by the ODSP payments received by the Respondent (directly paid to the facility).
 - c) ODSP payments will still be obtained by the Respondent should R return to live on the farm, albeit at a reduced rate and these payments were not previously taken into account.
 - d) Some level of maintenance is required given R is participating in a tertiary education program relevant to his special needs.
 - e) The Respondent should contribute to one-fifth of the household expense for this child to the amount of two-thirds of this expense as he has the children one-third of the time. This means in terms of the household expenses, his two-third contribution of the one-fifth of this expense (CDN\$674.46 as set out at paragraph 82 above) is CDN\$449.64 per month.
 - f) The Respondent should also be responsible for two-thirds of R's direct expenses which is CDN\$341.33 per month.
 - g) The total sums of (e) and (f) above equal CDN\$790.97 which I will round up to CDN\$800.00 per month.
 - h) Whilst the parties do have differing incomes, I believe this is still an appropriate and reasonable apportionment of the children's expenses.
91. The reduced child maintenance payments for R shall be backdated to 1 July 2018, which is when he completed his high school education. As R continues to be enrolled in a program in accordance with the Order, this maintenance shall immediately cease the 1st day of the month following the completion of this program. Given the Petitioner and the Respondent continue to share joint custody of the children (even though I accept in normal circumstances this would no longer be applicable once children have attained the age of eighteen, my view is this joint custody would continue indefinitely given their special needs), the Petitioner shall be entitled to obtain any information from the college in respect of R's enrollment and completion date. Therefore, the arrears for R which have accrued at the rate of CDN\$1,916.66 per month, shall be reduced by CDN\$15,633.24. This represents the difference between the old sum and the new sum of maintenance for the fourteen months which have passed since 1 July 2018.
92. The maintenance payments for the oldest child of the family shall be reduced to CDN\$820.00 per month. I have concluded this is a reasonable sum for the Respondent to pay based on the following:
- a) He is still being cared for by the Petitioner for a minimum of one-third of the year.

- b) The Respondent receives payments from ODSP for this child which were not taken into consideration previously.
 - c) Some level of maintenance is required given he is participating in a tertiary education program relevant to his special needs.
 - d) The Respondent should contribute to one-fifth of the household expense for this child to the amount of two-thirds of this expense as he has the children one-third of the time. This means in terms of the household expenses, his two-third contribution of the one-fifth of this expense (CDN\$674.46 as set out at paragraph 82 above) is CDN\$449.64 per month.
 - e) The Respondent should also be responsible for two-thirds of oldest child's direct expenses which is CDN\$366.67 per month.
 - f) The total sums of (d) and (e) above equal CDN\$816.31 which I will round up to CDN\$820.00 per month.
 - g) Whilst the parties do have differing incomes, I believe this is still an appropriate and reasonable apportionment of the children's expenses.
93. This reduction in payment shall be backed to 1 February 2019 as the Petitioner's Consolidated Application was not filed until 16 January 2019 seeking a variation of maintenance in respect of all three children of the family whereas the First Application merely sought the end the child maintenance payments for M and R. The reduced payments shall end on the 1st day of the month following the completion of the course he is currently enrolled in. Any arrears which may have accrued in relation to this child shall be paid forthwith.
94. In the Petitioner's submissions there was reference to the seeking of overpayment of child maintenance in the sum of \$12,500 since the Order was in place; however, this matter was not raised during the hearing and was also not sought as part of the relief set out in the Consolidated Application. Therefore, I will not make any determination in respect of this request.
95. The Petitioner has also requested to be granted costs of the Consolidated Application. The determination of this matter was regrettably not as straightforward as the Petitioner had initially anticipated. A great deal of this was as a direct result of the Respondent's failure to communicate with the Petitioner regarding what programs the children are participating in. Furthermore, it is clear the level of acrimony that has been displayed between the parties since the outset of the divorce proceedings in 2006 has not waived. Consequently, the Court is then required to step in.
96. It is most unfortunate in all family cases where the parties are dragged through litigation which undoubtedly has the effect of creating more animosity between the parties, the

result being the children are the ones who are disadvantaged. In an ideal world, the parties would have been agreeable to participate in mediation to resolve this dispute. Having said this, the fact is the Petitioner has been successful in obtaining the relief he sought. This simply cannot be ignored despite there being a general theme in family cases that no orders for costs are made. I do not agree with this historical practice being used as a broad brush in respect of costs for all family cases. Like any other litigation, one party has not been able to reach a resolution after which requires the matter to be determined by the Courts. As such, I see no reason to divert from the principle that costs should follow the event. I therefore award costs to the Petitioner on a standard basis, to be taxed if not agreed. I strongly encourage the parties to resolve the issue of costs as soon as practicable as it would be ideal for the costs awarded to the Petitioner to be set off against any arrears of child maintenance owed to the Respondent.

97. I would ask Counsel for the Petitioner to draw an order reflecting the terms of this Judgment as soon as practicably possible in order for it to be distributed to the FRO.

16 August 2019

ALEXANDRA WHEATLEY
REGISTRAR OF THE SUPREME COURT