Court of King's Bench of Alberta

Citation: FEG v MJV, 2023 ABKB 726

Date: 2023-12-20
Docket: 4814 006083
Registry: St. Paul

Between:

FEG

Plaintiff

- and -

MJV

Defendant

Reasons for Decision
of the
Honourable Justice Douglas R. Mah

A. What this case is about?

[1] The issues in this Special Application are:

- whether FEG is *in loco parentis* or standing in the place of a parent in respect of AL, the 15-year-old son of MJV and in consequence whether retroactive and prospective section 3 and section 7 child support are payable;
- whether retroactive and prospective spousal support is payable; and
- whether FEG has a legal obligation to reinstate MJV and AL on his employer provided medical plan.

B. Preliminary Evidentiary Objections

[2] I first need to comment on what evidence I considered. I appreciate that each party feels strongly about their respective positions. I also appreciate that each party feels a degree of antipathy towards the other. There are obviously grievances going both ways. Both counsel, as I said, forcefully put their respective client's case before the court. I don't think the parties can complain about the level of advocacy. Both parties were eager to give me information. There were certain factual matters on which I required clarity. Counsel tried to help me with that even though, strictly speaking, the information put forward in some instances was not in evidence. I made note of that.

[3] In making this decision, I relied only on evidence that was properly before the court, that is, in proper evidentiary form, not relayed to me by someone in the gallery. To start off, I have to comment on what exactly is properly before me because of evidentiary objections from both sides about update affidavits.

[4] With respect to the evidentiary objections, Mr. Wowk, on behalf of MJV, provided me with additional written submissions (as I requested) in his letter to me of November 22, 2023. Ms. Smith, on behalf of FEG, provided a written response on the same date.

[5] Mr. Wowk's objection relates to FEG's Update Affidavit of Oct 31, 2023. He says that all of it should be ruled inadmissible, except for para 3, because it is not update material but more importantly its submission is contrary to Rule 5.31. FEG was questioned on his affidavit and a transcript resulted. Rule 5.31 relates to who may use a questioning-for-discovery transcript and restricts use or reliance to the questioning party, not the questioned party.

[6] He further objects to the filing of the questioning-on-affidavit transcript by opposing counsel on the grounds that he has attached the appropriate and relevant excerpts from the transcript to MJV's Update Affidavit of November 1, 2023 and the transcript is not FEG's to use.

[7] Rule 5.31 reads as follows:

> **Use of transcript and answers to written questions**
>
> 5.31(1) Subject to rule 5.29 [Acknowledgment of corporate witness's evidence], a party may use in support of an application or proceeding or at trial as against a party adverse in interest any of the evidence of that other party in a transcript of questioning under rule 5.17 [People who can be questioned] or 5.18 [Persons providing services to a corporation or partnership] and any of the evidence in the answers of that other party to written questions under rule 5.28 [Written questions].
>
> (2) Evidence referred to in subrule (1) is evidence only of the questioning party who uses the transcript evidence or the answers to the written questions, and is evidence only against the party who was questioned.
>
> (3) If only a portion of a transcript or a portion of the answers to the written questions is used, the Court may, on application, direct that all or each other portion of the transcript or answers also be used if all or any other portion is so connected with the portion used that it would or might be misleading not to use all or any other portion of the transcript or other answers.

[8] FEG's counsel says that the transcript excerpts attached to MJV's Update Affidavit are misleading in two places and that she filed the whole of the transcript in order that the court not be misled. FEG's counsel said the court should restrict itself to only those two transcript passages that correct misleading omissions.

[9] Mr. Wowk relied on ***Reed v Reed***, 2018 ABQB 960 to support his invocation of Rule 5.31. In that case, a party had attached excerpts from that party's own questioning-for-discovery as part of an affidavit on a Summary Judgment Application. The Master (now Applications Judge) said the Rule did not permit this, but any defect could be cured by filing different affidavits without the excerpts.

[10] It is important to note, as the ***Reed*** case does, that questioning-for-discovery and questioning-on affidavit are two different things. Commentators Stevenson and Coté in the discussion of Rule 5.31 and Rule 6.7 in their ***Annotated Rules of Court 2021*** state that the use of the word "questioning" in both contexts leads to confusion. That apparently has happened here.

