

2021 ONSC 6608
Ontario Superior Court of Justice

Barteaux v. Mahdi

2021 CarswellOnt 14233, 2021 ONSC 6608, 2021 A.C.W.S. 104

**ROBERT MATTHEW BARTEAUX (Applicant) and POROSHAD MAHDI
(Respondent)**

R.A. Lococo J.

Heard: September 21, 2021

Judgment: October 7, 2021

Docket: Toronto FS-18-929

Counsel: Julie **Stanchieri**, William Francis, for Applicant
Natacha Leite (agent), for Respondent

Subject: Civil Practice and Procedure; Family

Related Abridgment Classifications

Family law

[XVII Practice and procedure](#)

[XVII.6 Discovery](#)

[XVII.6.c Financial disclosure](#)

Headnote

Family law --- Practice and procedure — Discovery — Financial disclosure

Following parties' separation in 2015, two children resided primarily with mother in former matrimonial home — Both parties were lawyers in private practice — In April 2019, father was ordered to pay interim child support of \$1,716 per month based on his 2018 income of \$120,000 as well as proportionate share, 34 percent, of childcare expenses — Father subsequently resigned position at law firm and started own practice, first through professional corporation and then in limited liability partnership — He claimed he had earned no personal income after leaving firm in 2019 or in 2020, and had funded living expenses by selling property — Mother brought motion for extensive disclosure — Father took position motion should be dismissed as premature, coming only four days after mother's formal request for disclosure, and on basis it offended principle of proportionality — Motion granted in part — While there was no doubt about importance of proper and timely financial disclosure in family law proceedings, there was also no doubt requests had to be consistent with principle of proportionality — Although disclosure requested by mother in this case went beyond what was necessary and appropriate, that did not justify dismissal of motion in its entirety, particularly in view of fact father's disclosure had been outstanding for some time — Order was required to supplement his statutory obligation to provide ongoing disclosure in circumstances — Father was ordered to disclose personal income tax returns and notices of assessment for 2019 and 2020, details of year-to-date earnings for 2021, financial statements and income tax returns for professional and any other corporation, including breakdown of amounts paid to or on behalf of non-arms' length individuals or entities, for 2018, 2019 and 2020, confirmation of income and draws from partnership in 2021, and statements for all personal and business bank accounts and debts from September 2018 to present — He was not required to provide disclosure in relation to acting, producing or directing activities, private school or other expenses for child with current partner, or travel.

Table of Authorities

Cases considered by *R.A. Lococo J.*:

Leitch v. Novac (2020), 2020 ONCA 257, 2020 CarswellOnt 5201, 38 R.F.L. (8th) 1, 64 C.C.L.T. (4th) 263, 150 O.R. (3d) 587, 63 E.T.R. (4th) 37 (Ont. C.A.) — considered

Leskun v. Leskun (2006), 2006 SCC 25, 2006 CarswellBC 1492, 2006 CarswellBC 1493, 349 N.R. 158, 268 D.L.R. (4th) 577, 226 B.C.A.C. 1, 373 W.A.C. 1, [2006] 1 S.C.R. 920, 34 R.F.L. (6th) 1, 62 B.C.L.R. (4th) 197, 2006 CSC 25 (S.C.C.) — referred to

Statutes considered:

Children's Law Reform Act, R.S.O. 1990, c. C.12
s. 30 — referred to

Rules considered:

Family Law Rules, O. Reg. 114/99

R. 2(2) — referred to

R. 2(3) — referred to

R. 19 — referred to

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 1.04(1.1) [en. O. Reg. 438/08] — referred to

Forms considered:

Family Law Rules, O. Reg. 114/99

Form 13 — referred to

Regulations considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

Federal Child Support Guidelines, SOR/97-175

Generally — referred to

s. 7 — referred to

s. 21(1) — referred to

s. 21(1)(e) — referred to

s. 21(1)(f) — referred to

MOTION by mother for order requiring father to provide extensive disclosure.

R.A. Lococo J.:

I. INTRODUCTION

1 The Applicant Robert Barteaux and the Respondent Poroshad Mahdi are parties to family law proceedings that Mr. Barteaux commenced after the breakdown of the parties' marriage in 2015. In the motion before me, the Respondent mother seeks disclosure from the Applicant father for the purpose of calculating his income for support purposes.

2 By way of background, the parties are both lawyers in private practice. They have two children together, who reside primarily with the Respondent mother in the parties' former matrimonial home. The Applicant father resides elsewhere with his current partner together with their young daughter and newborn son.

3 Under Shore J.'s temporary order dated April 29, 2019, the Applicant father is required on an interim basis to pay child support to the Respondent mother and contribute to childcare expenses. The temporary order requires the Applicant father to pay child support of \$1,716 per month, being the amount determined in accordance with the *Federal Child Support Guidelines, S.O.R./97-175*, based on his 2018 income, then estimated to be \$120,000. His actual 2018 income was \$121,656, according to his 2018 notice of assessment.