[11] Rule 6.7 governs questioning on affidavit. It reads:

> **Questioning on affidavit in support, response and reply to application**
>
> 6.7 A person who makes an affidavit in support of an application or in response or reply to an application may be questioned, under oath, on the affidavit by a person adverse in interest on the application, and
>
> > (a) rules 6.16 [Contents of appointment notice] to 6.20 [Form of questioning and transcript] apply for the purposes of this rule, and
> >
> > (b) the transcript of the questioning must be filed by the questioning party.

[12] As to the distinction between the two rules and the two types of questioning, the Master said in ***Reed in*** reference to questioning-on-discovery at para 11:

> What this means is that you can use evidence and admissions you have obtained against the other side. Ordinarily you cannot use your own evidence by filing your own transcript even if your witness dies (eg ***Paquin v Mr. Gaudreauainers Inc***, (1989) 1989 CanLII 3204 (AB KB), 98 AR 39 QB, and see ***Waquan v Canada***, 2002 ABCA 110).

and in then in reference to questioning-on-affidavit at para 12:

> It is not like an examination on an affidavit where it all goes in and it is open to both sides to use.

[13] Stevenson and Coté further comment with respect to Rule 6.7:

> Rule 6.7(b) leaves no discretion; the party questioning (cross-examining) on an affidavit must file a transcript with the court. On a motion, a party can put into evidence answers of its own affiant when cross-examined by the opposition. This is not an examination for discovery, and all cross-examination answers automatically are part of the record before the court, upon which any party may rely.

[14] The authors then cite ***Reed v Reed*** as well as ***Sutherland v Dorsey***, 2015 ABQB 477 for this proposition.

[15] In the result, there is nothing improper about FEG relying on or referring to his own cross-examination or questioning-on-affidavit or its transcript in his Update Affidavit or the filing of the entirety of the transcript for the purposes of this Application. It should have been done by the questioning party.

[16] In terms of other content, I have no regard to FEG's comments about MJV's use of weight-loss medication or any purported opinions on pharmacology on the basis that such comments are not relevant. Otherwise, an update affidavit should contain new developments or at the very most respond to matters not addressed earlier and raised for the first time in the other side's response affidavit.

[17] With regard to Ms. Smith's complaint that the March 31, 2023 letter attached to MJV's affidavit of November 1, 2023 is privileged and therefore inadmissible, I have reviewed the content and have concluded that the bulk of it is not privileged, notwithstanding that the letter is marked "without prejudice". I agree with Mr. Wowk's submission that merely slapping the label "without prejudice" on a piece of correspondence does not make it so: ***Flynn v. Luscar Ltd***, 2002 ABQB 799 at paras 45, 52, 60 & 66.

[18] The letter appears to only report factual information obtained by FEG which is being relayed to MJV's counsel. It is true there is a portion in which FEG's counsel adopts a certain legal position with regard to pension distribution that could be seen as a negotiation. Overall, the letter is of limited probative value in this application. Its inclusion in MJV's Affidavit is intended to show that FEG is denying inclusion of the pension as part of family property, and he is therefore a mean-spirited person. I do not read the letter as having the meaning that MJV is urging upon me. Rather, he is taking a position as to what part is divisible, but division of family property is not the issue before me.

C. Factual Background

[19] The factual background giving rise to the issues before me are summarized as follows:

- The couple met one another in Cornwall, Ontario and had a relationship since 2015. FEG often spent nights with MJV starting in September 2017 although he maintained a separate residence with his parents.
- MJV had two children from previous relationships, an older son SE who is not involved in these proceedings, and the younger son AL who was 10 years old at the time of marriage, now 15.
- FEG was a reservist and his ambition and objective in life had always been to join the Armed Forces as a regular member. Starting in January 2018 FEG was doing contract work in the army reserves at Meaford, Ontario for a period of 3 months while MJV and her children remained in their home. He sometimes returned to the Cornwall area during this time when he had leave.
- MJV graduated from the Personal Support Worker program in June 2018. She says she had been accepted into the Social Service Worker program but ultimately

took the PSW program because it was only one year in length (as opposed to three years for other program) and fit in better with FEG's plans to join the military.

- FEG was accepted into the regular Armed Forces in spring 2018 and received a posting to Cold Lake, Alberta. The wedding occurred as stated on March 16, 2018
- Following the marriage, FEG was away for his conversion training. Eventually, all four of them moved to Cold Lake in July 2018.
- Actual cohabitation between the parties occurred between the date of marriage March 16, 2018 until May 29, 2020. MJV alleges an earlier start date of cohabitation of September 2017 which I will comment upon later.
- MJV said she left the relationship on May 29, 2020 because of abusive, controlling and violent behaviour on FEG's part and because she felt she and the children were in danger
- MJV and the children moved back to Cornwall with MJV's family.
- No divorce proceedings were commenced at the time.
- Each party has a different perspective on the nature and quality of the contact the parties had during the separation. MJV says they remained in contact, visited one another for several week-long periods and generally discussed and planned for a reconciliation. FEG says that the two of them spent one night together during the entire period of separation.
- Similarly, the parties have different perspectives on the circumstances surrounding MJV and AL moving back into the home in Cold Lake on September 18, 2021.
- This resumption of cohabitation between FEG and MJV with AL also living with them continued until a final separation occurred on June 16, 2022, some 9 months later.
- Consequently, the totality of time comprising the cohabitation is just a hair under 3 years, with 1077 actual days together interrupted by a 477 day separation.

[20] MJV and FEG have uncomplimentary things to say about each other. MJV says that FEG during their time together:

- was obsessive about conserving water, to the point of timing their showers and prohibiting the use of hot water;
- was verbally abusive to the point that felt she was in physical danger;
- was controlling and exhibited violence and anger. She said he "yells, shoves me around, slams doors and calls me names";
- she says her sons stayed in their rooms to avoid witnessing the conflict;
- she felt the situation was so dangerous that in May 2020, it was necessary for her to make the decision that she and the children had to flee the home for safety reasons;

- she said the whole of the relationship was contentious;
- notwithstanding this abusive, controlling behaviour on FEG's part, MJV was pleased that FEG fulfilled the role of father to her son AL, and felt that FEG functioned as a male role model to her son;
- she says that during cohabitation, FEG often took AL to attend AL's activities such as football practice and attended parent-teacher interviews;
- when AL took an interest in FEG's activities, FEG would provide instruction, such as in the handling and use of firearms, and there are pictures to prove it;
- FEG provided financial support to MJV and her sons as a family;
- AL referred to FEG as father or dad;
- MJV also says that AL has not seen his biological father since he was two years old.

[21] FEG on the other hand says:

- he was under the impression AL visited with his biological father and that the biological father paid child support; it appears that FEG was mistaken about the visits, but it was agreed that the biological father did pay $168 per month in child support. The amount had not changed for many years.
- he says he was clear with MJV that he was not going to be a parent to her children and that if he wanted children, he would have children of his own;
- he insists that he was merely being civil to her sons because they all lived under the same roof;
- he also says that he would help out where he could with transporting AL because that is what is a supportive spouse does;
- he says that MJV provided financially for her children, not him;
- he says that he never disciplined the boys, was not allowed to, and when he got upset because they didn't pick up after themselves or do their chores, there was nothing he could do about it except express frustration, realizing that he was not a parent. He said that MJV "hit the roof" when he did try to impose behavioural requirements on AL.
- he says he formed no bond with AL and has not seen nor heard from him since the final separation;
- Regarding MJV, FEG says that she was demanding, not just of his time but of his money as well, always wanting a larger upgraded house;
- she says that she blamed him for the breakdown in their relationship;
- he says that her children were spoiled and catered to;
- he says when they separated the first time, he was glad to be rid of all of them.

D. Credibility

[22] In terms of credibility, it is trite law that the trier of fact may accept all, none or some of what a witness says. Here the witnesses put in their evidence by way of affidavit and FEG was additionally cross-examined on affidavit. In this case, credibility is determined by what makes sense in light of the other evidence that I do accept. Both parties have credibility issues:

- I find it hard to accept MJV's evidence that FEG ruled the household like a tyrant, yet she was pleased that he was a father figure and role model to her son AL.
- There are instances where MJV's characterization of the evidence is exaggerated and skewed. She says positively that FEG did discipline AL. The text exchange she points to is FEG asking MJV to remind AL to do the shovelling before he plays video games. There was no prohibition against video game playing in the event of non-performance of the shovelling, only a request for shovelling. That is not discipline. Para 6 of his February 2, 2023 affidavit is not an admission that he disciplined the boys as MJV says it is. It is the opposite. It is recounting how the boys ignored him and he and MJV would then get into an argument. about it.
- The evidence is not clear that the parties began cohabitation in September 2017 as MJV alleges. FEG says he began spending nights at MJV's residence more frequently starting in September 2017 but maintained his residence with his parents. I also note that that they were living in different geographical places during the first 2 and a half months of 2018, they got married and then it appears they lived in separate geographical locations again between April and the end of June 2018. It cannot be said that cohabitation in the true sense started in September 2017.
- As noted above, the letter of March 31, 2023 from FEG's legal counsel to MJV's legal counsel does not say that MJV is not entitled to a division. It is an attempt to define the accrual period.
- For FEG's part, I find it hard to accept that MJV simply turned up unannounced on his doorstep in Cold Lake, Alberta on September 18, 2021 and that he felt morally obligated to house them as opposed to leaving them on the street, and that this reunification was not a planned reconciliation. The evidence suggests that the FEG and MJV were working together in the months leading up to the reunification to get FEG out of barracks and into a house for a group of three persons.
- Similarly, it is self-serving to say that MJV paid for all the food for her sons. They were a married couple in Cold Lake and they came up with an arrangement for sharing expenses. MJV bought the groceries for everyone. FEG paid the rent for everyone. There is no evidence that he asked to be reimbursed for housing both sons during the first stint or for AL during the latter 9-month period.

[23] In summary on the issue of credibility, I do not accept or reject in totality the evidence of one party or the other. I accept that evidence from one or the other where it makes sense with other evidence I do accept or where it is consistent with the preponderance of probabilities.

E. Was FEG *In Loco Parentis* with respect to AL?

[24] Dealing first with the *in loco parentis* issue, the relevant authority starts with the Supreme Court of Canada decision of ***Chartier v Chartier***, [1999] 1 SCR 242. ***Chartier*** provides this important guidance in determining the *in loco parentis* issue:

- at para 36 – the existence of the parental relationship must be determined as of the time the family functioned as a unit;
- at para 38 - particular attention must be given to the representations of the step-parent, independently of the child's view of the situation;
- at para 39 - the circumstances of the relationship must be viewed holistically and contextually, from an objective standpoint; relevant factors are listed here that should not be considered as exhaustive;
- once formed, the intention to be a parent cannot be qualified or conditional.

[25] Once the relationship is formed, the *in loco parentis* parent has the same responsibilities to the child as he or she would to a biological or adopted child although the child support obligation is governed by section 5 of the ***Federal Child Support Guidelines***, not section 3.

[26] The factors include:

- any expression of parenthood;
- the length of relationship between the child and the non-parental cohabitant and the child's perception of the nature of that relationship;
- the nature or existence of the child's relationship with the absent biological father;
- whether the child participates in the extended family in the same way as would a biological child;
- whether the person disciplined the child as a parent and whether the child accepted his right to discipline;
- whether the person represented to the child, the family, the world, either explicitly or implicitly, that he was responsible as a parent to the child;
- whether playtime and excursions were always, for the majority, a family activity or whether the person and child spent time alone together in some activities or outings initiated by one or the other;
- whether the person provided gifts or items in addition to basic needs for the child.

[27] Mr. Wowk says that if the factors are treated as a checklist, most of them can be checked:

- AL referred to FEG as father;
- the biological father was absent, although he did pay child support;
- FEG did impose discipline;
- FEG held out to his medical insurer, and AL's teacher and football coach that he was a parent;

- FEG and AL engaged in activities together, as evidenced by the photos;
- FEG provided more than basic needs.

[28] FEG, on the other hand, says the ***Chartier*** factors operate against establishing *in loco parentis* status:

- FEG believed that AL had a relationship with his biological father;
- While MJV tried to get AL to refer to FEG as father, FEG discouraged this and corrected any attempt to do so;
- FEG says that he did not impose any discipline, that the boys rejected any authority over them on his part, telling him that he was not their father;
- there is no evidence that FEG integrated either of the boys into his extended family
- he says he was clear with MJV from the outset that he would not be a parent to her children;
- he says he did what was necessary to help out MJV as any good partner would, by stepping in for her when required and doing the transport to activities;
- overall, he conveys the impression that he made no commitment to the boys or AL in particular and did not have a meaningful relationship with him.