4 The temporary order also requires the Applicant father to pay \$679 per month toward nanny expenses for the parties' children, pending the ultimate determination of the appropriate sharing of those and other *s. 7* expenses. That monthly amount represents the proportionate sharing of childcare expenses based on the parties' 2018 income, the Applicant father's share being 34 percent and the Respondent mother's being 66 percent.

5 Subsequent to the interim child support order, the Applicant father resigned his position with his previous law firm. Effective July 1, 2019, he started his own law firm, through a professional corporation (PC). Initially, he practiced in association with another lawyer. Effective January 1, 2021, the Applicant father's PC partnered with the other lawyer's PC to form a limited liability partnership (LLP).

6 The Applicant father's evidence is that after leaving his previous law firm in 2019, he did not receive any personal income from his start-up law firm in 2019 or 2020. He says that his living expenses since that time were funded by the proceeds on the sale of a condo he owned, realizing net proceeds of \$676,690 and leaving him with a bank balance of \$475,780 after payment of outstanding debts (including a \$125,000 loan from his mother).

7 Two motions were scheduled to be heard before me on the same day, one brought by each party. The Applicant father's motion (for a parenting assessment under *s. 30 of the Children's Law Reform Act, R.S.O. 1990, c. C.12*) was adjourned on consent.

8 In the other motion, the Respondent mother sought the following relief: (i) extensive financial disclosure for the purpose of calculating the Applicant father's income for support purposes; (ii) table child support of \$4,206 per month, based on an imputed annual income for the Applicant father of \$327,440; and (iii) payment of childcare costs for times when the Applicant father was scheduled to have parenting time with the children but did not exercise his parenting time.

9 On the day of the motion hearing, the court was advised that (i) the parties had resolved the issue relating to childcare costs, and (ii) the motion relating to imputation of income and child support was being adjourned on consent. The motion hearing proceeded with respect to disclosure matters only.

II. Disclosure motion

10 The Respondent mother seeks disclosure from the Applicant father as set out in her Request for Disclosure dated September 9, 2021, four days before she brought her disclosure motion. The Request for Disclosure requested that the information be provided within 30 days in the form of an affidavit from the Applicant father. The items set out in the Respondent mother's draft order largely track the items set out in her Request for Disclosure.

11 The requested disclosure is extensive but justified in the Respondent mother's submission given (among other things) (i) the Applicant father's self-employment in his own law firm and later in partnership with another lawyer, (ii) the expenses the Applicant father has incurred relating to the film/entertainment industry that she says call into question his professed lack of earnings from that source, (iii) his lifestyle, which she says is not commensurate with the lack of income he says he has

earned from his law practice; and (iv) the Applicant father's lack of diligent and timely response to previous disclosure requests. The Respondent mother justifies some of the disclosure she seeks as being relevant in the context of her (now-adjudged) motion for child support, which includes a request to impute a substantial level of income for support purposes.

12 In response to the Request for Disclosure, the Applicant father provided an initial response the following day in a letter from his counsel. A more detailed response was provided in his counsel's letter dated September 13, 2021 and in the Applicant father's affidavit included in his motion material.

13 In response to the Respondent mother's motion, the Applicant father submits that the motion should be dismissed in its entirety. He acknowledges his obligation to provide timely income disclosure to the Respondent mother, but says that her motion is premature, coming only four days after delivering her September 9 Request for Disclosure. He also says that he has been doing what he can to respond to legitimate disclosure requests, given his circumstances in setting up his own law firm as a sole practitioner in mid 2019 and his more recent partnership with another lawyer as of January 2021. In the alternative, he submits that if a disclosure order is made, it should be narrower in scope than the order the Respondent mother seeks, which he says is not proportionate and goes beyond the disclosure that should reasonably be required.

14 In support of her position, the Respondent mother relies on previous case law that emphasizes the importance of disclosure in family litigation, which includes characterizing nondisclosure as "the cancer of family law": see *Leitch v. Novac*, 2020 ONCA 257, 150 O.R. (3d) 587, at para. 44; *Leskun v. Leskun*, 2006 SCC 25, [2006] 1 S.C.R. 920, at para. 34. In *Leitch*, at para. 44, the Court of Appeal also describes nondisclosure by the payor as being "antithetical to the policy animating the family law regime and to the processes that have been carefully designed to achieve those policy goals."

15 As already noted, the Applicant father is required to provide the Respondent mother with ongoing disclosure, which is legislatively mandated and not dependent on court order: see *Family Law Rules*, O. Reg 114/99, r. 19; *Federal Child Support Guidelines*, s. 21(1). However, the Applicant father questions the extent of the Respondent mother's requested disclosure, arguing that it offends the principle of proportionality, which requires the parties to deal with a case justly, including "in ways that are appropriate to its importance and complexity": see *Family Law Rules*, rr. 2(2) and (3); see also *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 1.04(1.1).