[29] Regarding the matter holistically and contextually is not just an arithmetic exercise of counting up ticks on a checklist and declaring a winner. Every relationship exists on a spectrum. At one end of the spectrum would be a mother's partner who either ignores the mother's children or deliberately excludes them from his life. This would be someone who refuses to incur any cost of having the children live with him, insisting on reimbursement for the food they eat, the utilities they use and putting a roof over their heads. It would be someone who refuses to help out the mother by doing transportation or stepping in when the mother is unavailable. This is the type of person that FEG referred to as a "monster" in his affidavit. In saying so, I felt he was not saying that MJV called him a monster but rather that he was not the type of person who would totally ignore or exclude the children because he felt he should be a supportive partner.

[30] At the other end of the spectrum is the person who, in the words of Graesser J in ***Green v Green***, 2011 ABQB 47 at para 39, citing the Court of Appeal in ***Theriault v Theriault***, 1994 CanLII 5255 makes "an unconditional commitment to the place of a parent".

[31] The other important element I need to comment on here is the degree of proof required to establish the relationship. I asked both counsel at the outset of the hearing whether they intended me, on this Special Application, to make a final determination of the *in loco parentis* issue. Both counsel said I am to make such a final determination. Therefore, the degree of proof required is proof on a balance of probabilities.

[32] A final determination is distinct from an interim determination. In ***Green***, the applicant sought interim child support on the basis of *in loco parentis* status. Justice Graesser said at para 41 that a *prima facie* case may suffice for an interim order.

[33] In the case before me, which is for a final order, the burden of proof lies on the person alleging the *in loco parentis* relationship and she must establish that status on a balance of

probabilities. That means that she must establish that FEG occupies the far end of the spectrum, that is that he made an unconditional commitment to be in the place of the parent.

[34] In ***Green*** paras 33-36, Graesser J struggles with the conundrum created where a person who has a brief marriage to someone who already has children and who shows any modicum of civility and generosity to the children or child unwittingly takes on a financial burden that lasts until the last of the children turns 18, or longer if a child continues in school thereafter or has health problems. The financial obligation could presumably last years longer than the marriage. This conundrum presents a disadvantage to single-parents in our society because prospective new partners might be reluctant to enter into any kind of relationship with the single-parent for fear of acquiring what could be extensive financial obligations when the adult relationship fizzles. But that is the law created by ***Chartier*** and that is why the factors must add up to an unconditional commitment to stand in the place of a parent.

[35] That unconditional commitment may manifest in different ways. In ***Chartier*** itself, the relationship was very brief – one year – but the stepfather had done much to manifest his intention to step in as *in loco parentis* for an infant child: initiating adoption proceedings, participating in changing the child's birth certificate to name him as the father; consenting to an interim Order declaring him to be *in loco parentis*. In ***Pittillo v Pittillo,*** 2012 ABQB 109 the husband was in a lengthy relationship of 10 years with a child of tender years, thus satisfying Justice Lee that *in loco parentis* status existed. It is a matter of weighing all the factors together. Sometimes that will end up with the Court finding *in loco parentis* status as Justice Fraser did in ***Thierman v Tymchuk***, 2021 ABQB 902 and sometimes not. It depends on the particular case, how persuasive the evidence is and the findings of the judge with regard to the nature of the relationship.

[36] The evidence here is not so clear and cogent that I am satisfied on a balance of probabilities that FEG made the unconditional commitment required as defined in G***reen*** and ***Theriault***. It is true as Mr. Wowk says that FEG did not rent a billboard on the highway to announce his intention, but the mere fact of transporting AL or attending at his school or sports activities, or the fact that FEG did provide financial support by paying for housing and utilities for the boys does not amount to the required manifest intention.

[37] In ***JLC v RGC,*** 2013 ABQB 701, Macklin J considered a situation where a former cohabitant was trying to establish *in loco parentis* status in order to retain a relationship with the mother's child following their separation. Justice Macklin says at para 53:

> The evidence as to the role played by the Defendant in the life of JTF while the parties were together, either cohabiting or married, is conflicting. I have no doubt that the Defendant did introduce JTF to his extended family, particularly his mother, but the extent of JTF's participation in the Defendant's extended family appears to have been limited. Further, I am also satisfied that he occasionally helped JTF with homework and took him to lessons though not necessarily on a regular and committed basis but more so to provide assistance to his marital partner, the mother of JTF. I believe that any responsible adult living with the mother of a child that is not also his would engage in such activities though not necessarily in the role of a parent but rather in the role of someone who is providing assistance to the boy's mother.

[38] I should note that in ***JLC***, the child in question had an ongoing relationship with his biological father, which is not a feature of the case before me. However, the fact that FEG for a period of time may have been the only major male figure in and AL's life does not automatically imbue FEG with *in loco parentis* status. A teacher, a coach, an uncle or someone outside the family might be the main male figure in a child's life. That does not make the person stand in *in loco parentis*. What is required is the unconditional commitment as manifested through a strong presence of the ***Chartier*** factors.

[39] With regard to FEG's appearance at the school or at football practice, there is nothing to suggest to me that he was there as anything more than a proxy for MJV as opposed to a parent in his own right.

[40] As to the question of discipline, even on MJV's evidence, it is unclear whether FEG imposed, or the boys or AL accepted discipline from him. From his perspective, they rejected any such attempted discipline.

[41] As to providing financial support or medical coverage, I accept that he did so not to be a "monster" as he says but rather because he was married to MJV and the boys were her children, and if he wanted to maintain a relationship with MJV, he had to be fair and civil to the children.

[42] There is no evidence that FEG integrated the boys or AL into his extended family. There is no evidence before me that FEG maintained any sort of relationship with AL the during the year and a half of separation in 2020 and 2021 or that he even inquired after AL's welfare.

[43] That one-and-a-half year separation and silence does nothing to solidify the relationship between FEG and AL. It just subtracts time from an already short relationship and points to the void between the two of them.

[44] I accept from looking at the photographs that FEG did on at least three occasions engage in activities of mutual interest with the boys. The evidence falls short of FEG giving the boys or AL parental instruction or imparting life lessons as opposed to being civil to the boys or AL in order to maintain a relationship with MJV.

[45] Looking at the evidence overall, I am left with the impression that the relationship between FEG and the boys or between FEG and AL was at all times fraught and that they never truly accepted one another into their lives while they were living in the same house. It appears that they respectively tolerated one another's presence and tried to maintain a state of *détente*. That lasted until the first separation. The evidence suggests that the main point of conflict in this marriage was the role of the boys in the household, a conflict that led to the initial separation.

[46] Thus, I conclude that the parental relationship was at some point along the spectrum but did not hit the point where *in loco parentis* is established by unconditional commitment on FEG's part. I therefore find that *in loco parentis* status has not been proven on a balance of probabilities.

F. Spousal Support

[47] I wasn't told exactly whether I'm dealing with interim spousal support only or making a final spousal support order. In view of the length of the marriage, I rather suspect I'm dealing with the latter.

[48] In support of the spousal support claim, MJV says:

- she gave up the three-year Social Service Worker program and took the one-year Personal Support Worker Program in order to accommodate FEG's career plans and, in particular, the deployment to Cold Lake;
- she moved across the country from Cornwall, Ontario to Cold Lake, Alberta in order to support his career;
- she held down the home front and assumed primary care of the children or child;
- she basically put her own career on hold for the period they were together;
- although she is currently working, she cannot make ends meet and therefore she experiences adverse economic consequences of the breakdown of the marriage;
- in sum, for both compensatory and non-compensatory reasons, she is entitled to spousal support.

[49] In speaking against the spousal support claim, FEG says:

- MJV made her own choices in moving from Cornwall to Cold Lake and in pursuing the PSW career path as opposed to the other program;
- she was almost immediately employed upon arrival in Cold Lake and has been almost continuously employed in her chosen career, except during the period they were separated for a year and a half in 2020 and 2021;
- she always had primary care of her two children and her marriage to FEG did not change that or shift additional burden to her;
- her 2022 income tax information indicates that she had her best year ever financially and is earning sufficient income to meet her stated budget and therefore suffers no adverse economic consequences as a result of the marriage breakdown;
- in conclusion, MJV is not entitled to spousal support on either a compensatory or non-compensatory ground.

[50] The ***Divorce Act*** does of course prescribes four objectives of spousal support. They are:

- to recognize the economic advantages and disadvantages arising from the marriage or its breakdown;
- to apportion between the spouses any financial consequences arising from childcare;
- to relieve any economic hardship arising from the marriage breakdown; and
- to promote economic self-sufficiency.