16 As indicated in previous case law, there can be no doubt about the importance of proper and timely income disclosure to permit support issues to be fairly determined by settlement or adjudication. It is also clear that providing such disclosure may well give rise to legitimate requests for further disclosure, consistent with the parties' ongoing disclosure obligation.

17 At the same time, requests for disclosure should be consistent with the principle of proportionality. The aggressive pursuit of overreaching disclosure requests offends that principle, impeding the timely resolution of proceedings and the appropriate allocation of court resources.

18 While I agree with the Applicant father that the level of requested disclosure goes beyond what is necessary and appropriate in this case, I do not agree with his submission that the Respondent mother's disclosure motion should be dismissed outright, given the past history of this matter. While the Applicant father's change in professional status provides some justification for delay in providing basic income disclosure (including income tax returns that have yet to be prepared), that and other requested disclosure have remained outstanding for an extended period of time, without a realistic pathway for production being articulated.

19 In these circumstances, I agree with the Respondent mother that a court order is required to supplement the Applicant father's statutory obligation to provide ongoing disclosure in these proceedings. Therefore, I have decided that a temporary order should issue, requiring the Applicant father to provide to the Respondent mother the disclosure set out in Appendix A of these Reasons, as explained further below.

- a. Some of the items of disclosure set out in Appendix A address the first ten items in the Respondent mother's Request for Disclosure, tracking the income disclosure requirements in s. 21(1) of the *Federal Child Support Guidelines*. In some cases, I have narrowed the scope of the required disclosure in line with the requirements in s. 21(1) (for example, limiting the required partnership and corporate disclosure to accord with ss. 21(1)(e) and (f)).

- b. I have not included a requirement that the Applicant father provide an updated Financial Statement (Form 13), since one was provided in the Applicant father's responding material.
- c. I have not included a requirement for further disclosure relating to the sale of the Applicant father's condominium or his current lease arrangements relating to his residence or his car. I consider the disclosure that he has already provided to be adequate in the circumstances.
- d. I have not included the requested extensive disclosure relating to TMC Inc. or the Applicant father's involvement in acting, producing or directing. I accept as adequate his explanation that he has no financial or ownership interest in TMC Inc. and no income derived from the entertainment industry.
- e. I have not included the requested disclosure relating to the funding of private school and other expenses for the Applicant father's young daughter with his current partner. This request appears to address the issue of equity of treatment between the parties' children and the Applicant father's children with his current partner, rather than being relevant to the determination of the Applicant father's income for support purposes.
- f. I have not included the requested disclosure relating to the Applicant father's travel outside of the Greater Toronto Area or the travel stamps in his passport. The moving party has not demonstrated the relevance of that disclosure to the issues before the court.

III. Disposition

20 Accordingly, a temporary order will issue as follows:

- a. Within 45 days, the Applicant father shall provide to the Respondent mother (to the extent not already provided) (i) the disclosure set out in Appendix A to these Reasons, or (ii) a written explanation as to why any particular item of disclosure cannot be produced within that time, together with a realistic timeline for producing that disclosure.
- b. On consent, the Respondent mother's motion for child support and income imputation is adjourned until after disclosure is provided, to be heard on a date to be arranged with the trial coordinator, with costs on this issue being reserved to the judge hearing the motion.
- c. On consent, on a without prejudice basis for both parties, the Applicant father shall pay \$2,776.07 directly to the Respondent mother within 30 days for childcare expenses for the periods when he did not exercise his parenting time, with no costs being payable by either party on this issue.
- d. Costs of the disclosure motion, if sought and not settled, will be determined following written submissions.

21 If the parties are unable to agree on costs if sought, each side may serve and file brief written costs submissions (not to exceed three pages) together with a costs outline within 21 days. Each side may respond by brief written submissions within a further seven days. If no submissions are received within the specified timeframe, the parties will be deemed to have settled costs.

Motion granted in part.

Appendix

APPENDIX A — DISCLOSURE

The Applicant father's personal income tax returns and notices of assessment for 2020 and 2019.

Details of the Applicant father's year-to-date earnings for 2021.

The following disclosure for 2020, 2019 and 2018 (or since incorporation) for the Applicant father's PC and any other corporation that the Applicant father controls:

- a. Financial statements,
- b. Income tax returns, and

c. a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to (or on behalf of) non-arm's length individuals or entities.

Confirmation of the Applicant father's income and draw from (and capital in) (i) the LLP since January 1, 2021, and (ii) any other partnership of which the Applicant father is a partner, for the past three years (or since the Applicant father became a partner).

Bank statements for all personal or business bank accounts that the Applicant father holds solely or jointly with another person or in trust on his behalf, from September 1, 2018 to present.

Personal and business debt statements (including credit cards, lines of credit, mortgage) from September 1, 2018 to present.

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