[51] As to economic advantages and disadvantages, professors Rogerson and Thompson say in their ***Spousal Support Advisory Guidelines Revise Users Guide*** that moving for the other spouse's career is a common marker of a compensatory claim. FEG says that he would have moved with or without her. If that is so, I have to ask why he married her if they weren't going to live together. I conclude that FEG married MJV with the expectation that she would be moving to wherever he was posted because otherwise there was no reason to get married. Their mutual

intention with the move was that he would pursue his career in the Armed Forces and she would go with him so they could be a married couple.

[52] While the evidentiary record is not as robust as it could be, I think I can infer from the titles and length of the two programs into which MJV was accepted that she took the lesser of the two career paths in order to accommodate FEG's imminent acceptance as a regular member and deployment to elsewhere in Canada.

[53] Accordingly, there is a basis for saying she has a compensatory claim.

[54] Since I have found that AL is not a child-of-the-marriage, considerations of the financial consequences arising from childcare do not arise. MJV was in any event able to pursue her career as a PSW despite childcare responsibilities.

[55] While I accept that 2022 was of MJV's best year ever in terms of earnings, that was the result of working three jobs. She earned slightly in excess of $43,000 while her budget on an after-tax basis is around $42,000. When I read her evidence, I see that she worked 50 hours per week at Points West, another 52 hours every two weeks at her retail job at Walmart, plus shifts in long-term care. That works out to at least a work week of 76 hours, which is nearly double what the average full-time employee works. Working such hours, to me, is neither reasonable nor sustainable.

[56] MJV herself says that her income should be based on $24,000 per annum. Using her own evidence, I take her hourly rate of $16.15 at Points West, multiply by a 40-hour work week times 50 weeks in a year and I arrive at an income of $32,300 per annum as a reasonable estimate of her income for spousal support purposes.

[57] I invite both counsel to provide me within 30 days of the date hereof with further submissions regarding the duration and quantum of spousal support payable along with new calculations under the ***SSAG*** using a guideline income of $70,360 for FEG and $32,300 for MJV and applying the rulings made in this decision. The submission should not exceed two single-spaced pages each not including the calculations.

[58] I realize that FEG says his 2023 income will be higher because of relocation expenses and retroactive pay increases but all I have to go on at present is his 2022 NOA.

[59] I should also indicate to counsel that I am looking at a fixed term duration given the short marriage and the fact that MJV is currently enrolled in a three-year program at Athabasca University which will lead to a bachelor of arts degree in psychology and restore her to an equivalent position, or better, than she would have been in had she taken the three-year program down east and not come to Cold Lake.

G. Medical & Dental Plan through Canada Life

[60] I appreciate that MJV is no longer on FEG's medical and dental plan. The only admissible evidence I have with regard to why that happened is found in FEG's Update Affidavit filed October 31, 2023. He says that he disclosed the fact that he is now separated from MJV to his employer and was thus posted as a single member without dependent family members when most recently sent to Wainwright. As such, he was not provided with positive enrolment particulars for the benefit plan.

[61] I have no power to direct the Department National Defence, Canadian Armed Forces or the provider (which I understand to be Canada Life) to re-enroll MJV as an eligible dependent if, under their respective rules, MJV is not an eligible dependent notwithstanding that she is a separated spouse receiving spousal support. I also take his point that FEG is likely only entitled to have one eligible partner or spouse in the event he enters into another relationship.

[62] The answer is that I don't know if MJV can be re-enrolled in the program or not. If the rules permit a separated spouse receiving spousal support to be eligible as a dependent family member, then FEG is directed to take whatever steps are necessary to re-enroll her and to maintain that enrolment until MJV is no longer eligible, whether that is by divorce judgment or because FEG has acquired a different dependent spouse or partner.

H. Costs

[63] There has been almost equally divided success here. Consequently, I direct that the parties bear their respective costs of this proceeding, including any steps taken that lead to my eventual decision on duration and quantum of spousal support.

Heard on the 15th day of November, 2023.
Dated at the Town of St. Paul, Alberta this 19th day of December, 2023.

Douglas R. Mah
J.C.K.B.A.

Appearances:

Lakeland Law Group, Jennifer A. Smith
for the Plaintiff

Grey Wowk Spencer, Lawren Wowk
for the Defendant